

1. **Requested Motion:**

**Meeting Date: Feb 4, 2019**

2nd and Final Public Hearing: Ordinance 18-20, Stormwater Utility AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPEALING AND REPLACING TOWN CODE OF ORDINANCES CHAPTER 30, ARTICLE III; PROVIDING FOR FINDINGS AND PURPOSE; LEGISLATIVE INTENT AND CONSTRUCTION; AMENDMENTS TO VARIOUS DEFINITIONS; PROVIDING FOR CREATION OF A STORMWATER UTILITY; ESTABLISHING A STORMWATER UTILITY FEE; PROVIDING FOR EXEMPTIONS; COLLECTION OF FEES; REVENUE SOURCES FOR UTILITY; ESTABLISHMENT OF AN ENTERPRISE FUND; ADJUSTMENT OF FEES; APPEALS; PROVIDING A CREDIT POLICY FOR PRIVATE ON-SITE STORMWATER MANAGEMENT SYSTEMS; BORROWING OF FUNDS; ADJUSTMENTS AND CREDITS ISSUED BASED UPON ORDINANCE 15-08; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND AN EFFECTIVE DATE.

**Why the action is necessary:**

**What the action accomplishes:**

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:** 4. **Submitter of Information:**

Ordinance

Town Clerk

5. **Background:**

The first public hearing on ordinance 18-20, Stormwater Utility, was held on January 22, 2019 at which time the Town Council moved it to a second and final public hearing on February 4, 2019.

Sec. 30-105(c) as follow up to Mr. Steele's comment in meeting. Staff has no objection to Mr. Jim Steele's suggestion regarding Sec. 30-105(c) which is incorporated into the attached.

Attachments:

18-20, stormwater final draft January 28 2019 (DOCX)

6. **Alternative Action:**

7. **Management Recommendations:**

8. **Recommended Approval:**

  
Michelle Mayher, Town Clerk

1/28/2019

  
Gray Robinson, Town Attorney

1/30/2019

  
Roger Hernstadt, Town Manager

1/30/2019

**ORDINANCE NO. 18-20**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPEALING AND REPLACING TOWN CODE OF ORDINANCES CHAPTER 30, ARTICLE III; PROVIDING FOR FINDINGS AND PURPOSE; LEGISLATIVE INTENT AND CONSTRUCTION; AMENDMENTS TO VARIOUS DEFINITIONS; PROVIDING FOR CREATION OF A STORMWATER UTILITY; ESTABLISHING A STORMWATER UTILITY FEE; PROVIDING FOR EXEMPTIONS; COLLECTION OF FEES; REVENUE SOURCES FOR UTILITY; ESTABLISHMENT OF AN ENTERPRISE FUND; ADJUSTMENT OF FEES; APPEALS; PROVIDING A CREDIT POLICY FOR PRIVATE ON-SITE STORMWATER MANAGEMENT SYSTEMS; BORROWING OF FUNDS; ADJUSTMENTS AND CREDITS ISSUED BASED UPON ORDINANCE 15-08; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Fort Myers Beach, pursuant to Article VIII, Section 1, of the Florida Constitution, Florida Statutes, and the Town Charter, has all powers of local self-government to perform Town functions and to render Town services in a manner not inconsistent with general or special law, and to exercise this powers by the enactment of Town ordinances; and

**WHEREAS**, the Town is responsible for the maintenance and expansion of the existing Town stormwater management system, which has been developed over a number of years for the purpose of collecting, cleaning, and disposing of stormwater; and

**WHEREAS**, the Ordinance provides a viable formula to adjust the costs charged to specific developed properties based upon their level of contribution to the stormwater utility system; and

**WHEREAS**, on February 1, 2016, the Town Council established the initial monthly Stormwater Utility fee as \$19.98 per ERU; and,

**WHEREAS**, the Town Council finds it appropriate to modify its Stormwater Utility by repealing and replacing Ordinance 15-08, as codified in Chapter 30, Article III of the Code of Ordinances, as follows.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Fort Myers Beach, that:

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**SECTION 1. RECITALS.**

The above recitals are incorporated herein, as additional findings supporting adoption of this Ordinance, as though fully set forth below.

