

## Chapter 52

### STORMWATER UTILITY

*Editors Note: Ord. 681 added these provisions as ch. 63.*

*However, to preserve the alphabetical arrangement of chapters, they have been codified as ch. 52.*

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#### Sec. 52-1. Finding and purpose.

(a) The city council of the City of Satellite Beach, Brevard County, Florida, finds that uncontrolled drainage and development of land has a significant adverse impact upon the health, safety and welfare of the City of Satellite Beach, its residents and areas adjacent thereto, including the Indian River Lagoon Estuary. Further, the city council finds more specifically 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, accelerates eutrophication of receiving water bodies, thereby adversely affecting flora and fauna;
- (3) Improperly channeling water increases the velocity of stormwater runoff, thereby increasing 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 such 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;

- (7) Improperly managed stormwater runoff may increase the incidents of flooding and the level of floods which occur, thereby endangering property and human life;
- (8) Improperly managed stormwater runoff may interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity;
- (9) Substantial economic losses may result from such adverse impacts upon the waters of the city's ecosystem;
- (10) Sound stormwater utility management practices result in the avoidance of future problems concerning the development of land and the maintenance of the quality of the city's environment.

(b) The purpose of this chapter is to protect, maintain and enhance both the immediate and long-term health, safety and general welfare of the citizens, residents and inhabitants of the city. In order to effectuate this stated purpose, this chapter has the following objectives:

- (1) To establish a stormwater management program in the city which is mutually compatible with those developed by the Florida Department of Environmental Protection, the St. Johns River Water Management District, Brevard County and other local government entities;
- (2) To develop a city stormwater management program within the city limits to be responsible for the construction, operation and maintenance of stormwater devices; for stormwater system planning; for review of development plans for compliance with stormwater management codes; and for estuarine and ocean quality management;
- (3) To create one or more stormwater management system benefit areas and adopt stormwater utility fees or assessments sufficient to plan, construct, operate and maintain stormwater management systems throughout the city;
- (4) To establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate and maintain stormwater management systems throughout the city;
- (5) To encourage productive and enjoyable harmony between humanity and nature;
- (6) To protect, restore and maintain the chemical, physical, and biological integrity to community waters;
- (7) To prevent individuals, business organizations and government from causing harm to the community by activities which adversely affect water resources;
- (8) To encourage the construction of drainage systems which aesthetically and functionally approximate natural systems;
- (9) To encourage the protection of natural systems and the use of such natural systems in ways which do not impair their beneficial functioning;
- (10) To encourage the use of drainage systems which minimize the consumption of electrical energy or petroleum fuels in order to move water, remove pollutants and maintain such systems;
- (11) To minimize the transport of pollutants to community waters;
- (12) To maintain or restore groundwater levels;

- (13) To protect, maintain or to restore natural salinity levels in estuarine areas;
- (14) To minimize erosion and sedimentation;
- (15) To prevent damage to wetlands;
- (16) To prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial;
- (17) To protect, restore and maintain the habitat for fish and wildlife;
- (18) To ensure the attainment of these objectives by requiring the approval and implementation of a stormwater management program for all activities which may have an adverse impact upon community waters; and
- (19) To seek interlocal agreements with Brevard County and any other applicable agencies or entities to develop and ensure cooperative efforts toward joint development of compatible and efficient stormwater management programs.

(Ord. 681, §1, 7-2-97)

**Sec. 52-2. Definitions.**

For purposes of this chapter, the following terms shall have the meanings set forth in this section. When consistent with the context, words used in the present tense shall include the future, words in the future tense shall include the present, words in the plural shall include the singular, words in the singular shall include the plural, words in the male gender shall include the female gender, and the word "shall" is always mandatory and not merely directive.

*Equivalent residential unit (ERU)* shall be defined to serve as a reference from which an equitable distribution of the cost of services and facilities can be made among all properties in the city through a stormwater management service charge rate methodology. The equivalent residential unit in the city for the purpose of service charge ratemaking has been determined through engineering analysis to be a gross area of 3,000 square feet.

