

9/9/10
FINAL

ORDINANCE NO. 2010-_____
STORMWATER MANAGEMENT UTILITY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING AND RESTATING CHAPTER 24, ARTICLE III, DIVISION 3 "STORMWATER MANAGEMENT UTILITY" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Palm Coast is authorized pursuant to Section 403.0893, Florida Statutes, and the Florida Home Rule Powers Act, to create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems; and

WHEREAS, the City of Palm Coast is dedicated to maintaining a master stormwater system for the benefit of real property within the municipal boundaries of the City of Palm Coast in order to provide proper drainage infrastructure to mitigate against flooding; provide recharge to the aquifer; provide storage for stormwater runoff so that it does not adversely impact downstream receiving water bodies; and provide other stormwater retention benefits; and

WHEREAS, the City of Palm Coast stormwater utility is an enterprise fund which is established to ensure stable funding for the operations, maintenance, and capital projects that are necessary for addressing flooding issues and meeting the required level of service adopted by law; and

WHEREAS, it is the intent and purpose of this Ordinance to impose a stormwater utility charge in the nature of a utility user fee similar to water and wastewater services and that this Ordinance is intended to create a dedicated funding source for the City's

stormwater utility by imposing said charges based on the beneficiaries relative contribution to the need for the City's stormwater utility; and

WHEREAS, the City Council hereby acknowledges, and relies, on the Florida Supreme Court's decision in *City of Gainesville v. State of Florida*, 863 So. 2d 138 (Fla. 2003), and the other cases affirmatively stated therein, upholding the propriety of a municipality's power to impose a stormwater user fee; and

WHEREAS, the City retained the consulting services of Jones Edmunds to technically evaluate, analyze, and establish the City's methodology used in imposing stormwater charges based on the beneficiaries relative contribution to the need for the City's stormwater utility; and

WHEREAS, the Jones Edmunds Final Report, dated June 2010, ("Final Report") finds that based on the typical hydrologic conditions within the City of Palm Coast and the stormwater utility's overhead expenses, vacant land benefits from the City's stormwater utility and could reasonably be charged a portion of the fee charged to developed land; and

WHEREAS, the City Council hereby adopts the findings documented in the Final Report that vacant and developed land within the City of Palm Coast stormwater service area contribute stormwater, directly or indirectly, to a stormwater facility maintained by the City, and that vacant and developed land should be charged a stormwater fee; and

WHEREAS, the City Council also hereby finds this Ordinance is in the best interests of the public health, safety, and welfare of the citizens of Palm Coast.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. AMENDING AND RESTATING CHAPTER 24.

Chapter 24, Article III, Division 3, "Stormwater Management Utility" of the Code of Ordinances of the City of Palm Coast, Florida is hereby amended and restated as follows:

SECTION 24-131. LEGISLATIVE INTENT AND LEGISLATIVE FINDINGS.

(a) *Intent and Purpose.* It is the intent of this Division for the City Council of the City of Palm Coast to establish the public function and service of stormwater management as a City utility enterprise in accordance with Section 403.0893, Florida Statutes, as well as the City's constitutional home rule powers and authority. It is the City Council's purpose and intent to establish a program of user charges for stormwater management services to be charged to all property within the City of Palm Coast, whether developed or vacant, that contributes stormwater runoff to or benefits from the City's stormwater management facilities and systems. It is the intent of the City Council to accomplish and adequately maintain the functions of such stormwater utility at levels of service required by the City and law. These functions include, but are not limited to, administration, maintenance, planning, design, construction, regulation, surveying, operation, and inspection as they relate to stormwater management facilities and systems of the City.

(b) *Legislative Findings.* In addition to the legislative findings contained in the "whereas" recitals of Ordinance No. 2010-____, the City Council finds that all land, whether developed or vacant, contribute stormwater runoff to, or benefit from, the City's stormwater management facilities and systems, unless a person or entity otherwise demonstrates pursuant to the provisions of this Division. It is also hereby found that vacant properties contribute stormwater runoff to, or benefit from, the City's stormwater management facilities and systems at a level that is less than the level associated with developed properties. Further, the City Council hereby adopts the technical findings and recommendations contained in the Jones Edmunds Final Report, dated June 2010, and said findings and recommendations shall be used as a guide in interpreting and applying the provisions of this Division. Additionally, the methodology and statistical estimates contained in the Jones Edmunds Final Report that are used to calculate the fees and charges required under this Division are a reasonable and equitable means to assess the cost of the City's stormwater

services which are provided to the beneficiaries of the City's stormwater management facilities and systems.

