

RESOLUTION NO. 13-114

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, RELATING TO THE PROVISION OF STORMWATER SERVICES, FACILITIES AND PROGRAMS IN THE CITY OF PANAMA CITY BEACH, FLORIDA; IMPOSING STORMWATER SERVICE ASSESSMENTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE CITY OF PANAMA CITY BEACH; APPROVING THE RATE OF ASSESSMENT; CONFIRMING, APPROVING AND ADOPTING THE STORMWATER SERVICE ASSESSMENT ROLL FOR FISCAL YEAR 2013-14; PROVIDING FOR COLLECTION OF THE ASSESSMENTS PURSUANT TO THE UNIFORM COLLECTION METHOD; PROVIDING THE PROCEDURE BY WHICH ELIGIBLE LANDOWNERS CAN APPLY FOR MITIGATION CREDIT; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution of the City of Panama City Beach, Florida (the "City") is adopted pursuant to City Ordinance No. 947, as amended from time to time and codified in Chapter 28 of the Code of Ordinances of the City of Panama City Beach (the "Assessment Ordinance"), Resolution No. 06-41 (as amended and supplemented from time to time, and particularly as amended by Resolution Nos. 06-53 and 07-15, the "Initial Assessment Resolution"), Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. This Resolution constitutes the Annual Assessment Resolution as defined in the Assessment Ordinance. All capitalized terms in this Resolution not otherwise defined herein shall have the meanings defined in the Assessment Ordinance and the Initial Assessment Resolution.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared as follows:

(A) Pursuant to the Assessment Ordinance, the City adopted the Initial Assessment Resolution imposing special assessments (the "Stormwater Service Assessments") to provide for the funding of Stormwater Management Service for the Fiscal Year commencing October 1, 2005.

(B) Pursuant to the Assessment Ordinance, the City adopted Resolution Nos. 07-07, 07-58, 08-59, 09-68, 10-142, 11-124 and 12-122 to provide for the funding of Stormwater Management Service for the Fiscal Years commencing October 1, 2006, October 1, 2007, October 1, 2008, October 1, 2009, October 1, 2010, October 1, 2011 and October 1, 2012 respectively. The Initial Assessment Resolution and Resolution Nos. 07-07, 07-58, 08-59, 09-68, 10-142, 11-124 and 12-122, as amended and supplemented from time to time, shall be referred to collectively herein as the "Stormwater Resolutions."

(C) In order to re-impose Stormwater Service Assessments for the Fiscal Year commencing October 1, 2013, the Assessment Ordinance requires the City Council to adopt an Annual Assessment Resolution which confirms or amends the assessment roll.

(D) The Fiscal Year 2013-14 Stormwater Service Assessment Roll (the "Assessment Roll") has heretofore been made available for inspection by the public.

(E) The Council considered the Resolution at its regular meeting on September 12, 2013, and comments and objections of all interested persons have been heard and considered. The re-imposition of Stormwater Service Assessments for stormwater services, facilities, and programs each fiscal year is an equitable and efficient method of allocating and apportioning Stormwater Management Service Cost among parcels of Assessed Property.

(F) The Stormwater Management Services provided for in the Stormwater Resolutions and contemplated herein are Essential Services which possess a logical relationship to the use and enjoyment of, and relieve a burden created by and provide a special benefit to Developed Property by acting to treat and control Stormwater generated or contaminated by improvements constructed on Developed Property which resulted in the alteration of such property from its natural state.

(G) The benefits derived from the Stormwater Management Services exceed the cost of the Stormwater Service Assessments imposed hereunder. The Stormwater Service

Assessment for any tax parcel within the City does not exceed the proportional benefits that such tax parcel will receive compared to any other tax parcel within the City.

(H) The legislative determinations of special benefit and fair apportionment contained in Section 1.04 of the Initial Assessment Resolution are hereby readopted, ratified and confirmed.

(I) Each parcel of Assessed Property within the City will be specially benefited by the City's provision of stormwater services, facilities, and programs in an amount not less than the Stormwater Service Assessment for such parcel, computed in the manner set forth in the Initial Assessment Resolution.

(J) Adoption of this Annual Assessment Resolution constitutes a legislative determination that all parcels assessed derive a special benefit in a manner consistent with the legislative declarations, determinations and findings as set forth in the Assessment Ordinance, the Stormwater Resolutions and this Annual Assessment Resolution from the stormwater services, facilities, or programs to be provided and a legislative determination that the Stormwater Service Assessments are fairly and reasonably apportioned among the properties that receive the special benefit.