**SECTION 2. AMENDMENT TO TOWN CODE CHAPTER 30, ARTICLE III.**

Town of Fort Myers Beach Code of Ordinances Chapter 30, Article III is hereby repealed and replaced as follows:

**CHAPTER 30**

**UTILITIES**

**ARTICLE III. STORMWATER**

**Sec. 30-101. Findings and Purpose of Utility.**

(a) The Town finds uncontrolled drainage and development of land has a significant adverse impact upon the health, safety, and welfare of the Town community. Further, the Town finds as follows:

- (1) Stormwater runoff is capable of carrying pollutants into receiving bodies, thereby degrading water quality;
- (2) The increase in nutrients, such as phosphorous and nitrogen, resulting from stormwater runoff accelerates eutrophication of receiving water bodies and adversely affecting flora and fauna;
- (3) Improperly channeling water increases the velocity of stormwater runoff and increases erosion and sedimentation;
- (4) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion;
- (5) Siltation of water bodies resulting from increased erosion decreases the capacity of water bodies to hold and transport water, interferes with navigation, and harms flora and fauna;
- (6) Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge;

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- (7) Improperly managed stormwater runoff may increase the incidence and intensity of flooding, which endangers property and human welfare;
- (8) Improperly managed stormwater runoff may interfere with the maintenance of spring quality and disrupt biological productivity;
- (9) Substantial economic losses to the Town’s tourist industry may result from adverse impacts upon the waters of the Estero Bay ecosystem;
- (10) The Town maintains a system of storm and surface water management facilities including, but not limited to, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways;
- (11) The stormwater system in the Town needs regular maintenance and improvements;
- (12) The Town has the regulatory authority and obligation to maintain its stormwater management system for the welfare of all residents and guests within the Town’s jurisdiction.

(b) The Town presently owns and operates a stormwater management system. The future usefulness of this system, including additions and improvements, rests on the Town’s ability to effectively conserve, manage, protect, control, use, and enhance stormwater and water resources within the Town’s jurisdictional boundaries. In order to effectively manage the stormwater system, the Town must have adequate and stable funding dedicated to this purpose.

(c) Stormwater management is a necessary function that is applicable and beneficial to the entire Town except for those areas, if any, that are specifically exempted as provided herein. While specific service and facility demands may differ from area to area at any given point in time, a stormwater management system encompassing all lands and water bodies within and around the Town is consistent with the present and future stormwater management obligations and needs of the Town.

(d) Construction and operation of a stormwater collection, retention, and detention systems are known to control the adverse impacts caused by stormwater runoff.

(e) The amount of impervious surface on a property is a factor in determining the amount of runoff. By controlling and regulating the amount of runoff and the total volume of stormwater discharged, pollutants within stormwater can be reduced.

(f) The Town of Fort Myers Beach desires to reduce the adverse effects of stormwater runoff and improve the water quality of groundwater, estuaries, and waterbodies in and around the Town.

(g) Formation of a Stormwater Utility; establishing a funding source for stormwater management activities and facilities; and, adoption of Stormwater Utility rates, fees, charges, fines and penalties are necessary to meet the current and future needs of the Town’s stormwater management system.

**Sec. 30-102. Legislative Intent and construction.**

(a) The intent of this section is to implement the provisions of s.403.0893(1) F.S. by creating a Town-wide Stormwater Utility and to adopt Stormwater Utility fees sufficient to plan, construct, operate, and maintain the Town stormwater management system, as defined in s. 403.031(16) F.S., and as contemplated by the Town’s comprehensive plan and the provisions of s. 403.0891(3) F.S.

(b) Stormwater Utility fees collected by the Town will be used to improve the public health, safety, and welfare by providing for the safe and efficient capture and conveyance of stormwater runoff and correction of existing stormwater concerns.

(c) Stormwater Utility fees collected by the Town may also be used to fund the cost of stormwater management activities as defined in this section, including the billing and collection of fees.

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

**Sec. 30-103. Definitions.**

*Benefit Area* means the geographic area within the municipality not exempted as provided herein within which customers are subject to the fee and benefit from the System. Property located within the Benefit Area may remain subject to flooding and other adverse stormwater impacts.

*Bonds* means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Program.

~~*Commercial* means properties including time shares, hotels, motels, businesses and all other uses not otherwise defined in another classification.~~

*Customer* means any person, property owner or legal entity who owns, leases, or is otherwise legally responsible for a property which contributes stormwater into the Town’s stormwater system and receives a special benefit from use of the Town stormwater management system and is responsible for payment of any fees as provided herein.

*Debt Service* means, with respect to any particular fiscal year and any particular series of Bonds, an amount equal to the sum of all interest payable on such Bonds during such fiscal year plus any principal installments of such Bonds during such fiscal year.

