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Introduction Date: November 12, 2014  
Public Hearing Dates: November 12, 2014  
December 16, 2014  
Enactment date: December 16, 2014

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2014-20**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 34, ARTICLE II, ENTITLED “STORMWATER SYSTEM” TO CLARIFY AND UPDATE DEFINITIONS AND STORMWATER UTILITY PROCEDURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Federal and State law, including, but not limited to, the Federal Clean Water Act and Federal National Pollutant Discharge Elimination System and Municipal Separate Storm Sewer System Regulations, The Florida Constitution, and Chapters 163, 166, 380, and 403, *Florida Statutes*, authorize and/or require the City to establish a Stormwater Utility to manage the quality of the City’s nearshore waters; and

**WHEREAS**, the City Council of the City, of Marathon, Florida (the “City”) enacted Article III of Chapter 34, of the Code of Ordinances, City of Marathon, Florida (the “Code”), which established a Stormwater Utility and authorized the imposition of an annual Stormwater Service Assessment pursuant to the its home rule powers under the Florida Constitution and State law and collectible pursuant to the Uniform Assessment Collection Act, Chapter 197, *Florida Statutes*, to pay for the design, construction, operation and maintenance of the Stormwater Utility’s facilities, programs, and collection and treatment services against assessable property within the City; and

**WHEREAS**, the creation of a Stormwater Utility and the imposition of a Stormwater Service Assessment to pay for the design, construction, operation and maintenance of the Stormwater Utility’s facilities, programs, and collection and treatment services is an equitable and efficient method of allocating and apportioning Stormwater costs among all parcels of assessable property located in the City; and

**WHEREAS**, to date the City has borrowed and spent in excess of \$23,000,000.00 to design, construct, operate and maintain the Stormwater Utility’s facilities, programs, and collection and treatment services; and

**WHEREAS**, the Stormwater Service Assessment was initially imposed upon all assessable property within the City commencing October 1, 2005, at an annual rate of \$60.00, and re-imposed commencing on October 1, 2010, at an annual rate of \$120.00; and

**WHEREAS**, from the inception of the Stormwater Utility and the imposition of an annual Stormwater Service Assessment - as provided for in Chapter 197, *Florida Statutes* - it has been the City's legislative intent and practice to annually assess all non-exempt parcels in the City a Stormwater Service Assessment; and

**WHEREAS**, the City desires to clarify and update its Stormwater Utility definitions and procedures to reflect its legislative intent and practice of annually assessing all non-exempt parcels in the City a Stormwater Service Assessment of no less than one (1) Equivalent Residential Unit per parcel; and

**WHEREAS**, the City hereby finds, determines and declares its legislative intent of the City that this ordinance is remedial in nature to resolve any informality or irregularity in any proceeding in connection with the levy of the annual Stormwater Service Assessment provided for herein; and therefore, this ordinance is retroactive in nature. *See, Arrow Air, Inc. v. Walsh*, 645 So. 2d 422 (Fla. 1994).

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:<sup>1</sup>**

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

**Section 2.** Chapter 34, Article III, of the Code of Ordinances, City of Marathon, Florida, is hereby amended to read as follows:

#### **Chapter 34 – Utilities**

#### **Article III. - Stormwater System**

#### **Division 1. - Generally**

#### **Sec. 34-68. Purpose, and intent, and findings.**

(a) The purpose of this article is to promote the health, safety and general welfare of the inhabitants of the City of Marathon by establishing a Stormwater Utility responsible for the financing, construction, operation and maintenance of stormwater facilities; for stormwater system planning; for coordinated review of development plans for compliance with stormwater regulations; and ensuring the protection and enhancement of the City's nearshore waters. Further, the City finds more specifically that:

- (1) The City is located in the middle of the Florida Keys archipelago, which contains environmental and natural resources of such statewide importance the Florida Legislature declared it to be an Area of Critical State Concern under Chapter 380, *Florida Statutes*; and
- (2) As a result of its inclusion within the Florida Keys Area of Critical State

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<sup>1</sup> / Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

