



AGENDA ITEM

June 1, 2021 City Council Meeting

Approved for Submittal By:

Scott Morgan

Scott Morgan, City Manager

To Be Presented By:

Morris Richardson

Morris Richardson, City Attorney

To: Honorable Mayor and Members of the West Melbourne City Council
Through: Scott Morgan, City Manager
From: Morris Richardson, City Attorney
Date: June 1, 2021

SUBJECT

Illicit Discharge Detection and Elimination Ordinance

RECOMMENDATION

The City Attorney recommends that the City Council:

Approve on first reading Ordinance No. 2021-16, establishing methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process.

FISCAL IMPACT

None.

DISCUSSION

BACKGROUND

The Federal Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States. Though the CWA does not deal directly with groundwater or with water quantity issues, the statute employs a variety of regulatory and nonregulatory tools to sharply reduce direct pollutant discharges into waterways, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters so that they can support the protection of watersheds. To further reduce the adverse effects of stormwater runoff, the U.S. Environmental Protection Agency (EPA) instituted its Stormwater Phase II Final Rule on December 8, 1999.

Phase II Stormwater Program Administration

As authorized by the CWA, the National Pollutant Discharge Elimination System (NPDES) Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The Phase II Stormwater Program is part of the EPA's NPDES program, which in Florida, is delegated to the Florida Department of Environmental Protection (FDEP) to administer.

Phase II Stormwater Program Regulations

The City of West Melbourne's Municipal Separate Storm Sewer System (MS4) is a system that discharges stormwater runoff to surface water, or waters of the state. While combined sewer systems have one set of pipes to carry stormwater and wastewater, MS4s have separate lines, one set for the stormwater and another for sewage.

Phase II regulates discharges from small MS4s located in "urbanized areas" (as delineated by the Census Bureau in the most recent census) and from additional small MS4s designated by the FDEP. MS4s that discharge to surface waters are required to get NPDES permits, since they are, in effect, point source discharges of water mixed with various pollutants: oil and grease, metals, pesticides, pathogens, sediment and nutrients. Basic permit provisions for MS4s are targeted at eliminating illicit discharges and controlling runoff from construction sites and newly developed areas.

Illicit Discharge Detection and Elimination

One of the most basic requirements in permits for MS4s calls for elimination of all "non-stormwater" or "illicit" discharges. The reason for this provision is that if sewage coming from homes, businesses, industries, and other facilities goes into a MS4, that sewage will be discharged to a receiving water without going through the municipal sewage treatment plant (because of the basic design of an MS4).

Ordinance No. 2021-16 combines and formalizes many of the City's existing programs and policies for detecting and eliminating illicit discharges in order to facilitate NPDES permit review and audit processes. As the FDEP'S guidance specifies, a municipal ordinance or other regulatory mechanism created to comply with Phase II regulations must include a prohibition of illicit discharges and an enforcement mechanism.

CONCLUSION

The City Attorney recommends that the City Council, by motion, adopt Ordinance No. 2021-16. Second reading of the ordinance will be scheduled and noticed for the City Council meeting on June 15, 2021.

ATTACHMENTS

1. Ordinance No. 2021-16, Illicit Discharge Detection and Elimination

ORDINANCE NO. 2021-16

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, PROVIDING FOR THE REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of West Melbourne, Florida through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law; and

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process; and

WHEREAS, the objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida, that:

Section 1. Recitals and findings. The foregoing Recitals are hereby ratified and incorporated as findings of the City Council and as the legislative intent of this ordinance.

Section 2. Short title. This article shall be known and may be cited as the “City of West Melbourne Illicit Discharge Ordinance.”

Section 3. Definitions. For the purposes of this ordinance the following terms shall have the meanings set forth below:

- a. *Authorized Enforcement Agency* means the department within the city that is designated by the city manager as having the responsibility to enforce this article, or the city's code enforcement department.
- b. *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- c. *Clean Water Act* means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- d. *Construction activity* means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.
- e. *Hazardous materials* means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- f. *Illicit connection* means either:
 - (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- g. *Illicit discharge* or *illegal discharge* means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 71-169 of this article, or discharge to

the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits.