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*Developed Property* means real property that has been altered from its original state by the addition of any improvements, such as a building, structure, or impervious surface reducing the land’s natural ability to absorb and hold rainfall. For new construction, property shall be considered developed pursuant to this article (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 whatever reason, for a period of three (3) months.

*Director* means the Town Manager or Town Manager’s Designee who acts as the Director of the stormwater 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.

*Equivalent residential unit or ERU* means the standard unit used to express the stormwater burden expected to be generated by each parcel of property. An ERU is the average impervious area of residential developed property per dwelling unit located within the Town and is established as 4,414 square feet.

*ERU Rate* means a utility fee charged for special benefit received per ERU, as set by a fee schedule established by Town Council Resolution as may be amended from time to time.

*Exempted Property* means property or properties that are permitted by the South Florida Water Management District and are properly maintained so that they retain, treat and properly discharge 100% of their own stormwater; generate no stormwater into the Town’s stormwater system and that are in full compliance with the South Florida Water Management District Permit(s).

*Fiscal Year* means the 12-month financial period for which the Town’s annual business budget is based and ~~includes the period~~ **is currently** from October 1 of the ~~current~~ calendar year through September 30 of the following calendar year.

*Impervious Surface ~~or Area~~* means land areas that have a surface or compacted material that is resistant to infiltration by water and impedes or restricts percolation of surface water into the soil. Impervious surfaces include, but are not limited to, most conventionally surfaced streets, roofs, roof extensions, sidewalks, patios, driveways, parking lots, oiled, graveled, graded, or compacted surfaces, porches, sidewalks, parking areas and athletic courts, swimming pools, and semi-impervious areas, such as compacted clay.

*Impervious Surface Area* means the number of square feet of horizontal surface covered by impervious surfaces. Measurements to determine impervious surface area should be made between exterior or outermost portions of the impervious surface.

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*Multi-Family Residential Unit* means dwelling units as defined in Land Development Code Sec. 34-2: *Dwelling unit, types: Multiple-family building*.

*Non-residential Unit* means property not meeting the definition of “Single-family,” “Two-family,” or “Multi-family” residential unit, including but not limited to, property zoned or used for commercial, industrial, retail, governmental, or other non-residential purposes, hotels, motels, storage areas, parking lots, park and recreational facilities, public and private schools, office building, libraries, hospitals, or convalescent centers.

*Operating Budget* means the annual Utility operating budget required and utilized to **construct improvements**, operate and maintain the Town’s stormwater system as adopted by the Town Council for **any** Fiscal Year.

*Operation and Maintenance* means **the operating budget**, current expenses, paid or accrued, of operation, maintenance, and current repair of the System, as calculated in accordance with sound accounting practice, and includes, but is not limited to, insurance premiums, administrative expenses, labor, executive compensation, materials and supplies costs for current operations, debt service, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which may reasonably be expected to incur in accordance with sound accounting practice.

*Single Family Residential Unit* means a dwelling unit defined as “single family” as defined in Land Development Code Sec. 34-2: *Dwelling unit, types: Single-family*.

**South Florida Water Management District (SFWMD)** means the regional governmental agency that manages the water resources in the southern half of the state.

*Stormwater* means the flow of water that results from a precipitation event and includes, but is not limited to, stormwater runoff, surface runoff, street wash, waters related to street cleaning or maintenance, and drainage.

*Stormwater Management Program* means the comprehensive strategies for dealing with stormwater quantity and quality issues. Stormwater management includes, but is not limited to, the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, water quality, flood plains, flood control, grading, erosion, tree conservation, environmental degradation, water pollution, and sediment control.

*Stormwater Management System* means a system that is designed, constructed, or implemented to control discharges caused by precipitation events and incorporates methods to collect, convey, absorb, inhibit, treat or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges from the system.

*Stormwater Utility* or *Utility* means the Fort Myers Beach Stormwater Utility created by this ordinance, consistent with Section 403.031(17) Fla. Stat. and Rule 62-40.431 F.A.C. to operate, maintain, and improve the Town of Fort Myers Beach public stormwater management system.

*Town* refers to The Town of Fort Myers Beach, Florida.

*Two-Family Residential Unit* means a dwelling unit as defined in Land Development Code Sec. 34-2: *Dwelling unit, types: Two-family.*

*Utility Fee*, or *Stormwater Utility Fee* means the monthly fee authorized by state law and this article, which is established to pay for the operations, maintenance, extension, improvement, replacement and debt service attributable to the Stormwater Utility.

