

CITY OF BRADENTON BEACH, FLORIDA, ORDINANCE NO. 04-373
“Stormwater Management Fee”

AN ORDINANCE OF THE CITY OF BRADENTON BEACH, FLORIDA, PROVIDING FOR THE CREATION IN CHAPTER 62, UTILITIES, IN GENERAL, ARTICLE 1, SECTIONS 1-12; CHAPTER 62, ARTICLE I, SECTION 62-1 PROVIDING FOR AUTHORITY; PROVIDING FOR SECTION 62-2 FINDINGS AND DETERMINATION; PROVIDING FOR SECTION 62-3 DEFINITIONS; PROVIDING FOR SECTION 62-4 ESTABLISHMENT OF STORMWATER UTILITY; PROVIDING FOR SECTION 62-5 FUNDING FOR OPERATING AND CAPITAL BUDGET; PROVIDING FOR SECTION 62- 6 IMPOSITION OF UTILITY FEE AND RATE RESOLUTION; PROVIDING FOR SECTION 62-7 BILLING AND PAYMENT PENALTIES; PROVIDING FOR SECTION 62-8 ADJUSTMENT OF FEES, MINIMUM FEE, CREDIT, APPEAL PROCESS; PROVIDING FOR SECTION 62-9 CAPITAL CONTRIBUTIONS; PROVIDING FOR SECTION 62-10 PROGRAM RESPONSIBILITY; PROVIDING FOR SECTION 62-11 STORMWATER UTILITY FUNDS; PROVIDING FOR SECTION 62-12 VIOLATIONS AND ENFORCEMENT; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; 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; and

WHEREAS, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” implements the applicable provisions of the ordinances in furtherance thereof; and

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the City of Bradenton Beach, to implement stormwater management programs within prescribed time frames; and

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq. The United States Environmental Protection Agency has published rules for stormwater discharge permits; and

WHEREAS, the City of Bradenton Beach has been issued a stormwater discharge permit, as co-permittee, with Manatee County (FLS 000036) by the United States Environmental Protection Agency that requires the City to control pollution caused by stormwater runoff and requires that annually adequate funding of the stormwater management program be provided; and

WHEREAS, the City of Bradenton Beach is responsible for the maintenance and expansion of the existing stormwater system which has been developed over a number of years for the purpose of collecting and disposing of stormwater; and

WHEREAS, as a coastal community, bounded on the west by the Gulf of Mexico, the east by waters of Sarasota Bay, in an identified evacuation zone, we recognize that the current

stormwater system is antiquated and inadequate to control and manage a stormwater runoff within the incorporated limits; and

WHEREAS, the quality of discharge must be monitored and the existing system design and construction requires corrective structures be included to detain discharge, as included in the City's Management Plan, prepared by Southwest Florida Water Management District (1996); and

WHEREAS, all improved real property within the City receives a specific and direct benefit from stormwater management in and by the City; and

WHEREAS, the City desires to provide necessary and essential improvements and extensions to the existing stormwater system to ensure the collection and disposal of stormwater within the incorporated City limits to protect the health, safety and welfare of the citizens of the City of Bradenton Beach and water quality in the surrounding waters of Sarasota Bay and Anna Maria Sound; and

WHEREAS, the Florida Stormwater Association Utility Fee Study and Model Ordinance provides data and analysis, technical research and support for cities and municipalities and assists cities with limited resources, such as the City of Bradenton Beach, in the creation and establishment of stormwater utility fees and credits; and

WHEREAS, the City Commission has determined that it is in the best interest of the City and the citizens, and in order to comply with and further the City's Department of Environmental Protection permit for National Pollution Discharge Elimination System, that this Ordinance be adopted to protect the public health, safety and welfare from adverse effects of non-managed stormwater, including flooding and the potential loss of life or property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, as follows:

Section 1. Findings of Fact. The WHEREAS clauses set forth above are adopted herein as findings.

Section 2. The City of Bradenton Beach Code of Ordinances Chapter 62, Utilities, is hereby amended to create Article I, Section 62-1 thru 62-15, hereby created to read as follows:

Chapter 62, Utilities

Article I. Stormwater Management Utility.

Section 62-1 Authority:

The City of Bradenton Beach is authorized by the Florida Constitution and the provisions of Chapter 166 and Section 403.0893, Florida Statutes, to construct, reconstruct, improve, and extend stormwater utility systems and to issue revenue bonds and other debts, if needed, to finance, in whole or part, the cost of such system and to establish just and equitable rates, fees,

and charges for the services and facilities provided by the system.