*Impervious areas* mean surfaces which have been compacted or covered with a layer of material which is highly resistant to infiltration by water, such as roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas and athletic areas. Impervious areas shall also include semi-impervious areas, such as compacted clay.

*Lot* shall mean a parcel of land shown on a recorded plat or on the Brevard County property appraiser's maps or any piece of land described by deed and recorded in the public records of Brevard County, Florida.

*Person* shall mean any and all persons, natural or artificial, and includes any individual, firm, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or other legal entity.

*Property owner* shall mean the person in whom is vested the fee ownership, dominion or title to real property. This term may also include a tenant, if chargeable under tenant's lease for the maintenance of the subject real property, and any agent of the owner or tenant, including developer.

(Ord. 681, §1, 7-2-97)

**Sec. 52-3. City stormwater management program.**

(a) Pursuant to the authority granted under F.S. §403.0891 et seq., the city council hereby directs the development and implementation of a stormwater management program for the purposes and objectives set forth hereunder.

(b) Pursuant to the authority granted under F.S. §403.0893(3), the city may develop and implement its stormwater management program through cooperation with Brevard County and other municipalities within Brevard County under appropriate interlocal agreements.  
(Ord. 681, §1, 7-2-97)

**Sec. 52-4. Stormwater management system benefit area.**

(a) There is hereby created, pursuant to the provisions of F.S. §403.0893(3), a stormwater management system benefit area.

(b) This stormwater management system benefit area shall encompass all real property located within the municipal boundaries of the city, as those boundaries may exist from time to time.

(c) All property owners within such stormwater management system benefit area shall be assessed an annual stormwater utility fee to fund the planning, construction, operation, maintenance and administration of a public stormwater management system for the benefitted area, pursuant to the criteria and standards set forth in this chapter and any applicable rate resolution adopted pursuant to section 52-5 of this chapter.

(d) In the event that such stormwater management system benefit area contains different land uses which receive substantially different levels of stormwater benefits, stormwater management systems benefit subareas may be created, which shall be assessed different stormwater utility fees from subarea to subarea based upon a reasonable relationship to benefits received.  
(Ord. 681, §1, 7-2-97)

**Sec. 52-5. Stormwater utility fee; rate resolution.**

(a) *Creation and imposition.* Pursuant to the provisions of F.S. §403.0893, a stormwater utility fee is hereby created and imposed on all real property located within the stormwater management system benefit area for services and facilities provided by the city's stormwater management program.

(b) *Non-ad valorem assessment.* Such stormwater utility fee shall constitute a non-ad valorem assessment, pursuant to the provisions of F.S. §403.0893.

(c) *Public hearing for rate resolution.* On or before the fifteenth day of September of each year, the city council shall hold a public hearing to adopt a rate resolution for the purposes of imposing the stormwater utility fee or assessment upon the owners of all real property located within the designated stormwater management system benefit area(s). Such rate resolution shall incorporate a schedule of rates and classifications of all affected real property in the designated stormwater management system benefit areas.

(d) *Adoption of budget.* On or before the end of each fiscal year, the city council shall adopt a budget for the operation and maintenance of the stormwater management program for the ensuing fiscal year, including funds for the payment of outstanding and anticipated indebtedness, including all reserves necessary in connection with such financing, for the providing of contributions into such reserves as deemed necessary for future capital and land acquisitions and renewal and replacement of existing facilities, for the enforcement and administration of the billing and collection of the annual stormwater utility fee or assessments provided for under the provisions of this chapter, including the necessary reserves for anticipated delinquent or uncollectible annual stormwater utility fees or assessments, and for the payment of the current operation and maintenance of such stormwater

management program. The rate resolution adopted by the city council shall provide sufficient revenues to fund the budget adopted for the operation and maintenance of the stormwater management program.