SECTION 24-132. DEFINITIONS.

The following words and phrases shall have the meanings as hereinafter defined when used in this Division:

- (a) *City* means the City of Palm Coast, Florida.
- (b) *City Manager* means the City Manager of Palm Coast or designee.
- (c) *Drainage area* means the watershed (acreage) contributing surface water runoff to the City's stormwater management facilities or systems.
- (d) *Dwelling unit* means a living unit containing independent facilities for cooking, bathing and sleeping, or each independent living unit in a building containing more than one (1) living unit for which a certificate of occupancy has been issued regardless of whether the unit(s) is actually occupied.
- (e) *Equivalent resident unit (ERU)* means the basic unit for the computation of stormwater service charges/rates representing the average impervious area for all single-family residential properties in the City which unit shall be established from time-to-time in stormwater management services charges/fees resolutions adopted by the City Council at a public meeting. Properties other than single-family residential properties shall be assessed as multiples of the basic ERU.
- (f) *Impervious area* means any part of any parcel of land that has an impermeable cover caused to be erected or constructed by the action of persons and those hard surfaced areas which prevent or retard the entry of water into the soil mantle, as it entered under natural conditions prior to development activity and/or which 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 activity. Such areas include, but are not limited to, buildings, structures, parking lots, driveways, patios, decks, walkways, rooftops, sidewalks, storage areas, athletic courts and any and all other surfaces which similarly impact the natural infiltration or runoff pattern which existed prior to development activity.
- (g) *Multifamily residential properties* means and includes all duplex, triplex, quadraplex, condominium, trailers, apartment and other lots or parcels of real property containing more

than one (1) dwelling unit. Common areas associated with such properties shall be included and apportioned in the charges to the multifamily units on such properties.

(h) *Nonresidential/commercial properties* means and includes all property zoned or used for commercial, industrial, retail, governmental, or nonresidential purposes and shall include all real property in the City not classified as single-family residential properties or multifamily residential properties as defined in this Division.

(i) *Receiving water* means those creeks, streams, rivers, lakes, sinkholes and other bodies of water into which surface waters are directed, either naturally or in manmade ditches, canals, pipes or open systems or facilities.

(j) *Single-family residential properties* means and includes all properties zoned or used for single-family detached housing units including, but not limited to, a mobile home on a separate lot or parcel of real property.

(k) *Stormwater detention basin* means a stormwater facility, either natural or manmade, that collects and contains stormwater runoff and allows the release of the stormwater through a structure or facility that is designed to control the rate of the release of the stormwater, as acknowledged by the City Manager or designee.

(l) *Stormwater detention/retention basin* means a stormwater facility, either natural or manmade, that performs a combination of the functions of both a stormwater detention basin and a retention basin, as acknowledged by the City Manager or designee.

(m) *Stormwater management facilities or systems* means and includes all natural and manmade improvements, structures, facilities, construction and other elements, of whatsoever type or nature, used to convey stormwater from the first point of impact with a surface feature to a suitable receiving water internal or external to the boundaries of the City. Stormwater management facilities or systems include, but are not limited to, roads with drainage systems or facilities, streets, catch basins, curbs, gutters, pipes, channels of whatsoever type or nature, storm drains, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds of whatsoever type or nature, and other stormwater conveyance, retention, detention or treatment facilities by whatsoever name or type or nature.

(n) *Stormwater retention basin* means a stormwater facility, either natural or manmade, that collects and contains stormwater runoff and only allows the release of the stormwater

runoff by one (1) or more of the following means: evapotranspiration, percolation into the natural ground and/or percolation into a manmade filtration system that may convey the stormwater runoff to a stormwater management facility or system, as acknowledged by the City Manager or designee.

(o) *Stormwater Service Area* shall mean the area or areas within the City of Palm Coast city limits that contributes stormwater, directly or indirectly, to the stormwater management facilities or systems maintained by the City.

(p) *Vacant* means land that is in a natural vegetated state, or land that has been cleared of such vegetation with no impervious area, excluding vacant bulk lands.

(q) *Vacant Bulk Land* means any lot or parcel of land greater than twenty-five (25) acres that are in a natural vegetated state or land that have been cleared of such vegetation but not as an adjunct of construction.

SECTION 24-133. ESTABLISH STORMWATER MANAGEMENT UTILITY.

The City hereby establishes a Stormwater Management Utility in accordance with Section 403.0893, Florida Statutes, and the City's constitutional home rule authority. This utility shall be responsible for the construction and operation of the City's stormwater management facilities and systems within the stormwater service area in accordance with the level of service for such facilities established by the City and law (including as set forth in the City's Comprehensive Plan), and shall have equal status with the other utility services provided by the City.

