



MEMORANDUM
Office of the City Attorney

LEGISLATIVE ITEM NO. 001335

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: June 11, 2001
FIRST READING

FROM: City Attorney


SUBJECT: Ordinance No. 0-01-30

An ordinance of the City of Gainesville, Florida, amending Article V, Stormwater Management Utility; clarifying the intent and application of the charges and fees; amending a definition; making certain other changes for consistency and clarification; providing for supplemental enforcement of delinquent charges; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

The City Commission, at its meeting of May 14, 2001, authorized the City Attorney's Office to prepare and advertise the necessary ordinance amending Article V, Stormwater Management Utility.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Approved and
Submitted by:


Marion J. Radson,
City Attorney

Ordinance No. 0-01-30

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An ordinance of the City of Gainesville, Florida, amending Article V, Stormwater Management Utility; clarifying the intent and application of the charges and fees; amending a definition; making certain other changes for consistency and clarification; providing for supplemental enforcement of delinquent charges; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

13 WHEREAS, at least 10 days notice has been given once by publication in a newspaper of
14 general circulation notifying the public of this proposed ordinance and of a Public Hearing in the
15 Auditorium of City Hall in the City of Gainesville; and

16 WHEREAS, a Public Hearing was held pursuant to the published notice described at which
17 hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

18 NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF
19 GAINESVILLE, FLORIDA:

20 Section 1. Article V of the Code of Ordinances, consisting of sections 27-236 through 27-244
21 inclusive, is amended to read as follows:

22 **ARTICLE V. STORMWATER MANAGEMENT UTILITY PROGRAM***

23 **Sec. 27-236. Intent.**

24 It is the intent of this article that the city will establish stormwater management as a city utility
25 enterprise in accordance with F.S. § 403.0893 and shall establish a program of user charges and
26 connection fees for stormwater management service to be levied against charged to all developed
27 property within the city that contributes stormwater runoff to the city's stormwater management
28 systems to accomplish the functions of such utility. These functions include, but are not limited

to, maintenance, planning, design, construction, regulation, surveying, and inspection as they
2 relate to stormwater management facilities of the city.

3 **Sec. 27-237. Definitions.**

4 As used in this article:

5 *Adjusted impervious* area shall mean the stormwater basin area(s) multiplied by the stormwater
6 management facility impervious area factor plus the impervious area(s) plus one-half of the
7 partial impervious area(s).

8 *City* shall mean the City of Gainesville, Florida, and its staff and elected officials.

9 *Department* shall mean the city public works department.

10 *Developed property* shall mean any parcel of land that has been modified by the action of
11 persons to reduce the land's natural ability to absorb and hold rainfall. These modification
12 include, but are not limited to, clearing, grading, cementing, filling, or compacting the natural
13 ground, or erecting or constructing buildings, parking lots, driveways, patios, decks, walkways,
14 and athletic courts.

15 *Drainage area* shall mean the watershed (acreage) contributing surface water runoff to the city's
16 storm drainage system.

17 *Equivalent residential unit (ERU)* shall mean the basic unit for the computation of stormwater
18 service charges and is defined as 2,300 square feet of impervious area, which represents the
19 estimated average impervious area for all developed, detached single-family properties in the
20 city.

21 *Impervious area* shall mean any part of any parcel of land that has an impermeable cover caused
22 to be erected or constructed by the action of persons, and such covers include, but are not limited
23 to, buildings, parking lots, driveways, patios, decks walkways, and athletic courts.

1 *Manager* shall mean the city manager or designee.

2 *Multifamily residential properties* shall mean and include all duplex, condo, trailer, apartment
3 and other properties containing more than one dwelling unit. Common areas associated with
4 such properties shall be included in the charge to the multifamily units on such properties.

5 *Nonresidential/commercial properties* shall mean and include all property zoned or used for
6 commercial, industrial, retail, governmental, or other nonresidential purposes and shall include
7 all developed real property in the city not classified as single-family or multifamily as defined in
8 this section.

9 *Partial impervious area* shall mean any part of any parcel of land that has been modified by the
10 action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes
11 areas which have been cleared, graded, graveled, filled, or compacted, and typically involve
12 unpaved parking, unpaved vehicle equipment storage, and material storage. Excluded are all
13 lawns, landscape areas, and gardens of farming areas.

14 *Receiving water* shall mean those creeks, streams, rivers, lakes, sinkholes, and other bodies of
15 water into which surface waters are directed, either naturally or in manmade ditches, pipes, or
16 open systems.

17 *Retention credit factor* shall mean the numeric value generated by dividing the stormwater
18 retention volume by the standard retention volume, but the value cannot exceed 1.0.

19 *Single-family property* shall mean and include all single-family detached housing units.

20 *Standard retention volume* shall mean the quantity of stormwater runoff generated by
21 multiplying 7.9 inches by the adjusted impervious area.

22 *Stormwater basin area* shall mean the horizontal area occupied by stormwater detention,
23 retention, and/or detention/retention basins at the design maximum water surface elevation.