- h. *Industrial activities* means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.
- i. *Municipal separate storm sewer system (MS4) or storm drain system* means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.
- j. *National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit* means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.
- k. *Non-stormwater discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.
- l. *Person* means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.
- m. *Pollutant* means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- n. *Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- o. *Receiving bodies of water* means any water bodies, watercourses and wetlands into which surface waters flow.
- p. *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

- q. *Stormwater management system* means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.
- r. *Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- s. *Water body* means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.
- t. *Watercourse* means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

Section 4. Applicability. This article shall apply to all pollutants entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Section 5. Compatibility with other regulations. This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment, as determined by the city manager or designee, shall control.

Section 6. Ultimate responsibility. The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 7. Control of pollutant contributions from interconnected MS4s. Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

Section 8. Prohibitions.

- (a) *Illicit/illegal discharges.* No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping

connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

- (1) petroleum products, including, but not limited to, oil, gasoline, grease;
- (2) solid waste;
- (3) paints;
- (4) steam cleaning waste;
- (5) pesticides, herbicides or fertilizers;
- (6) degreasers, solvents;
- (7) sanitary sewage;
- (8) chemically treated cooling water;
- (9) antifreeze and other automotive products;
- (10) lawn clippings, leaves, branches, etc.;
- (11) animal carcasses and feces;
- (12) recreational vehicle waters;
- (13) dyes;
- (14) construction materials;
- (15) water from a commercial car wash;
- (16) chlorinated water used for pressure cleaning;
- (17) any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit; and
- (18) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city's storm drain system.

(b) *Illicit connections.*

- (1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the city that results in any discharge in violation of any provision of federal, state, city or other laws or regulations.
- (2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.
- (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(c) *Violation of permits.* Any discharge into the stormwater system of the city in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

Section 9. Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.

- (a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the city's MS4 or regulated waters.
- (b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the city's land development regulations, shall be properly implemented, installed, operated, and maintained.
- (c) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of the city's MS4 or contribute to the failure of the city's MS4 to meet any applicable local, state, or federal law or regulation.
- (d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.
- (e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to city engineering department within 30 days after the issuance of a permit.

Section 10. Authorized exemptions.

- (a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:
 - (1) water line flushing;
 - (2) flushing of reclaimed water lines;
 - (3) street cleaning;
 - (4) construction dust control;
 - (5) landscape irrigation;
 - (6) diverted stream flows;
 - (7) rising ground waters;
 - (8) foundation and footing drains;
 - (9) dechlorinated swimming pool discharges;
 - (10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
 - (11) uncontaminated pumped ground water;
 - (12) discharges from potable water sources;
 - (13) air conditioning condensate;
 - (14) irrigation water;
 - (15) springs;

- (16) lawn watering;
- (17) individual residual car washing
- (18) flows from riparian habitat and wetlands; and
- (19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

- (b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Section 11. Emergency conditions and suspension of MS4 access.

Notwithstanding any other provisions of this article, whenever the authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or city approved construction plans, city forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency, conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

- (a) *Suspension due to illicit discharges in emergency situations.* The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.
- (b) *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

Section 12. Inspection and monitoring for compliance. City personnel and city agents shall be granted access for inspection of facilities discharging or suspected of discharging to the city's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the city's MS4, as well as records relating to them, shall be made accessible to city personnel and city agents for this purpose.

Section 13. Reporting requirements. Illicit discharges to the MS4 are prohibited. Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 71-167, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the city, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

Section 14. Enforcement.

(a) Notice of violation.

(1) Whenever the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- a. the performance of monitoring, analyses, and reporting;
- b. the elimination of illicit connections or discharges;
- c. the issuance of cease and desist orders;
- d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;
- e. advice as to the possible amount of fines; and
- f. the implementation of source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the

established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.