SECTION 24-134. GOVERNING BOARD.

The City Council shall serve as the Governing Board of the Stormwater Management Utility.

SECTION 24-135. DUTIES AND POWERS OF GOVERNING BOARD (CITY COUNCIL) AND CITY MANAGER.

(a) *City Council Powers.* The City Council shall have all powers, consistent with the City Charter and State law, necessary for the exercise of its responsibility for drainage from all properties within the City including, but not limited to, the following:

(1) Preparation of plans for improvements and betterments to the stormwater management facilities or systems.

(2) Construction of improvements and betterments to the stormwater management facilities or systems.

(3) Promulgation of regulations for the use of the stormwater management facilities or systems including, but not limited to, provisions for enforcement of such regulations.

(4) Review and approval of all new development permits within the City for compliance with stormwater management regulations included in present City Ordinances or Ordinances later adopted.

(5) Performance of maintenance and major and minor improvements to the stormwater management facilities or systems.

(6) Establishment of service charges for the City's stormwater management facilities or systems.

(7) Evaluation of water quality concerns for discharges to the stormwater management facilities or systems.

(8) Performance of all normal utility functions to include, but not be limited to, the planning, development, funding, construction, operation and maintenance of the City's stormwater management facilities or systems including, but not limited to, the hiring of staff, the selection of consultants, the entering into contracts for services and construction of facilities, and the handling of the purchase, lease, sale, or other rights to property for the stormwater management system.

(9) Issuance of revenue bonds for the purpose of performing those duties as described herein consistent with State law and the City Charter.

(b) *Administrative and Executive Powers.* In accordance with the Charter, and subject to the policies established by the City Council, the City Council shall delegate any administrative or executive powers that it may have under the provisions of this Division to the City Manager. The City Manager may delegate any of his or her powers under the provisions of this Division to his or her designee.

(c) *Administrative Procedures.* The City Manager shall adopt administrative procedures to implement the provisions of this Division, and said procedures shall not conflict with the provisions of this Division.

(d) *Adjustments, Credits, or Waivers Based on Improper Calculations.* Any person or entity owning property which is subject to stormwater utility fees imposed under this

Division may appeal the proper imposition or calculation of such fee under the terms of this Division, or implementing resolution, by filing a written request for review with the Director of Engineering and Stormwater. Said request shall explain in detail the basis for appeal including a calculation error or the property is entitled to an adjustment, credit, or waiver based on the provisions set forth in subparagraph 24-135(f) of this Division.

(e) *Technical Adjustments, Credits, or Waivers.* A technical adjustment, credit, or waiver of up to one hundred percent (100) percent of the imposed fee may be granted by the Director of Engineering and Stormwater if the person or entity appealing the fee demonstrates that the subject property does not contribute stormwater runoff to or benefit from the City's stormwater management facilities and systems in any respect whatsoever.

A full or partial mitigation adjustment, credit or waiver may be granted for:

- (1) non-City stormwater facilities;
- (2) mitigation for parcels bisected by the stormwater service area boundary;
- (3) mitigation for parcels conveying or storing stormwater;
- (4) mitigation for significant onsite retention;
- (5) mitigation for extra onsite detention; and
- (6) reduced service.

In making a determination on a request for a technical mitigation adjustment, credit or waiver, the Director of Engineering and Stormwater shall apply the technical data and standards set forth in Jones Edmunds' Final Report, dated June 2010, which a copy is on file with the City Clerk.

(f) *Historical Technical Adjustments, Credits, or Waivers.* Upon the effective date of Ordinance No. 2010- ____ ("Effective Date"), a person or entity may submit a completed application for a historical adjustment, credit, or waiver for City stormwater fees that were either paid, or charged but not yet paid, from April 8, 2008 to the Effective Date. The application shall be required to be completed and filed with the Director of Engineering and Stormwater within six (6) months of the Effective Date ("Application Deadline"). Upon expiration of the Application Deadline, no further application will be accepted by the City. Completed applications that are filed under this subsection (f) shall be processed as an appeal pursuant to the applicable requirements of subsection (e), except, however, any adjustment, credit, or waiver granted shall not only be prospective, but shall also be

retroactive to April 8, 2008 to the extent said requirements are applicable. Retroactive active adjustments, credits, or waivers shall either be credited on future City stormwater fee invoices or reimbursed to the person or entity filing the application. The City Manager is hereby authorized to determine a procedure under which retroactive credits or reimbursements are made by the City based on administrative and financial considerations related to the sound management of stormwater utility adopted under this Division.

