

TAB 6

**Stormwater Ordinance
Workshop November 2, 2009
Public Hearing November 16, 2009**

POINT PAPER

Problem: A change is needed to the stormwater ordinance to clarify who is responsible for payment of the stormwater fee.

Background: Section 29-207 currently reads “**A fee is hereby charged to all owners of developed property in the City which contribute any stormwater runoff to and/or which benefit from the City’s stormwater management system.**” The stormwater fee is billed to the “customer” along with all other utility fees on the month utility bill. Our utility ordinance defines “customer” as owner, lessee, or tenant. The intent of this language was needed because some utility customers are owners, while others are tenants of the owner.

Staff is proposing to change the language to read as follows: “**A fee is hereby charged to all customers, as defined in section 29-1, utilizing developed property in the City which contribute any stormwater runoff to and/or which benefit from the City’s stormwater management system.**” By changing this language, we will eliminate any confusion as to who is responsible for the fee and it will also provide consistency with other sections of the ordinance (i.e., section 29-1).

Staff is asking that this item be moved for to the 7:00pm agenda for advertising approval and scheduling of a public hearing.

Alternatives:

1. Motion to approve Ordinance 09-1001 for advertising and schedule a public hearing for November 16, 2009.
2. Do not approve Ordinance 09-1001

Recommendation: Alternative #1

Budget Impact: None Identified

ORDINANCE NO. 09-1001

AN ORDINANCE OF THE CITY OF PALMETTO AMENDING CHAPTER 29, ARTICLE VII, SECTION 29-207 OF THE CITY CODE OF ORDINANCES, PERTAINING TO THE CITY STORMWATER MANAGEMENT SYSTEM; PROVIDING CLARIFICATION OF FEE AND RESPONSIBILITY FOR STORMWATER MANAGEMENT SERVICE AND RELATED CHANGES; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, the City may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, Section 166.201, Florida Statutes, specifically, authorizes the City to raise by user charges or fees, the amounts of money necessary for the conduct of municipal government; and,

WHEREAS, Section 403.0893(1), Florida Statutes, authorizes the creation and funding of a stormwater utility; and,

WHEREAS, the City of Palmetto, hereinafter referred to as the "City," is responsible for the ownership, maintenance, and improvement of a stormwater management conveyance and impoundment system; and,

WHEREAS, after consideration of a rate study performed by the City's consulting engineer, the City enacted Ordinance No. 06-908 on December 18, 2006, implementing a stormwater rate structure for residential and non-residential properties within the City's boundaries; and was further amended by Ordinance 07-950 on October 15, 2007; and

WHEREAS, City staff finds it necessary to clarify the party responsible for the fee and other related provisions associated with stormwater management service; and

WHEREAS, the City Commission has considered the recommendations of City staff; and

WHEREAS, the City Commission has determined that said revisions and amendments to the party responsible for the fee associated with stormwater management service are in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PALMETTO, FLORIDA, as follows:

Section 1. Findings of Fact. The above "WHEREAS" clauses are adopted herein as findings of fact.

Section 2. Revision Language. The City of Palmetto Code of Ordinances is hereby amended by revising Chapter 29, Article VII as follows;

A. Amend the first sentence of Section 29-207 to read in its entirety as follows: A stormwater fee is hereby charged to all customers, as defined in Section

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29-1, utilizing developed property in the City which contribute any stormwater runoff to and/or which benefit from the City's stormwater management system.

B. Amend the three sentences of subsection (a) Section 29-207 to read in its entirety as follows:

"(a) Residential property. The stormwater fee for residential property is calculated based on the total impervious area of structures on the property, including building attachments. The fees are set forth in Table 1 below. Unless a contrary action is taken by the city commission, the stormwater vee for residential property shall be increased by two and five-tenths (2.5%) on October 1, 2010 and each October 1st thereafter."

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C. The title of Table 1 of subsection (a) of Section 29-207 shall be amended to read in its entirety as follows: "Table 1. Stormwater Fees for Residential Property per Month.

D. Amend the three sentences of subsection (b) of Section 29-207 to read in its entirety:

"(b) Nonresidential/commercial. The stormwater fee for nonresidential/commercial property is calculated based on the total impervious area of structures on the property, including building attachments. The stormwater fees for nonresidential/commercial property are set forth in Table 2 below. Unless a contrary action is taken by the city commission, the stormwater fee for

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nonresidential/commercial property shall be increased by two and five-tenth percent (2.5%) on October 1, 2010 and each October 1st thereafter."

