

7. Ordinance 2024-39, amending the Code of Ordinances, Title IX, General Regulations, by creating Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way, final reading.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Lisa Frazier, Growth Management Director

THRU: Suzanne Sherman, City Manager

DATE: September 19, 2024

RE: Ordinance 2024-39, amending the Code of Ordinances, Title IX, General Regulations, by creating Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way, final reading.

SUMMARY:

The Palm Bay 2045 Comprehensive Plan Future Land Use Element was adopted on May 1, 2023, and became effective on June 10, 2023. The remaining Palm Bay Comprehensive Plan Elements were adopted on May 18, 2023, and became effective on July 20, 2023. To bring the Land Development Code into compliance with the Comprehensive Plan, an update has been drafted for consideration by the City Council.

The proposed update is more concise and only includes requirements pursuant to Chapter 163, F.S. As such, some regulations are proposed to be moved to other parts of the Palm Bay Code of Ordinances as new "Titles", "Chapters", "Sub-Chapters", and "Sections".

To facilitate the relocation, and to retain the City's authority to regulate certain issues, new "Titles", "Chapters", "Sub-Chapters", and "Sections" were created as listed below.

- Title X, Impact Fees Chapter 103 was created for the relocation of Parks, Police, and Fire Impact Fees
- Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way was created and added to Title IX, General Regulations
- Chapter 204, Stormwater Management Utility was created and added to Title XX, Utilities Code
- Chapter 205, Water Shortage Emergency was created and added to Title XX, Utilities Code
- Chapter 102, Public Nudity was created and added to Title IX, General Regulations
- Provisions for emergency power and pumping equipment in residential areas was moved to Title XX, Utilities Code, Chapter 201, Sewer Use, Subchapter Private Lift Stations
- Section 74.25, Regulation of Vehicles In Residential Areas was created and added to Title VII, Traffic and Vehicles, Chapter 74, Stopping, Standing, and Parking, Subchapter Parking Regulation
- Chapter 75, Golf Carts was created and added to Title VII, Traffic and Vehicles

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· Subchapter 33, Fire Prevention and Protection; Buildings and Structures was created and added to Title III, Administration, Chapter 33, Fire Department

REQUESTING DEPARTMENTS:

City Attorney's Office

Growth Management

Public Works

City Manager's Office

FISCAL IMPACT:

None.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed ordinance.

ATTACHMENTS:

1. Ordinance

ORDINANCE 2024-39

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE IX, GENERAL REGULATIONS, BY CREATING CHAPTER 103, CLOSURE AND ABANDONMENT OF EASEMENTS AND DRAINAGE RIGHTS-OF-WAY; 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 IX, General Regulations, is hereby amended by creating Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way, which shall henceforth read as follows:

<>CHAPTER 103: CLOSURE AND ABANDONMENT OF EASEMENTS AND DRAINAGE RIGHTS-OF-WAY

Section103.01 POWER OF COUNCIL.

The City Council, upon its own motion or upon request of the state or federal government, or upon the written petition of any person or persons owning property that abuts any public, dedicated, or platted alley, easement, utility or drainage right-of-way located within the city limits may cause any alley, easement, utility or drainage right-of-way to be closed, abandoned, discontinued, vacated, altered, diverted, narrowed or amended.

Section103.02 NOTICE OF HEARING.

Before closing, abandoning, discontinuing, vacating, altering, diverting, narrowing, or amending any public, dedicated or platted alley, easement, utility or drainage right-of-way, or portions thereof, the City Council shall first hold a public hearing and ten (10) days' notice of the public hearing shall be given in writing to all persons whose property abuts upon the portion of the alley, easement, utility, or drainage right-of-way affected by the proposed closing, abandoning, discontinuing, vacating, altering, diverting, narrowing, or amendment. The notice shall be served by mailing a copy of such notice to each of such proposed owners, to be obtained from the records of the Property Appraiser or from such other sources as the City Clerk deems reliable. Proof of such mailing shall be made by

an affidavit of the City Clerk or Deputy Clerk, the proof to be filed with the Clerk; provided that failure to mail such notice or notices shall not invalidate any proceedings hereunder. Notice of the time and place of such hearing shall also be given by publication once in a newspaper of general circulation in the city and if there be no newspaper of general circulation published in the city, the City Council shall cause the notice to be published in a like manner in newspaper of general circulation published in the county; provided, that the publication shall be at least fourteen (14) days prior to the date of the hearing. The notice shall describe the alley, easement, utility, or drainage right-of-way to be closed, abandoned, discontinued, vacated, altered, diverted, narrowed, or amended and such service by publication shall be verified by the affidavit of the publisher of the newspaper and filed with the City Clerk.

Section 103.03 COUNCIL ACTION.

After such public hearing, the City Council may thereafter by ordinance declare such closing, abandonment, discontinuing, vacating, altering, diverting, narrowing, or amending of the alley, easement, utility, or drainage right-of-way, of which notice was previously given as hereinbefore provided for, and such ordinance of the City Council closing, abandoning, discontinuing, vacating, altering, diverting, narrowing, or amending any public, dedicated or platted alley, easement, utility or drainage right-of-way, or portions thereof shall, to the extent to which it is closed, abandoned, discontinued, vacated, altered, diverted, narrowed, or amended, operate as a revocation of the dedication or acceptance thereof by the City Council, but the right-of-way and easement therein of any lot owner shall not be impaired thereby. Any action of the City Council, as herein authorized, shall be evidenced by an ordinance duly adopted and entered upon the minutes of the City Council.

Section 103.04 EFFECT ON UTILITY EASEMENTS.

Such closing, abandonment, discontinuation, vacation, altering, diversion, narrowing, or amendment shall not in any manner affect utility equipment or services already installed in the alley, easement, utility, or drainage right-of-way, or portion thereof, or the right to thereafter maintain and operate the equipment and services in the alley, easement, utility, or drainage right-of-way, or portion thereof, during the term of the franchise under which the equipment and services were installed in the alley, easement, utility, or drainage right-of-way, or portion thereof. The requestor or petitioner shall notify the applicable utility and service companies of the proposed closing, abandonment, discontinuation, vacation, altering, diversion, narrowing, or amendment of the alley, easement, utility, or

drainage right-of-way, or portion thereof, and obtain a notarized letter from the utility and service companies stating the companies have no objections.

Section 103.05 APPLICATION; FEE.

Every application or petition filed with the city for closing, abandoning, discontinuing, vacating, altering, diverting, narrowing, or amending any alley, easement, utility, or drainage right-of-way, or portion thereof, shall be in writing and shall be accompanied by a filing fee as established by resolution, which fee shall be used for the expenses of legal notice and costs incidental in processing of the application or petition. This provision shall not apply when the city or one (1) of its agents is the requestor.<<"

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.