(g) *Procedure for Adjustments, Credits, or Waivers.* The Director of Engineering and Stormwater shall make a written disposition of the request and send a copy by mail to the person or entity making the request. If the request is filed within ninety (90) days of the first imposition or adjustment of such fee, any adjustment, credit, or waiver by the Director of Engineering and Stormwater shall be retroactive. Otherwise, such adjustment, waiver, or credit shall be prospective only. An aggrieved party may appeal the Director of Engineering and Stormwater's disposition to the City Manager by filing a written notice of appeal with the Office of the City Manager within fifteen (15) City business days after receipt of a copy of the Director of Engineering and Stormwater's determination. Failure to timely appeal the disposition made by the Director of Engineering and Stormwater shall constitute a waiver of any appellate right to challenge said disposition, and the decision of the Director of Engineering and Stormwater shall be final. The City Manager shall only review appeals filed in a timely manner and said review shall only be based on whether the Director of Engineering and Stormwater has properly interpreted and applied the terms of this Division, and the City Manager shall otherwise have no power to waive, adjust, or credit a stormwater utility fee. The City Manager's determination of any appeal shall constitute the City's final decision on the appeal.

SECTION 24-136. AUTHORITY FOR SERVICE CHARGES.

(a) *Authorization.* The City Council is empowered by this Division to establish, by adoption of a rate resolution, service charges (fees) for the City's stormwater management facilities or systems. Such service charges shall be based on the cost of providing stormwater management services to all properties within the City and shall, together with any other lawfully available and appropriated revenues, be sufficient to fund the level of service for stormwater management facilities established in the City's Comprehensive

Plan. Service charges may be different for properties within the City and may be different for properties receiving different classes of service under this Division.

(b) *Rates for Stormwater Management Services/Charges/Fees.* Each rate resolution adopted by the City Council shall impose monthly service or other charges (fees) on all owners of real property in the City (not otherwise exempted by law or by this Division) which contribute in any respect stormwater runoff to or benefit from the City's stormwater management facilities or systems. The rate resolution shall also provide for an effective date on which the charges shall commence being imposed. Monthly service charges shall be established for each of the following billing classifications:

(1) *Single family residential properties.* Each single-family residential property with one (1) dwelling unit shall be considered one (1) ERU for billing purposes.

(2) *Vacant Single-Family residential property.* Each vacant single-family residential property shall be assessed and charged based on the following assignments of ERUs:

(A) Property less than or equal to one (1) acre = seventyfour on hundredths (0.74) ERUs

(B) Property greater than one (1) acre and less than or equal to five (5) acres = eighty-nine one hundredths (0.89) ERUs per acre

(C) Property greater than five (5) acres and less than or equal to twenty-five (25) acres = Two and ninety-six one hundredths (2.96) ERUs per acre.

(3) *Multifamily residential properties.* All multifamily properties with multiple dwelling units shall be assessed and charged based on the following assignment of ERUs:

(A) Duplex units = Three-fourths (0.75) ERUs per dwelling unit

(B) Triplex units = Three-fourths (0.75) ERUs per dwelling unit

(C) Quadraplex units = Three-fourths (0.75) ERUs per dwelling unit.

(D) All other multifamily residential properties shall be charged based upon a calculation of ERUs derived from the basis of the amount of impervious area and pervious area on the properties which calculation shall be conducted in accordance with the process for non-residential/commercial property.

(4) *Nonresidential/commercial property.* All nonresidential/commercial property shall be a minimum of one (1) ERU. Non-residential/commercial property shall be

assessed and charged on the basis of the impervious area and pervious area on the parcel relative to ERU, as defined in this Division by:

(A) One (1) acre of impervious area = Six and two one hundredths (6.02) ERUs.

(B) One (1) acre of pervious area = Two and ninety-six one hundredths (2.96) ERUs.

(5) *Vacant Bulk Land.* All vacant bulk land shall be eighty-nine hundredths (0.89) of an ERU per one (1) acre.

(6) *Other Vacant Property.* All vacant property not assigned to a specific billing classification under this subsection (b) shall be two and ninety-six one hundredths (2.96) ERUs per one acre.

(7) *Other Impervious Areas.* All impervious areas (excluding public rights-of-way) not assigned to a specific billing classification under this subsection (b) shall be six and two one hundredths (6.02) ERUs per one acre.