E. The title of Table 2 of Section 29-207(b) is amended to read in its entirety as follows: "Table 2. Stormwater Fees for Nonresidential/Commercial Property per Month,

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F. Amend subsection (c) (4) of Section 29-207 to read in its entirety as follows: A one hundred (100) percent credit towards the operation and maintenance component of the stormwater fee will be provided if a customer can demonstrate that their property does not discharge any stormwater to the stormwater management system, including roadside ditches.

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G. Amend subsection (c) of Section 29-209 to read in its entirety as follows: Appeals or applications for adjustment made within (60) days of a customer's first receipt of stormwater service invoice for a given property are without charge.

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Section 3. Repeal of Inconsistent Ordinances. This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. Severability. If any provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

(3) The customer:

- a. Discharges industrial waste or wastewater that is in violation of its permit;
- b. Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater treatment systems;
- c. Fails to pay monthly bills for water and sanitary sewer services when due; or
- d. Repeats a discharge of prohibited wastes into public sewers.

(Ord. No. 553, Art. 8, 12-4-95)

Secs. 29-188—29-200. Reserved.

ARTICLE VII. STORMWATER MANAGEMENT*

Sec. 29-201. Stormwater management utility.

There is hereby created and established in the city a stormwater management utility in accordance with F.S. § 403.0893(1). This utility shall be responsible for the city's stormwater management system.

(Ord. No. 06-908, § 2, 12-18-06)

Sec. 29-202. Findings and determinations.

(a) The city is responsible for the ownership, operation, maintenance, regulation and improvement of a stormwater management conveyance and impoundment system and it is the public policy of the city to minimize degradation of water sources caused by the discharge of stormwater.

(b) As development within the city boundaries occurs, it will be necessary to construct improvements and extensions to the system to ensure that the collection and disposition of stormwater within the city is consistent with the protection of the public health, safety and welfare.

(c) The Federal Clean Water Act requires the city to meet the standards set forth by the Act which include the quality of stormwater and the receiving waters. To meet these standards within prescribed time frames, it will be necessary for the city to implement a stormwater management program on a consolidated basis and to construct appropriate facilities and infrastructure and to implement control measures.

(d) The costs of providing stormwater management utility services will be charged to customers whose property benefits from such services. The provision of stormwater management utility services is of special benefit and service to developed real property within the city.

***Editor's note**—Ord. No. 06-908, § 2, adopted December 18, 2006, amended article VII in its entirety to read as herein set out. Former article VII, §§ 29-201—29-209, pertained to the same subject matter, and derived from Ord. No. 643, §§ 1—9, adopted May 3, 1999; and Ord. No. 07-710, §§ 1—8, adopted August 6, 2001.

(e) The stormwater management fees provided for herein are necessary and proper for funding of stormwater management within the city.

(f) The provision of stormwater management utility services within the city is in the best interest of the public health, safety, and welfare.

(g) Management of the quality and quantity of stormwater is a valuable service supplied by the stormwater management utility to all developed real property within the management area and is a proper municipal public purpose.
(Ord. No. 06-908, § 2, 12-18-06)

Sec. 29-203. Definitions.

The following definitions are adopted for use in this article:

City shall mean the City of Palmetto, Florida, its elected officials and staff, as the context may require.

Developed property shall mean any parcel of land that has been modified by the action of any persons to reduce the land's natural ability to absorb and hold rainfall. These modifications include but are not limited to, clearing, grading, cementing, filling, or compacting the natural ground, or erecting or constructing buildings, parking lots, driveways, patios, decks, walkways, and athletic courts.

Equivalent residential unit (ERU) means the factor or basis established that is equal to the square footage of a residence divided by the mean square footage of all single-family residences.

Impervious area shall mean any part of any parcel of land that has an impermeable cover caused to be erected or constructed by the action of persons. Impervious area data provided by the office of the manatee county property appraiser shall be the primary basis for determining impervious area pursuant to this article. Updated data from said office will be reviewed by the city clerk annually each January. Where impervious surface area data is not available from said office for a given parcel, the city's department of public works shall determine the amount of impervious surface for that parcel.

