

ORDINANCE NO. 15 - 26

**AN ORDINANCE AMENDING ARTICLE V., CHAPTER 110 SECTION 361, SECTION 362, AND SECTION 377 OF THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA RELATING TO STORMWATER UTILITY PROVIDING FOR THE CLARIFICATION OF THE STORMWATER MANAGEMENT PROGRAM DEFINITIONS; PROVIDING FOR THE INCLUSION OF THE INDIAN RIVER LAGOON COUNCIL IN THE STORMWATER MANAGEMENT PROGRAM; PROVIDING FOR THE ABILITY TO SEEK BENEFICIAL INTERLOCAL AGREEMENTS; PROVIDING THAT EXPENSES WHICH AFFECT TWO OR MORE STORMWATER MANAGEMENT SYSTEM BENEFIT AREAS, THE COUNTY, AND STORMWATER MANAGEMENT PROGRAMS SHALL BE TAKEN FROM EACH STORMWATER MANAGEMENT SYSTEM BENEFIT AREA FUND PROPORTIONATELY; UPDATING OUTDATED LANGUAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING A CONFLICT PROVISION; PROVIDING FOR AREA ENCOMPASSED; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Brevard County recognizes the need to amend the current ordinance on Stormwater Utility in Brevard County, Florida; and

**WHEREAS**, the Board of County Commissioners of Brevard County recognizes the need to update the language of the current ordinance on Stormwater Utility to take into account the changes in the pertinent departments on both the state and county level; and

**WHEREAS**, the Indian River Lagoon National Estuary has been prioritized as a waterbody of significant national and statewide significance pursuant to Florida Statute Section 373.453; and

**WHEREAS**, the Board of County Commissioners seeks to promote the preservation of the Indian River Lagoon National Estuary by working with other state agencies and local governments; and

**WHEREAS**, the Board of County Commissioners can help further the goal of preserving the Indian River Lagoon National Estuary through budgetary contributions as a member of the Indian River Lagoon Council; and

**WHEREAS**, the Board of County Commissioners recognizes that stormwater management is a key consideration for the health of the Indian River Lagoon and contributions to collaborative efforts such as the Indian River Lagoon Council will lead to improved opportunities within Brevard County's individual stormwater management system benefit areas and across multiple county benefit areas; and

**WHEREAS**, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of citizens of Brevard County, Florida.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, as follows:

**Section 1. Amendments to Article V., Chapter 110, Section 361, Section 362, and Section 377.**

Article V, Chapter 110, Section 361, Section 362, and Section 377 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

**Sec. 110-361. – Definitions.**

For the purposes of this article, the following terms shall have the meaning set forth in this section. When consistent with the context, words used in the present tense shall include the future, words in the future tense shall include the present, words in the plural shall include the

singular, words in the singular shall include the plural, words in the male gender shall include the female gender, and the word "shall" is always mandatory and not merely directive.

*Board* shall mean the Board of county commissioners of Brevard County.

*Director* shall mean the director of the ~~surface water improvement division~~ Natural Resources Management Department charged with oversight of the stormwater utility of the county, or successor in title.

*Division* shall mean the division of the Natural Resources Management Department charged with oversight of the stormwater utility ~~surface water improvement division of the county~~, or its successor in function.

*Equivalent residential unit (ERU)* shall be defined to serve as a reference from which an equitable distribution of the cost of services and facilities can be made among all properties in the county through a storm water management service charge rate methodology. The equivalent residential unit in the county for the purpose of service charge ratemaking has been determined through engineering analysis to be a gross area of 2,500 square feet of effective impervious area.

*Impervious areas shall* mean surfaces which have been compacted or covered with a layer of material which is highly resistant to infiltration by water, such as roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas and athletic areas. It shall also include semi-impervious areas, such as compacted clay.

*Lot* shall mean a parcel of land shown on a recorded plat or on the county property appraiser's maps, or any piece of land described by deed and recorded in the public records of the county.

*Person* shall mean any and all persons, natural or artificial, and includes any individual, firm, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

*Property owner* shall mean the person in whom is vested the fee ownership, dominion, or title of real property. This term may also include a tenant, if chargeable under tenant's lease for the maintenance of the subject real property, and any agent of the owner or tenant, including the developer.

*Stormwater management program* shall mean any effort taken in compliance with this article to control, manage, or mitigate the adverse impacts of stormwater, including but not limited to the establishment and funding of stormwater management system benefit areas as well as other entities, agencies, and organizations whose interests are deemed by the Board to align with the purpose of this article.

