

ORDINANCE NO. 2007-30-136

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING ORDINANCE NO. 2006-25-106 THE "STORMWATER MANAGEMENT" ORDINANCE TO CLARIFY THE PROCEDURES TO APPEAL THE IMPOSITION OF A LIEN FOR NON PAYMENT OF FEES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens previously adopted Ordinance No. 2006-25-106, the "Stormwater Management Ordinance", whereby it established a Stormwater Management Utility ("SMU") pursuant to the Home Rule Powers provided in the Florida Constitution and Chapter 163 and 166, Florida Statutes, and

WHEREAS, through the creation of the City SMU, the City will become responsible for the ownership, maintenance, and expansion of the existing stormwater management system located within the City's limits for the purpose of collecting and disposing of storm and other surface water, and

WHEREAS, in order to collect stormwater utility fees, it will become necessary for the City to record liens against properties where a stormwater fee has been assessed, but has not been paid, and

WHEREAS, Florida Statutes do not require the City to provide notice to property owners prior to the filing of a lien, however, in the abundance of caution, the City Attorney is of the opinion that notice and an opportunity to be heard must be given prior to recording a lien against real property,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, THAT:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT: Section 11 of Ordinance No. 2006-25-106 is hereby amended as follows:

Sec. 11. Enforcement and Penalties.

(a) Stormwater Utility Fees shall be payable when due and, if late, shall be subject to a ten (10%) percent late charge. Any unpaid balance for such fees and late charges shall be subject to an interest charge at the rate of eight (8%) per annum. Imposition of such interest charge shall commence sixty (60) days after the past due date of the fees set forth on the utility bill. Nonpayment of any portion of the Stormwater Utility fee shall be considered as nonpayment of all other utilities appearing on the bill and may result in the termination of all utility services appearing on the bill.

(b) All fees, late charge and interest accruing, thereupon due and owing to the utility which remain unpaid sixty (60) days after the past due date of the fees shall become a lien against and upon the developed property for which the fees are due and owing to the same extent and character as alien for a special assessment. Until fully paid and discharged, said fees, late charges, and interest accrued thereupon shall be, remain, and constitute a special assessment lien equal in rank and dignity with the lien of 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 said fees, late charges, and interest accrued thereupon, become a lien as set forth in this chapter. Said lien may be enforced and satisfied by the City, on behalf of the SMU, pursuant to Chapter 173, Florida Statutes, as amended from time to time, or any other method permitted by law. The lien provided for herein shall not be deemed to be in lieu of any other legal remedies for recovery of said fee, late charges, and accrued interest available in the City and to the utility.

(1) Notice. For fees which become more than sixty (60) days past due and unpaid, the City or the SMU shall cause to be filed in the ~~office of the Clerk of the Circuit Court of Miami-Dade County, Florida~~ Public Records of Miami-Dade County, a notice of lien or statement showing a legal description of the 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 may be mailed within a reasonable time to the owner of the property involved as shown by the records of the Tax Collector of the County.

(2) Appeals. A property owner shall have ten (10) days after receipt of a bill to request an appeal in writing to the City's Code Enforcement Special Master. Said request shall be mailed to the attention of the Finance Director, shall be in writing, and shall state the basis for the appeal. Upon receipt of a Notice of Appeal, the City shall schedule a hearing before the Special Master and shall provide notice of the date of the hearing to the property owner by certified mail. If a request for an appeal is not filed within the ten (10) day time frame, the lien shall be deemed valid. If the City is the prevailing party on appeal, a \$100.00 administrative fee shall be assessed against the property owner.

(2)(3) Satisfaction. Liens may be discharged and satisfied by payment to the City, on behalf of the utility, of the aggregate amounts specified in the notice of lien, together with interest accrued thereon, and all filing and recording fees. When any such lien has been fully paid or discharged, the City 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. Any person, firm, corporation, or other legal entity, other than the present owner of the property involved, who fully pays any such lien shall be entitled to an assignment of lien and shall be subrogated to the rights of the City and the utility with respect to the enforcement of such lien.

~~(3)~~(4) Exemption to notice. Notwithstanding other provisions to the contrary herein, the City on behalf of the SMU shall have the discretion not to file notices of lien for fees, late charges, and interest accrued thereupon in an amount less than one hundred (\$100.00) dollars. If the City or the SMU elects not to file a notice of lien, said fees, late charges, and accrued interest shall remain as debts due and owing in accordance with the provisions of this ordinance.

~~(4)~~(5) Certificates verifying amount of debt. The utility is authorized and directed to execute and deliver upon request written certificates certifying the amount of fees, late charges, and interest accrued thereupon, which are due and owing to the utility and the City, for any developed property which is subject to payment of said fees, or the utility may certify that no fees, late charges or accrued interest are due and owing. Said certificates shall be binding upon the City and the utility. Third party requests for Certificates may incur a reasonable charge based on administration and clerical time to research, produce and transmit said Certificates.

SECTION 3: CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami **Gardens and that the sections of** this Ordinance may be renumbered or relettered and the word "Ordinance" may be

changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

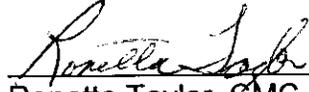
SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA ON FIRST READING THIS 28th DAY OF NOVEMBER, 2007.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA ON SECOND AND FINAL READING THIS 12TH DAY OF DECEMBER, 2007.


Shirley Gibson, MAYOR

ATTEST:


Ronetta Taylor, CMC, CITY CLERK

PREPARED BY: SONJA K. DICKENS, ESQ.
City Attorney

SPONSORED BY: SONJA K. Dickens, Attorney

MOVED BY: Councilman Bratton
SECONDED BY: Councilman Campbell

VOTE: 6-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Oscar Braynon, II	<u> </u> (Yes)	<u> </u> (No) Not present
Councilman Aaron Campbell	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> x </u> (Yes)	<u> </u> (No)

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Oscar Braynon II
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson
Councilman André Williams

Agenda Cover Page

Date: December 12, 2007

Fiscal Impact: No Yes X
(If yes, explain in Staff Summary)

Funding Source: N

Contract/P.O. Requirement: Yes No X

Sponsor Name/Department:

Dr. Danny Crew

Public hearing X

Ordinance X

1st Reading

Advertising requirement:

Quasi-Judicial

Resolution

2nd Reading X

Yes X No

Title

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Staff Summary

During November 2007, the City began billing residents for Stormwater services. The current Ordinance does not provide the City the ability to impose a lien on properties for non-payment of these fees. Additionally, it does not establish a mechanism for property owners to appeal these liens before the city imposes them. This Ordinance accomplishes these goals as well as assessing late fees, interest, and administrative fees related to this service.

Recommendation:

Staff recommends approval of the changes in this ordinance so that the City will have resource against those property owners that do not pay the amounts due.

**J-3) ORD. 2ND
READING/PUBLIC
HEARING**
Stormwater Management