- (b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the code enforcement board or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the code enforcement board. A person who has been determined to have violated a provision of this article may be sentenced to pay a fine as specified in section 1-16, in addition to any other punishment described in section 1-16.
- (c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the authorized enforcement agency, shall be liable to the city for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.
- (d) Persons responsible for violation of this article shall be liable for all costs incurred by the city in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.
- (e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the city's legal recourse, be subject to prosecution before the code enforcement board of the city, pursuant to this Code. Each day of violation shall constitute a separate violation.
- (f) The city may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.

Section 15. Use of penalty awards. Any funds received by the city as a result of the enforcement of this ordinance which are not used for specific purposes set forth in this ordinance shall be deposited in the stormwater utility fund.

Section 16. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 17. Inclusion in Code. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City

of West Melbourne Code of Ordinances in substantially the form of attached **Exhibit A**, and the sections may be renumbered to accomplish such intention.

Section 19. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 15th day of June, 2021.

ATTEST:

CYNTHIA HANSCOM, CITY CLERK

HAL J. ROSE, MAYOR

Reviewed as to form and legal sufficiency:

Morris Richardson, City Attorney

1st READING: June 1, 2021
2nd READING: June 15, 2021

EXHIBIT A

Chapter 71 – Natural Resources and Stormwater

ARTICLE VI. – ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sec. 71-161. – Short title.

This article shall be known and may be cited as the “City of West Melbourne Illicit Discharge Ordinance.”

Sec. 71-162. – Definitions.

- a. *Authorized Enforcement Agency* means the department within the city that is designated by the city manager as having the responsibility to enforce this article, or the city’s code enforcement department.
- b. *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- c. *Clean Water Act* means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- d. *Construction activity* means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.
- e. *Hazardous materials* means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- f. *Illicit connection* means either:
 - (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

- (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- g. *Illicit discharge* or *illegal discharge* means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 71-169 of this article, or discharge to the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits.
- h. *Industrial activities* means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.
- i. *Municipal separate storm sewer system (MS4)* or *storm drain system* means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.
- j. *National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit* means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.
- k. *Non-stormwater discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.
- l. *Person* means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.
- m. *Pollutant* means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

- n. *Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- o. *Receiving bodies of water* means any water bodies, watercourses and wetlands into which surface waters flow.
- p. *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- q. *Stormwater management system* means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.
- r. *Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- s. *Water body* means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.
- t. *Watercourse* means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

Sec. 71-163. – Applicability.

This article shall apply to all pollutants entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Sec. 71-164. – Compatibility with other regulations.

This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment, as determined by the city manager or designee, shall control.

Sec. 71-165. – Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Sec. 71-166. – Control of pollutant contributions from interconnected MS4s.

Interconnected MS4s, including MS4s not owned by the city, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving

MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

Sec. 71-167. – Prohibitions.

(a) *Illicit/illegal discharges.* No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

- (1) petroleum products, including, but not limited to, oil, gasoline, grease;
- (2) solid waste;
- (3) paints;
- (4) steam cleaning waste;
- (5) pesticides, herbicides or fertilizers;
- (6) degreasers, solvents;
- (7) sanitary sewage;
- (8) chemically treated cooling water;
- (9) antifreeze and other automotive products;
- (10) lawn clippings, leaves, branches, etc.;
- (11) animal carcasses and feces;
- (12) recreational vehicle waters;
- (13) dyes;
- (14) construction materials;
- (15) water from a commercial car wash;
- (16) any liquids in quantity or quality that are capable of causing a violation of the city's NPDES stormwater permit;
- (17) chlorinated water used for pressure cleaning; and
- (18) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the city's storm drain system.

(b) *Illicit connections.*

- (1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the city that results in any discharge in violation of any provision of federal, state, city or other laws or regulations.
- (2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(c) *Violation of permits.* Any discharge into the stormwater system of the city in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

Sec. 71-168. – Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.

