

## ORDINANCE 2024-42

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XX, UTILITIES CODE, BY CREATING CHAPTER 204, “STORMWATER MANAGEMENT UTILITY”; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title XX, Utilities Code, is hereby amended by creating Chapter 204, ‘Stormwater Management Utility’, which shall henceforth read as follows:

### **>>CHAPTER 204: STORMWATER MANAGEMENT UTILITY**

#### **Section 204.01 SHORT TITLE.**

This chapter shall be known and may be cited as the “Stormwater Management Utility” ordinance.

#### **Section 204.02 AUTHORITY.**

The city is authorized by the Florida Constitution and the provisions of F.S. Chapters 166 and 403 and F.S. § 403.0893, to construct, reconstruct, improve, and extend stormwater systems and to issue revenue bonds and incur other debts if needed to finance in whole or part the cost of such systems and to establish just and equitable rates for the services and facilities provided by the systems.

#### **Section 204.03 FINDINGS AND DETERMINATIONS.**

It is hereby ascertained, determined, and declared as follows:

(A) Through the National Pollutant Discharge Elimination System Stormwater (NPDES) permitting program, the U.S. Environmental Protection Agency, as implemented by the Florida Department of Environmental Protection, has mandated the City to implement and fund a comprehensive stormwater management program to reduce the contamination of stormwater runoff and prohibit illicit discharges. It is necessary to establish methods for controlling the introduction of pollutants into the City of Palm Bay’s separate storm sewer system

in order to comply with requirements of the NPDES permit process as set forth in Chapter 95 of the City of Palm Bay Code of Ordinances, to provide for public health, safety, environment, and general welfare of the property owners and citizens of Palm Bay.

(B) The Florida Legislature has mandated that local governments in the State of Florida, including the City, have the responsibility for developing mutually compatible stormwater management programs consistent with the rules and regulations of the Florida Department of Environmental Protection and the water management districts and the stormwater management programs established and maintained by other local governments.

(C) The City has, pursuant to Chapter 163, Florida Statutes, adopted the objectives and policies found in the Conservation Element of the City of Palm Bay Comprehensive Plan, which provide that the City shall design, manage, and operate the City's Stormwater Management System so the collection, storage, treatment, and conveyance of stormwater within the City adequately protects surface water quality. The creation and maintenance of the City's Stormwater Utility was designed to implement the Conservation Element of the Comprehensive Plan and other municipal, federal, and state policies mandating stormwater management programs by local governments.

(D) Section 403.0893, Florida Statutes, specifically authorizes and encourages local governments, including the City, to provide Stormwater Management Services and create stormwater programs and adopt Stormwater Charges sufficient to plan, construct, operate, and maintain Stormwater Management Systems.

(E) Improper management of stormwater increases erosion and sedimentation, which can decrease the capacity of water bodies to hold and transport water and interfere with navigation.

(F) The development and urbanization of property results in the creation of impervious surfaces which tend to increase the volume and rate of stormwater runoff and decrease groundwater recharge from water percolating into the soil, thereby requiring the implementation of stormwater management practices to offset such impacts.

(G) Improperly managed stormwater runoff may increase the incidence and intensity of flooding, endangering persons and property within the City.

(H) Improperly managed stormwater runoff may interfere with the water quality and quantity of the Indian River Lagoon and Turkey Creek and further disrupt biological diversity and productivity associated with such waterbodies.

(I) The public health, safety, and welfare are adversely affected by poor water quality and flooding resulting from inadequate stormwater management practices.

(J) The improper management of stormwater and adverse impacts upon the quality of water resources located within the City may result in substantial economic harm to the City and its residents.

(K) Property owners within the City are eligible for flood insurance through the National Flood Insurance Program (NFIP), which enables these property owners to acquire federally backed flood insurance protection. To ensure that this coverage is available, the City is required to meet the minimum FEMA requirements for participation in the NFIP and failure to meet these requirements could result in flood insurance being either unavailable or prohibitively expensive to property owners within the City.

(L) The City maintains a system of Stormwater Management Facilities, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention, and detention basins, infiltration facilities, and other components as well as natural waterways.

(M) Those elements of the Stormwater Management System that provide for the collection, storage, treatment, and conveyance of Stormwater are of benefit and provide services to Benefitted Property within the City.

(N) The cost of operating and maintaining the Stormwater Management System and the financing of existing and future repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed, services received, or burden caused by properties served thereby.