(K) On December 14, 2006, the City adopted Resolution No. 06-84 (the "Intent Resolution") expressing its intent to collect assessments pursuant to the uniform collection method authorized by Section 197.3632, Florida Statutes. The City forwarded copies of the

Intent Resolution to the Bay County Property Appraiser ("Property Appraiser"), the Bay County Tax Collector ("Tax Collector"), and the Florida Department of Revenue prior to January 10, 2007, as required by Section 197.3632(3)(a), Florida Statutes, and has entered into reimbursement agreements with the Property Appraiser and Tax Collector as required by Section 197.3632(2), Florida Statutes.

SECTION 4. APPROVAL OF ASSESSMENT ROLL; IMPOSITION OF ASSESSMENTS.

(A) The Assessment Roll, on file in the Office of the City Clerk and incorporated herein by this reference, is hereby approved, confirmed and adopted for Fiscal Year 2013-14. The Assessment Roll shall be certified to the Tax Collector by September 15, 2013, pursuant to Section 197.3632(5), Florida Statutes.

(B) The apportionment approach described in the Methodology Report and summarized in Section 3.03 of the Initial Assessment Resolution is hereby approved and adopted.

(C) A special assessment computed in the manner described in the Initial Assessment Resolution is hereby levied and imposed on all Tax Parcels described in the Assessment Roll in order to fund the Stormwater Management Service Cost for the Fiscal Year commencing October 1, 2013.

(D) Parcels of Assessed Property described in the Assessment Roll are hereby found to be specially benefited by the provision of the stormwater services, facilities, and

programs described or referenced in the Initial Assessment Resolution, based upon an assessment amount for each ERU of \$37.00.

(E) Based upon the assessment amount of \$37.00 per ERU, residential properties shall be grouped in tiers as follows:

(1) Residential properties with impervious area between 0 and 400 sq. ft. shall be in the "Very Small" tier, the Assessment for which shall be \$12.00 for each Tax Parcel so classified.

(2) Residential properties with impervious area between 401 and 1424 sq. ft. shall be in the "Small" tier, the Assessment for which shall be \$18.50 for each Tax Parcel so classified.

(3) Residential properties with impervious area between 1425 and 4274 sq. ft. shall be in the "Medium" tier, the Assessment for which shall be \$37.00 for each Tax Parcel so classified.

(4) Residential properties with impervious area between 4275 and 5699 sq. ft. shall be in the "Large" tier, the Assessment for which shall be \$55.50 for each Tax Parcel so classified.

(5) Residential properties with impervious surfaces totaling 5700 sq. ft. or more shall be in the "Very Large" tier, the Assessment for which shall be calculated in the

manner described in Section 3.03 of the Initial Assessment Resolution employing an impervious coverage ratio of one (1).

(F) Stormwater Service Assessments for non-residential properties and Undeveloped Property shall be calculated in accordance with Section 3.03 of the Initial Assessment Resolution.

(G) Stormwater Service Assessments shall constitute a lien upon the Assessed Property so assessed equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid.

(H) The City shall use legally available funds, other than Assessment Proceeds, to pay Stormwater Service Assessments imposed upon homestead properties classified on the Tax Roll by the Property Appraiser under "exemption codes" 13 (non-service connected total and permanent disability) and 14 (total and permanent service-connected disability).

(I) The following are Exempt Properties and not subject to the Stormwater Service Assessment: (1) public roads, (2) lakes, submerged land, and other naturally occurring water bodies with pervious soil bottoms, and (3) Government Property.

SECTION 5. COLLECTION OF ASSESSMENTS. The Fiscal Year 2013-14 Stormwater Service Assessment for each individual Tax Parcel shall be in addition to an amount equal to delinquent assessments from prior Fiscal Years for such Tax Parcel, if any,

and collected pursuant to the uniform collection method provided for in the Intent Resolution, Section 3.01 of the Assessment Ordinance, and Section 197.3632, Florida Statutes; provided, however, that any existing lien of record on the affected Tax Parcel for the delinquent Stormwater Service Assessment(s) is supplanted by the lien resulting from certification of the Assessment Roll to the Tax Collector.

