LEGISLATIVE MEMORANDUM

TO: **Honorable Mayor and Members of the City Council**

FROM: **Suzanne Sherman, City Manager**

THRU: **Christopher A. Little, P.E.**

DATE: **10/19/2023**

RE: **Ordinance 2023-101, amending the Code of Ordinances, by creating a new Chapter 203, to be titled 'Mandatory Connection to Potable Water and Sewer Utilities', first reading.**

The Utilities Department is seeking City Council approval to adopt a mandatory connection ordinance for the City's centralized water and sewer system. The proposed ordinance contains legislative intent, definitions, references to Florida Statutes, timeline for notification to property owners, private connections to City utilities, and abandonment of existing on-site sewer treatment facilities.

Section 381.00655(1)(a), Florida Statutes requires property owners to connect to wastewater treatment systems (whether publicly or investor owned) within one year of being notified of such system becoming available. While Florida Statutes impose a mandatory connection requirement for wastewater, there is no statute applicable to potable water. As such, in requiring mandatory connection to the City's potable water system, the City would be relying solely on its home rule authority pursuant to Article VII, Section II, Fla. Const., and section 166.021, Florida Statute. A survey of local governments throughout the state reveals that several have enacted such potable water mandatory connection ordinances. See, e.g., section 3-8-233, Charlotte County Code of Ordinances; section 34-35, Broward County Code of Ordinances.

In recent years the City of Palm Bay's absence of a mandatory connection policy has been a topic of discussion amongst outside agencies. Due to the absence of a mandatory connection ordinance, the City has been unable to pursue various grant funding opportunities, which are contingent upon existing mandatory connection policies. A mandatory connection ordinance will better position the City to pursue local, state, and federal grants to reduce the property owner's financial burden resulting from mandatory connection. Further, it will be economically viable for the Utilities Department to expand water and sewer infrastructure knowing that installation costs will be recoverable through the collection of fees related to the availability of water and sewer services. Finally, the City will be positioned to promote environmental stewardship within our community by working towards the elimination of over 32,000 existing septic systems and 12,000 exiting drinking water wells throughout Palm Bay.

The City has recently sought various funding opportunities to facilitate septic-to-sewer conversions and alleviate the cost burden to private property owners. On December 1, 2022, City Council approved $420,000 in State &

Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) to assist eligible low-income households with connection to City sewer. Additionally, the City sought and secured State appropriations totaling $2,100,000 during the Fiscal Year 2023-2024 legislative session to assist with septic-to-sewer conversions, for which funds will be made available to the City through a grant agreement for the term of July 1, 2023 - June 30, 2024. (The grant agreement is forthcoming to City Council once received from the Florida Department of Environmental Protection.) The City is also seeking $5 million in funding appropriations for additional septic to sewer conversion in the Fiscal Year 2024-2025 State legislative session. Finally, the City is currently coordinating with the Save Our Indian River Lagoon (SOIRL) Program to leverage available "quick connect" grant funds for residents as funds are made available. To date, the SOIRL program has funded over 250 septic to sewer conversions in Palm Bay. City Council's adoption of a mandatory connection ordinance will also enable the City to qualify for grant funding through Florida Department of Environmental Protection's Wastewater Quality Improvement Grant Program.

As of October 1, 2023, there are approximately 1,066 developed parcels where City sewer is available (known as Sewer Available Not Connected or SANC) and 2,344 developed parcels where City water is available (known as Water Available Not Connected or WANC). Of those developed parcels, 289 are neither connected to water nor sewer. Upon approval of the mandatory connection ordinance and through a phased approach, the Utilities Department will notify SANC and WANC customers of the availability of water and sewer services. Due to funding constraints, staff is recommending a phased notification to residents for mandatory connection. Phase 1 includes residential properties which have both centralized water and sewer available (289 parcels) as well as properties located east of Interstate 95 and in northeast Palm Bay.

The tentative notification schedule is as follows:

Date of Notification	SANC Properties	WANC Properties
July 2024	347 (Phase 1)	545 (Phase 1, 2)
July 2025	266 (Phase 2)	546 (Phase 3, 4)
July 2026	236 (Phase 3)	559(Phase 5, 6)
July 2027	217 (Phase 4)	694 (Phase 7, 8, 9)
TOTAL	1,066	2,344

Based on the recent septic-to-sewer conversion pricing obtained from the SOIRL Program, the average cost per household to connect to centralized sewer is $12,000. Connection to the City's centralized water system is estimated to cost $2,000-6,000, which includes City deposits, building permits, and meter installation charges. The cost for connection to City water is dependent on whether the resident decides to abandon the well or repurpose it for irrigation.