(O) The Stormwater Charges authorized herein are consistent with the authority granted in Section 403.0893, Florida Statutes. That statutory provision is additional and supplemental authority to the constitutional and statutory power of self-government granted to the City.

(P) It is necessary to establish methods for complying with regulatory mandates and programs related to the collection, treatment, and management of Stormwater. This includes, but is not limited to, the federally-mandated NPDES requirements; the Florida Department of Environmental Protection (FDEP) permit which the city holds to operate an MS4; city-wide water quality monitoring; federal, state, and local mandates (stormwater and water quality); public outreach and education efforts; management of the waters of the Turkey Creek and Indian River Lagoon (inclusive of dredging, water quality, pollution control, debris removal, and

monitoring); the Illicit Discharge Ordinance (Chapter 95, City Code, Ordinance No. 2008-37) which applies to all properties within the city limits; stormwater infrastructure inventories and related stormwater management plan; grants acquisition and management; the implementation of city-wide stormwater Best Management Practices (BMP's); intergovernmental relations, and regulations; stormwater permitting, plan review, and local regulation; right-of-way and driveway permitting; residential drainage permitting. These programs are designed to serve the greater good of all property owners, citizens, stakeholders, and visitors to our community including those in subdivisions and similar developments both privately or publicly maintained.

#### **Section 204.04 DEFINITIONS.**

As used in this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BENEFITTED PROPERTY.** All parcels of real property located within the City that receive a benefit from the Stormwater Management Services or Stormwater Management Facilities.

**CAPITAL COST.** All or any portion of the expenses that are properly attributable to the acquisition, construction, design, installation, reconstruction, renewal, or replacement (including demolition, environmental mitigation and relocation) of Stormwater Management Facilities under generally accepted accounting principles and including reimbursement to the City for any moneys advanced for Capital Cost and interest on any inter-fund or intra-fund loan for such purposes.

**DEPARTMENT.** The City of Palm Bay Public Works Department.

**DIRECTOR.** The City of Palm Bay Public Works Director or designee.

**DRAINAGE BASIN.** A part of the earth's surface contributes stormwater runoff to a drainage system, which consists of diffuse surface waters, together with all natural or artificial tributary surface streams or bodies of impounded surface water.

**FISCAL YEAR.** A twelve (12) month period commencing on October 1 and concluding on September 30 of the following calendar year, or such other twelve (12) month period as may be adopted by the Utility.

**MS4.** A Municipal Separate Storm Sewer System as designated by the United States Environmental Protection Agency and defined in 40 CFR 122.26(b)(8), is a conveyance or system of conveyances that is owned by a state, city, town, village, or other public entity including special districts under state law

such, that discharges to waters of the U.S., is designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.), is not a combined sewer, and is not part of a publicly-owned treatment works.

**PROJECT COST.** Shall mean, (i) the Capital Cost of one or more Stormwater Management Facilities; (ii) the Transaction Cost associated with the Obligations to finance such Stormwater Management Facilities; (iii) interest accruing on such Obligations for such period of time as the City deems appropriate; (iv) the debt service reserve fund or account, if any, established for the Obligations which financed the Stormwater Management Facilities; and (v) any other costs or expenses related thereto.

**STORMWATER.** Any surface runoff and drainage of water from land surfaces, including both impervious and pervious Areas.

**STORMWATER ASSESSMENT.** Either a Stormwater Improvement Assessment, a Stormwater Service Assessment, or both.

**STORMWATER CHARGE.** A Stormwater Assessment, a Stormwater Utility Fee, or both.

**STORMWATER IMPROVEMENT ASSESSMENT.** A special assessment imposed by the City to fund the Capital Cost, or the debt service and related cost of an Obligation issued to finance the Project Cost of one or more Stormwater Management Facilities.

**STORMWATER MANAGEMENT AREA.** A geographic area established by the Resolution of the City Council in accordance with Section 204.07 below within which Stormwater Management Services or Stormwater Management Facilities are to be provided.

**STORMWATER MANAGEMENT FACILITY.** The systems, capital facilities, lands, and water bodies utilized in collecting, conveying, storing, managing, and treating stormwater generated within the City. The term includes but is not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention, and detention basins, infiltration facilities, and other components as well as natural waterways.

**STORMWATER MANAGEMENT SERVICE.** Shall mean (i) management and administration of the City's Stormwater Management Utility, including administration, planning, and permitting requirements; (ii) stormwater program engineering; (iii) drainage basin planning; (iv) stormwater improvements to be acquired or constructed within a reasonable time horizon without the issuance of any debt or borrowing; (v) operating and maintaining the City's Stormwater

Management Facilities, including extraordinary maintenance; (vi) billing and collection of Stormwater Service Assessments and Stormwater Service Fees, including customer information and educational services and reserves for statutory discounts; and (vii) legal, engineering, and other consultant services.