*Undeveloped Property* means property that is not served by a facility meter and has not been altered from its natural state by dredging, filling, removal of trees and vegetation, or **such** other activity as **construction**, paving or compaction of soil in any manner resulting in the altering or disturbing of the topography or soils on the property.

#### **Sec. 30-104. Creation of Utility.**

(a) *Establishment of Utility.* Pursuant to the home rule power of Article VIII, Section 2(b) of the Florida Constitution, Florida Statutes Chapter 166, as amended, and Florida Statutes Sections 403.0891(1) and 403.0893(1), as amended, the Town hereby establishes a stormwater management utility. The Director of the utility shall be responsible for the Town's stormwater management program and system.

(b) *Governing body.* The governing body of the Stormwater Utility is the Town of Fort Myers Beach, Florida, Town Council.

(c) The Stormwater Utility will be responsible for the operation, maintenance and governance of the Town-wide Stormwater Utility less any area specifically exempted as provided herein. The Utility's responsibilities include planning, constructing, operating and maintaining the stormwater management system as set forth in the local program required pursuant to Section 403.0891(3) Fla. Stat. The Stormwater Utility will have all powers necessary for the exercise of its responsibilities as granted or authorized by law.

(d) *Director of Utility.* The Town Manager, or designee, will be the Director of day-to-day operations of the Stormwater Utility.

(e) *Powers and Duties of Director.* In order to properly discharge the responsibilities involved in day-to-day operations of the Stormwater Utility, the Town grants authority to the Director for the ascertainment, computation, and collection of the



fees imposed under this ordinance and for the proper administration and enforcement of this ordinance. The Director may take any reasonable measures necessary to develop **and implement** a stormwater plan, including, but not limited to:

- (1) Charging a utility fee to customers consistent with this ordinance;
- (2) **Develop** as necessary regulations, policies and procedures to implement this ordinance, forward the regulations, policies and procedures to the Town Council for consideration and adoption **by resolution**, and adopt any internal procedures required to implement the regulations or carry out other responsibilities for the effective administration of the system;
- (3) Administer the acquisition, design, construction, maintenance, and operation of the System, including capital improvements designated in the stormwater management plan adopted by the Town Council;
- (4) Administer, interpret, and enforce this article and all regulations and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the system, including but not limited to the quantity, quality, and/or velocity of the stormwater conveyed;
- (5) Accept and review for completeness applications for exemptions as provided by this ordinance.
- (6) Advise the Town Council and other Town departments on matters relating to the system;
- (7) Prepare and revise a comprehensive stormwater management program for adoption by the Town Council **as required by state law** ~~at least~~ or every five fiscal years **which ever is the longer shorter period**;
- (8) Review, inspect, approve, and recommend plans for extensions to the system to the Town Council;
- (9) Enforce regulations adopted by the Town Council to protect and maintain water quality within the system in compliance with established federal, state, and local water quality standards as adopted or amended;
- (10) Ensure an adequate and stable base rate to achieve a stable financial position for the system by analyzing and amending:
  - a. the cost of services and benefits provided, and

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- b. the system and structure of the stormwater management fees, charges, fines, and revenues of the system; and
  - c. any other factors relevant to maintaining a stable financial position.
- (11) Seek any grant capable of funding capital improvements for stormwater management.

### **Sec. 30-105. Structure of Equivalent Residential Unit.**

(a) *Establishment of the Equivalent Residential Unit.* Utility fees shall be based on establishment of the “equivalent residential unit (ERU)” as follows:

(b) *Determination of ERU.* The Director shall recommend to the Town Council, considering the general acceptance and use in the industry of stormwater systems, of a source and the reliability and general accuracy of the source, may determine the source of data from which to recommend the ERU to the Town Council. Using the property tax assessor’s rolls, site examination, mapping information, aerial photographs, and other reliable information, the Director, applying the following formula, will determine the ERU to apply. Based upon the average impervious area derived from a statistically valid sample of single-family parcels, the Town has computed an “ERU Value” of 4,414 square feet, which will be used to calculate the number of ERUs attributable to each Developed Property.

(c) *Determination of ERU Rate.* Applying the following formula, the Director may classify all property according to the number of ERUs the property occupies. The ERU Rate will be based on a tiered rate system that groups residential parcels into comparable impervious area categories and establishes comparable ERU conversion rates for non-residential parcels. The tiered rate system creates a sliding scale that groups residential parcels into comparable categories based upon impervious square footage, as follows: as defined in section 30-106.