Section 62-2 Findings and Determinations:

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

1. The elements of the system which provide for the collection, disposal, and treatment of stormwater benefit and provide services to all property within the City limits, including property not presently served by the storm elements of the system.
2. The costs of operating and maintaining the City Stormwater Management System and financing necessary repairs, replacement, improvements and extension thereof, should, to the extent practical, be allocated in relationship to the benefits enjoyed and services received therefrom.
3. Furthermore, the benefits enjoyed and services received are directly and indirectly related to the contribution of stormwater runoff from all property within the City limits, which, in turn, is related to the amount of impervious areas within the property.
4. It is the desire and intent of the City Commission, in adopting this Ordinance and creating the Stormwater Utility provided for herein, that the Utility Fees established by Resolution, after the date of adoption, be reviewed annually, during the regular budget process.

Section 62-3 Definitions:

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them by this section, except where the context clearly indicates a different meaning: The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use.

“Area of operation” means the corporate limits of the City.

“Availability Charge” means a charge to a developer or individual resident to provide and make available the Stormwater Management System including the Debt Service and any cost for the extension, maintenance or replacement of a Stormwater Management System facility that was previously constructed, but which serves such developer or individual resident.

“Bonds” means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Costs of Construction.

“City” means the City of Bradenton Beach.

“Costs of Construction” means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of acquisition of all property, real or personal, and all interests in connection therewith including all rights-of way and easements therefore, physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith; architectural, engineering, legal and other professional services; premiums incurred for insurance and sureties taken out and maintained during construction, to the extent not paid for by a contractor for construction; expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction; principal and interest of any and all Bonds required or obtained for the stormwater management system or project that is part of the system; and any miscellaneous expenses incidental thereto.

“Debt Service” means with respect to any particular Fiscal Year and any particular Series of Bonds, an amount equal to the sum of all interest payable on such Bonds during such Fiscal Year, plus any principal installments of such Bonds during such Fiscal Year.

“Developed Property” means real property which has been altered from its “natural” state by the addition of any improvements, such as a building, structure, or impervious surface. For new construction, property shall be considered “developed” and required to pay a stormwater management fee pursuant to this Ordinance:

- 1. upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate of occupancy is issued; or**
- 2. if construction of the improvements has begun, but is halted for a period of three (3) months, the property shall pay the fee for stormwater management.**

“Director” means the Director of Public Works.

“Dwelling Unit” means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. For purposes of this Stormwater Ordinance, a hotel or motel unit is assessed an Equivalent Residential Unit (ERU).

“Equivalent Residential Unit or ERU” means the assigned unit of square footage of Impervious Area of residential Developed Property per Dwelling Unit located within the City as established in Exhibit (A.) hereto or by City Resolution.

“ERU Rate” means a Utility Fee charged on each ERU, as established in Exhibit (A.) hereto.

“Extension and Replacement” means the costs of extensions, additions, and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for the Stormwater System or land acquisition for the Stormwater System and any related costs thereto, or paying extraordinary maintenance and repair, including the Costs of Construction or any other expenses which are not costs

of Operation and Maintenance or Debt Service.

“Fee-in-lieu-of Charge” means a charge to a developer or individual resident to recover the Costs of Construction and Debt Service on a new Stormwater Management System facility which serves such developer or individual resident.

“Fiscal Year” means a twelve month period commencing on the first day of October of any year, or such other twelve month period adopted as the Fiscal Year of the Utility.

“Impervious Area” means roofed and paved areas and any man-made surface which restricts the percolation of rain water into the soil, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

“Non-residential Utility Customer” means a Stormwater Utility Customer that is not classified by the City as residential.

“Operating and Maintenance” means the current expenses, paid or accrued, of operation, maintenance and current repair of the System, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing insurance premiums, administrative expenses, labor, executive compensation, the cost of materials, equipment and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

“Residential Utility Customer” means a Stormwater Utility Customer that is classified by the City as a single family residence, attached residence or single mobile home on a single lot. For the purposes of this Stormwater Ordinance, duplexes and tri-plexes are assessed an ERU for each dwelling unit.

“Revenues” mean all rates, fees, assessments, rentals or other charges or other income received by the Utility, in connection with the management and operation of the System, including amounts received from the investment or deposit of monies in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practices.

“Stormwater Management System” or **“System”** means the existing stormwater management of the City and all improvements thereto which by this Ordinance are the responsibility of the Utility, to be operated as an enterprise fund to, among other things, manage or conserve stormwater, control discharges necessitated by rainfall events, incorporate methods to manage, collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such stormwater system, including pipes, swales, conduits, retention ponds, canals and surface waters which accept drainage and stormwater discharges or sediment carried by stormwater

discharges and the management and maintenance of all aspects of such systems.

“Stormwater Utility System” or “Utility” as used in this Ordinance means the Utility created by this Ordinance to operate, maintain and improve the Stormwater Utility System.

“Stormwater Utility Customer” means the City utility customer to whom the stormwater utility fee is assigned and billed.

“Utility Fee” means a utility fee, authorized by Florida law and this Ordinance, which is established to fund all or a portion of the Stormwater Management Operating Budget and the Stormwater Capital Improvement Budget and the Costs of Construction.

