

Sponsored by: Council
Introduction Date: April 12, 2005
Public Hearing Dates: April 26, 2005
May 10, 2005
Enactment Date: May 10, 2005

**CITY OF MARATHON, FLORIDA
ORDINANCE 2005-10**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA
ESTABLISHING A STORM WATER UTILITY**

WHEREAS, on March 10, 2004, the City of Marathon (City), pursuant to Title 40 of the Code of Federal Regulations, Part 123.35, and Rule 62-624, Florida Administrative Code (F.A.C.), was designated by the Department of Environmental Protection (Department) as a regulated municipality under Phase II of the National Pollutant Discharge Elimination System (NPDES). The Department is authorized to designate the City as a regulated Phase II MS4 by criteria set forth in Rule 62-624.800, F.A.C.; and

WHEREAS, coverage under this program is obtained by applying for a Generic Permit for Stormwater Discharge from Regulated Phase II Municipal Separate Storm Sewer Systems pursuant to Rule 62.621.300(7)(a), F.A.C.; and

WHEREAS, the City wishes to establish a storm water utility to protect the health of the City's near shore waters which are recognized as an important asset to the City and to comply with the requirements of the NPDES resulting from the City's designation as a regulated municipality.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Chapter ___ of the City Code is created to read as follows:

Chapter ___ Stormwater System.

Article 1. Purpose, Intent and Definitions

Section ____. Purpose and intent.

The purpose of this Chapter is to promote the health, safety and general welfare of the inhabitants of the City of Marathon. This Chapter is intended to comply with federal and state law and regulations regarding water quality.

Section ____. **Definitions.**

For the purpose of this Chapter, the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined herein shall be construed to have the meanings given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Authorized official: Any employee or agent of the City authorized in writing by the City Manager to administer or enforce the provisions of this Chapter.

Board: The administrative hearing board, comprised of the City Council.

City Manager: The City Manager or his designee.

Discharge: Any direct or indirect entry of any solid, liquid or gaseous matter.

Dwelling unit: Any residential space identified for habitation by members of the same family or as classified by the city building code.

Equivalent residential unit (ERU): That unit of construction consisting of one (1) dwelling unit (whether single-family, condominium, mobile home, or townhouse unit) for residential purposes; or for commercial or industrial sites, an impervious area equal to Four thousand seven hundred sixty nine (4,769) square feet.

Impervious area or impervious surface: Any Horizontal surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.

Person: Any natural individual, corporation, partnership, institution, or other entity.

Nonresidential property: Any developed property not otherwise defined as residential.

Residential property: Any lot or parcel existing in the City or in the future annexation reserve area as defined in the City's comprehensive plan developed exclusively for residential purposes including, but not limited to, single-family homes, manufactured homes, multifamily, apartment buildings and condominiums, transient rentals such as hotels and motels, and floating structures.

Site of industrial activity: Any area or facility used for manufacturing, processing or raw materials storage, as defined under 40 CFR Section 122.26(a)(14) of regulations of the U.S. Environmental Protection Agency, as amended.

Stormwater: Any stormwater runoff, and surface runoff and drainage.

Stormwater system: The system of conveyances used for collecting, storing and transporting stormwater owned by the City of Marathon but not including any facilities intended to be used in accordance with applicable law for collecting and transporting sanitary or other wastewater.

Undeveloped property: Property which has not been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade or landscaping. For new construction, a property shall be considered developed pursuant to this Chapter.

(a) Upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or

(b) Where construction is at least fifty (50) percent complete and construction is halted for a period of three (3) months.

Article 2. Establishment of Utility and ERU Rate

Section ____. Stormwater management utility service assessment.

A stormwater service assessment is hereby imposed in accordance with Ordinance 2002-07-13 upon each lot and parcel within the City for services and facilities provided by the stormwater management utility. For purposes of imposing the stormwater service assessment, all lots and parcels within the City are classified into the following three (3) customer classes:

(a) Residential.

(b) Nonresidential, which includes governmental; institutional (tax exempt); commercial; industrial and other.

(c) Undeveloped.

Section ____. Schedule of rates.

(a) The City Manager is directed to prepare a list of lots and parcels within the City and assign a classification of residential, nonresidential or undeveloped to each lot or parcel.

(b) The service assessment imposed for residential properties shall be the rate for one (1) ERU multiplied by the number of individual dwelling units existing on the property (ERU rate) (number of dwelling units).

(c) The City Manager shall be responsible for determining the impervious area based on data supplied by the county property appraiser, or by the property owner, tenant or developer if such information is unavailable. The City Manager may require additional information as necessary to make the determination. The billing amount shall be updated by the City Manager based on any additions or deletions to the impervious area as approved through the building permit process.