**STORMWATER MANAGEMENT SYSTEM or SYSTEM.** The network of facilities, both natural and man-made, utilized in collecting, conveying, storing, managing, and treating stormwater, including but not limited to lakes, canals, rivers, streams, swales, culverts, pipes, wetlands, detention and retention basins, manholes, channels, drainage easements, and infiltration facilities, which convey stormwater from the point of first impact with the surface of land to the receiving water.

**STORMWATER MANAGEMENT UTILITY or UTILITY.** That division within the City Public Works Department which constructs, operates, and maintains the Stormwater Management System and otherwise performs the powers and duties described in this chapter.

**STORMWATER SERVICE ASSESSMENT.** A special assessment imposed by the City against benefitted property within a Stormwater Management Area to fund all or any portion of the Stormwater Service Cost properly attributable to the Stormwater Management Services provided by the City to such assessed property.

**STORMWATER SERVICE COST.** The estimated amount for any Fiscal Year of all expenditures and reasonable reserves that are properly attributable to the Stormwater Management Service provided within the Stormwater Management Area under generally accepted accounting principles, including, without limiting the generality of the foregoing, reimbursement to the City for any moneys advanced for the Stormwater Management Service, and interest on any interfund or intrafund loan for such purpose.

**STORMWATER UTILITY FEE.** A fee reasonably related to service provided by the City to property to fund all or any portion of the Stormwater Service Cost or Project Cost for a Stormwater Management Facility for such property at a just, fair, reasonable, and equitable rate based upon such property's stormwater burden, the reasonable relationship to benefits received, and the reasonable cost of providing Stormwater Management Services or Stormwater Management Facilities to such property.

**STORMWATER UTILITY FUND.** An enterprise fund associated with a specific Stormwater Management Area for maintaining Stormwater Service Charges collected by the City within such Stormwater Management Area.

**Section 204.05 ESTABLISHMENT OF STORMWATER MANAGEMENT UTILITY.**

The Stormwater Management Utility is established by the City Council to provide for the general welfare of the city and its residents by providing for the operation, maintenance, regulation, and future improvements to the Stormwater Management System. The City Stormwater Management Utility is hereby established to be a division within the City Public Works Department and shall be administered by the Director of Public Works.

**Section 204.06 POWERS AND DUTIES OF THE UTILITY.**

Subject to the supervision and authority of the City Manager and Director, the Utility shall have the following powers and duties:

(A) Preparation of plans for Stormwater Management Services and Stormwater Management Facilities and betterments to the Stormwater Management System.

(B) Administer the acquisition, design, construction, maintenance, and operation of the Stormwater Management Facilities.

(C) Review, inspect, approve, and deny plans and permits for extensions to the Stormwater Management Facilities.

(D) Promulgation of regulations for the use of the Stormwater Management System, including provisions for enforcement of such regulations.

(E) Advise the City Council and other City departments on matters relating to the Stormwater Management Services and Stormwater Management Facilities, including procedures, regulations and criteria by which new development permits within the City are approved for compliance with stormwater management regulations.

(F) Development of budgets and recommendations on the establishment and adjustment of Stormwater Charges, which shall be submitted to City Council for approval, to fund Stormwater Management Services and Stormwater Management Facilities.

(G) Evaluation of water quality concerns for discharges to the Stormwater Management System.

(H) Performance of all normal utility functions to include construction, operation, and maintenance of the City's Stormwater Management System, including, but not limited to, the hiring of staff, the selection of special consultants, the entering into contracts for services and construction of facilities, and the

handling of purchase, lease, sale or other rights to property for the Stormwater Management System, all consistent with the personnel and procurement requirements of the City.

(I) Apply for and pursue federal, state, local, and private grants or revolving funds to provide needed Stormwater Management Services and Stormwater Management Facilities.

(J) Apply for, implement, and monitor required City permits relating to the Stormwater Management System, including any required water quality monitoring and water quality programs.

(K) Administer, interpret, and enforce this chapter and all regulations and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the Stormwater Management Services and Stormwater Management Facilities.

#### **Section 204.07 REQUIRED LEVELS OF RATES FOR STORMWATER CHARGES.**

The City Council shall require that adequate revenues are generated to provide for a balanced operating budget by setting sufficient levels of Stormwater Charges.

