

rective actions by the user, the compliance history of the user, and any other factor as justice requires.

- (3) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(t) *Criminal prosecution.* Any SIU who willfully or negligently violates any provision of the city's sewer use ordinance (SUO), permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be punished by a fine of at least \$1,000.00 a day for each violation. Any SIU who knowingly makes false statements, representations, or certifications in any application, record report, plan or other documentation filed, or required to be maintained, pursuant to the SUO, permit, or order, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under the SUO, shall, upon conviction, be punished by a fine of at least \$1,000.00 a day for each violation.

(Ord. No. 11-38, § I(Exh. A), 12-8-11)

Sec. 78-139. Appeal of enforcement action.

(a) *Appeal procedure.* The following appeal procedure is designed to allow any person or user the right to appeal the requirements of this article if he thinks they are incorrect and to have the right to a hearing regarding his appeal before the city commission:

(1) Complaints requiring inspection or personnel approval shall be dealt with on a case-by-case basis. If necessary, documentation required to substantiate the user's complaint shall be filed with the city. After review of the information presented, a determination by the assistant to the city manager for public services will be made known to the complainant. All documentation, review notes, and written resolution of the complaint shall be filed and retained by the city clerk for a period of not less than three years.

(2) The user shall also have the right to an administrative review of the assistant to the city manager for public services' determination by the city commission. In

order to exercise this right, the user shall comply with all applicable requirements of this article, as it may be from time to time amended.

- (3) The city commission shall schedule a hearing thereon at its next regularly scheduled meeting at which this matter can reasonably become part of the agenda, but no later than 30 days following receipt of such notice. The user shall be notified of the date and time of the hearing, and shall be permitted to present evidence and argument at the hearing. The city commission shall make a determination on the matter at that time, and this determination shall be binding upon the user and the city and shall constitute the official position of the city with respect to the matter.
- (4) If the city commission upholds the assistant to the city manager for public services' decision, all penalties previously assessed against the user shall be paid immediately, but no later than five days following the city commission's determination. If the city commission overrules the assistant to the city manager for public services' decision in part or in full, the city commission may, at its discretion, waive part or all of the penalties charged to the complainant.
- (5) All decisions rendered by the city commission shall be considered final and binding on all parties involved.

(b) *Immediate action.* Nothing in this section or in this article as a whole is intended to preclude the city from taking immediate action to temporarily modify a permit or to sever service of an industry completely when there is imminent risk of injury to the public sewer system or to the health and welfare of the public or to the environment.

(Ord. No. 11-38, § I(Exh. A), 12-8-11)

Sec. 78-140. Affirmative defenses to discharge violations.

(a) *Upset.* An upset is defined in section 78-127 above.

- (1) An upset shall constitute an affirmative defense to an action brought for noncom-

pliance with categorical pretreatment standards if the requirements of subsection (2), below, are met.

- (2) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and the user can identify the cause(s) of the upset.
 - b. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - c. The user has submitted the following information to the assistant to the city manager for public services within 24 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five days:
 - 1. A description of the indirect discharge and cause of noncompliance.
 - 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - 3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (3) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (4) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or

failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

- (b) *Prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 78-132(a) of this article or the specific prohibitions in sections 78-132(b)(3) through (7) and (9) through (21) of this article if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:
 - (1) Local limits exist for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
 - (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
- (c) *Bypass.* Bypass is defined in section 78-127 above. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c)(1) and (c)(2) of this section.
 - (1) Bypass notifications are required if:
 - a. If a user knows in advance of the need for a bypass, it shall submit

- prior notice to the assistant to the city manager for public services, at least ten days before the date of the bypass, if possible.
- b. A user shall submit oral notice to the assistant to the city manager for public services of an unanticipated bypass that exceeds applicable pre-treatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The assistant to the city manager for public services may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- (2) Bypass is prohibited, and the assistant to the city manager for public services may take an enforcement action against a user for a bypass, unless;
- a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The user submitted notices as required under subsection (c)(1) of this section.
- (3) The assistant to the city manager for public services may approve an anticipated bypass, after considering its adverse effects, if the assistant to the city manager for public services determines that it will meet the three conditions listed in subsection (c)(2) of this section.
(Ord. No. 11-38, § I(Exh. A), 12-8-11)
- Sec. 78-141. Effective date.**
- This article shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.
(Ord. No. 11-38, § I(Exh. A), 12-8-11)
- Secs. 78-142—78-165. Reserved.**
- ARTICLE V. CROSS CONNECTION CONTROL**
- Sec. 78-166. Definitions.**
- (a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- Customer* means any person, business or any other entity residing in or doing business within the city limits or who by contract is bound to this article and who is or was connected to the city water system or who is or was receiving water service from the city.
- Emergency* means any sudden, unexpected or unforeseen event which in the opinion of the public services department may present an imminent and substantial danger to the health, safety and welfare of the citizens of the city if not acted upon immediately.
- (b) Other definitions applicable to this article are contained in the Manual of Cross Connection Control adopted in section 78-166.
(Code 1988, § 22-111; Ord. No. 11-02, § VI, 1-13-11)
- Cross reference**—Definitions generally, § 1-2.

