

ARTICLE V. STORMWATER
MANAGEMENT UTILITY PROGRAM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Sec. 27-236. Intent.

It is the intent of this article that the City of Gainesville will establish stormwater management as a Ccity utility enterprise in accordance with F.S. § 403.0893 and shall establish a program of user charges and connection fees for stormwater management service to be levied against all developed property within the Ccity to accomplish the functions of said utility. These functions include, but are not limited to, maintenance, planning, design, construction, regulation, surveying, and inspection as they relate to stormwater management facilities of the Ccity.

Sec. 27-237. Definitions.

As used in this article:

Adjusted impervious area shall mean the stormwater retention basin area(s) multiplied by the stormwater management facility impervious area factor plus the impervious area(s) plus one half of the partial impervious area(s).

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

Department shall mean the Ccity Public Works Engineering department.

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

6 Drainage area shall mean the watershed (acreage) contributing surface water runoff to the
 7 City's storm drainage system.

8
 9 Equivalent residential unit (ERU) shall mean the basic unit for the computation of stormwater
 10 service charges and is defined as two thousand three hundred (2,300) square feet of impervious
 11 area, which represents the estimated average impervious area for all developed, detached
 12 single-family properties in the City. All single family and duplex units are considered one (1)
 13 ERU for each dwelling unit and based on data for Gainesville have an average impervious area
 14 of two thousand three hundred (2,300) square feet. All other properties will have ERU's
 15 computed using the following formula:

16
$$\text{No. of ERU} = \left[\frac{\text{Impervious Area (Sq. Ft.)}}{2,300 \text{ Sq. Ft.}} \right]$$

17
 18 Impervious area shall means any part of any parcel of land that has an impermeable
 19 cover ~~been modified~~ caused to be erected or constructed by the action of persons, and such
 20 covers include, but are not limited to, buildings, parking lots, driveways, patios, decks, walkways,
 21 and athletic courts. ~~to reduce the land's natural ability to absorb and hold rainfall. This includes~~
 22 areas which have been cleared, graded, paved, graveled or compacted, or covered with
 23 structures. Excluded are all lawns, landscape areas, and gardens or farming areas.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Manager shall mean the City Manager or designee.

Multi-family residential properties~~residential properties~~ shall include all duplex, condo, trailer, apartment and other properties containing more than one (1) dwelling unit. Common areas associated with such properties shall be included in the charge to the "multi-family" units on said properties.

Nonresidential/commercial properties shall include all property zoned or used for commercial, industrial, retail, governmental, or other nonresidential purposes and shall include all developed real property in the City not classified as single-family or multi-family as defined in this section.

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

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

Retention credit factor shall mean the numeric value generated by dividing the stormwater retention volume by the standard retention volume, but the value cannot exceed one (1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Single-family property shall include all single-family detached housing units.

~~*Single family/duplex property* shall include all single family detached housing units and all two-unit dwelling structures. Attached single family dwellings served by individual water meters shall also be considered under this category. All other residential development shall be classified as "multi family."~~

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

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

~~*Stormwater detention* shall mean the act of collection and containment of stormwater runoff that only allows the release of the stormwater by one or more of the following methods: Evaporation, percolation into the natural ground, percolation into a manmade filtration system that may convey the stormwater runoff to a stormwater management system or through a structure that is designed to control the rate of the release of the stormwater.~~

Stormwater detention basin shall mean a facility, either natural or manmade, that collects and contains stormwater runoff and allows the release of the stormwater through a structure that is designed to control the rate of the release of the stormwater, ~~performs a stormwater detention function~~ as acknowledged by the Ccity Manager or designee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Stormwater detention/retention basin shall mean a facility, either natural or manmade, that performs a combination of both a stormwater detention basin and a retention basin as acknowledged by the City Manager or designee.

Stormwater management facility impervious area factor shall mean the amount that the stormwater retention basin area(s) are adjusted; the factor is derived by dividing 4.2 inches (which is the amount of rainfall generated by the twenty-five-year twenty-four-hour rain storm event between the eleventh and thirteenth hours) by 7.9 inches (which is the amount of rainfall generated by the twenty-five-year twenty-four-hour rain storm event) which quotient is 0.53.