#### **Section 204.08 STORMWATER CHARGES.**

(A) *Revenue Sources for the Stormwater Management Utility.* The Stormwater Utility Funding sources may include the following:

- (1) Stormwater Utility Fees;
- (2) Stormwater Assessments;
- (3) Stormwater permit and inspection fees;
- (4) Other funds or income obtained from federal, state, local, and private grants or revolving funds;
- (5) Bonds issued or loans obtained using future Stormwater Charges as collateral; and
- (6) Any other revenues budgeted by the City Council for Stormwater Management Services and Stormwater Management Facilities.

(B) *Enterprise Fund.* The City Manager, Director, or their designee, shall establish an enterprise fund exclusively for the deposit and withdrawal of all revenue collected or received pursuant to this chapter. The City Manager, Director, or their designee shall use the enterprise fund for the independent and

separate accounting of all revenues, expenditures, assets and liabilities, and earnings and obligations of the Utility and including the following purposes:

(1) The acquisition by gift, purchase, or condemnation of real and personal property and interests therein, necessary to construct, operate, and maintain Stormwater Management Services and Stormwater Management Facilities;

(2) All costs of administration and implementation of the Stormwater Management Services and Stormwater Management Facilities, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;

(3) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;

(4) Operation and maintenance of the Stormwater Management Services and Stormwater Management Facilities;

(5) Monitoring, surveillance, and inspection of Stormwater Management Facilities;

(6) Permitting, water quality monitoring, and water quality programs;

(7) Retrofitting developed areas for pollution control;

(8) Inspection and enforcement activities;

(9) Billing and administrative costs; and

(10) Other activities reasonably required to carry out the City's stormwater management program.

(C) Within each Stormwater Management Area, the City Council intends to fund all or part of the cost of providing Stormwater Management Services and Stormwater Management Facilities through Stormwater Charges. The City Council has further concluded that periodic determination of revenues earned, and expenses incurred in connection with the provision of Stormwater Management Services and Stormwater Management Facilities will enhance accountability and management control of the City's Stormwater Management Utility and will facilitate implementation of the City Council's funding policy for stormwater management. Accordingly, the City Manager shall establish a separate Stormwater Utility Fund for each Stormwater Management Area, which shall be maintained separate and apart from all other accounts of the City. Upon receipt, all Stormwater Charges

shall be deposited into the appropriate Stormwater Utility Fund. Proceeds of the Stormwater Charges collected within each Stormwater Management Area shall be used solely for the provision of Stormwater Management Services and Stormwater Management Facilities provided therein. Interest earned on Stormwater Charges shall not accrue to the City general fund but shall remain with the Stormwater Utility Fund.

(D) *Imposition of Stormwater Charges.* The City Council is hereby authorized to impose Stormwater Charges against property within all or a portion of the City included in a Stormwater Management Area by subsequent resolution(s) of the City Council as further provided herein.

(1) *Stormwater Assessments.* The City Council is hereby authorized to impose Stormwater Assessments against Benefitted Property within a Stormwater Management Area. All Stormwater Assessments imposed pursuant to this chapter within a Stormwater Management Area shall be imposed in accordance with the procedures set forth in Chapter 56 of the Code and Section 6.02 of the City Charter.

(a) The Stormwater Service Cost or Project Cost may be assessed against Benefitted Property located within a Stormwater Management Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Management Service and Facilities provided by the City.

(b) Notwithstanding the foregoing, if the City Council specifically determines that any portion of a Stormwater Management Area receives a distinct special benefit from any component of the Stormwater Management Services or Stormwater Management Facilities that is materially different in kind or degree from the special benefit received by other portions of such Stormwater Management Area, the Stormwater Service Cost or Project Cost related to such component shall be assessed against the portion of the Stormwater Management Area receiving the distinct special benefit.

(c) For any Fiscal Year in which Stormwater Assessments will be imposed within a Stormwater Management Area, the City Council shall determine the Stormwater Service Cost or Project Cost, the rate of assessments, and the methodology pursuant to which these costs will be apportioned amongst Benefitted Property by separately adopted resolutions in accordance with the procedures set forth in Chapter 56 of the Code.

(2) *Stormwater Utility Fees.* The City Council is hereby authorized to impose Stormwater Utility Fees on all Benefitted Property within a Stormwater

Management Area to fund all or any portion of the Stormwater Service Cost or Project Cost at a just, fair, reasonable, and equitable rate based upon such property's stormwater burden and the reasonable cost of providing Stormwater Management Services to such property.