Sec. 78-167. Program and manual adopted.

(a) A cross connection control program for the city and, in connection therewith, a Manual of Cross Connection Control, dated August 18, 1993, referred to as "the manual," is adopted by the city and incorporated into this article. One copy of the manual shall be on file in the office of the city clerk for public use, inspection and examination. Compliance with the manual and the cross connection program contained therein and this article is required by any and all customers who receive written notice from the public services department requiring the customer to obtain backflow devices.

(b) The manual shall be periodically reviewed by the public services department for compliance with applicable statutes, rules and regulations of the state and the state department of environmental protection.

(Code 1988, § 22-112; Ord. No. 11-02, § VI, 1-13-11)

Sec. 78-168. Property access.

Employees of the utilities and engineering departments and their agents bearing proper credentials and identification shall be permitted to enter any building, structure, or property served by a connection to the public potable water supply system of the city for the purpose of inspecting the connection, backflow protection devices, and all portions of the piping system on such property. If consent to such access cannot be obtained from the owner, occupant or customer of the premises to be inspected, the city may obtain an inspection warrant pursuant to F.S. § 933.21 or, in an emergency, the city employees and their agents may enter the premises without consent.

(Code 1988, § 22-113)

Sec. 78-169. Discontinued service.

No water service connection shall be installed or maintained by the city unless the customer is in compliance with the requirements of the Cross Connection Control Manual adopted in this article and this article. If a backflow prevention device does not exist on a parcel of property receiving water service from the city on the effective date of the ordinance from which this article

derives or if such device is not installed or, if installed, is not tested every 12 months and maintained continuously or if an unprotected cross connection exists on a premises, a ten-day notice of noncompliance shall be given to the customer prior to discontinuing service. Thereafter, service to the noticed customer shall be discontinued if the premises are not in compliance with the manual and this article. In an emergency, no notice shall be required and service may be discontinued immediately.

(Code 1988, § 22-114)

Sec. 78-170. Protection of public potable water supply.

Water service made available on the properties served by the public potable water supply shall be protected from possible contamination as specified by the Cross Connection Control Manual adopted in this article, this article, and by state and city building, plumbing and water regulations and codes. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system and does not use a potable source of water must be labeled "water unsafe for drinking" or "nonpotable water" in a conspicuous manner.

(Code 1988, § 22-115)

Sec. 78-171. Expenses and records.

The customer shall bear all expenses of installing, testing and maintaining the protection devices required by the Cross Connection Control Manual adopted in this article and this article to ensure proper operation on a continuing basis. Installation, testing and maintenance of protective devices shall be conducted by certified personnel approved by the public services department. The customer shall notify the public services

department in writing at least 48 hours prior to the occurrence of tests of protection devices in order that the city may have a representative witness the tests. The customer shall keep, for two years after each testing, maintenance and repair event, all records of testing, maintenance, and repair activities related to cross connection control and shall make these records available to the city upon request. Each customer shall provide to the public services department copies of all testing, maintenance, and repair records immediately after the work is performed.

(Code 1988, § 22-116; Ord. No. 11-02, § VI, 1-13-11)

Sec. 78-172. Effect of other codes and rules.

The Cross Connection Control Manual adopted in this article does not supersede the city plumbing code, the city building code, the Florida Safe Drinking Water Act, state drinking water regulations or any other city or state statute, ordinance, rule or regulation applicable to public water supply systems, but is supplementary to them. When conflicts exist between the manual, this article and such other codes and rules, the more restrictive provisions shall apply.

(Code 1988, § 22-117)

Sec. 78-173. Violation liability.

Any customer found guilty of violating this article shall be punishable in accordance with section 1-15. In addition, such person or customer shall pay all costs, expenses, and fees incurred by the city for prosecution and violation of this article involved in the case. Each day that a violation of this article occurs constitutes a separate and additional violation. Any customer in violation of this article shall be liable to the city for any expense, loss or damage incurred by the city because of such violation, including attorney's fees. In addition to any penalty provided by law for the violation of this article, the city may bring suit in the appropriate court to enjoin, restrain, or otherwise prevent the violation of this article.

(Code 1988, § 22-118)

Sec. 78-174. Liability of city.