~~*Stormwater management plan* shall mean a plan for receiving, handling, and transporting storm and surface waters within the city as adopted by the city commission.~~

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

1 ~~Stormwater retention shall mean the act of collection and containment of stormwater runoff~~
2 ~~that only allows the release of the stormwater runoff by one or more of the following:~~
3 ~~Evaporation, percolation into the natural ground or percolation into a manmade filtration system~~
4 ~~that may convey the stormwater runoff to a stormwater management system.~~

5
6 *Stormwater retention basin* shall mean a facility, either natural or manmade, that collects and
7 contains stormwater runoff and only allows the release of the stormwater runoff by one or more
8 of the following: evaporation, percolation into the natural ground and/or percolation into a
9 manmade filtration system that may convey the stormwater runoff to a stormwater management
10 system, performs a stormwater retention function as acknowledged by the City Manager or
11 designee.

12
13 ~~Stormwater retention basin area shall mean the horizontal area occupied by the stormwater~~
14 ~~retention basin at normal ground level.~~

15
16 *Stormwater retention volume* shall mean the maximum capacity of a stormwater retention
17 basin(s).

18
19 **Sec. 27-238. Utility established.**

20
21 There is hereby created and established in the City a stormwater management utility in
22 accordance with section 403.0893 of the Florida Statutes. This utility shall be responsible for the
23 City's stormwater management system and shall have equal status with the other utility
24 services provided by the City.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Sec. 27-239. Directors of the stormwater management utility.

Directors of the stormwater management utility shall be the Ccity Commission~~council~~.

Sec. 27-240. Duties and powers.

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

- (1) Preparation of plans for improvements and betterments to the stormwater management system.
- (2) Construction of improvements and betterments to the stormwater management system.
- (3) Promulgation of regulations for the use of the stormwater management system, including provisions for enforcement of said regulations.
- (4) Review and approval of all new development permits within the Ccity for compliance with stormwater management regulations included in present Ccity ordinances or ordinances later adopted.
- (5) Performance of routine maintenance and minor improvement to the stormwater management system.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(6) Establishment of charges for connection and use of the stormwater management system.

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

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

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

Sec. 27-241. Authority for service charges.

(a) *Authorization.* The stormwater management utility is empowered by this article to establish charges for the use and discharge to the Ccity's stormwater management system. Such charges shall be based on the cost of providing stormwater management services to all properties within the Ccity and may be different for properties receiving different classes of service. The monthly fee to be charged for stormwater management for each equivalent residential unit (ERU) shall be five dollars (\$5.00).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

(1) *Single-family property service charges.* Each single-family property shall be considered one (1) ERU for billing purposes. Monthly service charges for each single-family dwelling unit shall be identical, provided that the ratio of impervious area to total area of the lot does not exceed fifty (50) percent. If the ratio of impervious to total area exceeds fifty (50) percent and the total area of the lot exceeds ten thousand (10,000) square feet, the rates established in subparagraph (b)(3)(4) shall apply.

(2) *Multi-family property service charges.* The monthly service charge for all multi-family properties shall be:

- Duplex units = 1 ERU/dwelling unit
- Condominium units = 1 ERU/dwelling unit
- Apartments units = 0.6 ERU/dwelling unit
- Mobile homes = 0.6 ERU/dwelling unit

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

3
 4 (3) *Nonresidential/commercial property service charge shall be:*

5
 6 A minimum value of 1.0 ERU shall be assigned to each nonresidential/commercial

$$\text{No. Base ERU's} = \left[\frac{\text{Impervious Area (Sq. Ft.)} + 0.5 [\text{Partial Impervious Area (Sq.Ft.)}]}{2,300 \text{ Sq. Ft.}} \right]$$

$$\text{No. Billable ERU's} = \text{No. Base ERU's} \times (1 - \text{Retention Credit Factor})$$

$$\text{Monthly Service Charge} = [\text{No. Billable ERU's}] \times [\text{Rate / ERU}]$$