Staff is also requesting City Council's consideration for a temporary waiver of all utility-related fees for both water and sewer connections for households that comply with the mandatory connection notification letters. Such fees include Main Line Extension Charges (Chapter 200.11(F)) and Impact Fees (Chapter 171.50), approximately $5,670.40 for sewer and $3,553 for water. It is estimated that the waiver of fees will result in a Utilities Department revenue loss of $8,320,656 for Impact Fees and $6,052,223 for Main Line Extension charges over the course of all phases. The temporary waiver will expire 365 days from official notice from the City that water and/or sewer service is readily available. The waivers only apply to existing developed properties currently on septic and/or well where centralized sewer and/or water is currently available.

REQUESTING DEPARTMENT:
City Manager's Office, Utilities

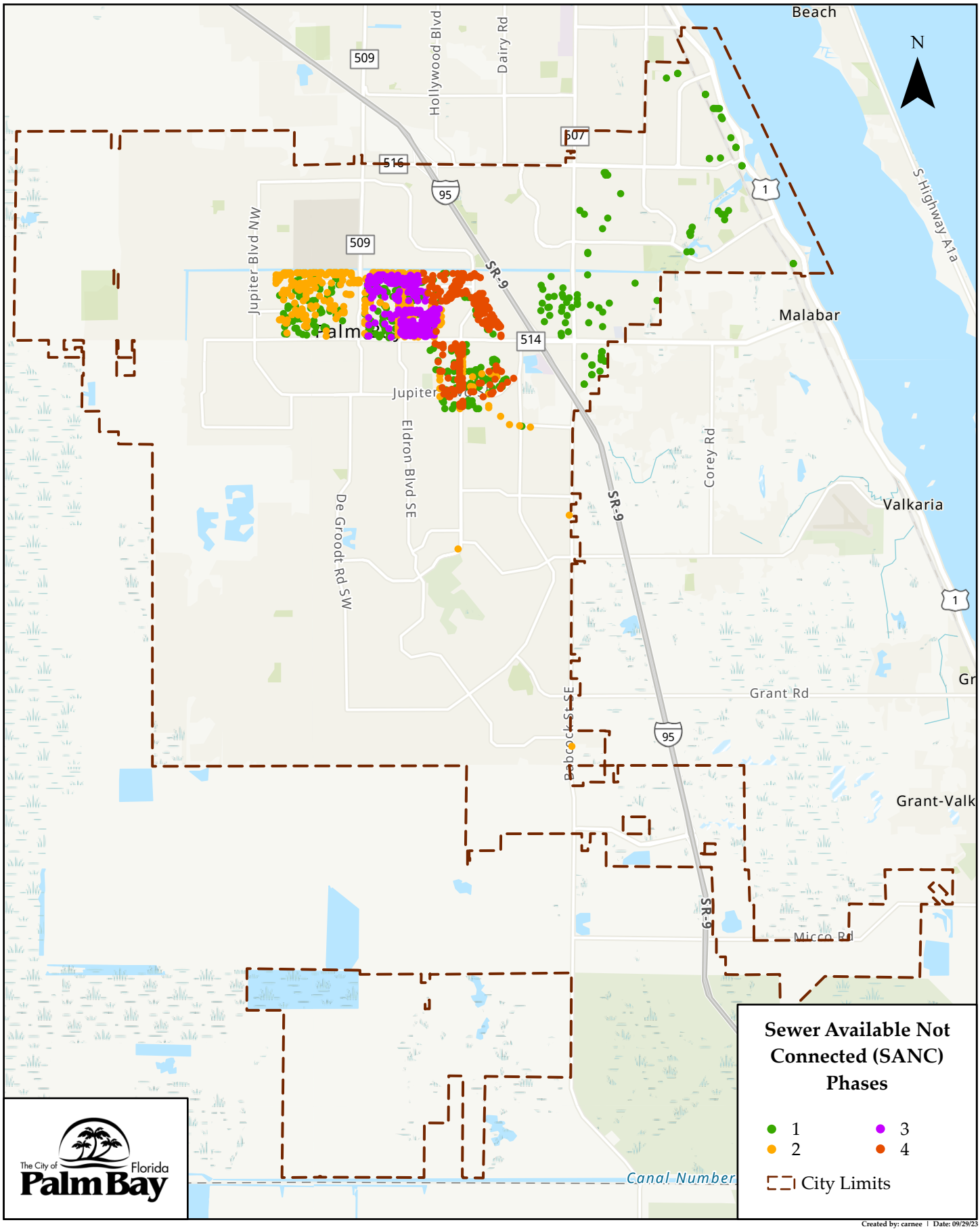
FISCAL IMPACT:
Assuming 100% connection, ongoing user rates would generate approximately $1.6 million annually based on an average residential customer using 3,787 gallons per month. Waiver of utilities-related fees for the identified lots will result in a one-time revenue loss of $8,320,656 for Impact Fees and $6,052,223 for Main Line Extension charges over the duration of the phasing plan.

