

ORDINANCE 06-908

AN ORDINANCE OF THE CITY OF PALMETTO AMENDING CHAPTER 29, ARTICLE VII, ESTABLISHING A STORMWATER UTILITY PURSUANT TO SECTION OF 403.0893(1), FLORIDA STATUTES; PROVIDING FOR ESTABLISHMENT OF A STORMWATER UTILITY; PROVIDING FINDINGS AND DETERMINATIONS; PROVIDING DUTIES AND POWERS; PROVIDING AUTHORITY FOR STORMWATER UTILITY FEES; PROVIDING FOR RESIDENTIAL AND NON-RESIDENTIAL FEES; PROVIDING FOR FEE ADJUSTMENTS; PROVIDING AUTHORITY FOR A READINESS TO SERVE FEE; PROVIDING APPEAL, FEE ADJUSTMENT AND BILLING PROCEDURES; PROVIDING FOR A STORMWATER MANAGEMENT UTILITY SYSTEM ENTERPRISE FUND; PROVIDING FOR LIMITED LIABILITY; PROVIDING FOR INSPECTIONS AND MAINTENANCE; 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, the City enacted Ordinance No. 643 providing for a stormwater management system; and,

WHEREAS, the City enacted such Ordinance after the City's consulting engineers had completed and the City had accepted a City-wide Stormwater Master Drainage Plan dated June, 1997 for the primary drainage basins; and,

WHEREAS, it continues to be necessary and essential 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; and,

WHEREAS, development within the City has increased exponentially in recent years; and,

WHEREAS, it is necessary and appropriate that stormwater utility fees be adjusted in keeping with changing economic factors; and,

WHEREAS, a professional consultant has performed a stormwater utility fees study; and,

WHEREAS, updates and amendments to the stormwater utility fees are consistent with the City's Comprehensive Plan; and,

WHEREAS, the City has found that the revisions and amendments to the stormwater utility fees set forth herein are consistent with said updates, and with the concept of reasonably apportioning the costs for such utility based on the customer's actual usage of the stormwater system, while taking into account the administrative costs and requirements of such system; and

WHEREAS, the City Commission has determined that the revisions and amendments to the stormwater utility system fees set forth below 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. Renumbering. The City of Palmetto's Code of Ordinances Chapter 29, Article VII, Section 29-210, is hereby renumbered and shall be re-codified as Section 29-230.

Section 2. Revision Language. The City of Palmetto's Code of Ordinances Chapter 29, Article VII, Sections 29-201 through 29-209, are hereby amended to read in their entirety as follows:

Sec. 29-201. Stormwater management utility.

There is hereby created and established in the City a stormwater management utility in accordance with Section 403.0893(1), Florida Statutes. This utility shall be responsible for the City's stormwater management system.

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.

(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.

Sec. 29-203. Definitions.

The following definitions are adopted for use in this Ordinance:

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. The determination of what constitutes impermeable cover shall be made by the Department of Public Works.

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 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.

Non-residential/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, multi-family 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 man made bodies of water into which stormwater is directed, either naturally or via man-made 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 man made 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.

Sec. 29-204. General Applicability.

This Ordinance, including the service charges imposed by it, shall apply to all developed properties within the City, including those properties classified as non-profit 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.

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 ordinance.

(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 multi-year 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.

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 non-residential classification shall be set forth in this ordinance, as may be amended from time to time.

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

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.

- (a) *Residential property.* Residential property fees are calculated based on the total amount of square footage of the footprint of structures on the property, including building attachments. The fees are as shown in Table 1 below.

Table 1. Residential Fees.

RESIDENTIAL RATE SCHEDULE	
Res. Sq. Ft.	Rate/Mo.
0 - 999	\$ 3.72
1,000 - 1499	\$ 5.76
1500 - 1999	\$ 7.36
2000 - 2499	\$ 9.48
>2500	\$ 14.12

- (b) *Non-residential/commercial*
Non-residential/commercial property fees are based on the acreage of a given lot. Non-residential / commercial fees are as shown in Table 2 below.

Table 2. Non-residential/Commercial Fees

COMMERCIAL RATE SCHEDULE	
Per Acre (or portion thereof)	Rate/Mo.
Constructed / Developed Property	\$ 33.60
Non-Constructed / Un-Developed Property	\$ -

- (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 100% 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 100% 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 100% 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 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.

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

The City may impose a nominal fee on developed property which has earned a 100% 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.

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 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) administrative charge shall apply to all other appeals or applications for adjustment.

Sec. 29-210. Budget.

The Director of Public Works shall establish a budget for the stormwater management utility each year by resolution. Stormwater management fees shall be established and collected in accordance with the budget.

Sec. 29-211. Billing.

Stormwater management utility fees as established herein may be included as a line item on the existing City utility bill. Billing procedures, penalties, enforcement mechanisms and remedies, shall be the same as those set forth in Section 29-37 through 29-43 herein.

Sec. 29-212. Stormwater Management Utility System Enterprise Fund.

There is hereby created the Stormwater Management Utility System Enterprise Fund, a permanent fund of the City, into which shall be paid all of the monies derived from the fees imposed by this Ordinance and the stormwater management utility. Collected money is to be used exclusively for stormwater management purposes, and shall be subject to the budget and accounting code provisions of the City. The City Clerk is authorized and directed, pursuant to the City budget, to make disbursements from this fund upon written request of the Director of Public Works, or his designee, and approval by City Commission, for purposes including, but not limited to, administration, planning and engineering; capital improvements and land acquisitions; operation and maintenance; and renewal capacity.

Sec. 29-213. City maintenance and limited liability.

The City shall make a reasonable effort to inspect and keep its stormwater utility system in good repair. By using the

utility system, customers of the utility consent to hold the City harmless against any liability for any damage caused by the system as is beyond the control of routine maintenance or due to circumstances not previously reported to the utility.

Sec. 29-214. Inspections and maintenance.

(a) In order to ascertain and ensure compliance with the provisions of this article and all regulations relating to stormwater services, the City shall have the right to inspect and secure from problems all parts of the stormwater management system.

(b) By use of the stormwater utility system, the customer of the utility shall be deemed to have consented to the entry by the City on the property using such system for the purpose of conducting inspections and other services required by this article and waives the right to receive further notice from the City for such actions pursuant to this article.

(c) The denial of access to any authorized agent or employee of the City to a property using the stormwater utility system for the purposes of conducting an inspection or servicing such property pursuant to this article shall result in a charge to the customer for any costs related to prohibiting the City from inspecting or servicing the property, including reasonable attorneys fees.

Secs. 29-215 – 29-229 Reserved.

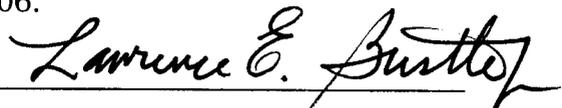
Section 3. Severability. If any provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

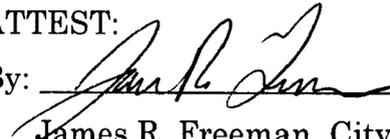
Section 4. Repeal of Ordinance. This Ordinance hereby repeals all ordinances and parts of ordinances in conflict herewith to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall take effect
January 1, 2007.

FIRST READING	December 4, 2006
PUBLICATION DATE	December 8, 2006
SECOND READING	December 18, 2006

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this 18th day of December, 2006.

By: 
Lawrence E. Bustle, Jr., Mayor

ATTEST:
By: 
James R. Freeman, City Clerk