Lot shall mean:

- (1) A parcel of land as originally subdivided or subsequently re-subdivided and properly recorded in the Public Records of Manatee County, Florida, as a lot within a subdivision, also known as a "lot of record";
- (2) Any number of contiguous lots of record, or portions thereof, under common ownership, not separated by a street, alley, public waterway or water body and upon which one (1) or more principle buildings for a single use are erected or to be erected; or
- (3) A tract of land that is not subdivided, is of sufficient size to meet minimum zoning requirements, and is improved or to be improved.

Mitigation credit shall mean a value which is applied to a property that has demonstrated mitigating factors thereon and which, when applied, proportionately lessens the fee required to be paid for that property.

Nonresidential/commercial properties means any property that is so classified by the property appraiser as such land use type, using the Florida Department of Revenue Land Use Codes (as it may be amended from time to time), including but not limited to, commercial, industrial, institutional, multifamily and mobile home park uses.

Operation and maintenance component shall mean the costs of operating and maintaining the stormwater utility system determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from gross revenues, depreciation, and any other items not requiring the expenditure of cash.

Receiving water shall mean those natural or manmade bodies of water into which stormwater is directed, either naturally or via manmade ditches, pipes, or open systems.

Residential means property zoned single-family or any individual parcel with a mobile home and all vacant residentially zoned property.

Stormwater management system shall mean and include all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to water bodies suitable to receive such stormwater, located either inside or outside the boundaries of the city. The stormwater management system includes but is not limited to all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities, whether public or private.
(Ord. No. 06-908, § 2, 12-18-06; Ord. No. 07-950, § 2, 10-15-07)

Sec. 29-204. General applicability.

This article, including the service charges imposed by it, shall apply to all developed properties within the city, including those properties classified as nonprofit or tax exempt for ad valorem tax purposes, unless otherwise provided by law. Undeveloped property that has not been altered from its natural state shall not be charged. Landscaped areas shall also be exempt except for any roads, parking, or structures associated therewith.
(Ord. No. 06-908, § 2, 12-18-06)

Sec. 29-205. Duties and powers.

(a) *Management.* The city shall employ and supervise a stormwater utility manager to administer the stormwater management utility system, and shall maintain accurate customer records, applying such fees and charges as may be established by this article.

(b) *Operation.* The stormwater management utility shall operate, manage, and regulate stormwater within the city. The utility shall have all powers necessary for the exercise of its responsibility, including, but not limited to, the following:

- (1) Promulgation of administrative rules and regulations for the operation and use of the stormwater management system, including provisions for enforcement of such rules and regulations.

- (2) Review and approval of all new development and permits within the city for compliance with stormwater management regulations included in present city ordinances or ordinances later adopted.
 - (3) Establishment of charges for connection and use of the stormwater management system.
 - (4) Evaluation of water quality concerns for discharges to the stormwater management system.
 - (5) Performance of all normal utility functions to include construction, operation, and maintenance of the city stormwater management system including, but not limited to, entering into contracts with private and public entities, and hiring staff, handling of purchase, lease, sale, or other rights to property for stormwater management system.
 - (6) Financial management of money collected for the purposes set forth herein, including but not limited to, budgeting on a multiyear basis, investing funds which are reserved for future use, setting aside reserves, borrowing money, issuing bonds, and pledging revenue for payment of loans or bonds, if otherwise authorized by law.
 - (7) All other powers authorized to the utility by law.
- (Ord. No. 06-908, § 2, 12-18-06)

Sec. 29-206. Authority for stormwater fee.

The stormwater management utility is empowered by this chapter to establish charges for the use of and discharge to the city's stormwater management system. Such charges shall be based on the cost of providing stormwater management utility services to all properties within the city. Such charges may be different for properties which receive different classes of service. The fees to be charged for stormwater management for each residential and nonresidential classification shall be set forth in this article, as may be amended from time to time.

(Ord. No. 06-908, § 2, 12-18-06)

Sec. 29-207. Fee for stormwater management service.

A service fee is hereby charged to all owners of developed property in the city which contribute any stormwater runoff to and/or which benefit from the city's stormwater management system.

- (a) *Residential property.* Residential property fees are calculated based on the total impervious area of structures on the property, including building attachments. The fees are as shown in Table 1 below. Unless contrary action is taken by the city commission, residential stormwater fees shall be increased by two and five-tenths (2.50) percent on October 1 of 2010, and each October 1 thereafter.

Table 1. Residential Fees.