RECOMMENDATION:
Motion to adopt an Ordinance creating Chapter 203 of the City of Palm Bay's Code of Ordinances, establishing mandatory connection to potable water and sewer utilities; and authorize a temporary waiver of utility-related main line extension and impact fees for water and sewer connections as a result of mandatory connection notices.

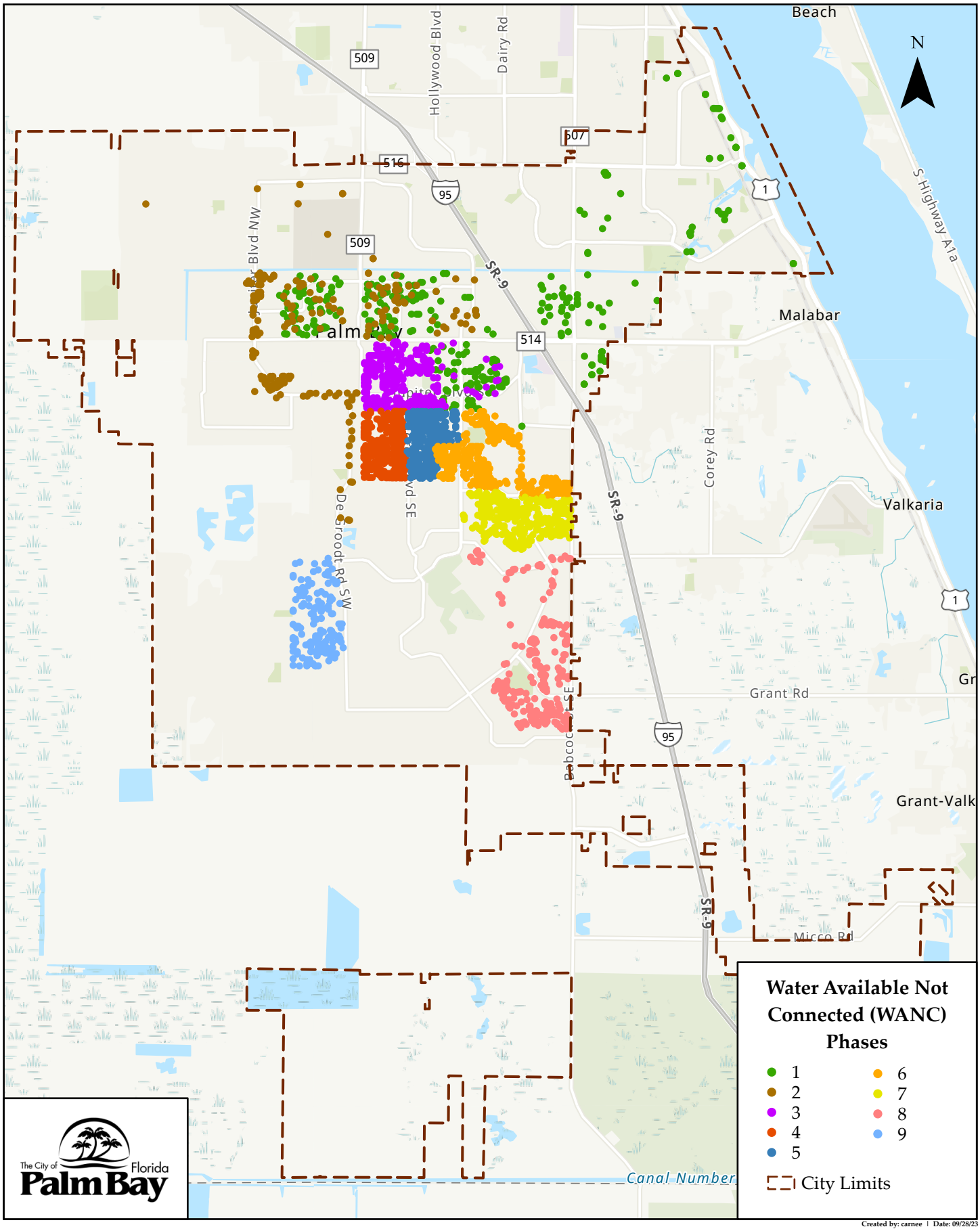
ATTACHMENTS:

