

AN ORDINANCE AMENDING CHAPTER 22, STORMWATER MANAGEMENT UTILITY, OF THE CITY OF CAPE CORAL CODE OF ORDINANCES, TO AMEND DEFINITIONS; TO CLARIFY CALCULATIONS OF STORMWATER USER FEES FOR MULTI-FAMILY AND UNDEVELOPED PROPERTY; TO ELIMINATE RETROACTIVE CORRECTIONS, ADJUSTMENTS, OR EXEMPTIONS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City's stormwater management utility established a program of user fees for stormwater management services to be charged to all property within the city that contributes stormwater runoff to the city's stormwater management system; and

WHEREAS, the stormwater management system functions include, but are not limited to, maintenance, planning, design, construction, regulation, surveying, and inspection of the stormwater management facilities.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 22, Stormwater Management Utility, is hereby amended as follows:

§ 22-3 - 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 meaning given by common and ordinary use, as defined in the latest edition of Webster's Dictionary.

ANNUAL STORMWATER COMPONENT. The amount computed for each parcel pursuant to § 22-5(f)(1) hereof.

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DEVELOPMENT PROJECT. A geographical area which provides and maintains stormwater facilities/structures in accordance with requirements of the State of Florida and the City and meets the requirements set forth in either § 22-5(e)(1) or (2) hereof in accordance with the procedures set forth in § 22-5(e)(4) hereof. The geographic area includes all parcels contributing run-off to a privately maintained master stormwater system or which are part of a State of Florida or City permitted stormwater facility discharging into a privately maintained master stormwater system.

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IMPERVIOUS AREA or IMPERVIOUS SURFACE. A 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, streets, driveways, roofs, sidewalks, patios, parking areas, athletic courts, other impervious surfaces and semi-impervious surfaces such as compacted clay, shell, limerock, stone, or any pervious pavement product.

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MULTI-FAMILY PARCEL.

~~(1) For fiscal years including and prior to 2003-2004, a parcel on which a building containing more than one dwelling unit has been constructed; and~~

~~(2) For fiscal years after 2002-2003, a~~ A parcel that is classified as either low density multi-family or high density multi-family.

...

SFWMD. The South Florida Water Management District or any successor entity thereto.

SFWMD PERMIT. A Surface Water Management or Environmental Resource Permit ~~general permit and stormwater discharge certification~~ issued by SFWMD authorizing the construction of a surface water management system.

...

§ 22-4 - Stormwater assessments.

(a) *Stormwater user fees.* The Council is hereby authorized to impose stormwater user fees against property that utilizes the city's stormwater system.

...

(e) *Correction of errors and omissions.*

(1) No act of error or omission on the part of the Council, Stormwater Director, Property Appraiser, Tax Collector, Clerk or their respective deputies, employees or designees shall operate to release or discharge any obligation for payment of any stormwater user fee imposed by the Council under the provisions of this Chapter 22.

(2) The number of ERUs attributed to a parcel of property may be corrected ~~at any time for the current fiscal year's assessed stormwater user fee~~ in the manner prescribed in § 22-7 hereof. Any such correction which reduces a stormwater user fee shall be considered valid for the current year, and subsequent years, assessed stormwater user fee from the date on which the stormwater user fee was imposed and shall in no way affect the enforcement of the stormwater user fee imposed under the provisions of this Chapter 22. Any such correction which increases a stormwater user fee or imposes a stormwater user fee on omitted property shall first require notice to the affected owner in the manner described in § 22-4~~(f)~~ hereof, providing the date, time and place that the Council will consider confirming the correction and offering the owner an opportunity to be heard.

(3) After the stormwater user fee roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

(4) In the event any change, modification or correction is made in accordance with this section and the property owner shall have paid the stormwater user fee for the current fiscal year, then the city shall refund the difference between stormwater user fee paid and the stormwater user fee after the change, modification or correction is made for the current fiscal year assessed stormwater user fee.

§ 22-5 - Calculation of stormwater user fees.

(a) *Classification of parcels.* Each parcel of property subject to the user fee shall first be assigned to one of the following classifications: residential developed property, nonresidential developed property and undeveloped property. The calculation of ERUs for each parcel shall then be made pursuant to the classification and in accordance with subsections (b), (c) or (d) below. After the initial calculation of ERUs pursuant to the sections, then a determination shall be made as to whether or not each parcel is located within a development project and should receive the adjustment described in § 22-5(e) below.