<i>RESIDENTIAL RATE SCHEDULE</i>			
<i>Res. Sq. Ft.</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>
0—999	\$ 3.72	\$ 4.46	\$ 5.35
1,000—1,499	5.76	6.91	8.29
1,500—1,999	7.36	8.83	10.60
2,000—2,400	9.48	11.37	13.64
>2,500	14.12	16.94	20.33

(b) *Nonresidential/commercial.* Nonresidential/commercial property fees are based on the total impervious area of structures on the property, including building attachments. Nonresidential / commercial fees are as shown in Table 2 below. Unless contrary action is taken by the city commission, nonresidential/commercial stormwater fees shall be increased by two and five-tenths (2.50) percent on October 1 of 2010, and each October 1 thereafter.

Table 2. Nonresidential/Commercial Fees

<i>COMMERCIAL RATE SCHEDULE (per Sq. Ft. of Impervious Area)</i>			
	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>
Constructed/Developed Property	\$0.00354	\$0.00425	\$0.00510

(c) *Fee adjustment.* Stormwater fees shall be appropriately adjusted where it is demonstrated that application of the fee structure provided for in Table 1 or Table 2 herein would be inequitable due to circumstances including but not limited to on-site retention, variations in impervious area, and other features that decrease stormwater runoff from a given property.

Application for a fee adjustment shall be submitted on a form provided by the city. The city shall develop and apply specific guidelines for evaluating applications.

- (1) Mitigation credits will only be given for that component of the stormwater fee that is dedicated to operation and maintenance costs for the stormwater system.
- (2) A one hundred (100) percent credit towards the operation and maintenance component of the stormwater fee will be provided for a private system that is permitted by the Southwest Florida Water Management District and provides treatment/retention of a 24-hour, 25-year storm event.
- (3) A one hundred (100) percent credit will be provided towards the operation and maintenance component of the stormwater fee for private system that is NOT permitted by the Southwest Florida Water Management District, only if the system is certified by a Florida Professional Engineer as meeting the criteria as would be required for a Southwest Florida Water Management District permit for a 24-hour, 25-year storm event.
- (4) A one hundred (100) percent credit towards the operation and maintenance component of the stormwater fee will be provided if a property owner can demonstrate that their property does not discharge any stormwater to the Palmetto municipal system, including roadside ditches.

- (5) A partial mitigation credit towards the operation and maintenance component of the stormwater fee will be provided for a private system based on the percentage of the 24-hour, 25-year storm event treated/retained by the private system, as determined by city staff.
 - (6) No mitigation credit will be given to any private system that is maintained by the City of Palmetto.
 - (d) If any condition on which an adjustment is made pursuant to this section changes or a new condition occurs, the adjustment may, at the discretion of the city, be disallowed until such time that a new application for adjustment is made and reviewed.
 - (e) The city commission shall have the authority to adopt a resolution specifying a dollar amount that shall be deemed to be the maximum monthly fee any one (1) customer shall pay for stormwater utility services in connection with nonresidential property. Said resolution shall be kept on file with the city clerk and made available to the general public. The city commission may modify said amount by resolution duly passed, as may be necessary from time to time.
- (Ord. No. 06-908, § 2, 12-18-06; Ord. No. 07-950, § 3, 10-15-07)

Sec. 29-208. Readiness-to-serve charge.

The city may impose a nominal fee on developed property which has earned a one hundred (100) percent credit towards the operation and maintenance component of the stormwater fee in order to cover the costs associated with the stormwater utility being immediately available to serve the property.

(Ord. No. 06-908, § 2, 12-18-06)

Cross reference—Liens generally, Ch. 2, Art. III, Div. 3.

Sec. 29-209. Appeals and fee adjustments.

(a) All written appeals or applications for adjustment shall first be made to the director of public works. Appeal of a decision of the director of public works rendered pursuant to this section shall be heard by the city commission. Such appeal must be made in writing and submitted to the city clerk within ten (10) days of the date an applicant receives the director of public works' written decision. Such written decision shall be delivered to the applicant by hand or certified mail.

(b) Appeals or applications for adjustment made between January 1 and January 31 are without charge.

(c) Appeals or applications for adjustment made within sixty (60) days of an owner's first receipt of stormwater service invoice for a given property are without charge.

(d) A twenty-five dollar (\$25.00) administrative charge shall apply to all other appeals or applications for adjustment.

(Ord. No. 06-908, § 2, 12-18-06)