Section 62-4. Establishment of Stormwater Utility

A. The Stormwater Utility is hereby established by the Commission to provide for the general welfare of the City and its residents.

B. The Director of Public Works shall be the chief staff member of the Utility.

Section 62-5. Operating and Capital Improvement Project Budget

The City shall adopt an Operating Budget not later than the first day of each Fiscal Year. The Operating Budget shall set forth for such Fiscal Year, the estimated Revenues and the estimated costs for Operation and Maintenance, Extension and Replacement and Debt Service.

Section 62-6. Imposition of Utility Fees and Rate Schedule

The Commission hereby authorizes the imposition of Utility fees on Developed Property within the City, as set forth in Exhibit “A”, attached hereto and incorporated herein.

A. Stormwater Utility Customer Classification, for purposes of this Stormwater Ordinance determining the Utility Fee, all Stormwater Utility Customers, within the Area of Operation shall be classified in one of the following classes based on the actual developed property, i.e., the actual development that has taken place on the property (regardless of the underlying zoning classification or potential uses not yet developed):

1. Single Family Residential Utility Customer,
2. Mobile Home Residential Utility Customer,
3. Multi-Unit Residential Utility Customer, or
4. Non Residential Utility Customer.

B. Computation of Utility Fee for Residential Utility Customer Classifications shall be equal to the Rates set forth in Exhibit “A” hereto.

C. Computation of Utility Fee for Non-Residential Utility Customer shall be the ERU Rate multiplied by the numerical factor obtained by dividing the total Impervious Area of the lot or parcel of a Non-Residential Utility Customer by one ERU. The minimum Utility fee for any Non-Residential Utility Customer shall be equal to one ERU Rate.

D. Exemptions for a Stormwater Utility Customer from the imposition of Utility Fee. If the Stormwater Utility Customer demonstrates to the satisfaction of the Public Works Director that the Developed Property subject to the Utility Fee does not discharge any stormwater to the Stormwater Management System or surrounding surface waters during the 100-year, 24 hour design storm event, as defined by the Southwest Florida Water Management District, a written exemption making such findings may be granted by the Public Works Director. The decision of the Public Works Director may be appealed to the City Commission by filing a letter requesting an appeal and setting forth the grounds for the appeal and any attached exhibits with the City Clerk within thirty (30) calendar days.

Section 62-7. Billing and Payment, Penalties.

The Utility Fee will be billed to the owner, tenant of each lot or parcel subject to the fee and to whom other city utility services are billed. All Stormwater Utility Customers, except those exempted by Section 62-6(D), shall be rendered bills or statements for the use of these services and Stormwater Management System facilities, through the same billing system used for the Sanitation Services billing by City Clerk’s Department. The mailing dates and due dates for the Stormwater Utility Bill shall be established by Resolution of the City Commission and may include the entire annual fee or a pro rata portion of the annual fee corresponding to an individual billing cycle. If the bill is not paid when due, enforcement and penalties can be imposed as set forth in the City of Bradenton Beach Code or as otherwise provided by law.

Section 62-8. Adjustment of Fees, Fee Credits, Minimum Fee and Appeal.

A. Adjustment of Fees may be submitted by request for adjustment of the Utility Fee to the Director, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. The following procedures shall apply to all requests for adjustment of the “Stormwater Fee”

1. Any customer who believes a Utility Fee to be incorrect may, subject to the limitations set forth in this article, submit an adjustment request to the Director.
2. Adjustment requests for the Utility Fees paid by a customer shall be in writing and shall set forth, in detail, the grounds upon which relief is sought.

3. Adjustment requests made during the first calendar year in which the Utility Fee is imposed will be reviewed by the Director, within a two (2) month period from the date of filing of the adjustment request. Adjustments resulting from such request shall be retroactive to the beginning of billings, but retroactive adjustment shall not exceed on (1) year and will be applied against future fee collections.

4. The customer requesting the adjustment may be required, at the customer's own cost, to provide supplemental information to the Director including, but not limited to, survey data approved by a registered professional land surveyor (RPLS) and engineering reports approved by a professional engineer, (PE). Failure to provide such information may result in the denial of the adjustment request.

5. Adjustments to the Utility Fee will be made upon the granting of the adjustment request, in writing, by the Director. Denials of adjustment requests shall be made, in writing, by the Director and copied to the City Clerk and City Commission. A denial may be appealed to the City Commission by filing a letter requesting an appeal and setting forth the grounds for the appeal and any attached exhibits with the City Clerk within 30 calendar days of the date of the written denial.