SECTION 6. EFFECT OF ADOPTION OF RESOLUTION. The adoption of this Annual Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll and the levy and lien of the Stormwater Service Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of rendering of this Annual Assessment Resolution.

SECTION 7. MITIGATION CREDIT PROCEDURE. The procedure by which eligible landowners may apply for Mitigation Credit against the Stormwater Service Assessments for Fiscal Year 2013-14 is as follows:

(A) General Matters Applicable to All Applications for Mitigation Credit:

(1) Type of Credit. Mitigation Facilities may qualify for Quality Credit, Quantity Credit, or both. A Mitigation Credit shall not apply to the Program Cost portion of the Stormwater Management Service Cost.

(2) Application for Mitigation Credit. In order to qualify for a Mitigation Credit, the owner of the property seeking Mitigation Credit shall submit to the City Engineer, along with the review fee described below, an application pursuant to the General Application Procedure (defined below) or, where applicable, pursuant to the Alternative Application Procedure (defined below). The application for Mitigation Credit shall be available from the City Engineer in such form as the City Manager may from time to time approve to achieve the purposes of this Section. The application must be submitted within sixty (60) days of the effective date of this Annual Assessment Resolution. Only one application for Mitigation Credit shall be filed for each system of Mitigation Facilities regardless of the number of Developed Properties served by it, and such application shall be filed by or on behalf of all owners of Developed Property served by the Mitigation Facilities which are the subject of the application.

(3) Fees. If an application pursuant to this Resolution is filed within two (2) years after the City shall have permitted all of the Mitigation Facilities which are the subject of that application, then there shall be no application fee. All other applications, depending upon the size of the site served by the Mitigation Facilities, shall be accompanied

by the following application fee:

- (a) Less than one (1) acre - \$100.00
- (b) One (1) acre or more, but less than five (5) acres - \$300.00
- (c) Five (5) acres or more, but less than twenty (20) acres - \$750.00
- (d) Twenty (20) acres or more - to be determined by the City Manager or the City Council to defray the actual cost of processing.

(4) Common ownership. For Tax Parcels enveloped in a common scheme of ownership regime (e.g. condominium association or homeowners association), a single application may be submitted for all affected Tax Parcels by a duly authorized representative.

(5) Supplemental Information. Within thirty (30) days of filing the application, the City Engineer may request in writing that the applicant provide supplemental information reasonably required to evaluate the application.

(6) Action on Application. Based upon the information submitted and any additional information available to the City Engineer and disclosed to the applicant, the City Engineer shall administratively grant or deny the application in writing within sixty (60) days of its receipt or, if supplemental information is timely requested, within forty five (45) days of receipt of supplemental information. The City Engineer shall be authorized to extend all deadlines for responding to all applications by one or more

extensions not to exceed a total of 90 days in the event that the number of applications received in a single, annual cycle exceed the capacity of his staff to process. No extension shall be longer than reasonably anticipated to be necessary and notice of each extension shall be furnished in writing to all applicants.

(7) Quality Credit. The City Engineer shall grant a Quality Credit of 10% of the Stormwater Service Assessment for Mitigation Facilities which demonstrate compliance with Section 26-36 of the City Code or its successor in function.

(8) Quantity Credit. The City Engineer shall grant a Quantity Credit of 40% of the Stormwater Service Assessment for Mitigation Facilities which demonstrate compliance with Section 26-37 of the City Code or its successor in function.

(9) Burden of Proof. The burden of establishing entitlement to a Mitigation Credit and compliance with the applicable City Code provisions shall fall on the applicant. If it is determined by the City Engineer, using customary engineering standards, that the property is not in compliance with the applicable City Code provisions, the application shall be denied. The issuance of, or the pendency of an application for, a local development order, development permit or building permit shall have no bearing upon whether, at the time the Mitigation Credit application is made or renewed, the property meets the necessary standards.

(10) Appeal. In the event the application is denied, the owner shall receive a written explanation from the City Engineer describing the basis for the denial. The owner shall then have the right to appeal the City Engineer's decision to the City Council by written notice specifying the basis for the appeal delivered to the City Clerk within twenty (20) days after receipt of the denial. Within thirty (30) days after receipt of the notice of appeal, the City Council shall consider the appeal in a hearing between the owner and the City Engineer, at a time and place noticed to the owner at least seven (7) days in advance. The City Council shall affirm the determination of the City Engineer if it finds such determination to be based upon competent, substantial evidence provided by or disclosed to the applicant at the time the City Engineer denies any application for Mitigation Credit. It is the intent of this Section to require the applicant to provide in any application all information in support of the application that the applicant wishes the City Engineer to consider. Upon conclusion of such hearing, the City Council shall set forth the reasons for its decision based on the criteria contained in this section.