No section of this article designating the duties of the city, any city officer or city employee shall be so construed to make the city or such officer or employee liable for any fine, damages or penalty for failure to perform such duty.
(Code 1988, § 22-119)

Sec. 78-175. Territorial applicability.

All territory within the city served by the city potable water system and any area served by the city shall be governed by this article to the extent permitted by law.
(Code 1988, § 22-120)

Secs. 78-176—78-200. Reserved.

ARTICLE VI. STORMWATER MANAGEMENT UTILITY*

Sec. 78-201. Created; established; declaration.

Pursuant to the home rule power of article VIII, § 2(b), of the state constitution, F.S. ch. 166, and F.S. § 403.0893, the city establishes a stormwater management utility and declares its intention to acquire, own, construct, equip, operate, repair and maintain open drainageways, underground storm drains, treatment facilities, equipment and appurtenances necessary, useful or convenient for a complete stormwater management system, and also including maintenance, extension and construction of the stormwater management system of the city; to minimize by suitable means such system's contribution to flooding; to minimize by suitable means such system's adverse effect on the water quality of lakes, ponds, rivers and basins within the city; and to seek the cooperation of the county, the state department of transportation and other municipalities in minimizing the effects of all such systems and other sources of accelerated runoff to flooding and water quality.
(Code 1988, § 25-21)

*Cross reference—Stormwater management, ch. 106.

Sec. 78-202. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abatement means any action taken to remedy, correct, or eliminate a condition within, associated with, or impacting a drainage system.

Administration fee means that portion of the stormwater management fee which includes expenses incurred in the billing and collecting of charges and the engineering and work effort relating to the stormwater system, which includes but is not limited to planning, design, enforcement, mapping and engineering administration.

Applicable contributing area means the total area in square feet achieved for any given parcel where such parcel's gross impervious and pervious surface areas are factored by their respective runoff coefficients.

Beneficiaries of drainage service means all real property within the city which benefits by the provision of maintenance, operation and improvement of the stormwater control system. Such benefits may include but are not limited to the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazard to property and life resulting from stormwater runoff; improvement in the general health and welfare through reduction of undesirable stormwater conditions; and improvement to the water quality in the stormwater and surface water system and its receiving waters.

Contributing runoff means the area of a parcel from which stormwater will result in runoff. Contributing runoff for each parcel in the city is estimated as 100 percent of the square footage of impervious and pervious surface located on the parcel.

Contributors of stormwater means all real property within the city.

Developed property means any real property altered by removal of vegetation, grading of the ground surface or construction of a structure or impervious surface thereon.

EDU base fee means that portion of the stormwater management fee which comprises stormwater services related to public, impervious surfaces, including roads, streets, bridges, and public facilities.

EDU contribution fee means that portion of the stormwater management fee reflective of the particular parcel's individual contribution to runoff to a city stormwater system.

Effective impervious area means a measure of relative runoff generation which aggregates the relative contribution of runoff of both pervious and impervious area by using relative runoff coefficients for each type of surface. The sum of the pervious area of a given parcel multiplied by its relative runoff coefficient and the impervious area of that parcel times its relative runoff coefficient shall be termed the effective impervious area.

Equivalent drainage unit (EDU) means a standard unit of measure determined to represent the stormwater runoff generated by a typical residential unit in the city. An EDU is the effective impervious area of the typical single-family lot in the city. Such measure provides a basis for comparing the runoff generated by one parcel with that generated by another. The effective impervious area is determined to be 4,077 square feet. One EDU is, therefore, determined to equal 4,077 square feet of effective impervious area. The EDU shall be used as the basis for computing monthly charges on residential and nonresidential properties.

Hydrologic response means the manner and means by which stormwater collects upon real property and is conveyed from real property, and which is a function dependent upon a number of interacting factors, including but not limited to topography, vegetation, surficial geologic conditions, antecedent soil moisture conditions and groundwater conditions. The principal measures of the hydrologic system may be stated in terms of total runoff volume, as a percentage of total

precipitation which runs off, or in the terms of the peak rate of flow generated by a storm of given duration and intensity, or statistical interval of return (frequency).

Impervious areas means those surface areas of real property which either prevent or severely restrict the entry of water into the soil mantle as compared to the water's entry under natural conditions prior to development or which surface areas cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include but are not limited to rooftops, sidewalks, walkways, patio areas, driveway, parking lots, storage areas and other surfaces which similarly impact the natural infiltration or runoff patterns which existed prior to development, including normal water in ponds and lakes.

