

ORDINANCE NO. O-19-02

AN ORDINANCE OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 102, ARTICLE V. OF THE CODE OF ORDINANCES, PROVIDING FOR CLARIFICATION, UTILITY FEE CREDITS AND ESTABLISHMENT OF FEES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City presently owns and operates a stormwater system which has been developed over a number of years to serve the purpose of collecting, treating and discharging storm and other surface waters, and is in the process of expanding, constructing and improving the system; and

WHEREAS, the City is authorized by the provisions of Florida Statutes Chapter, the Florida Constitution, the City Charter, and Fla. Stat. § 403.0893, to construct, reconstruct, improve, and extend stormwater utility systems, to issue revenue bonds and other debts if needed to finance in whole or part the cost of such a system, and to establish just and equitable rates, fees, credits, and charges for the services and facilities provided by the system; and

WHEREAS, this stormwater management system benefits and services all property within the City both directly and, less obviously, by keeping streets open for passage as well as by monitoring and minimizing pollution levels in adjoining waterways; and

WHEREAS, the cost of operating and maintaining the city stormwater management system and financing necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in an equitable manner among those who are served by the system; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEBASTIAN, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 102, Article V of the Code of Ordinances of the City of Sebastian, Florida, is hereby amended to read as follows:

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Sec. 102-123. - Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Calculated impervious surface of an ERU means for purposes of determining a stormwater fee, the calculated impervious surface of an ERU shall be deemed to be 3,285 square feet which is the statistical average of impervious area for one developed residential lot.

Developed nonresidential property means property zoned for uses other than for residential purposes upon which improvements have been constructed.

Developed residential property means property zoned for residential use upon which is constructed one or more dwelling units. This would include single-family or multi-family dwellings, condominiums and duplexes.

Equivalent residential unit (ERU) means the statistical average horizontal impervious area of all residential units in the city.

Exempt property means property which shall not be subject to a stormwater fee, which is limited to:

- (1) Common areas within multi-family areas.
- (2) Property, or portions of property, which is perpetually designated for conservation land uses or which, because of its environmentally sensitive character, cannot be developed under present environmental protection regulations.
- (3) Publicly owned road and drainage right-of-way and all City owned property.

Undeveloped parcels means unimproved property zoned for uses other than for single-family residential purposes or property zoned for residential uses upon which no subdivision improvements have been constructed.

Undeveloped single-family residential property means property improved and subdivided into single-family residential lots upon which no dwellings have been constructed.

Sec. 102-124. - Stormwater fee; imposition and calculation of.

(a) *Imposition.* A stormwater fee is hereby imposed upon all property within the city unless otherwise exempted, for services and facilities provided by the stormwater management system. For purposes of imposing the stormwater fee, the city has obtained the services of a consulting engineer to develop the statistical rationale for providing just and equitable rates, fees, and charges for the facilities and services provided by the system.

(b) *Application and classification.*

- (1) *Developed residential property.* Each dwelling unit shall be billed at a flat fee of one ERU per month.
- (2) *Undeveloped single-family residential property.* Each undeveloped single-family lot shall be billed for one ERU multiplied by a correction factor of 0.67 to calculate the flat monthly rate.
- (3) *Undeveloped parcels.* Each undeveloped parcel shall be billed at a rate determined by dividing the total land area of the properties, in square feet, by 11,154 which represents the square footage of a statistically average residential building site in the city, multiplied by a correction factor of 0.67 to arrive at the number of ERUs for that parcel.

(4) *Developed nonresidential property.* Each parcel of developed nonresidential property shall be billed at a rate determined by dividing the total impervious area of the parcel by the calculated impervious surface of an ERU to arrive at the number of ERUs for that parcel.

(5) *Exempt property.* Exempt property shall not be subject to a stormwater fee.

(c) Within the guidelines and procedures established by administrative regulations duly promulgated by the utility, a landowner may apply for a Stormwater Utility Fee Credit for constructed stormwater management systems pursuant to St. John's River Water Management District requirements in accordance by resolution adopted by City Council. When there is existence of atypical physical features to the site, or alternative stormwater treatment, the city shall reasonably determine said credit based upon the equitable pro-rata decrease in the total services required of the utility in providing the systemic benefits of stormwater management to the property.

Sec. 102-125. - Establishment of fee.

There is hereby established as the fee for one equivalent residential unit (ERU) the sum of \$10.00 for each month. Said fee shall continue in effect unless and until the city council, by resolution passed by supermajority, establishes a different rate for any fiscal period following the 2018-2019 fiscal year.

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Sec. 102-128. - Appeal of fee amount; procedure.

(a) After having paid in full all utility fees invoiced against his property, any property owner shall have the right to appeal either the utility fee charged, or a credits determination pursuant to section 102-124(c), with respect to his property as follows:

(1) Within 30 days of either the initial mailing of the utility fee bill, or the written determination as to credits, whichever date is relevant, the property owner shall have the right to appeal to the city council. The city council shall have 30 days from the receipt of the notice of appeal within which to hold a hearing on the appeal and thereafter shall render a determination.

(2) If the appellant prevails and it is decided a refund is due, the refund amount shall be in accordance with the determination on appeal but shall not include any interest on the refunded fee.

(3) Upon filing of a proper petition within 30 days of the determination of city council, said determination may be reviewed in the circuit court by writ of certiorari upon the record made before the city council.

(b) Notwithstanding the provisions set forth above, any property owner shall have until December 1st, to request a review by the city manager of the utility fee bill for the current fiscal year for claims of errors in classification or calculation. As a condition of requesting such review, the property owner must pay the fees due. The city manager may deny the appeal or modify the amount of the fee. The owner may appeal the city manager's determination to city council within 30 days and thereafter follow the procedures set forth in subsections (a)(1) and (3) above. Any claims relating to a credits determination pursuant to section 102-124(c) must be appealed in accordance with the standard procedure set forth above.

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SECTION 2. SEVERABILITY. If any section or part of a section of this ordinance is declared invalid or unconstitutional, the validity, force and effect of any other section or part of a section of this ordinance shall not thereby be affected or impaired unless it clearly appears that such other section or part of a section of this ordinance wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.

SECTION 3. CONFLICT. This ordinance shall prevail over all other ordinances which are in conflict with this ordinance. If any clause, section or other part or application of this ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and in no way affecting the validity of the remaining portions or applications remaining in full force and effect.

SECTION 4. SCRIVENER'S ERRORS. Sections of this resolution may be renumbered or re-lettered and corrections of typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of further action of the City Council by filing a corrected copy of same with the City Clerk.

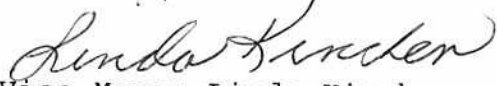
SECTION 5. EFFECTIVE DATE. This ordinance shall be enacted upon its final adoption.

The foregoing ordinance was moved for adoption by Council Member McPartlan. The motion was seconded by Council Member Dodd and, upon being put to a vote, the vote was as follows:

Mayor Jim Hill	<u>absent</u>
Vice Mayor Linda Kinchen	<u>aye</u>
Council Member Ed Dodd	<u>aye</u>
Council Member Albert Iovino	<u>aye</u>
Council Member Bob McPartlan	<u>aye</u>

The Mayor thereupon declared this ordinance duly passed and adopted this 27th day of February, 2019.

City of Sebastian, Florida


By: Vice Mayor Linda Kinchen
for Mayor Jim Hill

ATTEST:


Jeanette Williams, MMC
City Clerk

Approved as to form and content:


James A. Stokes
City Attorney