**Sec. 30-106. Implementation of Utility Fee.**

(a) The Town Council authorizes the imposition of a monthly stormwater utility fee on all non-exempt **qualifying** property within the Town as follows:

(1) *Single-family and Two-family residential.* The Stormwater Utility fee for developed single-family and two-family residential property is the ERU rate, as determined **herein** as follows:

<u>Impervious square footage</u>	<u>Small</u>	<u>Medium</u>	<u>Large</u>	<u>Very large</u>
<u>Minimum</u>	<u>101</u>	<u>3,311</u>	<u>5,518</u>	<u>8,829</u>
<u>Average</u>	<u>2,943</u>	<u>4,414</u>	<u>6,621</u>	<u>N/A</u>
<u>Maximum</u>	<u>3,310</u>	<u>5,517</u>	<u>8,828</u>	<u>N/A</u>
<u>ERU RATE</u>	<u>2/3</u>	<u>1</u>	<u>1 1/2</u>	<u>Calculate</u>

(2) *Multi-family residential.* The Stormwater Utility fee will be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area of the multifamily property by the equivalent square footage of 1 ERU. Multiple story structures will be calculated as if they were only ground-level structures.

Example: 50 unit condo with 100,000 sf of impervious area  
 1 ERU = 4,414 sf  
 Fee per ERU = \$19.98

$$100,000 \text{ sf impervious} \div 4,414 \text{ sf} = 22.655 \text{ ERU}$$

$$22.655 \times \$19.98 = \$452.65 \text{ for the 50 condo unit}$$

(3) *Non-residential.* The Stormwater Utility fee for non-residential developed property will be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the equivalent square footage of 1 ERU. Multiple story structures will be calculated as if they were only ground-level structures. The monthly Stormwater Utility fee for unoccupied developed property will be based upon the category and classification of the property as if the property were occupied.

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Example: Property contains 54,126 sf of impervious area  
 1 ERU = 4,414 sf  
 Fee per ERU = \$19.98

$$54,129 \div 4,414 \text{ sf} = 12.263 \text{ ERU}$$

$$12.263 \times \$19.98 = \$254.01$$

- (b) The monthly Stormwater Utility fee may be amended from time to time by Resolution of the Town Council.
- (c) An amount may be included in the utility fee to cover the cost of billing and accounting for each account, together with administrative charges, as determined by the Town Council.

### **Sec. 30-107. Exemptions from Utility Fee.**

Except as provided in this section and Sec. 30-112, no public or private property will be exempt from stormwater utility fees or receive a credit or offset against the utility fees. No exemption or reduction in the Stormwater Utility fee will be granted based on the age, race, religion, tax or economic status of the property owner, or for other conditions unrelated to the cost of providing stormwater management services and facilities. The following exemptions will be allowed:

~~(1) Property that is undeveloped, as defined in this ordinance.~~

~~(2) Water bodies without impervious bottoms such as lakes, ponds, and rivers.~~

~~(3) Developed, publically owned roadways available for use by the general public for transportation. These roadways include those owned by the Town, county, state or federal government. This exemption does not apply to public lands used for offices, maintenance yards, water and wastewater treatment facilities, water reservoirs and storage facilities, parking lots, park and recreation facilities, libraries, schools, social service centers, public housing, public hospitals or convalescent centers and similar public properties; likewise, the exemption does not apply to internal site roadways within public facilities, all of~~

which will be charged in a manner consistent with comparable non-publically owned properties as provided in this article. No exemption is granted for private roads or drives, or to internal roads, drives, and parking areas on privately owned properties regardless of the degree of access to those sites, roads, and drives allowed to the general public.

- ~~(4) Any property which does not discharge into or otherwise utilize the Town's stormwater management system pursuant to Section 30-111 and Section 30-112, and has an on-site system which treats, attenuates and discharges all of its stormwater runoff under a current South Florida Water Management District permit.~~

### **Sec. 30-108. Collection of Fee.**

(a) *Schedule of Billing.* The Town will mail to all customers a monthly stormwater utility bill. For customer's who do not receive a water bill, a bill will be mailed to the property owners' address as registered with the property appraiser.

(b) *Method of Payment.* The customer may pay the utility fee in person at the Town Hall 2525 Estero Boulevard, Fort Myers Beach, FL, electronically, or by mail.