Description
Map of SANC Phasing
Map of WANC Phasing
Ordinance 2023-101

Sewer Available Not Connected (SANC) Phasing



Water Available Not Connected (WANC) Phasing



ORDINANCE 2023-101

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XX, UTILITIES CODE, BY CREATING A NEW CHAPTER 203, TO BE TITLED 'MANDATORY CONNECTION TO POTABLE WATER AND SEWER UTILITIES'; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XX, Utilities Code, is hereby amended by creating a new Chapter 203, to be titled 'Mandatory Connection to Potable Water and Sewer Utilities', which shall henceforth read as follows:

"**>>CHAPTER 203: MANDATORY CONNECTION TO POTABLE WATER AND SEWER UTILITIES**

General Provisions

Section 203.01. LEGISLATIVE FINDINGS.

It is hereby ascertained, determined, and declared that:

(A) Pursuant to Art. VIII, Section 2(b), Florida Constitution; Section 166.021(1), Florida Statutes; and Article I, City Charter, the City of Palm Bay ("City"), through the City Council, has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(B) Section 381.00655, Florida Statutes, requires the owners of on-site sewage treatment and disposal systems ("OSTDS") to connect to an available publicly owned or investor-owned sewage system within a specified period of time after receiving written notification that the system is available for connection.

(C) Section 381.00655, Florida Statutes, expressly states that it does not limit the power of a municipality to enforce other laws for the protection of the public health and safety.

(D) Section 180.02, Florida Statutes, authorizes the City to create a zone by ordinance and prescribe reasonable regulations requiring all persons and

entities within that zone to connect to public sewer and alternative water systems when available and further provides that the City may extend this zone up to five miles outside of the corporate limits.

(E) The growing population of the City, the increasing contamination of groundwater and surface water and multiple devastating algae blooms that have occurred in the Indian River Lagoon in recent years, combined with the continued use of septic tanks constitutes a danger to the public health and requires connection of all developed properties to central wastewater treatment facilities whenever and wherever it is physically feasible.

(F) The connection of all developed properties to a central wastewater treatment system and the elimination of OSTDS promotes the health, safety, and welfare of all residents of the City by protecting and preserving natural resources and the quality of the environment through the elimination of potential sources of potable and surface water pollution and contamination.

(G) Properties within the City may obtain potable water from private wells, the water from which is not subject to the comprehensive contaminant testing and other regulations imposed pursuant to the Safe Drinking Water Act (42 U.S.C. § 300f et. seq.).

(H) A 2009 U.S. Geological Survey study of over 2,000 private wells across the United States found that about twenty-three percent (23%) had at least one contaminant at a level of potential health concern.

(I) The contamination of private drinking wells represents a threat to the health, safety, and welfare of the citizens of the City, which the City desires to address and alleviate through the connection of all developed properties to central potable water treatment and distributions systems whenever and wherever physically feasible.

Section 203.02. DEFINITIONS.

The following words and terms have the following meanings, unless the context otherwise requires a different definition:

ABANDON shall mean the abandonment of an Onsite Sewage Treatment and Disposal System, as accomplished pursuant to Rule 64E-6.011, Florida Administrative Code ("F.A.C").

