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Hernando County, Florida
TALLAHASSEE, FLORIDA

ORDINANCE NO.: 2003-16

AN ORDINANCE AMENDING SECTION 28-298, HERNANDO COUNTY CODE OF ORDINANCES RELATING TO REGULATORY FEES PAYABLE BY REGULATED UTILITIES; CLARIFYING ORIGINAL INTENT BY MORE SPECIFIC DIRECTIONS AS TO USE OF REGULATORY FEES; PROVIDING FOR DISPOSITION OF FUNDS WHEN REGULATION BY THE UTILITY REGULATORY AUTHORITY IS ENDED; AUTHORIZING USE OF REGULATORY FEES FOR COSTS INCURRED WHEN AN EXEMPT PUBLIC ENTITY SEEKS TO ACQUIRE A REGULATED UTILITY FOR PUBLIC PURPOSES AND TO OPERATE SUCH UTILITY, SUBJECT TO DISCRETIONARY ACTION IN THE BEST INTEREST OF CUSTOMERS OF THE REGULATED UTILITY; AUTHORIZING USE OF CERTAIN AMOUNTS OF REGULATORY FEES FOR FUNDING OF STORM WATER DRAINAGE IMPROVEMENTS AND PROGRAMS WITHIN THE FRANCHISED AREA OF THE REGULATED UTILITY; PROVIDING FOR SEVERABILITY AND INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the Hernando County Board of County Commissioners enacted Ordinance No. 2002-20 to provide a comprehensive scheme for the regulation of certain utilities, and

WHEREAS the Board enacted Ordinance No. 2003-13 in an attempt to clarify the Board's intent with respect to the use of regulatory fees, and

WHEREAS the Board deems it appropriate to further clarify its original intent with respect to the use of regulatory fees when a regulated Utility is being acquired by a public entity exempt from regulation, and

WHEREAS the polestar for the use of regulatory fees is what is in the best interests of the customers of the regulated Utility who are ultimately responsible for paying such fees;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:

SECTION 1. Section 28-298 of the Code of Ordinances of Hernando County is hereby amended to read as follows, with new provisions to be added denoted by underlining, and provisions to be deleted from the Code denoted by strike-through:

Sec. 28-298. FEES.

1. Regulatory and Franchise Fee. Each Utility shall pay a regulatory and franchise fee to the Authority in quarterly installments. So long as a Utility is regulated by the Authority there will be no period of time for which the regulatory fee is not applicable. Each quarterly installment must be paid within ninety days (90) days of the end of that fiscal quarter of the Utility, i.e. the payments are made 90 days in arrears. With each payment, the Utility shall file with the Authority, a statement of gross receipts for the applicable quarter, verified under oath by an authorized financial officer of the Utility.

2. The regulatory fee shall be four and one-half percent (4.5%) of the Utility's gross revenue, derived from the Utility's gross receipts billed within the County for the quarter. Such regulatory percentage fee shall continue until amended by the Board.

3. The fee shall be charged *pro rata* to the Utility's customers and each Utility may add to its customer invoices a separate line item for the then applicable regulatory and franchise fee paid to the County if the Utility also lists as a separate line item all governmental fees and taxes paid by the Utility.

4. Each Utility that fails to promptly submit to the County all required fees and accurate statement of gross receipts within the prescribed period shall pay the County a late regulatory fee charge of one percent (1%) of the delinquent fee per month, or fraction of a month plus all cost incurred by the Authority in collecting the fee.

5. All fees and administrative penalties collected by the County from Utilities pursuant to this Ordinance shall be placed in a separate enterprise fund to be called the Water and Wastewater Utility Regulatory Fund (Utility Trust Account) and such funds shall at all times remain separate and distinct from other County funds unless and until any particular regulated Utility comes under the regulatory jurisdiction of the regulation of Utilities shall be by an entity other than the Authority, or until a particular Utility is acquired by a public entity exempt from regulation hereunder. If a regulated Utility comes under the regulatory jurisdiction of another entity, and in such event regulatory fees remaining after paying all expenses of termination of the Authority with respect to such Utility shall be refunded, with any interest accrued thereon, pro rata to each then regulated Utility for refund to its customers. All such funds in the Utility Trust Account at the end of each fiscal year of the County shall automatically become the beginning balance for the succeeding fiscal year. In the event that a regulated Utility is being acquired

or is acquired by a public entity exempt from regulation hereunder, the proceeds in the Water and Wastewater Utility Regulatory Fund may be used as provided in paragraph 6 hereof.

6. The regulatory fees are to be used to pay for the ongoing costs of supervising and regulating Utilities in the County and enforcing and administering this Ordinance, including the County's costs for any court appointed receivers, and for operation, maintenance, and/or repair to abandoned franchised Utilities, which may include extraordinary repairs to protect the health, safety and welfare of the general public. Extraordinary repairs are those that are neither typical nor customary and which occur infrequently, and payment of which shall require Authority approval. Regulatory fees may also be used to pay for costs incurred when a public entity exempt from regulation hereunder seeks to acquire a County-regulated utility. When a regulated Utility is acquired by a public entity exempt from regulation hereunder, the balance of funds in the Water and Wastewater Utility Regulatory Fund may be used for costs incurred by the entity in operating the acquired utility. In any such case, the Authority shall have discretion to approve such costs or to enter such other orders as may be determined to be in the best interest of the Utility's customers, including but not limited to refunds directly to customers.

7. Application Fees. Only the Authority may establish or amend application fees. Any application filed by a Utility shall be accompanied by the applicable application fee. Such fees may be based upon the existing or proposed capacity of the Utility System.

8. Miscellaneous Fees. The Authority shall set a reasonable fee for the examination and testing of meters used for measuring any Utility Service. Any Person may have a meter tested by the Utility upon payment of the applicable fee fixed by Rule of the Authority. Utility customers, at their discretion, may pay the fee at the time of the request or have the Utility include the fee in the next regularly scheduled bill. However, the fee shall be repaid to the customer if the meter is found to have been incorrect to the disadvantage of the customer in excess of the degree or amount of tolerance allowed for such meters, or otherwise as may be provided in the rules of the Authority.

9. The Board of County Commissioners may withdraw from the utility regulatory fund an amount not to exceed five hundred thousand (\$500,000.00) dollars each fiscal year and transfer such funds to the general fund to be used exclusively for storm water drainage purposes within the local franchise area served by a County-regulated utility, which shall include, but not be limited to all associated engineering fees and property acquisition costs for any storm water projects. Before such transfer may occur, the County's Director of Regulatory and

Franchise Administration/Property Management or his successors, must certify to the Board that there are sufficient funds in the utility regulatory trust fund account to pay for and cover all reasonably anticipated expenses for any regulatory activities including any rate cases likely to occur during that fiscal year. Without such certification, the Board may not transfer any funds from the utility regulatory trust fund to the general fund for storm water management or for any other purpose.

SECTION 2. Severability.

It is declared to be the intent of the board of county commissioners that if any section, subsection, clause, sentence, phrase, or provision of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this ordinance.

SECTION 3. Inclusion in the Code.

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, any section or subsection of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section, "article", or other appropriate designation.

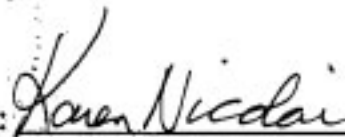
SECTION 14. Effective date.

This ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this ordinance has been filed with said office.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY in Regular Session this 14th day of October, 2003.

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest:

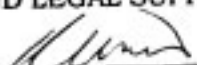

KAREN NICOLAI

Clerk

By:


MARY B. WHITEHOUSE

Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY  10/14/03
County Attorney's Office