

ORDINANCE NO. 2021-4435

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY CREATING ARTICLE X, TO BE ENTITLED "WATER QUALITY," TO ESTABLISH THE PURPOSE AND INTENT OF THE ARTICLE; PROVIDE FOR DEFINITIONS; ESTABLISH REQUIREMENTS TO CONTROL, REDUCE, AND PREVENT THE DISCHARGE OF STORMWATER POLLUTANTS; PROHIBIT ILLICIT DISCHARGE (SUBJECT TO CERTAIN EXEMPTIONS); PROVIDE FOR REPORTING OF ILLICIT DISCHARGES; PROVIDE FOR SUSPENSION OF ACCESS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM; ESTABLISH SEDIMENT AND EROSION CONTROL REQUIREMENTS; PROVIDE FOR PERMIT REVIEW, APPROVAL, AND CONDITIONS; AND PROVIDE FOR ENFORCEMENT AND PENALTIES; AND BY AMENDING APPENDIX A, "FEE SCHEDULE," TO PROVIDE FOR AN ENVIRONMENTAL REVIEW FEE; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach ("City") is located on barrier islands surrounded by the Atlantic Ocean, the Biscayne Bay Aquatic Preserve, and an interconnected system of waters that provide habitat for fish and wildlife, opportunities for recreation, and an enhanced quality of life; and

**WHEREAS**, the City has determined that illicit discharges to the stormwater system result in the damage and loss of natural resources, including the degradation of water quality; and

**WHEREAS**, the City has determined that certain land-disturbing activities accelerate the process of soil erosion and expose sediment to surface stormwater runoff, resulting in the damage and loss of natural resources, including the degradation of water quality; and

**WHEREAS**, sedimentation, which is the process by which sediment resulting from accelerated erosion is transported off the site of the land-disturbing activity, introduces excess nutrients, suffocates sea grass, blocks sunlight, inhibits photosynthesis, and depletes oxygen levels in the Bay; and

**WHEREAS**, the discharge of pollutants directly or via stormwater runoff into Biscayne Bay and surrounding water bodies degrades water quality and poses a public health risk; and

**WHEREAS**, storm drains that overflow, or are not properly protected or maintained, can permit an accumulation of pollutants to enter the stormwater system and discharge into Biscayne Bay and its interconnected waterways; and

**WHEREAS**, on December 10, 2020, Miami-Dade County released the *Report on Development and Implementation of an Annual Report Card Program on the Health of Biscayne Bay* which, in pertinent part, concluded that the health of the Bay is largely driven by water quality; and

**WHEREAS**, as an operator of Municipal Separate Storm Sewer Systems ("MS4") and a co-permittee of National Pollution Discharge Elimination System ("NPDES") Permit No.

FLS000003, the City is required to prohibit illicit discharges, illicit connections, improper disposal and illegal dumping into the stormwater system, and required to implement and enforce sediment and erosion reducing best management practices; and

**WHEREAS**, it is in the best interest of the City to enact this ordinance to safeguard persons, protect property, and prevent damage to the City’s environment; and

**WHEREAS**, the quality of the City’s waterways, Biscayne Bay, and the Atlantic Ocean is critical to environmental, economic, and recreational prosperity, and to the health, safety and welfare of the citizens of the City of Miami Beach.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** Chapter 46 of the Code of the City Miami Beach is hereby amended to create Article X thereof, to be entitled “Water Quality,” as follows:

**CHAPTER 46  
ENVIRONMENT**

\* \* \*

**ARTICLE X. WATER QUALITY**

**Sec. 46-231. Purpose and Intent.**

The purpose of this article is to safeguard persons, protect property, and prevent damage to the environment, Miami Beach’s surface waters, and Biscayne Bay through the regulation of non-stormwater discharges and pollutants into the City’s municipal separate storm sewer system (MS4), Biscayne Bay, and surface waters, to the maximum extent practicable.