AVAILABLE, when used in reference to connection to a Sewer Utility, means that the Sewer Utility is capable of being connected to the plumbing of a building, is not under a Department of Environmental Protection moratorium, has adequate capacity to accept the sewage to be generated by the building, and:

(1) For Developed Property that has an estimated sewage flow of one thousand (1,000) gallons per day or less, as determined by the Sewer Utility, a gravity sewer line to maintain gravity flow from the property's drain to the sewer line, or a low pressure or vacuum sewage collection line in those areas approved for low pressure or vacuum sewage collection, exists in a public easement or right-of-way that abuts the property line of such Developed Property; or

(2) For a building with estimated sewage flows exceeding one thousand (1,000) gallons per day, as determined by the Sewer Utility, a sewer line, force main, or lift station exists in a public easement or right-of-way that abuts the property or is within 50 feet of the property line of such Developed Property, as accessed via existing rights-of-way or easements; or

(3) For proposed residential subdivisions with more than fifty (50) lots, for proposed commercial subdivisions with more than five (5) lots, or for areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within one-fourth mile of the property line of the development as measured and accessed via existing easements or rights-of-way; or

(4) For repairs or modifications within areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within five hundred (500) feet of an establishment's or residence's sewer stub-out as measured and accessed via existing rights-of-way or easements.

AVAILABLE, when used in reference to connection to a Potable Water Utility, means that the Potable Water Utility is capable of being connected to the plumbing of a building, is not under a Department of Environmental Protection moratorium, has adequate capacity to supply potable water to the building, and:

(1) For a building that has an estimated water usage of one thousand (1,000) gallons per day or less, as determined by the Potable Water Utility, a water distribution line exists in an easement or right-of-way that abuts the property line of the lot or is within one hundred (100) feet of the property line; or

(2) For a building with an estimated water usage of more than one thousand (1,000) gallons per day, as determined by the Potable Water Utility, a water distribution line exists in an easement or right-of-way that abuts the property or is within fifty (50) feet of the property line of the lot as accessed via existing rights-of-way or easements; or

(3) For proposed residential subdivisions with more than fifty (50) lots, for proposed commercial subdivisions with more than five (5) lots, or for areas

zoned or used for an industrial or manufacturing purpose, a water distribution line exists within one-fourth mile of the property line of the development as measured and accessed via existing easements or rights-of-way.

BUILDING shall mean any structure designed or built for support, enclosure, shelter or protection of persons, animals, chattels or property of any kind. "Building" shall include any structure constructed or used for a residence, business, industry or other private or public purpose.

CITY shall mean the City of Palm Bay, Florida.

CITY COUNCIL OR COUNCIL shall mean the City of Palm Bay City Council.

CONNECTION FEE shall mean the water and wastewater capital charges imposed pursuant to Section 171.50, City of Palm Bay Code of Ordinances ("Code"), to recover the capital costs associated with connecting new users to the Potable Water Utility and Sewer Utility respectively.

DEVELOPED PROPERTY shall mean any improved property containing a Building with a plumbing system.

ON-SITE SEWAGE TREATMENT AND DISPOSAL SYSTEM ("OSTDS") shall mean a system subject to Rule 64E-6, F.A.C., that contains a standard subsurface, filled, or mound drain field system; a septic tank, an aerobic treatment unit, a laundry wastewater system; a grease interceptor; a dosing tank, a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy.

POTABLE WATER SERVICE AREA shall mean any geographic area within the City within which potable water treatment and distribution is made available or is intended to be made available by a Potable Water Utility.

POTABLE WATER UTILITY shall mean the City's potable water treatment and distribution system or any investor-owned potable water treatment and distribution system permitted to operate within the City pursuant to applicable laws and regulations.

SEWER SERVICE AREA shall mean any geographic area identified by the City and in accordance with Section 180.02, Florida Statutes, within which central wastewater collection, treatment, and disposal service is made available or is intended to be made available by a Sewer Utility.

SEWER UTILITY shall mean the "Publicly Owned Treatment Works" or "POTW," as defined pursuant to Section 200.02 of the Code, or any investor-

owned wastewater treatment, collection, conveyance, and disposal system permitted to operate within the Sewer Service Area pursuant to applicable laws and regulations.

Mandatory Connection to Sewer Utility

Section 203.10. CONNECTION TO SEWER UTILITY REQUIRED

(A) All Developed Property within the Sewer Service Area shall connect to a Sewer Utility within one (1) year of the final notification of availability of service described herein.