- Concern the City is statutorily obligated to limit the adverse impacts of development on the quality of its nearshore waters and to protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; and
- (3) The Federal and State government ordered the City to comply with National Pollutant Discharge Elimination System (“NPDES”) requirements or face financial penalties, the suspension of Federal and State grant funding, and a possible building moratoria; and
  - (4) Stormwater runoff is capable of carrying pollutants into the City’s nearshore waters, thereby degrading water quality; and
  - (5) The increase in nutrients, such as phosphorous and nitrogen, accelerates eutrophication of the City’s nearshore waters, thereby adversely affecting flora and fauna; and
  - (6) Improperly channeling water increases the velocity of stormwater runoff, thereby increasing erosion and sedimentation; and
  - (7) The alteration of natural topography and removal of vegetation tends to increase erosion; and
  - (8) Siltation of the City’s nearshore waters resulting from increased erosion interferes with navigation and harms flora and fauna; and
  - (9) Impervious surfaces increase the volume and rate of stormwater runoff, and allow less water to percolate into the soil, thereby decreasing groundwater recharge; and
  - (10) Improperly managed stormwater runoff from developed and undeveloped property may increase the incidents of flooding and the level of floods which occur, thereby endangering property and human life; and
  - (11) Improperly managed stormwater runoff from developed and undeveloped property may interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity; and
  - (12) Substantial economic losses will result from such adverse impacts upon the City’s nearshore waters ecosystem; and
  - (13) Sound stormwater management practices result in the avoidance of future problems concerning the development of land and the maintenance of the quality of the City’s nearshore waters; and
  - (14) The City maintains a system of stormwater management facilities including, but not limited to, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, swales, infiltration facilities, and other components that need regular maintenance and improvements; and
  - (15) All real property in the City benefits from this stormwater system.

(b) This article is intended to comply with Federal and State law and regulations regarding water quality, and has the following objectives:

- (1) To establish a stormwater utility and management program within the City responsible for the construction, operation, and maintenance of City stormwater devices and facilities; for stormwater system planning; for review of development plans for compliance with stormwater management regulations; and for nearshore water quality management; and

- (2) To adopt stormwater service assessments sufficient to plan, construct, operate, and maintain stormwater management facilities throughout the City; and
- (3) To protect, restore, and maintain the chemical, physical, and biological integrity of the City's nearshore waters; and
- (4) To prevent individuals, business organizations, companies, and governments from causing harm to the community, by activities which adversely affect water resources; and
- (5) To encourage the construction of drainage systems which aesthetically and functionally approximate natural systems; and
- (6) To encourage the protection of natural systems, and the use of such natural systems in ways which do not impair their beneficial functioning; and
- (7) To minimize the transport of pollutants to the City's nearshore waters; and
- (8) To minimize erosion and sedimentation; and
- (9) To prevent damage to wetlands; and
- (10) To reduce damage from flooding, while recognizing that natural fluctuations in water levels are beneficial; and
- (11) To protect, restore, and maintain the City's nearshore habitat of flora and fauna; and
- (12) To ensure the attainment of these objectives by requiring the approval and implementation of a stormwater management program for all activities, which have an adverse impact upon the City's nearshore waters.

**Sec. 34-69. Definitions.**

For the purpose of this article, 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.

Assessable Real Property means "non-residential property," "residential property" and "undeveloped property."

*Authorized official* means any employee or agent of the City authorized in writing by the City Manager to administer or enforce the provisions of this article.

*Best management practices* or *BMPs* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

~~*Board* means the Administrative Hearing Board, comprised of the City Council.~~

*City* means the City of Marathon, Florida.

*City Manager* means the City Manager or his designee.

*Clean Water Act* or *CWA* means Public Law (PL) 92-500, as amended PL95-217, PL95-576, PL6-483, PL97-117, and 33 U.S.C. 1251 et seq., as amended by the Water Quality Act of 1987, PL100-4.

*Construction activities* mean the alteration of land during construction and include such activities as clearing, grading, and excavation.

*DOR Code* means a property use code established in Rule 12D-8.008, Florida Administrative Code, assigned by the Monroe County Property Appraiser to parcels within the City.