7 property unless said property has earned a one hundred (100) percent retention credit,
 8 in which case, the property will be assigned a value of 0.0 ERU. The impervious area of
 9 each nonresidential/commercial property shall be determined by the City Manager or
 10 designee. ~~The value of two thousand three hundred (2,300) square feet of impervious~~
 11 ~~area per ERU is an average obtained using data of the City of Gainesville.~~

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

18
 19 (5) *Undeveloped property.* Stormwater management service charges shall not be levied
 20 against undeveloped property that has not been altered from the natural state as defined

1 | under section 27-237, "impervious area" and "partial impervious area." Farmland,
2 | gardens, and landscaped areas shall also be exempt except for any roads, parking, or
3 | structures associated therewith.
4 |

5 | (c) *Billing.* The fees imposed by this article shall be billed on a monthly basis and may be billed
6 | in conjunction with the property owner or property user's monthly electric bill issued by the
7 | Ceity through Gainesville Regional Utilities. Such fees shall be due and payable at the same
8 | time and in the same manner and subject to the same penalties as other utility fees. In the
9 | event a developed property ~~does~~ shall not have other City utility service(s) ~~at the time of the~~
10 | ~~adoption of this article but is deemed to be contributing runoff to the city's stormwater~~
11 | ~~management system,~~ a new account shall be developed and that property shall be billed
12 | separately for the stormwater management charges. The Ceity Manager or designee may
13 | create a new account for stormwater utility billing purposes only for a property owner or a
14 | property user that may also have a valid City electric and/or water utility account.
15 |

16 | **Sec. 27-242. Stormwater management utility trust fund.**
17 |

18 | (a) A stormwater management utility trust fund is hereby established into which all revenues
19 | from user fees, connection charges, grants, or other funding sources shall be deposited and
20 | from which all expenditures related to the Ceity's stormwater management utility shall be
21 | paid. Accounting and reporting procedures shall be consistent with state law and reported to
22 | the Ceity Commission by the Ceity Manager or designee annually.
23 |

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

4
5 **Sec. 27-243. Appeals.**

6
7 (a) Any customer or property owner who feels that the stormwater management service charge
8 for their property has been assigned or computed incorrectly may petition in writing to the
9 Ccity Manager or designee for a review of said charges.

10
11 (b) If not satisfied with the determination of the Ccity Manager or designee, the petitioner may
12 ask for a hearing before the Ccity Commission, whose decision shall be final. Any credits
13 authorized by the appeal process shall only be effective against billings subsequent to the
14 date of authorization.

15
16 **Sec. 27-244. Delinquent charges.**

17
18 (a) All charges not paid within thirty (30) days after the bill is due, or that are not under active
19 appeal, shall be considered delinquent.

20
21 (b) All charges billed by Gainesville Regional Utilities shall be subject to the same penalties for
22 delinquencies as other City utility fees.

23
24 (c) All charges billed by Gainesville Regional Utilities to users of property which are not paid
25 within sixty (60) days of billing may be billed to the owner of the property. When the property

1 owner is billed pursuant to this subsection, the provisions of subsection (a) shall attach, and
2 a late fee of one dollar (\$1.00) or two (2) percent of the delinquent amount, whichever is
3 greater, shall be assessed on all balances of more than fifteen dollars (\$15.00) on each
4 monthly statement reflecting a delinquent amount.

5

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

7

8 (1) Referred to a collection agency; or

9

10 (2) Referred to the Ccity Attorney to file suit thereon and collect all unpaid charges, fees,
11 interest, including reasonable attorney's fees and charges.