(a) The rate of the Stormwater Utility Fee imposed within a Stormwater Management Area and the methodology pursuant to which the Stormwater Service Cost or Project Cost will be apportioned amongst Benefitted Property shall be established by separate resolution of the City Council, and may, at the discretion of the City Council, be included within a resolution imposing Stormwater Service Assessments.

(b) Notwithstanding the foregoing, if the City Council specifically determines that any portion of a Stormwater Management Area receives a distinct special benefit or service from any component of the Stormwater Management Services or Stormwater Management Facilities that is materially different in kind or degree from the special benefit received by other portions of such Stormwater Management Area, the Stormwater Service Cost or Project Cost related to such component shall be assessed against the portion of the Stormwater Management Area receiving the distinct special benefit.

(c) Stormwater Utility Fees shall be adopted by a resolution approved by the City Council after a public hearing. The public hearing must be advertised at least ten (10) days in advance in a newspaper of general circulation in the City setting forth the date, time, and place of the public hearing, the current rate(s), the proposed rate(s), and the effective date of the proposed rate(s). A separate public hearing is not required to amend rates, fees, and charges pursuant to a previously adopted price index adjustment. All rate changes shall apply to the first billing cycle after the effective date for the rates, unless otherwise provided by resolution.

(3) *Collection of Stormwater Charges.* The Stormwater Charges authorized herein may be collected by the City pursuant to any legally available method or combination of such methods, including but not limited to: (i) for Stormwater Assessments, collection on the ad valorem tax bill pursuant to Chapter 56 of the Code and the Uniform Assessment Collection Act; (ii) collection on the utility bill; or (iii) collection by separate bill.

#### **Section 204.09 BILLING AND PAYMENT OF STORMWATER UTILITY FEES.**

(A) *Billing.* For parcels subject to a Stormwater Utility Fee, such fees will be collected on the monthly utility bill or by separate bill, as determined by the Utility.

(B) *Delinquent Bills.* All charges not paid within thirty (30) days after the bill is due shall be considered delinquent. All charges delinquent hereunder shall be subject to (i) an interest charge at the Florida statutory rate, and (ii) shall constitute a lien upon the real property affected, from the date charges are incurred. Charges which remain unpaid for a period of sixty (60) days may be reported to the City Council for assessment against the real property. In the alternative, the City Council may direct the City Attorney to file suit thereon, and to collect all such unpaid charges and fees, including reasonable attorneys' fees and charges.

(C) *Provisions of Chapter Cumulative.* The provisions of this chapter shall be supplemental to all ordinances of the city, and the provisions of this chapter shall be cumulative to all other remedies provided by law or ordinance for the collection of unpaid Stormwater Charges.

#### **Section 204.10 STORMWATER DRAINAGE FACILITIES.**

(A) The owner of real property is responsible for providing and maintaining stormwater drainage facilities to collect and dispose of stormwater on-site in compliance with local law. It shall be unlawful for any person to alter non-city maintained or owned stormwater drainage facilities without the prior approval of the Public Works Director or other agencies having jurisdiction. No changes shall be permitted by the Public Works Director which will adversely affect the stormwater management system in the area of the property.

#### **Section 204.11 PROGRAM RESPONSIBILITY.**

It shall be the duty of the Director to administer the Stormwater Management Utility. The Director shall keep an accurate record of all properties using the services and facilities of the System and the Stormwater Charges established and imposed pursuant to this chapter.

#### **Section 204.12 FLOODING; LIABILITY.**

(A) Floods from stormwater runoff may occur which exceed the capacity of the Stormwater Management System. Nothing in this chapter, or elsewhere in this Code, shall be deemed to mean that property subject to the user fees established hereby will always be free from stormwater flooding and flood damage.

(B) Nothing in this chapter or elsewhere in this Code shall be deemed to create any liability on the part of, or cause of action against, the city, or any official or employee thereof, for any flood damage that results from the runoff of floods or storms which cannot be accepted by the Stormwater Management System.<<"

**SECTION 2.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 3.** If any portion, clause, phrase, sentence, or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative, or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative, or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 4.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2024-xx, held on \_\_\_\_\_, 2024; and read in title only and duly enacted at Meeting 2024-xx, held on \_\_\_\_\_, 2024.

\_\_\_\_\_  
Rob Medina, Mayor

ATTEST:

\_\_\_\_\_  
Terese M. Jones, City Clerk

Reviewed by CAO: \_\_\_\_\_

***Strikethrough words shall be deleted; highlighted words shall be included and will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.***