(c) *Schedule of Payment.* The customer must pay the fee on or before the due date stated on the bill or be found delinquent.

(d) *Combination of Utility Bills.* If the Director elects to combine the stormwater utility fee with other utilities in the same bill, the utility department will render a monthly utility bill containing the stormwater utility fee and any other utilities.

(e) *Delinquent Accounts.*

(1) Accounts shall be considered delinquent unless payment is received on or before the billing due date. Notice of any delinquency will be sent to the customer adding any late fee permitted by the adopted fee schedule to the bill. Any payment which remains delinquent in excess of 30 days shall begin to accrue interest until paid at the maximum rate allowed by **state** law.

(2) The Director may require a deposit for delinquent accounts in an amount no more than that due in any 90 day period.

(3) Unpaid fees shall constitute a lien against the related real property, which shall be prior to all other liens except liens for state, county and municipal taxes and shall

be on a parity with the lien of such state, county and municipal taxes. Such lien may be foreclosed by the Town when delinquent for more than thirty (30) days in the manner provided by the laws of Florida for the foreclosure of mortgages on real property or collected in any manner provided by law with related attorney's fees, if any, and costs being the customer's responsibility.

(4) In addition to the late fees, deposits and liens for delinquent accounts, the Director may interrupt or terminate other Town utilities supplied to the delinquent customer until all fees and charges are paid.

(5) The customer is responsible for **timely payment** all fees imposed pursuant to this Ordinance.

### **Sec. 30-109. Revenue Sources for Utility.**

(a) *Sources of Funding.* The stormwater utility funding sources may include the following:

- (1) Stormwater utility fees;
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the stormwater utility ordinance;
- (3) Stormwater permit and inspection fees;
- (4) Other funds or income obtained from federal, state, local, and private grants or revolving funds;
- (5) Bonds issued using future stormwater utility revenue as collateral; and
- (6) Any other ~~reasonable~~ **legal revenue** source.

### **Sec. 30-110. Establishment of Enterprise Fund.**

(a) Town hereby establishes an enterprise fund exclusively for the deposit and withdrawal of all revenue collected pursuant to this article. The Director will use the enterprise fund for the independent and separate accounting of all revenues, expenditures, assets and liabilities, and earnings and obligations of the utility, and including the following purposes:

- (1) The acquisition by gift, purchase, or condemnation of real and personal property and interests therein, necessary to construct, operate, and maintain stormwater control facilities;

- (2) All costs of administration and implementation of the stormwater **improvement** management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (3) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;
- (4) Operation and maintenance of the System;
- (5) Monitoring, surveillance, and inspection of stormwater control devices;
- (6) Water quality monitoring and water quality programs;
- (7) Retrofitting developed areas for pollution control;
- (8) Inspection and enforcement activities;
- (9) Billing and administrative costs; and
- (10) Other activities reasonably required to carry out the stormwater management program.

(b) Unless specifically authorized by Town Council through an ordinance, the revenue and other assets of the Stormwater Utility will be used only for the conservation, management, protection, control, use and enhancement of stormwater in the Town, and the acquisition, administration, planning, construction, acquisition of equipment, management, maintenance, extension, and improvement of the Town's stormwater management system.

(c) If the funds available in the enterprise fund account are not sufficient to meet the anticipated needs of the Stormwater Utility, the Town Council, upon a recommendation from the Director, may make a temporary loan from the general fund to cover the insufficiency.

### **Sec. 30-111. Adjustment of fee; appeal.**

(a) *Availability of Adjustment.* Requests for adjustment of the stormwater utility fee shall be submitted to the Director, who will develop and administer procedures and

standards for adjustment of fees. All requests will be judged solely on the basis of the amount of impervious area on the site; ~~or, the existence of private, permitted and maintained stormwater facilities. Properties requesting a one-hundred percent (100%) exemption shall be reviewed pursuant to Sec. 30-112.~~ Credit shall be given for the installation of facilities required or permitted by state agencies, provided the following evidence is submitted annually: (a) such permit is in compliance with state agency regulations; and, (b) evidence that all required system maintenance is being performed. In response to a request for adjustment, the Director may adjust the fee up or down.

(b) *Basis for Adjustment.* Director will utilize the Town's **standard methodology** to assist in analysis for consideration of adjustment. In determining the similarity of properties, the Director will consider the location, geography, size, use, impervious area, and any other factors bearing on the variation. All adjustments must be in writing.