*(Ord. 1018, §1, 8-19-09)*

(e) *Public notice.* Notice of public hearing concerning the above referenced rate resolution shall be published in a newspaper of general circulation in Brevard County at least twice, with the first publication being at least 20 days prior to the public hearing. Such public hearing may be continued to a date certain without the necessity of further newspaper advertisement of public notice.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-6. Preparation and certification of annual stormwater utility assessment roll to tax collector.**

(a) On or before the fifteenth day of September of each year, the city shall cause to be prepared an annual stormwater utility assessment roll based on information provided by the Brevard County property appraiser. Such roll shall contain a summary description of each parcel of real property within the designated stormwater management system benefit area(s), the name and address of the owner of each such parcel, the rate classification applicable to each parcel of real property as specified in the rate resolution and the amount of the annual stormwater utility fee or assessment applicable to each parcel of real property. The summary description of each parcel of real property shall be in such detail as to permit ready identification of each parcel on the real property assessment roll.

(b) The city council shall, at any regular or special meeting held on or before the fifteenth day of September of each year, review the annual stormwater utility assessment roll prepared by the city manager for its conformity with the rate resolution provided for in section 52-5. The city council shall make such changes or additions as necessary to conform such roll with the rate resolution. Upon the completion of such review, if the city council shall be satisfied that the annual stormwater utility assessment roll has been prepared in conformity with the rate resolution, it shall ratify and confirm such roll and certify the roll to the tax collector for appropriate action.

(c) In the event that any classification of real property designated in the rate resolution requires an individual calculation of the annual stormwater utility assessment, the city shall calculate and determine such annual stormwater utility assessment.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-7. Method of collection of annual stormwater utility assessment.**

(a) Annual stormwater utility assessments shall be collected and enforced in the same manner that ad valorem taxes are collected and enforced, including, but not limited to, provisions relating to discount for early payment, prepayment by installment method, penalty for delinquent payment, and issuance of tax certificates and tax deeds for nonpayment, as provided for in F.S. § 197.3521, as amended.

(b) Failure to pay the annual stormwater utility assessment in the required manner will result in the issuance of a tax certificate against the subject property and may result in the loss of title to the subject property.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-8. Separately prepared annual stormwater utility assessment notice.**

Nothing contained in this chapter shall be construed or interpreted to preclude the city from submitting, within its discretion, a separately prepared notice of the annual stormwater utility assessment imposed on certain real property within its municipal boundaries to the owner of such property if, in the opinion of the city, such procedure will facilitate the billing and collection of such annual stormwater utility assessment.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-9. Correction of errors and omissions; adjustments; petitions to board.**

(a) No act of omission or commission on the part of the Brevard County property appraiser, Brevard County tax collector, the city or their deputies or employees shall operate to defeat the payment of the annual stormwater utility assessment imposed by the city under the provisions of this chapter. Provided, however, any acts of omission or commission may be corrected at any time by the officer or party responsible and when so corrected they shall be construed to be valid ab initio and shall in no way affect process by law for the enforcement of the annual stormwater utility assessments imposed under the provisions of this chapter.

(b) The city shall have the authority, at any time, upon its own initiative or in response to a petition from any affected owner of real property, to correct any error of omission or commission in the adoption of any annual stormwater utility assessment roll, or in the implementation of this chapter and make necessary adjustments thereto.

(c) Any owner of real property may petition the city to correct any asserted error of omission or commission in relation to their property in the adoption of the annual stormwater utility assessment roll, or any addendum to such roll, or in the implementation of this chapter, or any asserted exemption or basis for variance or mitigation from the adopted assessment against their property, within 30 days of the date of mailing the final notice of ad valorem taxes and non-ad valorem assessments for the current year. Such petition shall be initiated by filing with the city a written petition containing the name of owner, a legal description of the real property affected, a summary description of the asserted error, or basis for the exemption, variance or mitigation, and the relief requested of the city. Such petition may be considered by the city council at any regular or special meeting, with notice being provided to the petitioner; provided, however, that the city council may establish, by resolution, a stormwater utility appeals committee and delegate to such committee the authority and responsibility to hear such petitions provided for under this section pursuant to the procedures set forth in the enabling resolution creating such appeals committee. Failure to timely file a petition as provided herein shall bar the review of any alleged error of omission or commission.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-10. Failure to include real property on annual stormwater utility assessment roll.**