1 *Stormwater detention basin* shall mean a facility, either natural or manmade, that collects and
2 contains stormwater runoff and allows the release of the stormwater through a structure that is
3 designed to control the rate of the release of the stormwater, as acknowledged by the city
4 manager or designee.

5 *Stormwater detention/retention basin* shall mean a facility, either natural or manmade, that
6 performs a combination of both a stormwater detention basin and a retention basin, as
7 acknowledged by the city manager or designee.

8 *Stormwater management facility impervious area factor* shall mean the amount that the
9 stormwater retention basin area(s) is adjusted; the factor is derived by dividing 4.2 inches (which
10 is the amount of rainfall generated by the 25-year, 24-hour rain storm event between the 11th and
11 13th hours) by 7.9 inches (which is the amount of rainfall generated by the 25-year, 24-hour rain
storm event) which quotient is 0.53.

13 *Stormwater management system* shall mean and include all natural and manmade elements used
14 to convey stormwater from the first point of impact with the surface of the earth to a suitable
15 receiving water body or location internal or external to the boundaries of the city. The
16 stormwater management system includes all pipes, channels, streams, ditches, wetlands,
17 sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment
18 facilities, ~~whether public or private. Regardless of whether or not the city shall have recorded~~
19 ~~rights of way or easements, it is presumed that the city has a prescriptive right of access to all~~
20 ~~stormwater management facilities for operation, maintenance, rehabilitation, or replacement.~~

21 *Stormwater retention basin* shall mean a facility, either natural or manmade, that collects and
22 contains stormwater runoff and only allows the release of the stormwater runoff by one or more
23 of the following: evaporation, percolation into the natural ground and/or percolation into a

1 manmade filtration system that may convey the stormwater runoff to a stormwater management
2 system, as acknowledged by the city manager or designee.

3 *Stormwater retention volume* shall mean the maximum capacity of a stormwater retention
4 basin(s).

5 **Sec. 27-238. Stormwater management utility--Established.**

6 There is hereby created and established in the city a stormwater management utility in
7 accordance with section 403.0893 of the Florida Statutes. This utility shall be responsible for the
8 city's stormwater management system and shall have equal status with the other utility services
9 provided by the city.

10 **27--239. Same--Directors.**

11 Directors of the stormwater management utility shall be the city commission.

12 **Sec. 27-240. Same--Duties and powers.**

13 The stormwater management utility shall have all powers necessary for the exercise of its
14 responsibility for the drainage from all properties within the city, including, but not limited to,
15 the following:

- 16 (1) Preparation of plans for improvements and betterments to the *stormwater*
17 *management system*.
- 18 (2) Construction of improvements and betterments to the *stormwater management*
19 *system*.
- 20 (3) Promulgation of regulations for the use of the *stormwater management system*,
21 including provisions for enforcement of such regulations.

2 (4) Review and approval of all new development permits within the city for
3 compliance with *stormwater management* regulations included in present city ordinances
4 or ordinances later adopted.

5 (5) Performance of routine maintenance and minor improvement to *the stormwater*
6 *management system*.

7 (6) Establishment of charges for ~~connection and use of~~ the *stormwater management*
8 *system*.

9 (7) Evaluation of water quality concerns for discharges to the *stormwater*
10 *management system*.

11 (8) Performance of all normal utility functions to include construction, operation, and
12 maintenance of the city's *stormwater management system*, including, but not limited to,
13 the hiring of staff, the selection of special consultants, the entering into contracts for
14 services and construction of facilities, and the handling of purchase, lease, sale or other
15 rights to property for the *stormwater management system*.

16 (9) Issuance of revenue bonds for the purpose of performing those duties as described
17 herein.

18 **Sec. 27-241. Authority for service charges.**

19 (a) *Authorization.* The stormwater management utility is empowered by this article to
20 establish charges for the use and discharge to the city's stormwater management system. Such
21 charges shall be based on the cost of providing stormwater management services to all properties
22 within the city and may be different for properties receiving different classes of service. ~~The~~
23 ~~monthly fee to be charged for stormwater management for each equivalent residential unit~~
~~(ERU) shall be \$5.75.~~

1 (b) Rates for stormwater management service. There is ~~levied against~~ charged to all
2 owners or occupants of real property in the city, with improvements or uses thereon which
3 contribute stormwater runoff to ~~and/or which benefit from the city's stormwater management~~
4 system, a monthly fee as established by separate ordinance in accordance with the following
5 definitions:

6 (1) *Single-family property service charges.* Each single-family property shall be
7 considered one ERU for billing purposes. Monthly service charges for each single-
8 family dwelling unit shall be identical, provided that the ratio of impervious area to total
9 area of the lot does not exceed 50 percent and the total area of the lot exceeds 10,000
10 square feet. If the ratio of impervious to total area exceeds 50 percent and the total area
11 of the lot exceeds 10,000 square feet, the rates established in subsection (b)(3) shall
12 apply.