(c) *Procedure for adjustment.* The following procedures will apply to all stormwater utility fee adjustment requests:

- (1) *Submission of application for adjustment.* The adjustment application must be submitted to the Director in writing by the customer within 180 days of assessment of the utility fee ~~or the adoption of this ordinance,~~ **or any revision to Chapter 30, Article III of this Code.**
- (2) The application must detail the grounds for the adjustment and include documentation to substantiate the reason for the adjustment. Incomplete applications will be rejected. At minimum, the application must include the following:
  - a. The name and address of the property owner;
  - b. The property address, legal description and a property sketch;
  - c. The total amount of impervious area;
  - d. The total lot or parcel size; and
  - e. a summary description of the asserted error or basis for the relief requested.
- (3) *Grounds for adjustment.* Grounds for adjustment of the fee may include, but are not limited to:
  - a. incorrect property classification for purposes of determining the fee;
  - b. errors in the property's impervious surface area square footage;
  - c. mathematical errors in calculating the property's applicable fee; and
  - d. errors identifying the property owner of a fee-subject property.
  - e. use of materials generally accepted to be pervious.
  - f. presence of on-site privately maintained and permitted stormwater treatment facilities.



- (4) *Supplemental Information for Decision.* The Director may require the applicant, at the applicant's expense, to provide supplemental information to the Director including, but not limited to, survey data approved by a Florida licensed professional land surveyor; engineering reports signed and sealed by a Florida licensed professional engineer. The Director may deny an application based on the failure to provide such information.
- (5) *Timing and Notice of Decision.* The Director, on or before 90 business days after receipt by the Director of a completed application, will review and render a written decision on the application. The Director will provide a copy of the written decision to the applicant.
- (6) *Retroactivity of Adjustment Decision.* The Director may retroactively apply any grants of adjustment resulting from an application. Retroactive adjustment will not exceed one (1) year, and any reimbursement due may be granted as a credit against the customer's future fee collections.
- (d) *Appeal of Adjustment.* The decision of the Director may be appealed to the Town Council as follows:
- (1) The written appeal must be submitted by the customer, to the Town Clerk within 30 days of the Director's written decision.
  - (2) The appeal must include a certified boundary and topographic survey prepared by a Florida registered land surveyor depicting all improvements on the property along with any other evidence necessary to show that the Director's decision was incorrect. The basis of the appeal must be clearly articulated in the written appeal document.
  - (3) The appeal will be scheduled in the normal course of business for Town Council consideration during a regularly scheduled Town Council meeting.
  - (4) The Town Council will apply the standards and review criteria set forth in this section.
  - (5) The Town Council will articulate the findings of fact upon which their vote to grant or deny the appeal is based. A written determination will be rendered as a result of the appeal proceeding.
  - (6) The Town Council decision will be final.
- (e) Any adjustment granted pursuant to this section may be retroactively applied, but in no case will the retroactive adjustment exceed 12 months. The adjustment will be applicable to the property's current and future utility fees, so long as no substantial change occurs to the property.

**Sec. 30-112. Policy for approved private on-site stormwater management systems.**

(a) *Applicability.* Properties that operate and maintain a private on-site stormwater management system designed to process one hundred percent (100%) of the total volume of stormwater runoff within the property, with no use of the Town's stormwater management system and receiving no special benefit from the Town stormwater management system are eligible for an exemption.

(b) *Basis for Exemption:* Any property with a properly designed, constructed and maintained on-site stormwater management system subject to valid permits issued by the South Florida Water Management District.

(c) *Procedure for Exemption.* The following procedures shall apply to stormwater utility fee adjustment requests:

- (1) *Application for Exemption.* The customer must submit an application for exemption to the Director. A property owners association may file a single application on behalf of all owners within a residential development boundary.
- (2) *Application contents.* The application must detail the basis for the exemption. Incomplete applications will be rejected. At a minimum, the application must include the following:
  - a. The name and address of the property owner or the property owner's agent;
  - b. The property address, legal description, and a sketch of the property boundary (the property boundary of a residential complex will be the outbound dimensions of the total development);
  - c. **Evidence of the current** maintenance of the system shall be:
    - i. The Director may require the petitioning customer, ~~at the customer's expense, to~~ provide supplemental information to the Director including, but not limited to, survey data approved by a **State of Florida** registered professional land surveyor and engineering reports approved by a **State of Florida** professional engineer.
    - ii. **For holders of SFWMD permits, a recent** South Florida Water Management District (SFWMD) inspection during the months of June 1 through September 30.
    - iii. The Town of Fort Myers Beach, **at customer's request,** will perform an inspection of the system **upon being**

granted a right-of-entry by the customer and bill the customer all related costs.

d. The Director may deny a customer's petition based on the failure to provide adequate technological information.

e. In the event of a dispute; either party can appeal to the Town Council.