(8) *Application to all real property.* Except as otherwise exempted by law or by this Division, service charges shall apply to all real property within the City using or benefiting from the City's stormwater management facilities or systems including, but not limited to, those parcels of real property classified as nonprofit or tax-exempt for ad valorem tax purposes. Service charges shall apply to all governmentally owned real property including, but not limited to, properties of the City including, but not limited to, City-owned buildings, parks and other properties, but excluding property that is used as part of the City's stormwater management facilities or systems and serving a public purpose in its entirety.

(c) *Billing.* The service charges authorized and established by this Division shall be billed in conjunction with the real property owner's or real property user's monthly water and/or wastewater bill. However, in the case of vacant property, an annual bill for the stormwater fees only shall be sent separately, in advance, to the property owner. Such stormwater charges billed on the monthly water and/or wastewater bill shall be due and payable as a single combined utility charge at the same time and in the same manner and subject to the same penalties as other City utility fees, and the withholding or failure to pay any part of the combined utility charge shall be subject to such penalties. Condominium or rental apartments and commercial properties shall be billed as property of the condominium

association or landowner, respectively, rather than individual occupants. In the event the owner of a parcel of real property is not a customer obtaining City utility service(s), a new account shall be established and the owner of that real property shall be billed separately for the stormwater management service charges. The City Manager or designee may establish a new account for stormwater utility billing purposes for a property owner or a property user that does not also have a valid City water or wastewater utility account. The owner of every building, premise, lot, property, or dwelling unit shall be obligated to pay the fee for all services provided and billed hereunder. In the case that a tenant in possession of any premises or buildings shall pay such stormwater charges, the payment shall relieve the landowner from the obligation and lien; but the City shall not be required to look to any person other than the landowner for the payment of such charges. No changes of ownership or occupation of the premises shall affect the application of this subsection, and the failure of any purchaser to learn that the purchased property is subject to a lien shall in no way affect responsibility of the purchaser for such payment.

SECTION 24-137. PROHIBITED ACTS/OBLIGATIONS AND DUTIES.

The prohibitions set forth in Article VI of this Chapter relating to discharges into waters of the City shall apply to discharges into the City's stormwater management facilities or systems. The City Council may establish, by rate resolution, a surcharge for any stormwater generated on private property which contributes inordinately to the total maximum daily load of any impaired water body.

SECTION 24-138. DELINQUENT CHARGES; PENALTIES.

- (a) If any bill for current monthly or annual charges remains due and unpaid twenty (20) days from the utility bill date, a delinquent (late) fee shall be charged to the customer account, in accordance with the provisions of a fee resolution adopted by the City.
- (b) All service charges imposed pursuant to this Division shall be a lien upon the property with which such charge is associated from the date said charge becomes due until the date such charge is finally paid. All liens filed pursuant to this section shall be subject to the City of Palm Coast Lien Ordinance set forth in Section 43-76 et. seq.
- (c) The provisions of this Division may be enforced by any and all lawful means by the City pursuant to all Codes and Ordinances duly adopted by the City Council or as may otherwise be available to the City pursuant to State law and nothing contained in this

Division shall prohibit the City from enforcing this Ordinance by other means set forth in the City's Codes and Ordinances, provided in the statutory law of the State of Florida, or otherwise available to the City.

(d) In accordance with the authority granted under Section 403.0893(3), Florida Statutes, nothing herein shall be construed to prohibit the City from using the non-ad valorem levy, collection, and enforcement method to collect any service charge imposed under this Division.

(e) In the event the City must take any action against a person or entity to collect a service charge imposed by this Division, the City shall be entitled to recover all court costs and reasonable attorneys' fees for such collection, through all appellate proceedings.

SECTION 24-139. FINANCIAL ACCOUNTS.

(a) The City Council shall maintain stormwater financial accounts into which all revenues from stormwater service charges, grants, or other funding sources shall be deposited and from which all expenditures related to the City's stormwater management utility shall be paid. Accounting and reporting procedures shall be consistent with State law and reported to the City Council by the City Manager or designee annually.

(b) Expenditures from the stormwater financial accounts for activities that are not directly or indirectly related to the City's stormwater management utility shall not be permitted.

SECTION 2. CONFLICTS. All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 3. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force, or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 4. CODIFICATION.

It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Palm Coast, Florida; that the Sections of this

Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective on _____.

Approved on first reading the _____ day of _____ 2010.

Adopted on the second reading after due public notice and hearing City of Palm Coast this _____ day of _____ 2010.

CITY OF PALM COAST, FLORIDA

ATTEST:

Jon Netts, Mayor

, City Clerk

APPROVED AS TO FORM AND LEGALITY:

William E. Reischmann Jr. Esq.
City Attorney