(d) The minimum service assessment for any nonresidential parcel shall be equal to the rate for one (1) ERU.

(e) The service assessment imposed for residential and nonresidential property shall be established by resolution in accordance with the provisions of Ordinance 2002-07-13

Section ____. **Billing and payment; penalties.**

(a) Stormwater utility service assessment shall be collected annually by the city for all properties subject to the service assessment through property tax bill. Any unpaid stormwater utility service assessment shall constitute a lien on such property except the liens of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Such lien, when delinquent for more than thirty (30) days, may be foreclosed by the city in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

(b) The owner of a property is responsible for all service assessment imposed under this Chapter.

Section ____. **Adjustment of service assessment.**

(a) Requests for adjustment of the stormwater management utility service assessment shall be submitted through the City Manager, who shall be given authority to administer the procedures and standards and review criteria for the adjustment of service assessment as established herein. All requests shall be judged on the basis of the amount of impervious area on the site, or additional/enhanced stormwater facilities. No credit shall be given for the installation of facilities required by city or county development codes or state stormwater rules. The following procedures shall apply to all adjustment requests of the stormwater utility service assessment:

(1) Any owner who has paid his stormwater management utility service assessment and who believes the contribution rate component of his stormwater management utility service assessment to be incorrect may, subject to the limitations set forth in this Chapter, submit an adjustment request to the City Manager.

(2) Request for adjustment of stormwater service assessment paid by an owner making the request shall be in writing and set forth, in detail, the grounds upon which relief is sought.

(3) Adjustment requests made during the first calendar year that the stormwater management utility service assessment is imposed will be reviewed by the City Manager within a four-month period from the date of filing of the adjustment request. Adjustments resulting from such request shall be retroactive to the beginning of billings but shall not exceed one (1) year.

(4) The owner requesting the adjustment may, at his own cost, provide supplemental information to the City Manager including, but not limited to facts, opinions or engineering services to substantiate his case.

(5) Adjustments to the stormwater management utility service assessment will be made upon the granting of the adjustment request, in writing, by the City Manager. Denials of adjustment requests shall be made in writing by the City Manager.

(b) Upon receipt of the written denial of the adjustment request, the owner who initially requested the adjustment may, within thirty (30) days of receipt of such denial, appeal to the board for review of the denial.

(1) The board shall complete its review within sixty (60) days of receipt of said request for appeal. The board's determination on the appeal shall be in writing and set forth in detail the reason for its decision.

(2) In evaluating the appeal, the board shall be bound by the standards and review criteria contained herein.

(3) All determinations of the board arising out of this section shall be final.

Section ____. **Capital contributions.**

Procedures and standards developed by the City Manager shall define appropriate means by which to optimize development capital contributions in the implementation of basic specific stormwater systems. These basic specific capital contributions shall take the form of "service assessment-in-lieu-of" or "availability charges". Each situation will be analyzed by the City Manager, and a specific written decision will be developed. The application is defined as follows:

(a) Service assessment-in-lieu-of is applied to a site-specific negotiated procedure, wherein a development's stormwater contribution (quantity and quality) is assessed its share of the capital needs of the facilities required to serve the development in question. This capital contribution would be used to implement city-owned stormwater facilities. The process does not apply wherein the stormwater facilities are privately held. Each application is evaluated against the city's stormwater master plan for the watershed involved or, while the master plan is incomplete, the cumulative impacts from the development.

(b) Availability charge is administered on a site-specific basis identical to the service assessment-in-lieu-of procedure noted above; the only difference is that the capital investment advanced by the city in implementing a stormwater facility is not recovered through an availability charge. The capital charge is determined on a pro rata share of the capacity used by the new applicant or by the cumulative impact from the development upon all impacted facilities.

Section ____. **Stormwater utility enterprise fund.**

There shall be established a stormwater utility enterprise fund for the deposit of all service assessment and charges collected by the stormwater utility service assessment. These funds shall be for the exclusive use of the City's stormwater management utility including, but not limited to, the following:

(a) Stormwater management services, such as studies, design, permit review, plan preparation and development review.

(b) Operation, maintenance, repair and replacement of the stormwater collection, storage, treatment and conveyance infrastructure.

(c) Project costs related to constructing major or minor structural improvements to the stormwater-related infrastructure as provided in the city-wide stormwater management plan.

(d) Administrative costs associated with the management of the stormwater utility service assessment. A maximum of 10% of the annual storm water utility fund may be transferred to the general fund annually for administrative costs.