(b) *Residential developed property.* Each parcel of residential developed property shall be further classified as either a single-family parcel or a multi-family parcel.

(1) *Single-family parcels.*

- a. Since the cost of measuring and computing the impervious area for each individual single-family parcel greatly exceeds any benefit derived from individual measurement and computation, the area of each single-family parcel constitutes a

reasonable proxy for impervious area using the following formula for calculating the number of ERUs attributable to each parcel.

$$\text{Total ERUs} = 1.0 + 0.87 \frac{(\text{Total Parcel Area} - 10,000)}{(10,000)}$$

b. In no case shall the total number of ERUs for any single-family parcel be less than one.

(2) *Multi-family parcels.*

a.

~~1. Fiscal years 1997 through and including 2003-2004. For fiscal years 1997 through and including 2002-2003, the city shall calculate the total ERUs for each multi-family parcel in the following manner:~~

~~$$\text{Total ERUs} = 0.75(\text{Total DUs}) + 0.87 \frac{(\text{Total Parcel Area} - \text{DUs}(10,000))}{(10,000)}$$~~

~~2. In no case shall the total number of ERUs for any multi-family parcel calculated under this § 22-5(b)(2)a. be less than the result of multiplying 0.75 by the number of DUs located on the parcel.~~

b.

Fiscal years after 2003-2004. For fiscal years after 2003-2004, The city shall classify each multi-family parcel as either low density multi-family or high density multi-family and calculate the total ERUs for each multi-family parcel in the following manner:

1. Since low density multi-family parcels are considered analogous to single-family parcels of the same size with respect to their impact on the stormwater system, those parcels that constitute low density multi-family shall use the following calculation:

$$\text{Total ERUs} = \text{Total DUs} + 0.87 \frac{(\text{Total Parcel Area} - \text{DUs}(10,000))}{(10,000)}$$

2. In no case shall the total number of ERUs for any multi-family parcel calculated under this § 22-5(b)(2)b.1. above be less than the result of multiplying one by the number of DUs located on the parcel.

3. Since high density multi-family parcels are considered analogous to nonresidential developed property with respect to their impact on the stormwater system, those parcels that constitute high density multi-family shall use the following calculation:

$$\text{Total EDU's} = \frac{\text{Impervious Surface Area}}{\text{EDU Value}}$$

$$\text{Total ERUs} = \text{Total EDUs} + 0.87 \frac{(\text{Total Parcel Area} - \text{EDUs}(10,000))}{(10,000)}$$

4. In no case shall the total number of ~~er~~ERUs for any multi-family parcel calculated under this § 22-5(b)(2)b.3. above be less than the result of multiplying one by the number of ~~ERUs~~EDUs located on the parcel.

(c) *Nonresidential developed property.*

(1) Parcels that are classified as nonresidential developed property shall use the following formula to calculate the number of ERUs:

$$\text{Total EDU's} = \frac{\text{Impervious Surface Area}}{\text{EDU Value}}$$

$$\text{Total ERUs} = \text{Total ERUs EDUs} + 0.87 \frac{(\text{Total Parcel Area} - \text{ERU EDUs}(10,000))}{(10,000)}$$

(2) In no case shall the total ERUs be less than the total EDUs.

(d) *Undeveloped property.*

(1) *Total exemption property.* Undeveloped property, no part of which abuts public street(s), paved private street(s) or waterway(s), shall be exempt from payment of a stormwater user fee provided that the owner complies with the procedures identified in § 22-7.