**Sec. 46-232. 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.

Best Management Practices (“BMPs”) mean measures, practices, prohibition of practices, schedules or activities, general good housekeeping practices, maintenance procedures, educational practices, and/or devices which are generally accepted within an industry as being effective, to reduce erosion from occurring on a disturbed site, preventing sedimentation from occurring on an adjacent property or within a waterway, or preventing the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems.

Construction means the act of creating or maintaining stockpiles of soil or other material which are erodible if exposed to water or wind and are capable of generating dust; or developing or improving public or private land, including without limitation the removal of surface cover, disturbance of soils, clearing, grading, demolition, and/or excavation.

Demolition means the partial, substantial, or complete removal or destruction of any structure, building or improvement.

Development or development activity means (i) the construction, installation, demolition, or removal of a structure; (ii) clearing, scraping, grubbing, killing or otherwise removing vegetation from a site; and/or (iii) adding, removing, exposing, excavating, leveling, grading, digging, furrowing, dumping, piling, dredging, or otherwise significantly disturbing soil, mud, sand, or rock of a site.

Environmentally sensitive area means landscape elements or places which are vital to the long-term maintenance of biological diversity, soil, water, or other natural resources whether on a specific site or in a regional context. These areas shall include but not be limited to all wetlands, open water bodies, dunes, and beaches.

Erosion means the detachment, transport, and deposition of particulate matter by the action of wind, water, or gravity.

Exfiltration means a stormwater management procedure, which stores runoff in a subsurface collection system and disposes of it by percolation into the surrounding soil.

Grading means any stripping, excavating, filling, stockpiling, or combination thereof, including the land in its excavated or filled condition.

Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit connection means either of the following: (i) any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including but not limited to any conveyance that allows any non-storm water discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the public works department; or (ii) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the City.

Land-disturbing activities means any activity which may result in soil erosion from water or wind and the movement of sediments or pollutants into surface waters or lands, or activity that may result in a change to the existing soil cover, including, but not limited to, clearing, dredging, grading, excavating, transporting, demolition, and filling of land.

Municipal separate storm sewer system or MS4 means the conveyance or system of conveyances that is owned and operated by the City of Miami Beach, and is designed or used to collect or convey stormwater (e.g., storm drains, pipes, and/or ditches).

Non-hazardous waste means all waste materials not specifically deemed hazardous under Title 40, Parts 260-273 of the Code of Federal Regulations, which are considered nonhazardous wastes.

Non-structural controls mean BMPs that include collecting trash and debris, sweeping up nearby sidewalks and streets, maintaining equipment, and training site staff on erosion and sediment control practices.

Off-site sedimentation means the transport of sediment across boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or on any land, public or private, not owned by the person responsible for the land-disturbing activity.

Operator means any party that has (i) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; and/or (ii) day-to-day operational control of any activities that are necessary to ensure compliance with a sediment and erosion control plan for the site or other permit conditions imposed by the City.

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

Pollutant means anything that causes or contributes to pollution. Pollutants may include but are not limited to chemicals, paints, varnishes, degreasers and solvents; antifreeze, oil and other automotive fluids or petroleum products; diesel fuel, non-hazardous and toxic liquid and solid wastes; sanitary sewage; heated water, chemically treated cooling water or other water; acids or alkalis; lawn clippings, leaves, branches, or yard trash; animal carcasses; pet waste; dyes; laundry waste or soaps; construction materials; pool water; effluent from boats, vessels, and other recreational watercraft; refuse, rubbish, garbage, litter, sediment, or other discarded or abandoned objects, and accumulations, so that the same may cause or contribute to pollution; pesticides; herbicides; fertilizers; hazardous substances and wastes; sewage; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Pollution means the contribution of pollutants to any land, the MS4, Biscayne Bay, or surface waters.

Sediment and erosion control plan means a plan for the control of soil erosion, sedimentation of waters, release of pollutants into waterbodies or the MS4, and runoff resulting from land-disturbing activity.