*Discharge* means the release of liquid, solid or gaseous material and includes, but is not limited to, a release, spilling, leaking, seeping, pouring, emitting, emptying and/or dumping of any substance or material.

*Dwelling unit* means any residential space identified for habitation by members of the same family or as classified by the Florida Building Code.

*Equivalent residential unit (ERU)* means that unit of construction consisting of one (1) dwelling unit (whether single-family, condominium, mobile home, or townhouse unit) for developed residential purposes property; or for developed commercial or industrial sites property, an impervious area equal to 4,769 square feet; or for undeveloped commercial, industrial, or residential property, an area equal to 4,769 square feet. An ERU serves as a reference from which an equitable distribution of the stormwater cost of services and facilities can be made among all properties within the City through a stormwater assessment rate methodology.

*Exempt property* means any submerged land or parcel (non-residential, residential or undeveloped) containing wetlands of such quality and/or size (a/k/a “red flagged wetlands”) that it does not contribute stormwater to the City’s stormwater system, and is not otherwise benefited by the City’s stormwater utility . Additionally, “exempt property” includes all governmental real property within the City. Governmentally owned real property used for non-governmental purposes shall not be included within the definition of “exempt property.” The exemption of property from taxation under Florida law shall not relieve the owner of any such real property from the provisions of this article, or from the imposition by the City of the annual stormwater service assessment applicable to such real property

*Illicit connection* means any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm sewer system including, but not limited to, any conveyances which allow a non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm sewer system and any connections to the storm sewer system from indoor drains and sinks regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency, or any drain or conveyance connected from a commercial or industrial land use to the storm sewer system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

*Illicit discharge* means any direct or indirect non-stormwater discharge to the storm sewer system, except as specifically exempted in this article.

*Impervious area or impervious surface* means any horizontal surface, which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, or modified by the action of a person to reduce the land's natural ability to absorb and hold rainfall. It includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as areas that have been cleared streets, roofs, sidewalks, parking lots and other similar surfaces.

*Industrial activities* mean activities subject to NPDES Industrial Permits as defined by 40 CFR, Section 122.26(b)(14).

*Municipal separate storm sewer system or MS4* means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned or operated by a local government that discharges to waters of the United States or to other MS4s, ~~this~~; is designed solely for collecting, treating or conveying stormwater; ~~and this~~ is not part of a publicly owned treatment works (POTW), as defined by 40 Code of Federal Register 122.2 or any context may require.

*NPDES (National Pollutant Discharge Elimination System) Stormwater Permit* means permit issued by EPA (or by a state under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

*Nonresidential property* means any developed or undeveloped parcel ~~property~~ not otherwise defined as residential.

*Parcel* means land(s) or lot(s) shown on a recorded plat or on the Monroe County Property Appraiser's maps or any piece of land described by deed and recorded in the public records of Monroe County, Florida.

*Person* means any natural individual, corporation, partnership, institution, or other entity.

*Pollutant* means anything that causes or contributes to pollution including, but is not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

*Red-Flag Wetlands* means wetlands that lack disturbance and are of obvious and exceptionally high quality meeting criteria specified in the Florida Keys Wetlands Evaluation Procedure.

*Residential property* means any developed or undeveloped lot or parcel existing in the City or in the future annexation reserve area as defined designated 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* means any area or facility used for manufacturing, processing or raw materials storage, as defined under 40 CFR 122.26(a)(14) of regulations of the U.S. Environmental Protection Agency, as amended.

*Stormwater* means surface flow and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Stormwater management plan* means a City or state government approved plan for receiving, handling, and transporting stormwater and surface waters within the City.

*Stormwater management system* means the system of storm and surface water management facilities including, but not limited to, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components owned by the City system of conveyances used for collecting, storing and transporting stormwater owned by the City but not including any facilities intended to be used in accordance with applicable law for collecting and transporting sanitary or other wastewater.