## **Sec. 110-362. – Findings and Purpose.**

- (a) The Board of county commissioners finds that uncontrolled drainage and development of land has a significant adverse impact upon the health, safety and welfare of the county community. Further, the board finds more specifically as follows:
- 1) Storm water runoff is capable of carrying pollutants into receiving bodies, thereby degrading water quality.
  - 2) The increase in nutrients, such as phosphorous and nitrogen, accelerates eutrophication of receiving water bodies, thereby adversely affecting flora and fauna.
  - 3) Improperly channeling water increases the velocity of stormwater runoff, thereby increasing erosion and sedimentation.
  - 4) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion.
  - 5) Siltation of water bodies resulting from increased erosion decreases the capacity of the water bodies to hold and transport water, interferes with navigation, and harms flora and fauna.
  - 6) Impervious surfaces increase the volume and rate of stormwater runoff, and allow less water to percolate into the soil, thereby decreasing groundwater recharge.
  - 7) Improperly managed stormwater runoff may increase the incidents of flooding and the level of floods which occur, thereby endangering property and human life.
  - 8) Improperly managed stormwater runoff may interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity.
  - 9) Substantial economic losses may result from such adverse impacts upon the waters of the county ecosystem.
  - 10) Sound stormwater utility management practices result in the avoidance of future problems concerning the development of land and the maintenance of the quality of the county environment.

- (b) The purpose of this article is to protect, maintain, and enhance both the immediate and the long term health, safety and general welfare of the citizens, residents, and inhabitants of the county. In order to effectuate this stated purpose, this article has the following objectives:

- 1) To establish a stormwater management program in the county which is mutually compatible with those developed by the ~~state department of environmental regulation~~ Florida Department of Environmental Protection, the St. Johns River Water Management District, the Indian River Lagoon Council, and other local governmental entities, as well as other agencies, entities, or organizations found by the Board to have interests aligning with this article.
- 2) To develop a countywide stormwater management program, in a graduated fashion, upon a commission district by commission district basis, within the unincorporated areas, to be responsible for the construction, operation, and maintenance of stormwater devices; for stormwater system planning; for

- review of development plans for compliance with stormwater management codes; and for lake, and river, and lagoon water quality management.
- 3) To create one or more stormwater management system benefit areas and adopt stormwater utility fees or assessments sufficient to plan, construct, operate, and maintain stormwater management programs throughout the county.
  - 4) To establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain the stormwater management systems throughout the county.
  - 5) To encourage productive and enjoyable harmony between humanity and nature.
  - 6) To protect, restore and maintain the chemical, physical and biological integrity of community waters.
  - 7) To prevent individuals, business organizations and governments from causing harm to the community by activities which adversely affect water resources.
  - 8) To encourage the construction of drainage systems which aesthetically and functionally approximate natural systems.
  - 9) To encourage the use and protection of natural systems ~~and the use of such natural systems~~ in ways which do not impair their beneficial functioning.
  - 10) To encourage the use of drainage systems which minimize the consumption of electrical energy or petroleum fuels in order to move water, remove pollutants, and maintain the systems.
  - 11) To minimize the transport of pollutants to community waters.
  - 12) To maintain or restore groundwater levels.
  - 13) To protect, maintain, or to restore natural variability of salinity levels in estuarine areas.
  - 14) To minimize erosion and sedimentation.
  - 15) To prevent damage to wetlands.
  - 16) To prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial.
  - 17) To protect, restore and maintain the habitat of fish and wildlife.
  - 18) To ensure the attainment of these objectives by requiring the approval and implementation of a stormwater management program for all activities which may have an adverse impact upon community waters.
  - 19) To seek interlocal agreements with various counties, municipalities, special districts, universities, and non-for-profits, as well as other persons as defined by this article, to ensure cooperative efforts toward joint development, continuous improvement, and implementation of compatible and efficient stormwater management programs.

**Sec. 110-377. – Storm water utility fund.**

- (a) There shall be established a storm water utility fund for the deposit of all fees collected pursuant to this article, for each designated storm water management system benefit area.

- (b) Each storm water utility fund for the applicable storm water management system benefit area shall be used exclusively to provide services and facilities related to the storm water management program. The funds shall only be utilized for the following expenditures, and shall be held as trust funds of the county:
- (1) Operation or maintenance of storm water management facilities within the jurisdiction of the county.
  - (2) Costs for the planning, evaluation, design, construction, and management of the storm water management program.
  - (3) Administrative costs related to the management of the storm water management program.
  - (4) Management services, such as permit review and planning and development review related to the storm water management program.
  - (5) Debt service financing of capital improvements related to the storm water management program.
- (c) Expenses that shall apply to two or more stormwater management system benefit areas, county-wide, or to stormwater management programs shall be distributed to or taken from each stormwater management system benefit area fund proportionately.

**Section 2.**     **Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**Section 3.**     **Inclusion in Code.** It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

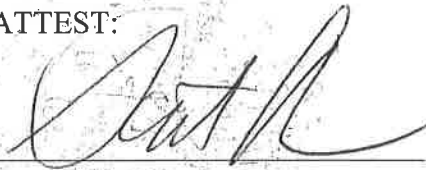
**Section 4.**     **Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

**Section 5.**     **Area Encompassed.** This ordinance shall take effect only in the unincorporated areas of Brevard County, Florida.


**Section 6.**     **Effective Date.** This ordinance shall take effect upon filing a copy of this ordinance with the Department of State by the Clerk of the Board of Commissioners.

**ENACTED** this   1   day of September, 2015

ATTEST:

  
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Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

  
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Robin Fisher, Chairman

As approved by the Board on , September 1, 2015