(2) *Partial exemption property.* Except as otherwise provided herein, for undeveloped property all or part of which abuts public street(s), paved private street(s) or waterway(s), the area of the property abutting the public streets, paved private streets or waterways to a depth of not more than 125 feet, for purposes of this Chapter 22, shall first be calculated as follows: The abutting property area ("APA") shall be determined by calculating an area 125 feet from each abutting public street, paved private street or waterway. However, in calculating the APA, overlap area(s) shall be included only once. Then, the following formula shall be applied:

$$\text{Total ERUs} = \frac{0.87 (\text{APA})}{(10,000)}$$

(3) *Determination of exemption.* In determining whether a parcel falls within subsections (d)(1) or (2) above, the following provisions shall apply:

a. The city shall presume that all parcels of undeveloped property abut public street(s), paved private street(s) or waterway(s) and shall calculate the stormwater user fee ~~for fiscal year 1997 and subsequent years~~ for the undeveloped property ~~accordingly~~ according to the following formula:

$$\text{Total ERUs} = \frac{0.87 (\text{Total Parcel Area})}{(10,000)}$$

However, the owner(s) of any undeveloped property may apply for either a correction for the current fiscal year's stormwater user fee, providing conditions were the same between October 1 and November 1 of the fiscal year in which application is made, or, if conditions are different than the conditions for which the current fiscal year's stormwater user fee was based, the owner(s) of any undeveloped property may apply for the correction of the subsequent fiscal year's stormwater user fee, ~~and/or for retroactive correction under § 22-8(d).~~

b. The evidence submitted to the city by the property owner(s) shall consist of a survey, plat or notarized affidavit of the property owner(s), which shall identify the subject property by STRAP number and such other legal description requested by the city. In addition, the property owner(s) shall submit a topographic survey prepared by a Florida Registered Professional Land Surveyor, obtained within one year of the application and calculations prepared by a Florida Registered Professional Engineer demonstrating that the property retains all the stormwater run-off generated from the entire property during a 25 year, 3-day storm event. The city shall promptly review all such evidence submitted by the owner(s) of undeveloped property and shall notify the property owner(s) of any defects in the evidence submitted, including but not limited to, the failure to provide the STRAP number of a parcel.

(e) *Development projects.* All property located within a development project is eligible for a credit/incentive. Because development projects are required by the State of Florida and by the city to provide and to maintain private stormwater facilities on the development projects, up to a 60% credit/incentive is available in the calculation of the number of equivalent residential units for all parcels located in development projects as follows:

(1) *SFWMD permit parcels.* All parcels located in development projects for which development requires a SFWMD permit shall be eligible for the credit/incentive if all of the following conditions are met:

a. The required SFWMD permit has been obtained for the development project and is in full force and effect as evidenced by a letter from SFWMD stating that all conditions of the permit have been met; and

b. The private stormwater facilities located in the development project are fully functioning and ~~are privately maintained in a satisfactory~~ operating throughout the year in a satisfactory condition and in accordance with the SFWMD permit as determined and certified by a registered professional engineer licensed in the State of Florida. A private stormwater facility shall be determined by a registered professional engineer licensed in the State of Florida to be in satisfactory operating condition so long as the stormwater facility is maintained throughout the year and operating in a manner such that the stormwater runoff from the development project in which the stormwater facility is located is not contributing to stormwater problems in the local area in which the development project is located. The development project shall be required to provide an annual report recertified by a registered professional engineer licensed in the State of Florida that the private stormwater facilities located in the development project are functioning and operating at 100% efficiency, are fully functioning and are privately maintained in a satisfactory operating condition and in accordance with the SFWMD permit. In addition, the engineer shall certify the system is maintained throughout the year by conducting two inspections per year, one inspection within the months of November thru April, and the second within the months of July thru September. The results of said inspections shall be submitted to the Stormwater Director. If the Stormwater Director determines at any time during a fiscal year that the private stormwater facility is not satisfactorily maintained on or is no longer located in the development project, then the development project shall be required to remedy situation and shall forfeit the aforesaid credit for the subsequent fiscal year(s) during which time the subject properties shall be treated for purposes of this Chapter 22 in the same manner as other properties which do not meet all of the conditions necessary for the credit until such time as the situation has been remedied to the satisfaction of a registered professional engineer licensed in the State of Florida.

c. The certification submitted by the Florida Registered Professional Engineer shall include, but is not limited to, the following information: Date of inspection, name of person conducting the inspection, location map, SFWMD permit number, the development project plan depicting existing improvements, and documentation of the condition of the stormwater features including, but not limited to, perimeter berms, detention or retention ponds, control structures, weirs, catch basins/inlets, trench drains, swales, pipes, exfiltration systems, oil/water separator, littoral zones, rain gardens, and wetland storage systems.