(d) *Grounds for Exemption for Customers holding SFWMD permits:*

(1) In addition (c)(2)a. and (c)(2)b. above, the stormwater management facilities must be currently permitted by the South Florida Water Management District (SFWMD); and, be operated and maintained in accordance with the a current SFWMD permit.

(2) The stormwater utility customer requesting the exemption must attest to the Director that the stormwater facilities are fully functional, operating properly, and being maintained according to the South Florida Water Management District permit.

(3) Term of Exemption. Exemptions shall continue for the duration of the permits issued by the South Florida Water Management District. However, evidence, acceptable to the Director, that the system is working within its design capacity must be timely submitted every 24 months to the Director or prior to before if any impervious area had been is being added. Evidence acceptable that a private SFWMD permitted system is fully functional shall include:

a. A report, prepared by the Town at the Customer's request upon being granted a right of entry by the customer, no less than once every 24 months, documenting no system deficiencies based on an inspection during the period June 1 through September 30.

(4) In the event an assessment results from the inspection reports, the Customer may appeal the Director's decision to the Town Council.

(e) Exempted property is exempt from this ordinance.

~~(e) PROPOSED: Any property meeting the above requirements is exempt from fees.~~

### **Sec. 30-113. Borrowing against enterprise fund.**

*Issuance of Bonds.* The Director may borrow against the fund by requesting the municipality issue bonds, notes, or other evidences of indebtedness (referred to here as "bonds") to finance or refinance the costs of the system and to pay the costs of issuing the bonds. If the Director elects to use bonds, the Director will issue the bonds pursuant to an ordinance adopted by a majority vote of the Town Council, and the ordinance must set forth the use and disposition of the proceeds of the bonds, the maturity date of the bonds and their interest rate or rate of accretion if applicable, the manner and method of payment, the rights and remedies of the holders thereof, the security for repayment and other covenants or conditions as the Town Council may deem proper. The provisions of the bond ordinance and general law will be the only limitations and restrictions regarding bond issuance.

### **Sec. 30-114. Adjustments and credits issued pursuant to Ordinance 15-08.**

#### **SECTION 1.**

Any adjustments or credits or exemptions issued pursuant to Town Ordinance 15-08, as codified in the Town of Fort Myers Beach Code of Ordinances in Chapter 30, Article III, will remain in effect pursuant to the terms of the adjustment or credit or exemption conditioned upon continued compliance with the terms of this ordinance.

#### **SECTION 2. SEVERABILITY.**

If any provision, section, paragraph, sentence, clause, or portion of this ordinance or the application thereof to any person or circumstance, is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions or portions thereof.

#### **SECTION 3. CODIFICATION AND SCRIVERNER'S ERRORS.**

The Town Council intends that this ordinance will be made part of the Fort Myers Beach Code of Ordinances; and, that sections of this ordinance can be renumbered or

relettered; and, the word “ordinance” can be changed to “section”, “article” or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing.

#### **SECTION 4. CONFLICTS OF LAW.**

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

**SECTION 5. EFFECTIVE DATE.**

This ordinance **supercedes Ordinance 15-08 and Town Resolution 16-07** and becomes effective immediately upon its adoption.

THE FOREGOING ORDINANCE was moved for adoption upon a motion by Council Member \_\_\_\_\_ with second by Council Member \_\_\_\_\_ and upon being put to a roll call vote, the result was as follows:

Tracey Gore, Mayor	_____
Joanne Shamp, Vice-Mayor	_____
Dennis Boback	_____
Anita Cereceda	_____
Bruce Butcher	_____

**DULY PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018~~8~~**9**.

**TOWN OF FORT MYERS BEACH**

**ATTEST:**

By: \_\_\_\_\_  
Tracey Gore, Mayor

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
John Herin, Jr., Gray|Robinson, Town Attorney

Attachment: 18-20, stormwater final draft January 28 2019 (2019-17 : 2nd and Final Public Hearing: Ordinance 18-20, Stormwater)