(11) Obligation to Pay. A pending application for Mitigation Credit shall not relieve the owner of the obligation to make timely payment of the Stormwater Service Assessment. In the event a Mitigation Credit is granted which decreases the Stormwater Service Assessment paid while the application is pending, the owner shall be entitled to credit for the excess assessment. Any reduction, including a credit, which may be

necessary after the Stormwater Service Assessment Roll has been adopted may, at the option of the City, be refunded to the property owner or credited to a subsequent Stormwater Service Assessment for the subject tax parcel.

(12) Time Limit and Renewal of Credit. All Mitigation Credit determinations shall only apply to two annual Assessment cycles. In order to renew a Mitigation Credit determination, the property owner shall, within sixty (60) days after adoption of the Annual Assessment Resolution for any period in which a Mitigation Credit determination is no longer applicable, submit to the City Engineer an application, along with the review fee, either (i) prepared, sealed, dated and signed by a professional engineer registered in the State of Florida certifying that the property for which application is made still meets the technical standards and requirements for the credit sought for the reasons demonstrated in the immediately preceding application (the General Application Procedure), or (ii) if applicable, requesting the City make the determinations required for a Mitigation Credit under the Alternative Application Procedure . The renewal application shall be processed, granted or denied with right of appeal in the same manner as an original application. If circumstances upon which the original Mitigation Credit was determined have changed, a full application demonstrating entitlement in substantial conformance with this Section shall be required.

(B) General Application Procedure:

The application for a Mitigation Credit shall be prepared, sealed, dated and signed by a professional engineer registered in the State of Florida, demonstrating that the Tax Parcel for which application is made meets the technical standards and requirements for a Quality Credit, Quantity Credit, or both, and setting forth, in detail, a description and diagram of the Mitigation Facilities and the grounds upon which the credit is justified. A request by the City Engineer for additional information may include, but not limited to, topographical survey data and drawings signed and sealed by a professional land surveyor registered in Florida. Failure to provide such information will result in the denial of the application.

(C) Alternative Application Procedure:

In addition to the General Application Procedure, the following, alternative procedure shall be available for Mitigation Credit applications based upon Mitigation Facilities which were permitted by the City on or before July 26, 2012, pursuant to City Code of Ordinances Chapter 26 (originally adopted 9.10.98), or on or following July 27, 2012, pursuant to City Land Development Code Section 3.05.00 (originally adopted 7.26.12):

(1) For purposes of the application, it shall be presumed that the Mitigation Facilities when originally permitted met the requirements of City Code Chapter 26 or City LDC Section 3.05.00, as applicable.

(2) The application may be prepared and submitted by the owner of the subject property or an authorized representative of such owner and need not be prepared and submitted by a professional engineer.

(3) The application shall request that the City inspect the subject Mitigation Facilities and determine whether the Mitigation Facilities have (i) not been altered in any material way and (ii) have been maintained so as to continue to function materially as originally designed. If both conditions are met, the application may be granted.

(4) In the event the City shall discover that the Mitigation Facilities as originally permitted did not meet the requirements of City Code Chapter 26 or City LDC Section 3.05.00, as applicable, when permitted, or do not at time of inspection meet all applicable City and State requirements, the application shall be denied and the City shall be entitled to undertake appropriate enforcement remedies. In any appeal of the City's denial on the basis that the facilities did not meet the requirements of City Code Chapter 26 or City LDC Section 3.05.00, as applicable, when permitted, the burden of proof on that sole issue shall be on the City. The burden of proof of all other issues shall be on the applicant.

SECTION 8. REPEAL OF INCONSISTENT RESOLUTIONS. Any resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 9. EFFECTIVE DATE. This Annual Assessment Resolution shall take effect immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED THIS 12th day of September 2013.

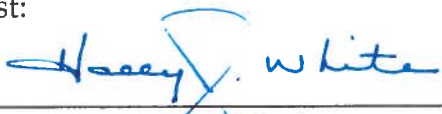
CITY COUNCIL OF PANAMA CITY BEACH



Gayle F. Oberst, Mayor



Attest:

By: 
Holly J. White, City Clerk