(2) *Non-SFWMD permit parcels.* All parcels located in development projects for which development does not require a SFWMD permit shall be eligible for the credit/incentive if all of the following conditions are met:

a. The owner(s) of the parcel in the development project provides a letter from a registered professional engineer licensed in the State of Florida which certifies both that the construction on the subject development project is in compliance with the SFWMD "basis of review" in effect on the date of application for the credit/incentive and that the private stormwater facilities located in the development project are functioning as designed; and

b. The private stormwater facilities located in the development project in which the subject property is located are fully functioning and ~~are privately maintained in a satisfactory~~ operating throughout the year in a satisfactory condition and in accordance with the City permit as determined ~~and certified~~ by a registered professional engineer licensed in the State of Florida. A private stormwater facility shall be determined by a registered professional engineer licensed in the State of Florida to be in satisfactory operating condition so long as the stormwater facility is maintained throughout the year and operating in a manner such that the stormwater runoff from the development project is not contributing to stormwater problems in the local area in which the development project is located. The development project shall be required to provide annual report recertified by a registered professional engineer licensed in the State of Florida that the private stormwater facilities located in the development project are functioning and operating at 100% efficiency, are fully functioning and are privately maintained in a satisfactory operating condition and in accordance with the City permit. In addition, the engineer shall certify the system is maintained throughout the year by conducting two inspections per year, one inspection within the months of November thru April, and the second within the months of July thru September. The results of said inspections shall be submitted to the Stormwater Director. If the Stormwater Director determines at any time during a fiscal year that the private stormwater facility is not satisfactorily maintained on or is no longer located in the development project, then the development project shall be required to remedy situation and shall forfeit the aforesaid credit for the current and subsequent fiscal year(s) during which time the subject properties shall be treated for purposes of this Chapter 22 in the same manner as properties which do not meet all of the conditions necessary for the credit until such time as the situation has been remedied to the satisfaction of a registered professional engineer licensed in the State of Florida.

(c) The certification submitted by the Florida Registered Professional Engineer shall include, but is not limited to, the following information: Date of inspection, name of person conducting the inspection, location map, date of City permit, the development project plan depicting existing improvements, and documentation of the condition of the stormwater features including, but not limited to, perimeter berms, detention or retention ponds, control structures, weirs, catch basins/inlets, trench drains, swales, pipes, exfiltration systems, oil/water separator, littoral zones, rain gardens, and wetland storage systems.

(3) *Calculation.* If a parcel is located in a development project that meets all of the conditions of either subsection (e)(1) or subsection (e)(2) above, then the total ERUs for that Parcel shall be calculated by multiplying (a) total ERUs calculated for the parcel using the formulas identified in § 22-5(b), (c) or (d) above depending on the initial classification of the parcel, by (b) the factor of 0.40.

(4) *Procedure.* In determining whether the ERUs for all of the parcels in a development project should be calculated in accordance with this section, the following provisions shall apply:

a. The city shall presume that all parcels located in development projects are ineligible for ~~the up to a 60% credit/incentive~~ and shall calculate the stormwater user fees ~~for fiscal year 1997 and subsequent years~~ for the parcel accordingly. However, the owner(s) of any parcel in a development project may apply for either a correction for the current fiscal year stormwater user fee, providing conditions were the same between October 1 and November 1 of the fiscal year in which application is made, or, if conditions are different than the conditions for which the current fiscal year's stormwater user fee was based, the owner(s) of any parcel within a development project may apply for correction of the subsequent fiscal year stormwater user fee; ~~and/or for retroactive correction under § 22-8(d).~~

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§ 22-7 - Eligibility for exemptions, adjustments or corrections.

(a) *Exemptions.* Parcels that constitute state- owned department of natural resources mangrove wetlands shall be exempt from the stormwater user fees. In addition, the following properties

shall be exempt from the stormwater user fees provided the owner(s) of the properties comply with the provisions of § 22-8 and prove by a preponderance of the evidence that the subject parcel falls into one of the following categories:

(1) Undeveloped property no part of which abuts public street(s), paved private street(s) and/or waterway(s); or

(2) Property which has no impact on any city stormwater facilities because it falls into one of the following categories:

a. Property from which any and all runoff drains directly and exclusively into state waters without impacting the city stormwater systems; or

b. ~~Property for which all stormwater is contained on the property and from which no runoff drains off the property~~ that retains all run-off generated from the entire property during a 25 year, 3-day storm event.