Lot means an area of land occupied by or to be occupied by a principal building and accessory buildings and including all front, side and rear yards and open spaces, which lot is located in the platted subdivision. Multiple lots which have been aggregated to create a single developed area of land under single ownership and multiple adjoining undeveloped lots under single ownership which may not be developed as individual separate lots are deemed to be a parcel for the purposes of this article.

Multiple-dwelling unit means a building or facility consisting of more than one dwelling unit, each such unit consisting of one or more rooms with bathroom and kitchen facilities designed for occupancy by no more than one family.

Natural state means surfaces which have not been disturbed by man in such a manner that would hinder the natural percolation of stormwater into the soil mantle.

Nonresidential lot or parcel means a lot or parcel that is not zoned or used for residential purposes.

Nonresidential unit means any building, structure or facility used other than as a dwelling unit or single-family unit.

Open drainageway means a natural or man-made open cut into the land which has the specific function of transmitting natural stream water or storm runoff water from a point of higher elevation to a point of lower elevation, such as swales, ditches, canals, streams and creeks.

Owner means the record fee simple owner of the real estate and structures subject to this article.

Parcel, excluding lots, tracts and portions of contiguous land areas under single ownership. Except as to lots, each parcel of real property is presumed to have that area of land assigned to its parcel number upon the real property tax rolls of the county.

Peak flow means the highest instantaneous rate of stormwater runoff, measured or estimated in cubic feet of water per second. It is differentiated from total flow volume by the introduction of a unit of time measure during which the maximum rate of flow is measured, calculated, or estimated.

Person means any individual, corporation, trust, partnership, governmental body other than the city, or other entity.

Pervious areas means those areas within the city which are, under standard conditions, permeable to stormwater runoff and surface water.

Private property means that property or facilities owned by individuals, corporations, or other organizations or entities and not by a city, county, state or federal government agency.

Relative runoff coefficient means a numerical factor which assigns a relative weight to a given area of pervious surface so that its runoff generation is equated to that of an equivalent amount of impervious area.

Residential lot or parcel means a lot or parcel which is zoned or used for residential purposes.

Service area means the city limits.

Site migration means all private facilities constructed on a parcel of land which provide for the abatement of stormwater to standards prescribed by the city.

Stormwater means the flow of water which results from and occurs immediately following a rainfall event.

Stormwater management fee means the fee authorized pursuant to this article, which fee is billed on the basis of equivalent drainage units. The stormwater management fee shall include the EDU base fee charge, the EDU contribution fee charge, the administration charge, and any additional charge authorized under this article.

Stormwater system means the appurtenances, facilities, equipment and services necessary to provide for the collection, storage, and conveyance of and the matters relevant to stormwater and stormwater runoff. The stormwater system is intended to reduce the peak flow from developed land surfaces, to reduce the erosion created by the stormwater, to increase the water quality of the stormwater runoff within the city, and to provide other improvements and enhancements in handling the quality and quantity of stormwater.

Total flow means the cumulative volume of stormwater discharged from a property, basin or watershed. The total flow is quantified in measures such as acre feet or cubic feet of water.

Utility means the stormwater management utility created by this article.

Vacant means any lot or parcel of land that is without any building, structure, appurtenance, or improvements.

(Code 1988, § 25-22)

Cross reference—Definitions generally, § 1-2.

Sec. 78-203. Findings, determination and intent.

For the purposes of this article, it is found, determined and declared as follows:

- (1) Those elements of the stormwater system for the collection, transmission and disposal of stormwater and surface water are of benefit and provide services to all real property not served by the stormwater elements of the system.
- (2) The cost of operating and maintaining the city's stormwater management util-

ity system and financing necessary repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to user impacts, based upon contributions to stormwater runoff, and benefits and services received therefrom.

- (3) All property within the city demonstrates a hydrologic response to rainfall events which generates stormwater runoff. The volume, rate, and quality of this runoff will vary with the soil type, land use conditions, topographic conditions, and other variables. In particular, the construction of nonresidential units on previously undeveloped property will generally increase the volume and rate of stormwater runoff, and adversely affect its water quality.
- (4) The city has certain rights, but not obligations, pursuant to recorded plats, non-exclusive drainage easements and declarations of covenants, conditions and restrictions to maintain, repair and replace certain private stormwater improvements if the city determines such improvements are not being properly maintained, repaired and replaced and such failure may cause harm to the public. The fees collected hereunder may provide a funding source for such purposes if the city determines such to be in the public's interest.
- (5) It is the intent of this article to establish stormwater management as a city utility and to establish a program of service charges and fees for stormwater management services, which charges and fees are to be charged against all property within the city to accomplish the purpose of the utility.
- (6) The city's stormwater utility fees shall be fair and reasonable and shall bear substantial relationship to the cost of providing services and facilities in that similar property shall pay similar storm-