

ORDINANCE NO. 2021-15

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH (NMB), AMENDING CHAPTER XIX, ENTITLED “WATER AND SEWERS” OF THE CITY CODE OF ORDINANCES, SPECIFICALLY AMENDING SECTION 19-24, ENTITLED “EMERGENCY WATER CONSERVATION RATES” TO REVISE THE SECTION TITLE AND TO PROVIDE FOR ECONOMIC INCENTIVES FOR WATER CONSERVATION TO CLARIFY THE CONTINUED IMPOSITION OF A 10% SURCHARGE, ON WATER CONSUMPTION THAT EXCEEDS PER MONTH WATER USAGE BY NMB WATER CUSTOMERS, EFFECTIVE RETROACTIVELY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, under Florida law, municipalities have long been authorized to establish utilities for the provision of water;¹ and

WHEREAS, the legislative body of a municipality is authorized to administer such a utility and “may establish just and equitable rates or charges”² and

WHEREAS, the Legislature has established a statewide water conservation program, and has expressly recognized the authority of public water supply utilities to fashion their own conservation measures, including the creation of economic incentives for water conservation;³ and

WHEREAS, based on the foregoing, the City has broad authority to enact regulations that would impose a continuous surcharge for water consumption that exceeds certain thresholds, according to the classification of single-family, multi-family, and commercial customers; and

WHEREAS, in order to promote efficient use of water by providing customers with economic incentives to conserve water, the City desires to amend Section 19-24, currently entitled

¹ See §§ 180.03; 180.06(3), Fla. Stat. (2021).

² § 180.13, Fla. Stat. (2021).

³ See §373.227(1), Fla. Stat. (2021).

“Emergency Water Conservation Rates” to establish a ten (10%) percent surcharge, effective retroactively, on water consumption that exceeds per month water usage by its customers; and

WHEREAS, “it is well-established in Florida that legislative bodies may enact curative laws having retroactive effect to ratify, validate and confirm any action that they could have authorized in the first place;”⁴ and

WHEREAS, the City Commission deems it to be in the public interest to adopt this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Commission of the City of North Miami Beach, Florida, as follows:

Section 1. The foregoing findings and recitals are true and correct and incorporated by reference.

Section 2. Chapter XIX, “Water and Sewers,” Article II, “Water,” Section 19-24, “Emergency Water Conservation Rates,” of City of North Miami Beach Code of Ordinances, is hereby amended by adding the following underlined language and deleting the following stricken language:

19-24 - EMERGENCY WATER CONSERVATION RATES. SURCHARGE FOR EXCESS WATER CONSUMPTION.

~~During periods of mandated water restrictions by the South Florida Water Management District, an automatic adjustment to the rates shall be instituted. The rate adjustments are as follows:-~~

a. ~~Currently, permanent mandatory year-round water restrictions are imposed by the South Florida Water Management District in lieu of phases. It is the policy of the City of North Miami Beach to apply Phase II Emergency Water Conservation Rates~~ In order to promote efficient use of water by providing customers with economic incentives to conserve water, the City imposes a surcharge of ten (10%) percent on water consumption that exceeds per month water usage by its

⁴ *Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1347 (S.D. 2003) (citing *Coon v. Bd. of Pub. Instruction of Okaloosa County*, 203 So. 2d 497, 498 (Fla. 1967) (upholding validity of curative statute that retroactively validated defectively approved school bonds)); *Sullivan v. Volusia County Canvassing Bd.*, 679 So. 2d 1206 (Fla. 5th DCA 1996) (upholding legislature’s retroactive ratification of election despite alleged notice and ballot irregularities)).

customers, as identified in subsection 1.

1. ~~During Phase II restrictions, a~~ The ten (10%) percent surcharge will be added to the consumption portion of the bill for the following:

- (a) each single-family customer for all water used in excess of three thousand (3,000) gallons per month per Equivalent Residential Connection;
- (b) each multi-family customer for all water used in excess of two thousand (2,000) gallons per unit per month per Equivalent Residential Connection; and
- (c) each nonresidential customer for all water used in excess of two thousand (2,000) gallons per month per Equivalent Residential Connection.; and
- ~~(d) each wholesale customer for all water used.~~

2. This provision shall have retroactive effect.

Section 3. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any section, subsection, clause or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. It is the intention of the City Commission of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

Section 6. This Ordinance shall become effective immediately upon adoption and shall have retroactive effect.

[SIGNATURE PAGE TO FOLLOW]


APPROVED on **first reading** at a duly noticed meeting of the City Commission on this **14th day of December, 2021.**

APPROVED AND ADOPTED on **second reading** at a duly noticed public hearing before the Mayor and City Commission on this **18th day of January, 2022.**


ATTEST:


ANDRISE BERNARD, CMC
CITY CLERK

(CITY SEAL)


ANTHONY F. DEFILLIPO
MAYOR

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION


HANS OTTINOT,
INTERIM CITY ATTORNEY

SPONSORED BY: Mayor and City Commission