Sediment means a solid material, whether organic or inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, or gravity as a product of erosion.

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity and onto adjacent public or private property or into a waterbody.

Solid waste includes bulky waste, commercial refuse, garden trash, tree and shrubbery, garbage, refuse, rubbish, special handling trash, trash, hazardous waste, biohazardous waste, industrial waste, residential refuse, white goods, or other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from domestic, industrial, commercial, mining, or agricultural operations.

Stabilize means to establish groundcover sufficient and adequate to prevent erosion.

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

Stormwater pollution prevention plan ("SWPPP") means a written plan required for construction projects proposing to disturb an area equal to or greater than one (1) acre of land, which plan is submitted by the applicant and approved by the City, and which identifies a strategy to minimize stormwater runoff that will be generated by the project. The SWPPP shall be consistent with the guidelines in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual published by the Florida Department of Environmental Protection.

Structural controls means structural BMPs such as silt fences, sedimentation ponds, erosion control blankets, and temporary or permanent seeding.

Surface waters, or water(s), or waterway means waters on the surface of the earth, contained in bounds created naturally or artificially, including the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, ditches, and other watercourses.

**Sec. 46-233. Requirements to prevent, control, and reduce stormwater pollutants by the use of best management practices.**

The City shall require the use of best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, Biscayne Bay, or surface waters. The owner or operator of a residential, commercial or industrial establishment, or construction site, shall provide or establish, at the expense of the owner or operator, reasonable protection or safeguards from accidental discharge of prohibited materials or other wastes into the MS4, Biscayne Bay, and/or surface waters, through the use of structural and non-structural BMPs. Furthermore, the property owner or operator responsible for a property which is or may be the source of an illicit discharge, may be required to implement, at said person's or entity's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the City's MS4. An illicit discharge that occurs despite compliance with BMPs is a violation of this section, except if such discharge is permitted under section 46-235.

**Sec. 46-234. Illicit discharge.**

- (a) No person shall throw, drain, or otherwise discharge, cause, or cause others under such person's control to discharge into the City's MS4, right-of-way, Biscayne Bay, or surface waters, any pollutants or waters containing pollutants, whether such discharges occur directly into a waterbody, through piping connections, runoff, exfiltration, infiltration, seepage, or leaks.
- (b) No person may maintain, use, or establish, any direct or indirect connection to the City's MS4 that results in any discharge in violation of any provision of Federal, State, or Local governmental law, rule, or regulation.

**Sec. 46-235. Illicit discharge exemptions.**

The following activities shall be exempt from the requirements of this article, but only to the extent that the discharge meets state water quality standards, and does not significantly contribute pollutants into the MS4, as determined by the code compliance department and/or environment and sustainability department:

1. Water line flushing;

2. Discharges from potable water sources;
3. Air conditioning condensate;
4. Irrigation water;
5. Water from crawl space pumps;
6. Footing drains;
7. Lawn watering;
8. Discharges or flows from emergency firefighting activities;
9. Reclaimed water line flushing authorized pursuant to a permit issued under the authority of Chapter 62-610, Florida Administrative Code; and
10. Uncontaminated roof drains.

**Sec. 46-236. Reporting of illicit discharges.**

- (a) Notwithstanding other requirements of law, any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, upon learning of any known or suspected release of materials which are resulting or may result in an illegal discharge of a pollutant into stormwater, the MS4, Biscayne Bay, or surface waters, shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event that hazardous materials are released said person shall immediately notify the State Warning Point of the Florida Department of Environmental Protection and the City's Environment and Sustainability Department. In the event that only non-hazardous materials are released, said person shall immediately notify the Environment and Sustainability Department. If the discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

**Sec. 46-237. Suspension of access to the Municipal Separate Storm Sewer System.**

The City may suspend access to the MS4 if either one of the following situations occurs:

- (a) Suspension due to illicit discharges in emergency situations. The City, without prior notice, may suspend any person's access to the MS4 in order to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, Biscayne Bay, or surface waters
- (b) Suspension due to detection of illicit discharge. Any person discharging into the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge.

