



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold County Attorney
William K. DeBaal, Deputy County Attorney
Kate Pingolt Cotner, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney *DR*

DATE: July 10, 2015

SUBJECT: Public Hearing and Adoption of Ordinance Establishing Amnesty Program for Certain Utility Delinquency Charges


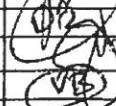

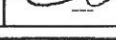
BACKGROUND.

Under section 201.08(B) of the Code of Indian River County ("Code"), service availability charges are imposed on the owner of each water and sewer Equivalent Residential Unit ("ERU") which is reserved for future use. This charge is necessary to recover to the County the cost of repairing and maintaining the capacity in the water/sewer system which is reserved for the ERU.

In the 2004-2006 timeframe, several property owners acquired ERUs for planned developments. However, with the economic slowdown that followed, many of these developments were not built – leaving the property owner with ongoing service availability charges for each ERU acquired. When property owners were unable or unwilling to pay these charges, delinquency charges of \$2 and 1.5% interest were imposed monthly, pursuant to section 201.08(J)(4) of the Code. As a result, large amounts of service availability and delinquency charges are due with respect to several properties in Indian River County.

APPROVED FOR JULY 24, 2015
B.C.C. MEETING – PUBLIC HEARINGS


COUNTY ATTORNEY

INDIAN RIVER CO.	APPROVED	DATE
Administration		7/16/15
County Attorney		7/10/15
Budget		7/15/15
Utilities Dept.		7/10/15
Risk Management		

On February 14, 2012, in an attempt to encourage payment of the accrued service availability charges, the Indian River County Board of County Commissioners (the "Board") adopted Ordinance 2012-001 which created an amnesty period from February 14, 2012 through March 31, 2012, during which delinquency charges would be waived if service availability charges were paid in full. Five accounts were paid in full during that period, with \$134,950.13 collected and \$98,432.33 of charges waived.

After the amnesty program closed, staff and individual commissioners were approached by property owners who said that, for a variety of reasons related to the short duration of the program, they were not able to take advantage of it. Therefore, on April 2, 2013, the Board adopted Ordinance 2013-002, establishing another amnesty period from April 2, 2013 through August 31, 2013. During this second amnesty period, twelve accounts were paid in full, with \$323,883.10 collected and \$125,891.84 of charges waived. In total, the two amnesty periods resulted in seventeen accounts being paid in full, and \$458,833.23 being collected and \$224,324.17 in charges being waived. These programs were available only with respect to ERUs which were reserved for future use, but for which there had been no prior use or consumption. On July 7, 2015, the Board directed the County Attorney to draft an ordinance establishing a new amnesty program. The proposed amnesty period will be from July 24, 2015 through October 31, 2015. As with previous amnesty periods, the Utilities Department will notify owners of this new amnesty period.

RECOMMENDATION.

The County Attorney recommends that the Chairman open the public hearing, take comments from the public and then close the public hearing, and that the Board then adopt the attached proposed amnesty ordinance.

ATTACHMENT(S).

Proposed Ordinance Establishing Amnesty Program for Certain Utility Delinquency Charges

ORDINANCE NO. 2015 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 201.08 (RATES AND CHARGES) OF CHAPTER 201 (COUNTY WATER AND SEWER SERVICES) OF THE CODE OF INDIAN RIVER COUNTY; ESTABLISHING AN AMNESTY PROGRAM RELATING TO DELINQUENCY CHARGES ON CERTAIN UTILITY SERVICE AVAILABILITY CHARGES; MAKING FINDINGS AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, sections 201.08(B) and (C) of the Code of Indian River County (the "Code") requires that service availability charges be imposed on the owner of each water and sewer Equivalent Residential Unit ("ERU") which is reserved for future use ("Service Availability Charges"); and

WHEREAS, section 201.08(J)(4) of the Code provides that the County shall charge delinquency charges on all outstanding balances, including outstanding balances of Service Availability Charges; and

WHEREAS, there is currently a significant outstanding balance of Service Availability Charges upon which delinquency charges are accruing – namely, those which are based upon ERUs reserved for future use, but for which there has been no past or present use or consumption of water or sewer services ("Reserved ERU Service Availability Charges"); and

WHEREAS, payment of Reserved ERU Service Availability Charges is important to the financial well-being of the County's water and sewer system, because such charges reimburse the County for its expense in maintaining the infrastructure built to provide capacity for reserved ERUs; and

WHEREAS, the creation of an amnesty program which, for a limited period of time, waives delinquency charges upon the payment in full of outstanding Reserved ERU Service Availability Charges will serve the public interest by encouraging the payment of such charges,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT:

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of promoting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is not inconsistent with general or special law, and is necessary and appropriate to promote the health, safety and welfare of the residents of Indian River County.

ORDINANCE NO. 2015 - _____

Section 2. Findings.

The Board finds that the above "Whereas" clauses are true and correct, and hereby incorporates such clauses as findings of the Board.

Section 3. Amendment of Section 201.08(J)(4) of the Code.

Section 201.08(J)(4) of the Code of Indian River County, Florida, is hereby amended to read as follows (new language indicated by underline, and deleted language indicated by ~~strikethrough~~):

"(4) *Delinquency charge.* County shall charge an additional two dollars (\$2.00) plus one and one-half (1 1/2) percent interest monthly (collectively "delinquency charges") on all outstanding balances including assessments, fees, charges, and other fees due (collectively "underlying charges") if payment is not made in full by each payment deadline date; provided, however, that the Utilities Director may waive some or all delinquency charges in connection with the reactivation of service of an existing account, where (i) payment in full of all underlying charges and delinquency charges would work a hardship to the customer, and such waiver is determined to be in the best interests of the County, and (ii) such waiver results in the immediate payment in full of all underlying charges and any delinquency charges which are not waived.

With respect to service availability charges which (i) are based on the ownership of one or more ERUs which are reserved for future use but for which there has been no past or present use or consumption of services, and (ii) are unpaid as of ~~April 2, 2013~~ July 24, 2015, such delinquency charges shall be waived if the unpaid service availability charges are paid in full at any time between ~~April 2, 2013~~ July 24, 2015 and ~~August 31, 2013~~ October 31, 2015."

Section 4. Severability.

If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 5. Codification.

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

ORDINANCE NO. 2015 - _____

Section 6. Effective Date.

This ordinance shall become effective upon enactment by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal, on the 13th day of July, 2015, for a public hearing to be held on the 24th day of July, 2015, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman Wesley S. Davis	_____
Vice Chairman Bob Solari	_____
Commissioner Joseph E. Flescher	_____
Commissioner Peter D. O'Bryan	_____
Commissioner Tim Zorc	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day of _____, 2015.


BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____
Wesley S. Davis, Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court
And Comptroller

Approved as to form and legal sufficiency:

By: _____
Deputy Clerk


Dylan Reingold, County Attorney

EFFECTIVE DATE: This ordinance was filed with the Department of State on the ____ day of _____, 2015.