(b) *Adjustments.* Owners of properties which are not eligible for exemption from the stormwater user fees, but which are characterized by such unusual feature(s) or circumstance(s) so as to substantially affect the impact of the property on the stormwater system and/or the benefit received by the property from the stormwater system may be eligible to receive adjustments of their stormwater user fees for properties in accordance with § 22-8(c)(4).

(c) *Corrections.* In addition to utilizing the correction procedures articulated in §§ 22-4 and 22-5, any property owner who believes that his or her stormwater user fee has been calculated incorrectly under the provisions of this chapter shall have the right to request a correction of the stormwater user fee. Except as provided in §§ 22-4 and 22-5 and as provided herein, no revision or correction of the stormwater user fee shall occur or be available.

§ 22-8 - Adjustment of stormwater user fees, correction of stormwater user fees and exemption procedures; hearings and appeals; ~~retroactive corrections, adjustments or exemptions~~; due notice; inspection.

(a) *Procedures.* Except as otherwise provided in §§ 22-4 and 22-5 concerning certain corrections to the stormwater user fee, the following procedures shall apply to all requests for correction of, adjustment of or exemption from the stormwater user fee:

(1) Any property owner who has paid his or her stormwater user fee and who believes the calculation or determination of his or her stormwater user fee to be incorrect may, subject to the restrictions set forth in this article, submit a correction request to the Stormwater Director.

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(c) *Powers of Special Master.* In exercising his or her powers, the Special Master, in conformity with the provisions of this Chapter 22 may reverse or affirm, wholly or partly, the decision of the Stormwater Director with respect to corrections or exemptions in accordance with the provisions of this Chapter 22 and the following criteria. With respect to adjustment pursuant to § 22-7(b), the Special Master may determine adjustments in accordance with the provisions of this Chapter 22 and the following criteria.

(1) *Corrections.* Except as provided in §§ 22-4 and 22-5, a correction to the stormwater user fee shall be granted by the Special Master during the appeal process only if the owner first establishes by a preponderance of the evidence that an error has occurred in the calculation of the stormwater user fee for his or her property. ~~For retroactive corrections, see § 22-8(d).~~

(2) *Exemptions pursuant to § 22-7(a)(1).* An exemption to the stormwater user fee pursuant to § 22-7(a)(1) shall be granted by the Special Master during the appeal process only if the property owner first establishes that the property meets the criteria established by § 22-7(a)(1) of this Chapter 22 for the exemption. ~~For retroactive exemptions, see § 22-8(d).~~

(3) *Exemptions pursuant to § 22-7(a)(2).* An exemption to the stormwater user fee pursuant to § 22-7(a)(2) shall be granted by the Special Master during the appeal process only if the property owner proves by a preponderance of the evidence that the property meets the criteria established by § 22-7(a)(2)a. or b. ~~For retroactive exemptions, see § 22-8(d).~~

(4) *Adjustments pursuant to § 22-7(b).* An adjustment to the stormwater user fee pursuant to § 22-7(b) of this Chapter 22 shall be granted by the Special Master during a hearing on the issue only if the property owner proves by a preponderance of the evidence that without the adjustment the stormwater user fee which would be applicable to the subject property under this Chapter 22 would be unduly burdensome and inequitable in light of the impact of the property on and the benefit received by the property from the stormwater system. Factors the Special Master may consider in determining whether the aforesaid circumstance(s) exist with respect to a particular parcel, include, but are not limited to, the following:

- a. The existing drainage patterns on the property;
- b. The nature of the use which is extant on the property;
- c. The drainage structure(s), retention ponds or other retention or drainage devices, if any, extant on the property;
- d. The place and manner in which stormwater drainage occurs on the subject property;
- e. The topography of the property including, but not limited to, the slope and elevation of the property;
- f. The proximity of the property from roads, canals or other waterways;
- g. The composition of the soil(s) on the property;
- h. The extent and type of natural vegetation extant on the property; and
- i. Other factors resulting from the application of drainage engineering principles which are prevailing in the community.