**Sec. 46-238. Sediment and erosion control requirements.**

- (a) Any person conducting a land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity, consistent with the requirements of this article. Additionally, any such person shall be held responsible for knowing and abiding by the requirements of this article.
- (b) All construction work, including work in an area less than one (1) acre in size, that has the potential to impact the City's MS4, Biscayne Bay, surface waters, and/or adjacent

properties, is required to employ sediment and erosion control measures that are in accordance with the Florida Department of Environmental Protection ("FDEP") *Florida Storm Water Erosion and Sedimentation Control Inspector's Manual*, latest revision, to maintain water quality standards in accordance with Miami Dade County Department of Environmental Resource Management ("DERM") standards and Florida Administrative Code Chapter 62-302.

- (c) All construction activity that results in the disturbance of an area equal to or greater than one (1) acre is required to obtain coverage under the FDEP Generic Permit for Storm Water Discharge from Large and Small Construction Activities (Construction Generic Permit ["CGP"]). The notice of intent ("NOI"), any correspondence, the acknowledgement letter granting coverage under the CGP, a copy of the CGP, erosion control plans, SWPPP, and all completed inspection forms and other documentation required by the CGP shall be available at the site at all times and made available to the City Manager or any other City official or inspector until land-disturbing activities have been completed. The contractor shall always have at least one (1) person on-site during work activities who is certified through the Florida Stormwater, Erosion and Sedimentation Control Inspector Training Program. All construction activity that involves the alteration of surface water flows is required to obtain coverage under the FDEP Environmental Resource Permit ["ERP"].
- (d) An affidavit, in a form prescribed by the City, that is signed by the property owner and certified contractor acknowledging the parties' obligations to implement a sediment and erosion control plan that meets the standards of this article, and evidences the parties' agreement to maintain the plan for the duration of the construction phase shall be submitted with a building permit application ("Construction Site Sediment and Erosion Control Affidavit").
- (e) In order to obtain a building permit for any land-disturbing activity, an environmental plan review by the Environment and Sustainability Department shall be required to ensure sediment and erosion controls are included in the plans. A review fee as set forth in Appendix A shall be assessed for any land-disturbing activity with a valuation of \$250,000 or more, as determined by the building official.
- (f) Construction entrance(s) shall be stabilized wherever traffic will be leaving a construction site and traveling on paved roads or other paved areas within the site that is open to the public.
- (g) Any sediment that is tracked onto road pavement shall be removed immediately (prior to the end of each workday).
- (h) Pavement shall not be cleaned by washing/flushing street unless proper drain protection is in place to prevent discharges into the MS4.
- (i) All sediments/soils shall remain on site.

- (j) Perimeter protection, including a staked silt fence where applicable, is required for all development or redevelopment activities.
- (k) Catch basin inserts are to be used to prevent sediments from entering drainage system. Inserts are to be inspected and cleaned weekly and after each rainfall event.
- (l) If water truck is used to control dust on dirt/graded areas only, water truck will only drop enough water to control the dust or reach the optimum moisture content of the soil for compaction. No run-off is to be generated.
- (m) Controlling dust on paved roadways will be done by use of a sweeper with water-jet sprayers. Only enough water should be applied to control dust while sweeping. Sprayers shall not generate runoff into catch basins.
- (n) All disturbed areas of the site shall be vegetated or otherwise temporarily stabilized until construction completion.
- (o) Sediment/soil erosion entering the right-of-way, adjacent private property, or waterbody shall be prohibited.
- (p) Sediment/soil erosion from uplands into environmentally sensitive areas shall be prohibited.
- (q) Dumping or piling vegetative debris or clippings in right-of-way or environmentally sensitive areas shall be prohibited.
- (r) Tracking sediment or soil onto a roadway shall be prohibited.
- (s) Floating turbidity curtains labeled with the name of the contractor shall be required for construction or development activities occurring in or adjacent to a waterway, or that may cause sedimentation of the adjacent waterway.