When it shall appear that any annual stormwater utility assessment might have been imposed under the provisions of this chapter against any parcel of real property, but such parcel of real property was omitted from the appropriate annual stormwater utility assessment roll, the city may, by resolution, impose the applicable annual stormwater utility assessment for the fiscal year in which such error is discovered, plus the applicable annual stormwater utility assessment for up to the prior two fiscal years if such real property was subject to an annual stormwater utility assessment for such prior two fiscal years. Such total annual stormwater utility assessment shall become delinquent if not fully paid upon the expiration of 60 days from the date of adoption of such resolution, and upon becoming delinquent shall be subject to the penalties and interest for delinquent annual stormwater utility assessments as provided in F.S. ch. 197. Such total annual stormwater utility assessments shall be subject to a discount for early payment, as provided in F.S. ch. 197.

*(Ord. 681, §1, 7-2-97)*

**Sec. 52-11. Application of annual stormwater utility assessment to government agencies.**

(a) *Non-city governmental agencies not responsible for assessment.* The initial non-ad valorem assessment imposed by this chapter shall not apply to any governmental agencies owning real property within any designated stormwater management system benefit area, including those of the city. If in the future the city determines to eliminate this exemption, all government agencies, except the city, shall pay any annual stormwater utility assessment imposed under the provisions of this chapter. At such time as the city may eliminate this exemption, subsections (b) through (e) of this section shall apply.

(b) *Discount for early payment not applicable.* The discount early payment of annual stormwater utility assessments provided for in F.S. ch. 197 shall not be applicable to the annual stormwater utility assessment imposed against governmental agencies owning real property. Such governmental agencies shall pay in the manner provided in this chapter the full annual stormwater utility assessment imposed.

(c) *Prompt payment required.* The annual stormwater utility assessment imposed against local governmental agencies shall become delinquent if not fully paid in accordance with F.S. §§218.70--218.79, the Florida Prompt Payment Act.

(d) *Authority to enforce collection.* The city shall have the authority to enforce the collection of any delinquent annual stormwater utility assessment by the institution of procedures set forth under F.S. §§218.70--218.79, the Florida Prompt Payment Act.

(e) *City agencies exempt.* No agencies of the city shall be required to pay any stormwater utility assessments.

(Ord. 681, §1, 7-2-97)

**Sec. 52-12. Applicability of annual stormwater utility assessment to leasehold interests in real property leased by a governmental agency.**

(a) The provisions of this chapter and the annual stormwater utility assessment imposed by the city shall be fully applicable to the lessee of any leasehold interest in real property owned by a governmental agency. As to such leasehold interest, the provisions of this chapter shall apply to such leasehold only and not to the real property.

(b) The provisions of this chapter, including the annual stormwater utility assessment imposed by the city, shall be fully applicable to the private owner of any real property leased to a governmental agency.

(Ord. 681, §1, 7-2-97)

**Sec. 52-13. Applicability of stormwater utility assessment to tax-exempt real property.**

The exemption of property from taxation under Florida law shall not relieve the owner of any such real property located within a designated stormwater management system benefit area from the provisions of this chapter or from the imposition by the city of the annual stormwater utility assessment applicable to such real property, as specified in the rate resolution adopted under the provisions of section 52-5.

(Ord. 681, §1, 7-2-97)

**Sec. 52-14. Stormwater utility fund.**

(a) There shall be established a stormwater utility fund for the deposit of all fees collected pursuant to this chapter for each designated stormwater management system benefit area.

(b) Each stormwater utility fund for the applicable stormwater management system benefit area shall be used exclusively to provide services and facilities related to the stormwater management program. Such funds shall only be utilized for the following expenditures, and shall be held as trust funds of the city:

- (1) Operation or maintenance of stormwater management facilities within the jurisdiction of the city;
- (2) Costs for the planning, evaluation, design, construction, and management of the stormwater management program;
- (3) Administrative costs related to the management of the stormwater management program;

- (4) Management services, such as permit review and planning and development review related to the stormwater management program; and
- (5) Debt service financing of capital improvements related to the stormwater management program.  
*(Ord. 681, §1, 7-2-97)*

END CHAPTER 52