~~(5) *Reference.* For retroactive adjustments, see § 22-8(d).~~

~~(d) *Retroactive corrections, adjustments or exemptions.*~~

~~(1) All requests for corrections, adjustments or exemptions to the stormwater user fee for fiscal year 1997 through the fiscal year prior to the year in which application is made, shall be made in writing and submitted to the Stormwater Director. The Stormwater Director shall forward all such requests to the Special Master for hearing. All retroactive requests shall be granted by the Special Master during a hearing on this issue only if the property owner proves by clear and convincing evidence that without the retroactive correction, adjustment or exemption to the stormwater user fee, which would be applicable to the subject property under this Chapter 22, the currently established stormwater user fee would be unduly burdensome and inequitable in light of the impact of the property or the benefit received by the property from the stormwater system. Factors the Special Master may consider in determining whether the aforesaid circumstances exist with respect to a particular parcel, include, but are not limited to, the following:~~

- ~~a. The previous and existing drainage patterns on the property;~~
- ~~b. The previous and existing nature of use which is extant on the property;~~

- ~~e. The previous and existing drainage structure(s), retention ponds or other retention or drainage devices, if any, extant on the property;~~
- ~~d. The previous and existing place and manner in which stormwater drainage occurs on the subject property;~~
- ~~e. The previous and existing topography of the property including, but not limited to, the slope and elevation of the property;~~
- ~~f. The previous and existing proximity of the property from roads, canals, or other waterways;~~
- ~~g. The previous and existing composition of the soils on the property;~~
- ~~h. The previous and existing extant and type of natural vegetation extant on the property; and~~
- ~~i. Other factors resulting from the application of drainage engineering principles which are prevailing in the community.~~

~~(2) All requests for exemptions to the stormwater user fee by owners of undisturbed parcels for fiscal years 1991 through 1996 shall be made in writing and submitted to the Stormwater Director. The Stormwater Director shall forward all such requests to the Special Master for hearing. The burden of proof shall be on the applicant to demonstrate that its parcel was an undisturbed parcel. The Special Master shall review the request for exemption utilizing the following criteria:~~

- ~~a. The soils composition of the parcel;~~
- ~~b. The extent of natural vegetation present on the parcel; and~~
- ~~c. The topography of the parcel.~~

~~(3)~~

~~Other than as set forth in subsection (d)(2) above, no other provision for retroactive correction or adjustment of the stormwater user fee was available after the first year that the stormwater user fee was imposed until fiscal year 1997. Therefore, no retroactive correction or adjustment is available for fiscal years 1991 through 1996.~~

~~(ed)~~ *Due notice by the Special Master.* Due notice for the notice of hearing by the Special Master shall be by certified mail return receipt requested (or its equivalent for foreign countries) ten days prior to the hearing for those with mailing addresses within the State of Florida, or 14 days prior to the hearing for those with mailing addresses in Canada or Mexico, or 21 days prior to the hearing for mailing addresses in all foreign countries. If no return receipt is received by the hearing date, the case will be continued for a period of 60 days pending notification from the Lee County Property appraiser of a change in address or owner.

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~~(fe)~~ *Special Master qualifications and Special Master hearings.*

(1) The city shall utilize the services of one or more Special Masters to conduct hearings concerning adjustments to and exemptions from the stormwater user fee. The Stormwater Director shall, at least annually, recruit qualified persons to serve as Special Masters. The Council shall, on an annual basis, appoint at least one qualified person to serve as the Special Master and if possible, at least one qualified person to serve as an alternate Special Master in the event the Special Master is unable to attend a meeting. No person shall be appointed to the position of "Stormwater Special Master" unless he or she possesses at least a Bachelor's degree in civil engineering or environmental engineering and is a registered professional engineer holding an active license in good standing with the State

of Florida. In making the aforesaid appointment(s), preference shall be given to applicants who have prior experience dealing with surface water in a design or management capacity. The appointment(s) shall be in the sole discretion of the Council. Each Special Master shall serve for a term of one year though Special Masters may be reappointed for consecutive one year terms. Although appointed for one year terms, Special Masters shall be subject to removal, with or without cause, from their positions at any time during their term by the Council in its sole discretion. Special Masters shall not be considered to be city employees though, if authorized by the Council, they may receive compensation for their service and also may be reimbursed for the travel, mileage and per diem expenses as may be authorized by the Council.