(a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the city's MS4 or regulated waters.

(b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the city's land development regulations, shall be properly implemented, installed, operated, and maintained.

(c) Authorized discharges to the city's MS4 shall be controlled so that they do not impair the operation of the city's MS4 or contribute to the failure of the city's MS4 to meet any applicable local, state, or federal law or regulation.

(d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

(e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to city engineering department within 30 days after the issuance of a permit.

Sec. 71-169. – Authorized exemptions.

(a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:

- (1) water line flushing;
- (2) flushing of reclaimed water lines;
- (3) street cleaning;
- (4) construction dust control;
- (5) landscape irrigation;
- (6) diverted stream flows;
- (7) rising ground waters;
- (8) foundation and footing drains;
- (9) dechlorinated swimming pool discharges;

- (10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
- (11) uncontaminated pumped ground water;
- (12) discharges from potable water sources;
- (13) air conditioning condensate;
- (14) irrigation water;
- (15) springs;
- (16) lawn watering;
- (17) individual residual car washing
- (18) flows from riparian habitat and wetlands; and
- (19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

- (b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Sec. 71-170. – Emergency conditions and suspension of MS4 access.

Notwithstanding any other provisions of this article, whenever the authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or city approved construction plans, city forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency, conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

- (a) *Suspension due to illicit discharges in emergency situations.* The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.
- (b) *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized

enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

Sec. 71-171. – Inspection and monitoring for compliance.

City personnel and city agents shall be granted access for inspection of facilities discharging or suspected of discharging to the city's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the city's MS4, as well as records relating to them, shall be made accessible to city personnel and city agents for this purpose.

Sec. 71-172. – Reporting requirements.

Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 71-167, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the city, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

Sec. 71-173. – Enforcement.

(a) Notice of violation.

(1) Whenever the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

- a. the performance of monitoring, analyses, and reporting;
- b. the elimination of illicit connections or discharges;
- c. the issuance of cease and desist orders;
- d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;
- e. advice as to the possible amount of fines; and
- f. the implementation of source control or treatment BMPs.

- (2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.
- (b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the code enforcement board or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the code enforcement board. A person who has been determined to have violated a provision of this article may be sentenced to pay a fine as specified in section 1-16, in addition to any other punishment described in section 1-16.
- (c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the authorized enforcement agency, shall be liable to the city for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.
- (d) Persons responsible for violation of this article shall be liable for all costs incurred by the city in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.
- (e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the city's legal recourse, be subject to prosecution before the code enforcement board of the city, pursuant to this Code. Each day of violation shall constitute a separate violation.
- (f) The city may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.

Sec. 71-174. – Use of penalty awards.

Any funds received by the city as a result of the enforcement of this ordinance which are not used for specific purposes set forth in this ordinance shall be deposited in the stormwater utility fund.



AGENDA ITEM

June 1, 2021, City Council Meeting

Approved for Submittal By:
<i>Scott Morgan</i>
Scott Morgan, City Manager
To Be Presented By:
<i>Scott Morgan</i>
Scott Morgan, City Manager

To: Honorable Mayor and Members of the West Melbourne City Council
From: Scott Morgan, City Manager
Date: June 1, 2020

SUBJECT

Water Plant Property Purchase

RECOMMENDATION

The City Manager recommends that the City Council:

Adopt Resolution No. 2021-18 amending the 2020-2021 budget and approving the purchase of a vacant 3.39-acre property on Park Hill Boulevard owned by GTD Enterprises, LLC of Satellite Beach for the purchase price of \$319,500.

FISCAL IMPACT

The City's cost of acquiring the property would be \$319,500 plus a minor amount of closing costs. (The sellers have agreed to pay for the policy of title insurance for the City as well as the documentary stamp tax, the estimated value of both being \$3,900.) The purchase is proposed to be funded from a 3.2% portion of the \$10.1 million in federal American Rescue Plan Act funds the City will be receiving.