(B) By subsequent resolution, the City may, with the approval of the Department of Health, waive the requirement of mandatory connection to a Sewer Utility for a property or properties if it determines that such connection is not required in the public interest due to public health considerations.

(C) By subsequent resolution, the City may establish a process to grant a variance to an owner of a performance based OSTDS permitted by the Department of Health as long as the OSTDS is functioning in accordance with the conditions of its operating permit and satisfies such other conditions as the City may determine are reasonably necessary for the protection of the public health.

Section 203.11. NOTIFICATION TO CONNECT TO SEWER

The Sewer Utility shall provide notification to all owners of Developed Property within a Sewer Service Area not already connected to the Sewer Utility as follows:

(A) *Initial notification.* The initial notification shall notify all owners of Developed Property within the Sewer Service Area of the anticipated availability of the Sewer Utility. The initial notification shall be sent no less than one (1) year prior to the anticipated date on which the Sewer Utility will become available within the Service Area and shall be deemed delivered on the date the notification is deposited in the U.S. mail. The initial notification shall provide the following:

(1) If the Developed Property is currently connected to a properly functioning OSTDS, the OSTDS owner must connect to the Sewer Utility within one (1) year after receiving notification that the Sewer Utility is available for connection; and

(2) If the OSTDS needs repair or modification to function in a sanitary manner to comply with the requirements of Sections 381.0065 - 381.0067, Florida Statutes, or rules adopted under those sections, the OSTDS owner must

connect to the Sewer Utility within ninety (90) days after receiving notification that the Sewer Utility is available for connection;

(3) Within ninety (90) calendar days of connection to the Sewer Utility, at his/her own expense, the property owner shall either: (i) properly abandon any existing OSTDS in accordance with applicable county and state laws and codes, or (ii) receive approval from the department of health to use the abandoned septic tank as an irrigation cistern;

(4) The property owner shall pay the specified sewer Connection Fee in effect at the time of connection, subject to any financial programs or incentives which may be in effect at that time. The property owner shall have the option of prepaying the amortized value of required Connection Fees in equal monthly installments over a period not to exceed two (2) years from the date of the initial notification of anticipated availability.

(B) *Final notification.* The final notification shall notify all owners of Developed Property within the Sewer Service Area not already connected to the Sewer Utility that service is available. Notice shall be deemed given on the date the notification is deposited in the U.S. mail. This notification shall state that service is available and that:

(1) If the Developed Property is currently connected to a properly functioning OSTDS, the OSTDS owner must connect to the Sewer Utility within one (1) year of such final notice informing the property owner that service is available;

(2) If the OSTDS needs repair or modification to function in a sanitary manner to comply with the requirements of Sections 381.0065 - 381.0067, Florida Statutes, or rules adopted under those sections, the OSTDS owner must connect to the Sewer Utility within ninety (90) days of such final notice;

(3) Within ninety (90) calendar days of connection to the Sewer Utility, at his/her own expense, the property owner shall either: (i) properly abandon any existing OSTDS in accordance with applicable county and state laws and codes; or (ii) receive approval from the department of health to use the abandoned septic tank as an irrigation cistern;

(4) Unless it has been prepaid, the property owner shall pay the specified sewer Connection Fee in effect at the time of connection, subject to any financial programs and/or incentives which may be in effect at that time.

(C) In the event sewer service is already available within an area at the time of the adoption of this Chapter, the Sewer Utility shall not be required to

provide the initial notification described in subsection (A) hereof and may proceed directly to the final notification described in subsection (B). In such event, the final notice shall also state that the property owner shall have the option of prepaying the amortized value of required Connection Fees in equal monthly installments over a period not to exceed two (2) years from the date of such final notice.

Mandatory Connection to Potable Water Utility

Section 203.20. CONNECTION TO POTABLE WATER UTILITY REQUIRED.

(A) All Developed Property within the Potable Water Service Area shall connect to a Potable Water Utility within one (1) year days of the final notification of availability of service described herein.

(B) The City may, by subsequent resolution, waive the requirement of mandatory connection to a Potable Water Utility for a property or properties if it determines, by subsequent resolution, that such connection is not required in the public interest due to public health considerations.