B. Credits for Onsite Stormwater Facilities. Credits for Onsite Stormwater Facilities may apply to some developed properties subject to the Stormwater Utility Fee if they have constructed and currently operate and maintain stormwater management facilities which can reduce stormwater runoff impacts from the subject property during the equivalent of the 100 year storm event, or that wish to mitigate the Stormwater Utility Fee by constricting and maintaining a stormwater management facility that will qualify for a fee exemption or credit. Those electing to avoid the stormwater Utility Fee must qualify for an exemption, pursuant to Subsection 62-6 D., herein above. Stormwater utility customers with subject property meeting the criteria provided in this section may receive an Onsite Stormwater Facility Credit on the Stormwater Utility Fee for the subject property based on the following criteria.

1. The subject stormwater facilities have been permitted by the SWFWMD or approved by the Director, as provided in Subsection 62-8 A 4.

2. The developer demonstrates that the subject stormwater facilities have been inspected during the year prior and a signed affidavit provided that the facilities have been operated properly and maintained according to standard practices and as required by FDEP or SWFWMD permits, and meet the Water Quality Standards of treated Stormwater set forth in the Florida Administrative Code and the City Code.

C. Minimal Fee will consider the credits to the Utility Fee assigned to a Non-Residential Customer after adjustment or application of the Onsite Credit which is equivalent to the rate of one (1) ERU, per site plan.

D. Appeal of Denial the customer who initially requested the adjustment may,

within thirty (30) days of the receipt of a written denial, appeal to the City Commission for review of the denial by filing a letter requesting an appeal with the City Clerk. The City Commission's determination on the review shall be in writing and set forth, in detail, the reasons for the decision. The determination will apply all of the standards and review criteria contained in this section.

Section 62-9 Capital Contribution requests in-lieu-of-payment, where the City has constructed or plans to construct stormwater facilities, may be considered at a public hearing and the City may accept a capital contribution from the developer and allow certain adjustments to development plans to incorporate the Capital Improvements as part of the development plan if:

A. The City improvement that is proposed by a developer will enhance detention of stormwater runoff, above the required 25 Year Storm event..

B. There is a positive environmental or economic cost-benefit analysis over the short-term and long-term service, including construction, maintenance and operating costs over the expected life of the improvement.

The Capital Contribution shall take the form of "Payment-in-Lieu-of-Fee" or "Payment-in-Lieu-of-Availability Charges." Each such request will be analyzed by the City and require and a specific written decision shall be rendered by the City Commission on the request.

Section 62-10 Program Responsibility will be the duty of the Director of the Department of Public Works, who will administer the Stormwater Utility. The Department shall keep an accurate record of all persons using and paying fees for the services and facilities of the Stormwater Management System of the City and shall be make any required adjustments or changes pursuant to the provisions of this Article in accordance with the rates and charges established by Ordinance or Resolution.

Section 62-11 Stormwater Utility Funds shall cause to be established, a Stormwater Utility Fund for the deposit of all fees and charges collected by the Stormwater Utility Fund. These funds shall be for the exclusive use of the City's Stormwater Utility, including but not limited to the following:

A. Administrative Costs associated with the management of the Stormwater Utility.

B. Planning and Engineering Costs for the Stormwater Utility.

C. Operation and Maintenance of all aspects of the System, including Extension, Replacement Maintenance and Cost of Construction, and System Capital Improvements Plan / Program (CIP)

D. Funding of pollution abatement devices for the System.

E. Debt Service financing.

Section 62-12 Violations and Enforcement.

A. Violations. The terms of this Ordinance may be enforced by the methods and penalties to be imposed for the violation of the Code of Ordinances of the City of Bradenton Beach including, but not limited to, code enforcement or the issuance of a citation, a summons, or a notice to appear in county court; a civil action for injunctive relief or damages, including any and all attorney's fees and costs of enforcement of any action filed in a court of competent jurisdiction.

B. Penalties. Unless otherwise specifically authorized for by a law, a person convicted of violating a City Ordinance, including this Ordinance, by a court of competent jurisdiction may be sentenced to pay a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a detention facility as authorized by law.

Section 3. Repeal of Ordinances in Conflict. Any Ordinance in conflict with the provisions of this Ordinance is repealed to the extent that it conflicts with this Ordinance. In the event of any conflict this Stormwater Ordinance shall prevail in any matter involving stormwater or stormwater utility fees.

Section 4. Severability. In the event that any section, provision or portion of this Ordinance be declared by a Court of competent jurisdiction to be invalid, such declaration shall not affect the validity of the remaining portions hereof.

Section 5. Effective Date. This Ordinance shall take effect on October 1, 2004, or as provided for by law.

PASSED AND DULY ADOPTED in regular session, with a quorum present and voting, this _____ day of _____, 2004.

First Reading: _____ 2004

Second Reading: _____ 2004

Attest: Nora Idso
City Clerk

CITY OF BRADENTON BEACH, FLORIDA
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
BRADENTON BEACH

By: _____
City Clerk

By: _____
John R. Chappie, Mayor