*Stormwater Utility Cost or Stormwater Cost* means the amount necessary to fund the City's stormwater utility services that are allocable to assessed property during a Tax Year and shall include, but not be limited to: (i) the cost, whether direct or indirect, of all services, programs or facilities provided by the City, or through contractual arrangements with the City relating to stormwater management and disposal activities; (ii) the cost of any indemnity or surety bonds and premiums for insurance; (iii) the cost of salaries, volunteer pay, workers compensation insurance, or other employment benefits; (iv) the cost of computer services, data processing, and communications; (v) the cost of training, travel and per diem; (vi) the recovery of unpaid or delinquent fees or charges advanced by the City and due for stormwater management and disposal services, programs or facilities allocable to specific parcels; (vii) the cost of engineering, financial, legal or other professional services; (viii) all costs associated with the structure, implementation, collection, and enforcement of the stormwater service assessments or a prior year's assessment for a comparable service, facility or program, including any service charges of the Monroe County Tax Collector or Monroe County Property Appraiser; (ix) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the stormwater service assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the City Council; (x) a reasonable amount for contingency and anticipated delinquencies and uncollectible stormwater service assessments; and (xi) reimbursement to the City or any other person for any monies advanced for any costs incurred by the City or such person in connection with any of the foregoing items.

*Stormwater Service Assessments* means a special assessment lawfully imposed by the City against assessable property to fund all or any portion of the stormwater cost, providing a special benefit to property because of possessing a logical relationship to the value, use, or characteristics of the assessable property.

*Submerged land* means land below the mean high tide line and/or the mean high water line of an upland water body.

*Undeveloped property* means ~~property~~ any parcel (residential or non-residential), which has not been altered from its natural state through any construction activity; by the addition of any improvements such as a building, structure, and impervious surface; or change of grade, placement of fill, tree or vegetation removal, or landscaping. For new construction, a property shall be considered developed ~~pursuant to this article:~~

- (1) Upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or
- (2) Where construction is at least 50 percent complete and construction is halted for a period of three (3) months.

*Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

*Wetlands* means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and, under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida Keys wetlands generally include tidal marshes, mangrove swamps and other similar areas.

## **Division 2 – Establishment of Utility and ERU Rate**

### **Sec. 34-97. Stormwater ~~management~~ utility and stormwater service assessment.**

(a) Pursuant to the home rule power of Article VIII, Section 2(b) of the Florida Constitution, Chapter 166, *Florida Statutes* and Chapter 24 of the Marathon Code, A stormwater utility is hereby established and a stormwater service assessment is hereby imposed, in accordance with Ordinance No. 2002-07-13, upon each non-exempt 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)~~ four (4) customer classes:

- (1) Residential.
- (2) Nonresidential, which includes ~~governmental~~; institutional (tax exempt); commercial; industrial and other.
- (3) Undeveloped.
- (4) Exempt.

(b) The stormwater service assessment imposed on each non-exempt parcel in the City



shall constitute a non-ad valorem assessment.

(c) On or before the fifteenth (15<sup>th</sup>) day of September of the first year of assessment, the City Council shall hold a public hearing to adopt a final rate resolution and assessment roll. The rate resolution and assessment roll shall stay in effect until a change in the stormwater service assessment is proposed. On or before the fifteenth (15<sup>th</sup>) day of September in the year of a proposed assessment change, the City Council shall hold a public hearing to adopt the modified stormwater service assessment resolution and assessment roll for the purposes of imposing the stormwater service assessment upon each non-exempt parcel within the City. Said rate resolution and assessment roll shall incorporate a schedule of rates and classifications of all parcels in the City.

(d) Notice of the public hearing concerning the above referenced stormwater service assessment resolution shall be published in a newspaper of general circulation in the City at least once, with the first publication being at least twenty (20) days prior to the public hearing. Said public hearing may be continued to a date certain without the necessity of further newspaper advertisement or public notice.