(2) The Stormwater Director shall provide clerical and administrative personnel as may be reasonably required by the Special Master for the proper performance of his or her duties.

(3) Minutes shall be kept of all Special Master hearings.

(4) All Special Master hearings shall be open to the public.

(5) The city shall have the right to provide testimony or evidence at the Special Master hearing.

(6) The property owner, as petitioner, or the city, as respondent, shall have the right to request postponement of a decision for up to 60 days for the purpose of providing additional testimony or evidence to the Special Master.

(7) It is the responsibility of the petitioner to provide a preponderance of evidence, ~~or in the case of retroactivity provide clear and convincing evidence.~~ The Special Master shall consider the educational background, technical expertise and any active license of any witness giving testimony (verbal or written) during the hearing. Written or verbal testimony given by the city's Public Works Director shall be considered expert testimony. The Special Master shall have the right to request additional evidence from the petitioner. The request must be necessary in order for the Special Master to render a decision in the petitioner's favor. Special Master will reschedule hearing of the case for up to 90 days in order to provide time for the petitioner to obtain the requested evidence. Failure of the petitioner to provide such necessary evidence will cause the Special Master to deny the petitioner's request.

(8) All decisions of the Special Master shall have the caveat that the decision is valid so long as the conditions upon which the decision was made remain the same. All decisions of the Special Master shall be reduced to a formal written document within 30 days of the date of the hearing. A copy of the formal written document shall be provided to the property owner and to the Stormwater Director for implementation. Administrative reviews shall be conducted in accordance with § 22-8(gf).

(gf) *Inspections.* The city retains the right to inspect properties that have previously applied for and been granted a correction, adjustment or exemption because of private stormwater facilities on the property to determine that the stormwater facilities are in compliance with the conditions for which the correction, adjustment or exemption was approved. If the conditions for which the correction, adjustment or exemption was approved have changed or no longer exist, the city will notify the property owner that he or she has 30 days to correct the problem. If the problem is not corrected within that 30 day period, the city will submit to the Special Master a request for the Special Master to revoke the correction, adjustment or exemption. All such administrative reviews by the Special Master shall be reviewed prior to any scheduled hearing and a decision rendered at the scheduled hearing. A summary document of the administrative decisions shall be prepared and forwarded to the Stormwater Director for implementation. If in the future the property qualifies for a correction, adjustment or exemption, the property owner may reapply following the guidelines set forth in this Chapter 22.

§ 22-9 - Program responsibility.

(a) The Stormwater Director shall be responsible for preparation of a city-wide stormwater management master plan, for approval by the Council. This plan shall be updated on an annual basis no later than December 31 of each calendar year. It shall be the duty of the Stormwater Director to administer the Stormwater Program, to keep an accurate record of all properties benefitting from the services and facilities of the Stormwater Program, and to make changes in accordance with the methodologies, rates and charges established in this chapter and in subsequent resolutions of the Council.

(b) The Stormwater Director shall be responsible for determining impervious area of developed property and total parcel area based on data obtained from the Property Appraiser. If the information is unavailable from the Property Appraiser, the property owner, tenant or developer may submit a certified survey and/or a foundation survey to assist the Stormwater Director in determining impervious area and total parcel area. The Stormwater Director may require additional information as necessary to make the determination. The amount of any stormwater user fee shall be revised by the Stormwater Director based on any additions to or reductions in the impervious area as approved through the building permit process.

(c) The Stormwater Director shall prepare a checklist for use by the Florida Registered Professional Engineer during the inspection and certifying of the private stormwater facilities. The checklist shall include, but not be limited to, the items contained in §§ 22-5(e)(1)c and 22-5(e)(2)c.

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SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 8th DAY OF January, 2018.



JOE COVIELLO, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	<u>aye</u>	NELSON	<u>aye</u>
GUNTER	<u>aye</u>	STOKES	<u>aye</u>
CARIOSCIA	<u>aye</u>	WILLIAMS	<u>aye</u>
STOUT	<u>aye</u>	CODEN	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 19th DAY OF January, 2018.



REBECCA VAN DEUTEKOM
for CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY