

ORDINANCE NO. 03-31

AN ORDINANCE OF TOWN OF MIAMI LAKES, FLORIDA, CREATING A STORMWATER UTILITY SYSTEM FOR THE TOWN; PROVIDING AUTHORITY; PROVIDING FOR DEFINITIONS; MAKING CERTAIN FINDINGS AND DETERMINATIONS; ESTABLISHING A STORMWATER UTILITY FEE SYSTEM; ESTABLISHING A METHOD AND PROCEDURE FOR THE COLLECTION OF STORMWATER UTILITY FEES; PROVIDING FOR REQUESTS FOR ADJUSTMENT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town is currently part of the Miami-Dade County Stormwater Utility and, as part of the Utility, Miami-Dade County is responsible for the maintenance of the Town's stormwater management system; and

WHEREAS, by the adoption of Resolution No. 03-319 the Town has exercised its option to be exempt from the provisions of the Miami-Dade County Stormwater; and

WHEREAS, by creating the Utility the Town will become responsible for the ownership, maintenance and expansion of the existing stormwater management system located within the Town's limits for the purpose of collecting and disposing of storm and other surface water; and

WHEREAS, the Town finds that although each developed property in the Town has varying degrees of water retention, all properties contribute to some extent to the Town's stormwater drainage problems and that all citizens will benefit from the establishment of a Stormwater Utility; and

WHEREAS, the fee structure set forth herein represents a logical, reasonable and rational basis for allocating the costs for a Stormwater Utility to the several types of developed properties of

(Coding: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.)

the Town and based upon the relative contribution of such developed properties to the need for the Stormwater Management System; and

WHEREAS, the purpose and intent of this ordinance is to establish a Town-wide stormwater utility in furtherance of the provisions of Section 403.0893(1), Florida Statutes, the Town of Miami Lakes Comprehensive Plan, to insure compliance with the Federal Clean Water Act, the Environmental Protection Agency Stormwater NPDES Permitting Program, Rule 62-25, Florida Administrative Code, and to adopt stormwater utility fees sufficient to plan, fund, construct, operate and maintain a local stormwater management system pursuant to Section 403.0891(3), Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. A new section of the Town Code entitled, “Stormwater Utility System” is hereby created as follows:

“STORMWATER UTILITY SYSTEM

Sec. 1. Authority.

- (a) As authorized by the Town’s Home Rule authority and Section 403.0893(1), Florida Statutes, as amended, a municipal stormwater utility within the geographic boundaries of the Town of Miami Lakes implementing the provisions of Section 403.0893(1), Florida Statutes which shall be known as the Miami Lakes Stormwater Utility (the “Utility”) is created.
- (b) The Utility shall be a public body corporate and politic which, through its governing body may exercise all those powers specifically granted herein, those powers granted by law and those powers necessary in the exercise of those powers herein enumerated.
- (c) The governing body of the Utility shall be the Town Council.

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(d) The Utility shall be responsible for the operation, maintenance, and governance of a Town wide stormwater utility to plan, construct, operate and maintain the Town's Stormwater Management System.

(e) The Town Manager shall be the Director of the Utility.

(f) The Utility Director shall prescribe the organization and operating procedures of the Utility. The Utility Director shall employ such consultants and employees as may be necessary to operate the Utility.

Sec. 2. Definitions.

The following, when used in this Ordinance, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

(a) "Developed Property" shall mean any parcel of land that contains an impervious area.

(b) "Dwelling" shall mean any building that is wholly or partly used or intended to be used for living, sleeping, cooking and eating.

(c) "Dwelling Unit" shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities used or intended to be used for living, sleeping, cooking and eating.

(d) "ERU" ("Equivalent Residential Unit") shall mean the statistically estimated average of impervious area of residential developed properties per dwelling unit. The estimated average (which equals 2,800 square feet) is calculated by dividing the total estimated impervious area of residential properties by the estimated total number of dwelling units.

(e) "Impervious Area" shall mean the horizontal ground surface that is incapable of being penetrated by rainwater. This shall include, but not be limited to, all structures, roof extensions, slabs, patios, porches, asphalt, driveways, sidewalks, parking areas, and decks.

(f) "Nonresidential Developed Property" shall mean any parcel of land that contains an impervious area and that is classified by the Miami-Dade County Property Appraiser as land use types 10 through and including 99, as set forth in Florida Administrative Code Rule 12D-8.008(2)(c), as amended from time to time.

(g) "Residential Developed Property" shall mean any parcel of land that contains an impervious area and is classified by the Miami-Dade County Property Appraiser

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as land use types 00 through and including 09 as set forth in Florida Administrative Code Rule 12D-8.008(2)(c), as amended from time to time.

(h) "Stormwater Infrastructure" shall mean the structural, non-structural or natural features of a parcel of land or watershed which collect, convey, store, absorb, inhibit, treat, use, reuse, or otherwise affect the quantity or quality of stormwater.

(i) "Stormwater" shall mean the surface water runoff that results from rainfall.

(j) "Stormwater Management System" (or the "System") shall have the meaning specified by Section 403.031(16), Florida Statutes, as amended from time to time.

(k) "Stormwater Utility" shall have the meaning specified by Section 403.031(17), Florida Statutes, as amended from time to time.

(l) "Stormwater Utility Fund" shall mean that separate Fund established by the Town for the deposit and use of all Stormwater Utility Fees collected.

(m) "Stormwater Utility Fee" shall have the meaning specified by Section 403.0893, Florida Statutes, as amended from time to time.

Sec. 3. Findings and Determinations.

It is hereby determined and declared as follows:

(a) The Town desires to create a Stormwater Management System to maintain and improve water quality, to control flooding that results from rainfall events, to deter unmanaged rainwater from eroding sandy soils, to deter the disruption of the habitat of aquatic plants and animals and to provide for the collection of Stormwater Utility Fees for those expenses connected with the planning, constructing, operating and maintaining of a Stormwater Management System.

(b) The collection of and disposal of stormwater and regulation of groundwater are of benefit to all property within the Town including property not currently served by the System.

(c) The cost of operating and maintaining the System should, to the extent practicable, be allocated in relationship to the contributions to the system.

Sec. 4. Stormwater Utility Fee.

(a) A Stormwater Utility Fee is assessed against each Developed Property within the Town for services and facilities provided by the Stormwater Management

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System. The rate per ERU to be used in calculating Stormwater Utility Fees shall be set by a separate ordinance of the Town Council after a Public Hearing.

(b) The Utility Director or his/her designee is directed to prepare a list of lots and parcels within the Town and to assign a classification of Single-family Dwelling Unit, Multi-family Dwelling Unit, or Nonresidential Developed Property to each lot or parcel.

(c) ERUs shall be assigned as follows:

- (1) Single Family Dwelling Units: 1.0 ERU.
- (2) Multi-family Dwelling Units: 1.0 ERU per Dwelling Unit.
- (3) Non-Residential Developed Properties: shall be assigned ERUS on the basis on one ERU per 2,800 square feet of Impervious Area.

(d) The following criteria shall be used to calculate Stormwater Utility Fees:

- (1) Each Single-Family Dwelling Unit, Multi-family Dwelling Unit and Nonresidential Developed Property shall be assessed a Stormwater Utility Fee calculated by multiplying the rate for one ERU by the number of ERUs provided in Sections 4(c)(1), (2) and (3), respectively.
- (2) For the purpose of calculating Stormwater utility Fees, the calculation of ERUs is based upon property usage. The property usage shall be determined by the Town based on, but not be limited by, state and county land use codes, occupational licenses and site inspections.
- (3) Any authorized representative of the Town shall have access to the properties at any reasonable time for the purpose of determining property usage for the purpose of calculating Stormwater Utility Fees and obtaining billing account information.
- (4) The number of ERUS calculated for each account shall be rounded up to the nearest whole number.
- (5) The minimum charge assessed against each Developed Property shall be one (1) ERU.

(e) The fees owed to the Town and collected by the Miami-Dade County Water and Sewer Department (WASD) with respect to the Stormwater Utility, together

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with investment earnings thereon, shall be deposited in the Stormwater Utility Fund and shall be used exclusively for planning, constructing, financing, operating and maintaining the Stormwater Utility and the infrastructure of the Stormwater Management System. The Town may pledge such fees as security for indebtedness incurred by it in connection with the Stormwater Utility and the Stormwater Management System.

Sec. 5. Collection of Stormwater Utility Fee; Liens.

- (a) The Stormwater Utility Fee shall be shown as a separate item on WASD bills (or as shown on a stormwater utility bill if no water bill is issued) and shall be paid by the owner, tenant or occupant in possession of the premises at the same time and in the same manner as is provided in WASD regulations for the payment of bills. For properties not receiving monthly utility bills for other services, the bill or statement for the Stormwater Utility Fee shall be sent to the owner of the property as determined from the tax rolls by the Town. The Utility Director may render annual or semi-annual billing on such properties if determined to be in the best interest of the Town.
- (b) The Stormwater Utility Fee shall be billed to the owner, tenant or occupant of each Developed Property. If the Stormwater Utility Fee is not fully paid by the owner, tenant or occupant on or before the past due date set forth on the owner's, tenant's or occupant's bill, a ten percent (10%) late charge may be added to the bill. Any unpaid balance of the owner, tenant or occupant for a Stormwater Utility Fee shall be subject to an interest charge at a rate of eight percent (8%) per annum. Imposition of this interest charge shall commence 60 days after the past due date of the fees set forth on the bill of the owner of the Developed Property. WASD is authorized to act as the Town's agent for the purpose of billing and collecting Stormwater Utility Fees. Stormwater Utility Fees shall be billed by WASD in the same manner and subject to the same rules and regulations governing WASD's water and sewer bills, including, but not limited to, the right to discontinue service. Fees and late charges, together with any interest charges, shall be debts due and owing the Town's Stormwater Utility.
- (c) All Stormwater Utility Fees, late charges and interest accruing thereupon, due and owing to the Town's Stormwater Utility which remain unpaid 60 days after the past due date shall become a lien against and upon the Developed Property for which the Stormwater Utility Fees are due and owing to the same extent and character as a lien for a special assessment. Until fully paid and discharged, such fees, late charges, and interest accrued shall constitute a special assessment lien equal in rank and dignity

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with the liens of Town ad valorem 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 five years from the date such Stormwater Utility Fees, late charges, and interest accrued thereupon became a lien as set forth in this ordinance. This lien may be enforced and satisfied by the Town pursuant to Chapter 173, Florida Statutes, as amended from time to time, or by any other method permitted by law. The lien provided for in this sub-section shall not be deemed to be in lieu of any other legal remedies for recovery of such fee, late charges, and accrued interest available to the Town.

- (d) For Stormwater Utility Fees which become more than 60 days past due and unpaid, the Town shall cause to be filed in the office of the Clerk of the Circuit Court of Miami-Dade County, Florida, a notice of lien or statement showing a legal description of the Developed 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 within a reasonable time to the owner of the Developed Property involved as shown by the records of the tax collector of Miami-Dade County. No such lien shall be enforceable by the Town unless this notice is filed within six months from the date the fees and late charges become a lien as established in this section.
- (e) Liens may be discharged and satisfied by payment to the Town of the aggregate amounts specified in the notice of lien, together with interest accrued, and all filing and recording fees. When any such lien has been fully paid or discharged, the Town 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 Miami-Dade County, Florida.
- (f) Notwithstanding other provisions to the contrary, the Utility Director shall have the discretion not to file notices of lien for fees, late charges, and interest accrued in an amount less than fifty dollars (\$50.00). If the Utility Director elects not to file a notice of lien, such fees, late charges, and accrued interest shall remain as debts due and owing in accordance with section (b) above.
- (g) The owner of Developed Property is ultimately responsible for all unpaid fees established under this section.
- (h) The Utility Director or his designee is authorized and directed to certify upon written request the amount of fees, late charges and interest accrued,

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which are due and owing to the Town for any Developed Property which is subject to payment of said fees, or the Town Manager may certify that no fees, late charges or accrued interest are due and owing.

Sec. 6. Request for Adjustment.

The owner, tenant or occupant may request an adjustment of the Stormwater Utility Fees assessed against a parcel of Developed Property. The Utility Director or his designee shall be authorized to adjust the stormwater utility fee upon determination that the property should not be subject to the assessment of a fee or that the calculated fee is incorrect. The procedure to request an adjustment shall be as follows:

- (a) All requests shall be in writing and set forth in detail the grounds upon which relief is sought.
- (b) All adjustment requests shall be submitted no later than 30 calendar days from the date of the bill under dispute.
- (c) The owner, tenant or occupant requesting the adjustment may be required, at his own cost, to provide supplemental information to the Utility Director, including, but not limited to, survey data and engineering reports approved by either a registered professional land surveyor (R.P.L.S.) or professional engineer (P.E.). Failure to provide such information may result in denial of the adjustment request.
- (d) The Utility Director shall provide the person requesting the adjustment with a written determination of the request. Any adjustments shall be prorated monthly.
- (e) No adjustment may be requested unless the Stormwater Utility Fee is first paid to the Town.”

Section 2. Repeal of Conflicting Ordinances. Article IV of Chapter 24 of the Miami-Dade County Code, concerning the same subject matter, as made applicable to the Town by Article VIII, Sections 8.3 of the Town Charter, is hereby repealed and replaced. Notwithstanding the foregoing, for the purposes of the collection of past due fees assessed prior to the effective date of this ordinance, the prior provisions of Chapter 24 of the Town Code shall remain in effect.

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Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the Town Council , and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Town of Miami Lakes; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on first reading. The motion was seconded by Councilmember Simon and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador, II	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Mayor Wayne Slaton	<u>Yes</u>

PASSED AND ADOPTED on first reading this 14th day of **January**, 2003.

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The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on second reading. The motion was seconded by Councilmember Meador, and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador, II	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Mayor Wayne Slaton	<u>Yes</u>

PASSED AND ADOPTED on second reading this 11th day of March 2003.

Wayne Slaton
WAYNE SLATON, MAYOR

ATTEST:

Beatris M. Arguelles
BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO FORM:

Tim Baulo
WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDES
TOWN ATTORNEY

Ordinance No. 0331