**Sec. 34-98. Assessment role and schedule of rates ~~Schedule of rates.~~**

(a) Pursuant to the home rule power of Article VIII, Section 2(b) of the Florida Constitution, Chapter 166, *Florida Statutes* and Chapter 24 of the Marathon Code, ~~The~~ the City Manager is directed to prepare a list of all lots and parcels within the City and assign a classification of residential, nonresidential, or undeveloped, or exempt to each lot or parcel, which list shall constitute the annual stormwater utility assessment roll. Such roll shall contain a summary description of each parcel in the City setting forth the name and address of the owner of each such parcel; the assessment classification applicable to each parcel of real property as specified in the rate resolution; and the amount of the annual storm water utility fee or assessment applicable to each such parcel.

(b) The City Manager shall be responsible for determining the impervious area based on data supplied by the Monroe County Property Appraiser, or by the property owner, tenant or developer if such information is unavailable from the Property Appraiser. The City Manager may require additional information as necessary to determine the impervious area of a parcel. The annual stormwater assessment amount shall be updated by the City Manager based on any additions or deletions to the impervious area of a parcel.

(c) On or before the fifteenth (15<sup>th</sup>) day of September of the first year the stormwater service assessment is imposed the City Council shall, at any regular or special meeting, review the stormwater utility assessment roll prepared by the City Manager for its conformity with the rate resolution provided for in Section 34-97; and make such changes or additions as necessary to conform such roll with the rate resolution. Upon the completion of such review, and any changes or additions, it shall ratify and confirm such roll and certify the roll to the Monroe County Tax Collector for appropriate action. The ratified and confirmed stormwater utility assessment roll shall be maintained on file in the office of the City Manager, and thereafter shall be incorporated into the annual stormwater service assessment resolution by reference.

(d) The service assessment imposed for residential properties shall be one (1) ERU per parcel, multiplied by the number of dwelling units existing on the parcel (1 ERU) x (number of dwelling units). The minimum service assessment for any residential property, irrespective of the number of existing dwelling units, shall be equal to one (1) ERU per parcel.

(e) The minimum service assessment for any nonresidential property, irrespective of the amount of impervious area, shall be equal to one (1) ERU per parcel.

(f) The minimum service assessment for any undeveloped property, irrespective of the amount of impervious area, shall be equal to one (1) ERU per parcel.

(g) Exempt properties shall not be assessed.

~~(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 Chapter 26.~~

#### **Sec. 34-99. Billing and payment; penalties.**

(a) The annual stormwater service assessment 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 the installment method, penalty for delinquent payment, and issuance of tax certificates and tax deeds for nonpayment, as provided for in Section 197.3631, Florida Statutes. Failure to pay the annual storm water 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. Stormwater utility service assessment shall be collected annually by the City for all properties subject to the service assessment through the property tax bill. Alternatively, Any any unpaid stormwater utility service assessment shall constitute a lien on such property assessed 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 30 days, may be foreclosed by the City in the manner provided by the State law for the foreclosure of mortgages on real property.

(b) The owner of a property is responsible for all stormwater service assessments imposed under this division.

**Sec. 34-100. Adjustment of service assessment; correction of errors and omissions.**

(a) Requests for adjustment of the stormwater ~~management utility~~ service assessment shall be submitted in writing to ~~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~~ reviewed based on the ~~basis of the~~ amount of impervious area on the ~~site~~ parcel, or additional/enhanced stormwater facilities. No credit shall be given for the installation of facilities required by City or County development codes or Federal or State water quality regulations and stormwater rules. The following procedures shall apply to all adjustment requests of the stormwater ~~utility~~ service assessment:

- (1) Any property owner ~~who has paid his stormwater management utility service assessment and who believes the contribution rate component of his stormwater management utility service assessment~~ may, ~~subject to the limitations set forth in this article,~~ submit an adjustment request to the City Manager. A condition precedent to the submission of an adjustment request is the payment of all unpaid stormwater service assessments.
- (2) Adjustment requests ~~Requests 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.~~ Adjustment requests 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 for assessment refunds to the beginning of billings, but refunds shall not exceed one (1) year of imposed assessments.
- (4) The property owner requesting the adjustment may be required by the City, at his property owner's own cost, to provide supplemental information to the City Manager including, but not limited to facts, professional opinions or engineering services studies to substantiate the adjustment request his ease.
- (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.
- (6) Should an adjustment be granted to a lesser number of ERUs, and the property owner later increases the number of lots or parcels to be developed, assessments that would have otherwise been imposed in fiscal year 2014-2015 (or such fiscal year in which the original adjustment is made), and each year thereafter, shall be due from the property owner as a condition of increasing the number of ERUs.