(e) Debt service financing of stormwater-related capital improvements defined in the city-wide stormwater management plan.

(f) Funding of studies including water quantity and quality monitoring, aerial photography, and geotechnical work associated with the planning of the stormwater-related infrastructure.

Article 3. Operation and Discharge

Section ____ . Program administration.

It shall be the duty of the City Manager to administer the stormwater utility program. The City Manager shall keep an accurate record of all persons using the services and facilities of said stormwater management utility of the City and make changes in accordance with the rates and charges established in this Chapter or by ordinance.

Section ____ . Industrial activity.

(a) General prohibitions. The State of Florida standards are hereby adopted by reference.

(b) Specific prohibitions. By adoption of industrial activity stormwater regulations or by issuance of industrial activity stormwater permits, or both, the City Manager may impose reasonable limitations as to the quality of stormwater (including without limitation the designation of maximum levels of pollutants) discharged into the stormwater system from sites of industrial activity. Any promulgation of such regulations and issuance of permits by the City Manager shall be in accordance with applicable law.

(c) Administrative orders. The City Manager may issue an order to any person to immediately cease any discharge determined by the City Manager to be in violation of any provision of this Chapter, or in violation of any regulation or permit issued hereunder.

(d) NPDES permits. Any person who holds a national pollutant discharge elimination system (NPDES) permit shall provide a copy of such permit to the City Manager no later than the later of: sixty (60) calendar days after the effective date of this Chapter or sixty (60) calendar days after issuance.

Section ____. **Illicit discharges.**

(a) General prohibitions. Except as set forth under subsection (c) of this section or in accordance with a valid NPDES permit, any discharge to the stormwater system that is not composed entirely of stormwater is prohibited.

(b) Specific prohibitions. Any discharge to the stormwater system containing any sewage, industrial waste or other waste materials, or containing any materials in violation of federal, state, county, municipal or other laws, rules, regulations, orders or permits, is prohibited.

(c) Authorized exceptions. Unless the City Manager determines that it is not properly managed or otherwise is not acceptable, the following discharges are exempt from the general prohibition set forth under subsection (a) of this section: flows from fire fighting, water line flushing and other contributions from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising groundwaters, direct infiltration to the stormwater system, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washings, flows from riparian habitats and wetlands, and dechlorinated swimming pool contributions.

(d) Illicit connections. No person may maintain, use or establish any direct or indirect connection to the stormwater system that results in any discharge in violation of this Chapter. This prohibition is retroactive and applies to connections made in the past, regardless of whether made under a permit, or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

Section ____. **Spills and dumpings.**

(a) Notification of spills. As soon as any person has knowledge of any discharge to the stormwater system in violation of this Chapter, such person shall immediately notify the City Manager by telephoning 305-743-0033, and if such person is directly or indirectly responsible for such discharge, then such person shall also take immediate action to ensure the containment and cleanup of such discharge and shall confirm such telephone notification in writing to the City Manager at City of Marathon, 10045-55 Overseas Highway, Marathon, Florida 33050, within three (3) calendar days.

(b) Administrative order. The City Manager may issue an order to any person to immediately cease any discharge, or connection to the stormwater system, determined by the City Manager to be in violation of any provision of this Chapter, or in violation of any regulation or permit issued hereunder.

Section ____. **Enforcement.**

A violation of this Chapter or any resolution adopted pursuant to this Chapter may be enforced by issuance of a citation, summons, notice to appear in county court, or by filing an action in civil court for injunction relief. This Section is supplemental and nothing contained herein shall prohibit this City from enforcing Chapter by any other lawful means.

(a) Injunctive relief. Any violation of any provision of this Chapter, or of any regulation or order issued hereunder, shall be subject to injunctive relief if necessary to protect the public health, safety or general welfare.

(b) Continuing violation. A person shall be deemed guilty of a separate violation for each and every day during any continuing violation of any provision of this Chapter, or of any regulation or permit issued hereunder.

(c) Enforcement actions. The City Manager may take all actions necessary, including the issuance of notices of violation, the filing of court actions and/or referral of the matter to the local code compliance board to require and enforce compliance with the provisions of this Chapter and with any regulation or permit issued hereunder.

