

Meeting Date
September 1, 2015



AGENDA	
Section	Public Hearing
Item No.	IV.E

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Public Hearing RE: Stormwater Utility Ordinance Amendment
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DEPT/OFFICE:	Natural Resources Management Department (NRM)
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Requested Action:

It is requested that the Board of County Commissioners approve amendment of Article V., Chapter 110, Section 361, Section 362, and Section 377 of the Brevard County Code of Ordinances, Stormwater Utility, to update the language and promote collaborative opportunities, such as the Indian River Lagoon Council, to implement the County's stormwater management program.

Summary Explanation & Background:

The Stormwater Utility was established in 1990 as a dedicated and restricted source of revenue to provide flood protection and water quality improvements. The enabling ordinance established five stormwater management system benefit areas matching the unincorporated areas of each of the County's five Commission Districts, as amended from time to time. Five stormwater utility funds were established for the deposit of fees collected for each benefit area. Funds collected in a benefit area are used exclusively to provide services to that benefit area.

To date, the Stormwater Utility has constructed over 450 projects. However, flooding continues to be a problem in multiple areas of the County and water quality continues to be a major concern for the St Johns River and the Indian River Lagoon. Inadequate water quality harms seagrass beds and negatively impacts fisheries, property values, recreation, wildlife, and the overall economic vitality of the County. Major capital investments and funding partnerships are needed.

On August 4, 2015, the Board reaffirmed its commitment to a new collaborative effort, the Indian River Lagoon Council, to lead to improved opportunities county-wide to promote the preservation of the Indian River Lagoon National Estuary by working with other state agencies and local governments. Budgetary contributions as a member of the Indian River Lagoon Council are intended to benefit all of Brevard County's individual stormwater management system benefit areas proportionately. Similarly, other collaborative efforts have the potential to be financially advantageous to multiple stormwater management system benefit areas. The attached ordinance amendments are provided to allow multiple benefit area funds to proportionately share the costs of stormwater management program efforts that assist multiple benefit areas.

The 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, clarifies the Stormwater Management Program definitions; provides for the inclusion of the Indian River Lagoon Council in the Stormwater Management Program; provides for the ability to seek beneficial interlocal agreements; provides that expenses which affect two or more stormwater management system benefit areas shall be taken from each stormwater management system benefit area fund proportionately; and updates outdated language.

Fiscal Impact: Collaborative projects will lead to improved cost efficiency and leveraging opportunities

Clerk to the Board instruction: Return an executed copy of the approved ordinance to Natural Resources Management

Exhibits Attached: Clean and Strikethrough copies of the proposed ordinance amendment

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Stockton Whitten	Assistant County Manager	Department Director/Extension Virginia Barker/X52435
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

September 2, 2015

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item IV.E., Ordinance for Amendment to Article V, Chapter 110, Section 361, Section 362, and Section 377 of the Brevard County Code of Ordinances, Stormwater Utility, to Update the Language and Promote Collaborative Opportunities, Such as the Indian River Lagoon Council, to Implement the County's Stormwater Management Program

The Board of County Commissioners, in regular session on September 1, 2015, adopted Ordinance No. 15-26, amending Article V, Chapter 110, Section 361, Section 362, and Section 377 of the Brevard County Code of Ordinances, Stormwater Utility, to Update the Language and Promote Collaborative Opportunities, such as the Indian River Lagoon Council, to implement the County's Stormwater Management Program. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

✓ Tammy Etheridge, Deputy Clerk

/af

Encl. (1)

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:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



Robin Fisher, Chairman

As approved by the Board on September 1, 2015

ORDINANCE NO. 15 - 26

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- (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 1st day of September, 2015

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



Robin Fisher, Chairman

As approved by the Board on September 1, 2015

Brevard County Attorney
Ordinance Approval Sheet

SECTION I

The following information must be completed on all ordinances submitted to the Board:

Ordinance Name: Stormwater Utility		Ordinance Author: Virginia Barker/ Cristina Berrios	
Division Name: Natural Resources	Mail Stop: 81	Review Deadline: N/A	
Sent by: Virginia Barker			
Dept./Office Director: Virginia Barker, Interim Director			
Meeting Date:	(BCC) 09/01/15	Advertising Deadline: 8/20/15	

SECTION II

COUNTY OFFICE

APPROVAL
Yes No

INITIALS DATE

County Attorney's Office

X _____

CB

8/6/15

SECTION III

Sent for Review

Land Dev.

N/A

NRM

YES

Other Dept./Office

N/A

Comments:



**Classified Ad Receipt
(For Info Only - NOT A BILL)**

Customer: B.O.C.C. COUNTY MANAGER'S OFF
Address: 2725 JUDGE FRAN JAMIESON WAY
MELBOURNE FL 32940
USA

Ad No.: 0000642964
Pymt Method Invoice
Net Amt: \$210.64

Run Times: 1

No. of Affidavits: 1

Run Dates: 08/20/15

Text of Ad:

AD#642964 8/20/2015

NOTICE OF PUBLIC HEARING
NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Brevard County, Florida, on September 1, 2015 at 9:00 a.m., in the Commission Room at 2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, FL 32940, will hold a public hearing on the following ordinance:

ORDINANCE NO. 2015-
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.

All persons for or against said ordinance can be heard at said time and place. If a person decides to appeal any decision made by the Board with respect to such hearing or meeting, he will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The needs of hearing or visually impaired persons shall be met if the department sponsoring the Public Hearing is contacted at least 48 hours prior to the public meeting hearing by any person wishing assistance. The sponsoring department is the Natural Resources Office, 633-2016.

A copy of the ordinance may be inspected at:
Brevard County Government Center,
Building C Clerk to the Board of County Commissioners Viera Government Center, Bldg. C, County Manager's Office
<http://www.brevardcounty.us/CountyManager/DraftOrdinances>

By order of the Board of County Commissioners of Brevard County, Florida

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Brevard County, Florida, on September 1, 2015 at 9:00 a.m., in the Commission Room at 2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, FL, 32940, will hold a public hearing on the following ordinance:

ORDINANCE NO. 2015-_____

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.

All persons for or against said ordinance can be heard at said time and place. If a person decides to appeal any decision made by the Board with respect to such hearing or meeting, he will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The needs of hearing or visually impaired persons shall be met if the department sponsoring the Public Hearing is contacted at least 48 hours prior to the public meeting hearing by any person wishing assistance. The sponsoring department is the Natural Resources Office. 633-2016.

A copy of the ordinance may be inspected at :

Brevard County Government Center, Building C Clerk to the Board of County Commissioners
Viera Government Center, Bldg. C, County Manager's Office
<http://www.brevardcounty.us/CountyManager/DraftOrdinances>

By order of the Board of County Commissioners of Brevard County, Florida