(C) The City may establish a process, by subsequent resolution, to grant a variance to a property containing a potable water source on the premises that satisfies such conditions as the City may determine are reasonably necessary for the protection of the public health.

Section 203.21. NOTIFICATION TO CONNECT TO POTABLE WATER

The Potable Water Utility shall provide notification to all owners of Developed Property within a Potable Water Service Area not already connected to the Potable Water Utility as follows:

(A) *Initial notification.* The initial notification shall notify all owners of Developed Property within the Potable Water Service Area of the anticipated availability of the Potable Water Utility. The initial notification shall be sent no less than one (1) year prior to the anticipated date on which the Potable Water Utility will become available within the Potable Water Service Area and shall be deemed delivered on the date the notification is deposited in the U.S. Mail. The initial notification shall provide the following:

(1) The property owner must connect to the Potable Water Utility within one (1) year after receiving notification that the Potable Water Utility is available for connection; and

(2) The property owner shall pay the specified potable water Connection Fee in effect at the time of connection, subject to any financial programs or incentives which may be in effect at that time. The property owner

shall have the option of prepaying the amortized value of required Connection Fees in equal monthly installments over a period not to exceed two (2) years from the date of the initial notification of anticipated availability.

(B) *Final notification.* The final notification shall notify all owners of Developed Property within the Potable Water Service Area that service is available. Notice shall be deemed given on the date the notification is deposited in the U.S. Mail. The notification shall state that service is available and that:

(1) The property owner must connect to the Potable Water Utility within one (1) year of such final notice informing the property owner that service is available;

(2) Unless it has been prepaid, the property owner shall pay the specified potable water Connection Fee in effect at the time of connection, subject to any financial programs and/or incentives which may be in effect at that time.

(C) In the event potable water service is already available within an area at the time of the adoption of this Ordinance, the Potable Water Utility shall not be required to provide the initial notification described in subsection (A) hereof and may proceed directly to the final notification described in subsection (B). In such event, the final notice shall also state that the property owner shall have the option of prepaying the amortized value of required Connection Fees in equal monthly installments over a period not to exceed 730 days from the date of such final notice.

Connection Fees, Enforcement

Section 203.30. PAYMENT OF CONNECTION FEES; FINANCING PROGRAMS AND INCENTIVES; COLLECTION OF CONNECTION FEES AS NON-AD VALOREM SPECIAL ASSESSMENT.

(A) Property owners required to connect to a Sewer Utility or a Potable Water Utility pursuant to this Ordinance shall have the option of prepaying the amortized value of required Connection Fees in equal monthly installments over a period not to exceed two (2) years from the date of the initial notification of anticipated availability.

(B) By resolution, the Council may establish financing programs to waive or reduce the Connection Fees for property owners connecting to the City's Sewer Utility or Potable Water Utility or otherwise provide financial incentives to induce connection. Nothing in this section shall prohibit investor-owned Sewer Utilities or Potable Water Utilities from establishing their own financing programs.

(C) Where a property owner has not connected to the Sewer Utility or Potable Water Utility within one (1) year of receiving the final notice described in Section 203.04 or Section 203.06, herein, the Connection Fee(s) attributable to such property may be collected as a non-ad valorem special assessment pursuant to Chapter 56 of the Code.

Section 203.31. ENFORCEMENT

Violations of this Chapter may be enforced by the Department of Health and by the following remedies, which are cumulative and may be pursued simultaneously or consecutively:

(A) Code enforcement action pursuant to Section 52.080, et. seq., of the Code and Chapter 162, Florida Statutes.

(B) Complaint for injunctive relief filed in the Eighteenth Judicial Circuit in the State of Florida.

(C) Any other civil or criminal remedy available at law.<<"

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2023-XX, held on , 2023; and read in title only and duly enacted at Meeting 2023-XX, held on , 2023.

_____
Rob Medina, MAYOR

ATTEST:

_____
Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

~~Strikethrough~~ words shall be deleted; highlighted words that will included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.

LEGISLATIVE MEMORANDUM

TO: **Honorable Mayor and Members of the City Council**

FROM: **Terese Jones, City Clerk**

DATE: **10/19/2023**

RE: **Committee/Council Reports**

Committee Reports:
Space Coast Transportation Planning Organization
Space Coast League of Cities
Tourist Development Council

Council Reports

REQUESTING DEPARTMENT:
Legislative