#2

Definition of Impervious Area Versus "Pervious Parking Area"

Finding

According to the City's SMU ordinance, all developed nonresidential/commercial properties are to be charged SMU fees based on the ratio of impervious area on each property to the average impervious area of 2300 square feet calculated for single-family residential units within the City of Gainesville. This ratio (adjusted by a calculated retention credit factor percentage) provides the number of ERU's (equivalent residential units) to be billed to nonresidential/commercial property owners or tenants (see formula below set forth in Section 27-241(1)c of the City's Code of Ordinances).

$$\text{Number of ERU's} = \text{Impervious Area (sq. ft.)} / 2300 \text{ sq. ft.} * (1 - \text{retention credit factor})$$

For instance, if a commercial property has 23,000 square feet of impervious area and no retention credit factor, the number of ERU's would be 10. As with residential units, the City's current monthly rate of \$5.00 for each ERU is billed monthly through GRU. For the previous example of 10 ERU's, the monthly charge would be \$50.00. As of February 22, 1996, the average non-residential/commercial property in the City was billed 12.85 ERU's monthly at a cost of \$64.25.

Section 27-237 of the Gainesville Code of Ordinances states:

Impervious area means any part of any parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes areas which have been cleared, graded, paved, graveled or compacted, or covered with structures. Excluded are all lawns, landscape areas, and gardens or farming areas.

Since the inception of the SMU program, the Public Works Department has followed an administrative practice of classifying only areas paved or covered with structures as impervious. Generally, areas which have only been cleared, graded, graveled or compacted are designated as "pervious parking area", and only one-half of the area is classified as impervious area for the calculation of ERU's (see formula below).

$$\text{Number of ERU's} = \text{Impervious Area} + \text{One half of "Pervious Parking Area"} \text{ (sq. ft.)} / 2300 \text{ sq. ft.} * (1 - \text{retention credit factor})$$

However, "pervious parking area" is not defined or identified at any point within the City's SMU ordinance. According to the Public Works Director, this practice was developed due to concerns of business owners affected by the SMU program.

Definition of Impervious Area Versus “Pervious Parking Area”

Conclusion

The administrative practice described above appears to be a departure from the ordinance and results in reduced SMU fees for nonresidential/commercial property with areas classified as “pervious parking area”. The City’s SMU ordinance does not define “pervious parking area” and clearly defines “impervious area” to include “any part of any parcel of land that has been modified by the action of persons to reduce the land’s natural ability to absorb and hold rainfall.” This appears to include the “pervious parking area” which is being used by Public Works in the calculation of ERU’s for nonresidential/commercial properties.

If the City eliminates the practice of charging reduced SMU fees to areas which have only been cleared, graded, graveled or compacted (designated by management as “pervious parking area”), annual SMU revenues would increase approximately \$120,000 per year based on the Public Works Department’s SMU database. While most nonresidential/commercial properties would not be affected by this change, approximately 300 properties with “pervious parking area” would have their monthly SMU fees increased from an average of \$134 to \$158, an 18% increase. One large commercial property with an unusually high level of “pervious parking area” would experience an increase of almost 100%, from \$2,600 per month to \$5,100 per month.

Recommendation

We recommend management consider a more stringent application of the City’s SMU ordinance as it pertains to the definition of impervious area. Specifically, “any part of any parcel of land that has been modified by the action of persons to reduce the land’s natural ability to absorb and hold rainfall”, as stated in the City’s SMU ordinance, should be considered impervious area and factored at 100% into the calculation of ERU’s. Alternatively, management should revise the City’s SMU ordinance to define “pervious parking area” and document its affect on the calculation of SMU fees.

City Manager’s Response

The concept of “pervious parking” was utilized from the initial stages in developing the SMU billing rate structure. This concept addresses the need to consider areas that are effectively in between natural ground and man-made impervious ground cover. Impervious parking is only applicable for non-residential properties and addresses those areas used primarily for low use parking and driving areas. The City has expended resources to identify and quantify pervious parking areas on applicable non-residential developed properties to increase the equitableness of the SMU billing system. The elimination of pervious parking considerations in the SMU billing system would be difficult to defend and justify to the public and would increase the City’s exposure to legal challenges.

#2 (continued)

Definition of Impervious Area Versus “Pervious Parking Area”

I will ask the Public Works Manager to work with the City Attorney to develop the appropriate ordinance amendment necessary to retain the use of pervious parking in the SMU billing system.