13 (2) *Multifamily property service charges.* The monthly service charge for all
14 multifamily properties shall be:

15 Duplex units = One ERU/dwelling unit

16 Condominium units = One ERU/dwelling unit

17 Apartment units = 0.6 ERU/dwelling unit

18 Mobile homes = 0.6 EU/dwelling unit

19 Definition of dwelling unit shall be those living areas served by individual
20 electric and/or water meters.

21 *Nonresidential/commercial property service charge.* Nonresidential/commercial
22 property service charge shall be:

23 No. Base ERU's=

Impervious Area (sq. ft.) + 0.5 (Partial Impervious Area (sq. ft.))/2,300 sq.ft.

2 No Billable ERU's = No. Base ERU's x 1 (1 - Retention Credit Factor)

3 Monthly Service Charge = (No. Billable ERU's) x (Rate/ERU)

4 A minimum value of 1.0 ERU shall be assigned to each
5 nonresidential/commercial property unless such property has earned a
6 100-percent retention credit, in which case, the property will be assigned a
7 value of 0.0 ERU. The impervious area of each
8 nonresidential/commercial property shall be determined by the city
9 manager or designee.

10 (4) *Application to all developed properties.* Service charges shall apply to all
11 developed properties within the city using the system, including those properties
12 classified as nonprofit or tax-exempt for ad valorem tax purposes. Service charges shall
13 apply to all government properties, including properties of the city, including the city-
14 owned buildings, parks, and other properties.

15 (5) *Undeveloped property.* Stormwater management service charges shall not be
16 ~~levied against~~ charged to undeveloped property that has not been altered from the natural
17 state as defined under section 27-237, "impervious area" and "partial impervious area."
18 Farmland, gardens, and landscaped areas shall also be exempt except for any roads,
19 parking, or structures associated therewith.

20 (c) *Billing.* The fees imposed by this article shall be billed on a monthly basis and may be
21 billed in conjunction with the property owner or property user's monthly electric bill issued by
22 the city through Gainesville Regional Utilities. Such fees shall be due and payable at the same
time and in the same manner and subject to the same penalties as other utility fees. In the event a

1 developed property does not have other city utility service(s), a new account shall be developed
2 and that property shall be billed separately for the stormwater management charges. The city
3 manager or designee may create a new account for stormwater utility billing purposes only for a
4 property owner or a property user that may also have a valid city electric and/or water utility
5 account.

6 **Sec. 27-242. Trust fund.**

7 (a) A Stormwater management utility trust fund is hereby established into which all revenues
8 from user fees, ~~connection charges~~, grants, or other funding sources shall be deposited and from
9 which all expenditures related to the city's stormwater management utility shall be paid.
10 Accounting and reporting procedures shall be consistent with state law and reported to the city
11 commission by the city manger or designee annually.

12 (b) Expenditures from the fund for activities that are not related to the city's stormwater
13 management utility shall not be permitted, except for a prorated charge for general city
14 government services as is in effect for other city utility funds.

15 **Section 27-243. Appeals.**

16 (a) Any customer or property owner who feels that the stormwater management service
17 charge for their property has been assigned or computed incorrectly may petition in writing to
18 the city manager or designee for a review of such charges.

19 (b) If not satisfied with the determination of the city manager or designee, the petitioner may
20 ask for a hearing before the city commission, whose decision shall be final. Any credits
21 authorized by the appeal process shall only be effective against billings subsequent to the date of
22 authorization.

23 **Section 27-244. Delinquent charges.**

1 (a) All charges not paid within 30 days after the bill is due, or that are not under active
2 appeal, shall be considered delinquent.

3 (b) All charges billed by Gainesville Régional Utilities shall be subject to the same penalties
4 for delinquencies as other city utility fees.

5 (c) All charges billed by Gainesville Regional Utilities to users of property which are not
6 paid within 60 days of billing may be billed to the owner of the property. When the property
7 owner is billed pursuant to this subsection, the provisions of subsection (a) shall attach, and a late
8 fee of \$1.00 or two percent of the delinquent amount, whichever is greater, shall be assessed on
9 all balances of more than \$15.00 on each monthly statement reflecting a delinquent amount.

10 (d) All charges remaining delinquent after 60 days may be:

11 (1) Referred to a collection agency; or

12 (2) Referred to the city attorney to file suit thereon and collect all unpaid charges,
13 fees, and interest, including reasonable attorney's fees and charges.

14 (e) These provisions are supplemental and in addition to the provisions of Section 27-14.

15 Section 2. If any section, sentence, clause or phrase of this ordinance is held to be invalid or
16 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect
17 the validity of the remaining portions of this ordinance.

18 Section 3. All ordinances, or parts of ordinance, in conflict herein are to the extent of such
19 conflict hereby repealed.

1 Section 4. This ordinance shall become effective immediately upon final adoption.

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3 PASSED AND ADOPTED this _____ day of _____, 2001.

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THOMAS D. BUSSING
MAYOR

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ATTEST:

Approved as to form and legality

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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This ordinance passed on the first reading this ___ day of _____, 2001.

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This ordinance passed on the second reading this ___ day of _____, 2001.