Section ____. **Inspections and monitoring.**

(a) Authority for inspections. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or regulation or permit issued hereunder, or whenever an authorized official has reasonable cause to believe there exists any condition constituting a violation of any of the provisions of this Chapter, or regulation or permit issued hereunder, any authorized official may enter any property, building or facility at any reasonable time to inspect the same or to perform any duty related to enforcement of the provisions of this Chapter or any regulations or permits issued hereunder; provided that:

(1) If such property, building or facility is occupied, such authorized official shall first present proper credentials and request permission to enter; and

(2) If such property, building or facility is unoccupied, such authorized official shall make a reasonable effort to locate the owner or other person having charge or control of the property, building or facility, and shall request permission to enter.

Any request for permission to enter made hereunder shall state that the owner or person in control has the right to refuse entry, and that in the event entry is refused, the authorized official may enter to make inspection only upon issuance of a search warrant by a duly court of competent jurisdiction. If the owner or person in control refuses permission to enter after such

request has been made, the authorized official is hereby authorized to seek assistance from any court of competent jurisdiction in obtaining entry.

(b) Authority for monitoring and sampling. Any authorized official may establish on any property such devices as are necessary to conduct sampling or metering of discharges to the stormwater system. During any inspections made to enforce the provisions of this Chapter, or regulations or permits issued hereunder, any authorized official may take any samples deemed necessary.

(c) Requirements for monitoring. The City Manager may require any person engaging in any activity or owning any property, building or facility (including but not limited to a site of industrial activity) to undertake such reasonable monitoring of any discharge(s) to the stormwater system and to furnish periodic reports.

Section 3. Any provision of the Code that conflicts with this Ordinance is hereby repealed.

Section 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become a part of the City of Marathon, Florida Code of Ordinances; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. This Ordinance shall be effective immediately upon its adoption on second reading.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 10th day of May 2005.

THE CITY OF MARATHON, FLORIDA



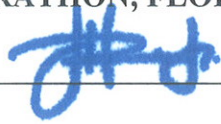
John Bartus, Mayor

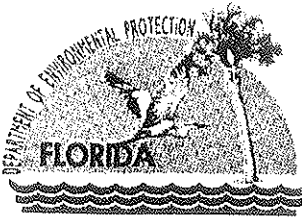
AYES: Pinkus, Mearns, Miller, Bull, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Cindy L. Ecklund
City Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:


City Attorney



Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Colleen M. Castille
Secretary

April 18, 2005

Ms. Susie Thomas
Project Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

Re: Phase II MS4 Permit ID Number FLR04E129
Notice of Issued Permit

Dear Ms. Thomas

The Florida Department of Environmental Protection has received and processed your *Notice of Intent to Use Generic Permit for Stormwater Discharge from Phase II Municipal Separate Storm Sewer Systems* (NOI) and the accompanying processing fee. This letter serves to acknowledge that the NOI is complete and the regulated portion of the MS4 is covered under the *Generic Permit for Discharge from Phase II Municipal Separate Storm Sewer Systems* (Phase II MS4 GP). Coverage under this permit is considered effective as of **04/18/05** and will expire **04/17/10**.

The Phase II MS4 GP was issued under the provisions of Section 403.0885, Florida Statutes, 40 CFR Chapter 122.32-.37, and applicable rules of the Florida Administrative Code. Until the Phase II MS4 GP is terminated, modified or revoked, permittees that have properly obtained coverage under this permit are authorized to discharge to surface waters in accordance with the terms and conditions of this permit.

Your project identification number is FLR04E129. Please make reference to this number on all future correspondence to the Department.

This letter is not a permit. The NOI allows the MS4 to proceed with discharges by complying with the *Generic Permit for Stormwater Discharge from Phase II Municipal Separate Storm Sewer Systems* Rule 62-621.300(7)(a), F.A.C., a copy of which can be obtained online at <http://fac.dos.state.fl.us/> or by contacting the NPDES Stormwater Section.

Key provisions of the permit are (1) development schedules and implementation of Best Management Practices (BMPs) and accompanying Measurable Goals that address elements in each of the six minimum control measures included in both the Phase II MS4 GP and Appendix A of the NOI, (2) retention of records that are required for the permit, including an updated copy of the appropriate Stormwater Management Plan, as well as ordinances, certifications, etc., and (3) submission of annual reports, in accordance with the GP, that report activities and fulfillment of the requirements for each year of the permit.

"More Protection, Less Process"

Printed on recycled paper.

Ms. Susie Thomas
March 16, 2005
Page 2 of 2

If the Phase II MS4 permittee wishes to continue coverage beyond the expiration of the current permit coverage, an NOI must be filed at least 180 days prior to the expiration date of the current coverage.

If you have any questions concerning this acknowledgement letter, please contact me at 850/245-7523 or sara.jozwiak@dep.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Jozwiak", written in a cursive style.

Sarah Jozwiak
Phase II MS4 Coordinator