

MEMORANDUM

Agenda Item No. 4(G)

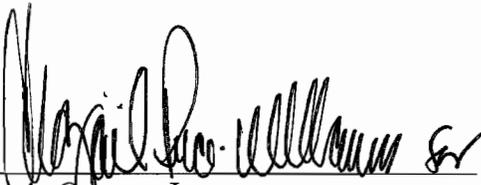
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 1, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance relating to Water
and Sewer bills; creating
Section 32-101 of Code;
entitled Miami-Dade Water &
Sewer Consumer Relief Act;
providing for adjustments to
unusually high water bills

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

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SUBJECT: Agenda Item No. 4(G)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(G)
9-1-2011

ORDINANCE NO. _____

ORDINANCE RELATING TO WATER AND SEWER BILLS;
CREATING SECTION 32-101 OF THE CODE OF MIAMI-
DADE COUNTY, FLORIDA; ENTITLED MIAMI-DADE
WATER AND SEWER CONSUMER RELIEF ACT;
PROVIDING FOR ADJUSTMENTS TO UNUSUALLY HIGH
WATER BILLS; PROVIDING FOR RETROACTIVITY OF
ADJUSTMENTS; PROVIDING SEVERABILITY, INCLUSION
IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Resolution No. R-1164-04 provides a one-time lifetime adjustment for a Miami-Dade Water and Sewer Department (“WASD”) quarterly single-family residential customer who receives a bill that exceeds six (6) times the past year’s average quarterly consumption due to a concealed leak; and

WHEREAS, this Board is aware of instances where a single-family owner-occupied quarterly customer has received an unusually high water bill but is not entitled to an adjustment because the customer cannot show that the high bill is due to a concealed leak on the customer’s property, an incorrect meter reading, a leak on the outlet side of the meter or as a result of vandalism; and

WHEREAS, water bills have allegedly increased substantially in several areas of the country, including Ohio, North Carolina, Massachusetts and Atlanta due to faulty water meters; and

WHEREAS, WASD has more than 400,000 customers billed on a quarterly basis which makes it difficult for the customer to minimize costs or liability should a leak occur; and

WHEREAS, in 2010 alone, there were 16,324 high water bill complaints; and

WHEREAS, quarterly billing can have the unintended consequence of being punitive

against homeowners and businesses when they are victims of a water leak, water theft or other circumstance that causes a high water bill, but are unable to address the problem in a timely manner because they have no way to detect the problem or mitigate the loss until they receive the bill three months later; and

WHEREAS, customers that receive monthly billings may also receive an unusually high bill as a result of an unexplained event that occurs during the billing period and undetected until the bill is received; and

WHEREAS, this Board desires to provide relief to all customers that receive a high bill but is unable to show the Department that it is due to a concealed leak or a faulty water meter; and

WHEREAS, Section 2.07 (13) of the Water and Sewer Department's Rules and Regulations provides every customer with the right to dispute a high water bill and request a certified meter test and to request an administrative hearing; and

WHEREAS, Section 2.07 (14) of the Water and Sewer Department's Rules and Regulations provides that the Hearing Officer shall consider all facts, evidence, testimony, and other information presented at the hearing; and

WHEREAS, Section 32-96 of the Code of Miami-Dade County states "the water and sewer service rendered by the Department, as measured by water meters, shall be prima facie evidence of the quantity of water delivered to the customer and of sewage collected from the customer;" and

WHEREAS, in 2000, the Third District Court of Appeals opined that WASD's prior guidelines for evidence at hearings stated that when the meter is found to be within acceptable standards of accuracy, a "very strong presumption is created" in favor of the accuracy of the

water bill. The Court held that this language raised the meter accuracy to the level of a virtual irrebuttable presumption in favor of the County; and

WHEREAS, the Court found that the customer was denied his due process rights by WASD's administrative hearing because the procedural rules regarding the weighing of evidence denied the customer a reasonable, meaningful and fair opportunity to challenge his water bill; and

WHEREAS, although WASD changed its procedural rules to delete the "strong presumption" language, this Board has heard customers allege that they have not received adequate due process in their appeal hearings; and

WHEREAS, this Board desires to ensure that WASD's appeals procedures are fair and adequate and that each customer receives appropriate due process when challenging a bill; and

WHEREAS, such due process should include the right of both parties to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him; and

WHEREAS, for example, a residential customer may present the testimony of family and friends on water consumption at the residence; evidence of much lower prior and subsequent billing history; inspections and testimony by a plumber or engineer regarding the plumbing and flow of water to demonstrate leaks; or that the alleged volume of water consumption was not physically possible; and

WHEREAS, the hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the Hearing

Examiner finds it competent and reliable, regardless of any common law or statutory rule to the contrary; and

WHEREAS, the Hearing Examiner shall make findings of fact based on the evidence of record and any person aggrieved by the decision of the Hearing Examiner may seek review in the Circuit Court for Miami-Dade County, or a court having competent jurisdiction in accordance with Florida law,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 32-101 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

>>Sec 32-101. Adjustments for Unusually High Water Bills.

- (1) The Miami-Dade Water and Sewer Department shall provide an adjustment to all customers who dispute a water bill that exceed four (4) times the past year's average quarterly consumption whether or not the high bill is due to a concealed leak, incorrect meter reading, vandalism or leak on the outlet side of the water meter. The adjustment shall be calculated based on subtracting the average of the three previous bills from the higher bill disputed by the customer. This adjustment shall be in the form of a credit on the customer's account towards future consumption.
- (2) The customer seeking an adjustment must be in "good standing" with the Department which is defined as not having water disconnected for nonpayment or the account in collection during the previous twelve (12) months.
- (3) A customer may seek a high bill adjustment if the customer has not received a high bill adjustment in the

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

previous 24 month period.

- (4) The provisions of this ordinance shall be retroactive to billings rendered as of January 1, 2007. Retroactive adjustments shall be given to any customer that received a bill that exceeds four (4) times the past year's average quarterly consumption, disputed the bill and requested an administrative hearing in which the customer did not prevail.
- (5) This Ordinance shall be entitled the Miami-Dade Water and Sewer Consumer Relief Act.<<

Section 2. The Water and Sewer Department shall report back to the Board of County Commissioners within sixty (60) days of the effective date of this ordinance with an updated appeals process that includes the following:

The right of both parties to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. The residential customer may present the testimony of family and friends regarding the water consumption at the residence; evidence of much lower prior and subsequent billing history; inspections and testimony by a plumber or engineer regarding the plumbing and flow of water to demonstrate leaks; and that the alleged volume of water consumption was not physically possible. The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the Hearing Examiner finds it competent and reliable, regardless of any common law or statutory rule to the contrary. The Hearing Examiner shall make findings of fact based on the evidence of record and any person aggrieved by the decision of the Hearing Examiner may seek review in the Circuit Court for Miami-Dade County, or a court having competent jurisdiction in accordance with Florida law.

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Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections 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 word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:




Prepared by:

Henry N. Gillman

Prime Sponsor: Senator Javier D. Souto