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

- (1) The ~~Board~~ City Council shall complete its review within 60 days of receipt of said request for appeal. The ~~Board~~ City Council'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~~ City Council shall be bound by the standards and review criteria contained herein.
- (3) All determinations of the ~~Board~~ City Council arising out of this section shall be final.

(c) All adjustment requests submitted under this section must be submitted within a period of 90 days of ~~the adoption of the annual stormwater service assessment resolution receipt of the initial notice of annual assessment~~ set forth in Section 34-998. After the expiration of such period of limitation, no right of administrative adjustment shall be asserted or be available to any owner.

(d) No act of omission or commission on the part of the Monroe County Property Appraiser, Monroe County Tax Collector, the City Council, or City Manager shall operate to defeat the required payment of the annual storm water utility assessment imposed by the City Council under the provisions of this article. Provided, however, any acts of omissions 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 any process by law for the enforcement of the annual stormwater service assessments imposed under the provisions of this article.

(e) The City Council shall have the authority, at any time, upon its own initiative or in response to an adjustment request from any affected owner of real property, to correct any error of omission or commission in the adoption of any annual stormwater service assessment roll, or in the implementation of this article, and make necessary adjustments thereto, subject to the one (1) year refund limitation in subsection (a)(3) herein.

#### **Sec. 34-101. 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:

- (1) "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.

- (2) "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.

**Sec. 34-102. 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:

- (1) Stormwater management services, such as studies, design, permit review, plan preparation and development review.
- (2) Operation, maintenance, repair and replacement of the stormwater collection, storage, treatment and conveyance infrastructure.
- (3) Project costs related to constructing major or minor structural improvements to the stormwater-~~related system~~ infrastructure as provided in the Citywide stormwater management plan.
- (4) Administrative costs associated with the management of the stormwater utility service assessment. A maximum of ten (10) percent of the annual stormwater utility fund may be transferred to the general fund annually for administrative costs.
- (5) Debt service financing of stormwater-related capital improvements defined in the Citywide stormwater management plan.
- (6) Funding of studies including water quantity and quality monitoring, aerial photography, and geotechnical work associated with the planning of the stormwater-~~related system~~ infrastructure.

**Sec. 34-102. Conflicting provisions.**

In the event that any provision of this article is in direct conflict with the provisions of any other provision of the City Code, the more restrictive provision shall apply.

**Section 3.** The provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

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

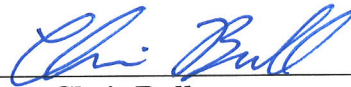
**Section 5.** It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be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

**Section 6.** It is the intention of the City Council that this ordinance is remedial in nature and to resolve any informality or irregularity in any proceeding in connection with the levy of the annual Stormwater Utility Service Assessment; and therefore, this ordinance is retroactive in nature. *See, Arrow Air, Inc. v. Walsh*, 645 So. 2d 422 (Fla. 1994).

**Section 7.** This Ordinance shall be effective immediately upon enactment.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 16<sup>TH</sup> DAY OF DECEMBER 2014.**

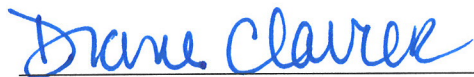
**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_  
**Mayor Chris Bull**

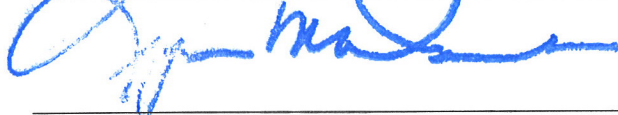
AYES: Keating, Zieg, Kelly, Senmartin, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



\_\_\_\_\_  
Diane Clavier, City Clerk  
(City Seal)

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



\_\_\_\_\_  
Lynn M. Dannheisser, City Attorney