**Sec. 46-239. Enforcement and penalties.**

- (a) Any fines and fees collected under this article shall be (i) deposited in the Miami Beach Biscayne Bay Protection Trust Fund, established in section 46-230, and (ii) used by the City for the administration, education, and enforcement of this article, or to further water conservation, nonpoint pollution prevention activities, water quality improvements, and marine and coastal ecosystems enhancements that protect the City's water resources and Biscayne Bay.
- (b) If a code compliance officer finds a violation of section 46-234 and/or 46-238 of this article, the code compliance officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10)



days of service shall constitute an admission of the violation and a waiver of the right to a hearing. Each act or violation and each day upon which any violation shall occur shall constitute a separate offense. Such notice may also require:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit connections or discharges;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property at the violators expense;
- e. The implementation of source control or treatment BMPs; and/or
- f. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed.

(c) A violator who has been served with a notice of violation must elect to either

1. Pay the following civil fine:

(a) First violation within a 12-month period.....\$500.00;

(b) Second violation within a 12-month period..... \$1,000.00;

(c) Third or subsequent violation within a 12-month period....\$5,000.00;

or

2. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the City commission, which shall be refunded if the named violator prevails in the appeal.

(d) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly. Unpaid fines shall accrue interest at the highest legal limit authorized by law.

(e) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien for the amount of the lien, plus accrued interest, collection costs, and attorneys' fees.

- (f) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- (g) The violator shall be required to pay any fines or costs of mitigation associated with any water quality control violation issued by an agency to the City because of the violator's failure to eliminate turbid runoff from a site and/or any activity that raises background levels of turbidity above existing background levels.
- (h) The violator is responsible for reimbursement to the City of all investigative and cleanup costs incurred by the City. Costs shall include, but are not limited to, costs associated with equipment operation and maintenance associated with the investigation, materials used in the investigation, personnel, contract services, waste disposal, laboratory fees, and any other Environment and Sustainability Department labor costs. The City shall issue an itemized invoice with all reimbursable costs to the violator.

**SECTION 2.**

That Appendix A, entitled "Fee Schedule," is hereby amended as provided in "Exhibit A" to this Ordinance.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.**

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

**SECTION 5. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, 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 6. EFFECTIVE DATE.**

This Ordinance shall take effect on the 7 day of August, 2021.

**PASSED AND ADOPTED** this 28 day of July, 2021.

ATTEST:

[Signature]  
8/2/21  
 Rafael E. Granado, City Clerk

[Signature]  
 Dan Gelber, Mayor

(Sponsored by Commissioner Micky Steinberg)

APPROVED AS TO FORM AND LANGUAGE AND FOR EXECUTION

[Signature] 7-19-21  
 City Attorney NK Date



**Exhibit "A"**

**APPENDIX A - FEE SCHEDULE**

Pursuant to section 1-15 of this Code, this appendix includes all fees and charges established by the city commission that are referred to in the indicated sections of the Code of Ordinances. Certain specified fees and charges, as identified herein, shall be subject to annual adjustment by the city manager, pursuant to the provisions of section 1-15 and this Appendix "A". A schedule of all current city fees and charges as set forth in Appendix "A" shall be maintained on the city's website.

Section of this Code	Description	Amount (Sales tax or other taxes may apply)	Annual Adjustment (References shown are defined at the end of this Appendix A)
* * *			
<b>Chapter 46. Environment</b>			
* * *			
<u>Article X. Water Quality</u>			
<u>46-238 (e)</u>	<u>Environmental Plan Review Fee</u>	<u>\$144.00</u>	<u>[A]</u>