

**PROPOSED ORDINANCE NO. 48-00**

**ORDINANCE NO. 52-00**

**AN ORDINANCE TO BE ENTITLED:**

AN ORDINANCE RELATING TO THE PROVISION OF SERVICES AND CAPITAL FACILITIES FOR STORMWATER MANAGEMENT AND THE IMPOSITION OF STORMWATER ASSESSMENTS RELATED TO THOSE SERVICES AND FACILITIES WITHIN THE CITY OF PENSACOLA; PROVIDING DEFINITIONS AND FINDINGS; ESTABLISHING A STORMWATER UTILITY AND PROVIDING ITS RESPONSIBILITIES; ESTABLISHING A STORMWATER UTILITY FUND; AUTHORIZING THE IMPOSITION AND COLLECTION OF STORMWATER ASSESSMENTS TO FUND THE COST OF PROVIDING SERVICES AND CAPITAL FACILITIES FOR STORMWATER MANAGEMENT; ESTABLISHING PROCEDURES FOR NOTICE AND ADOPTION OF STORMWATER ASSESSMENT ROLLS AND FOR CORRECTING ERRORS AND OMISSIONS; PROVIDING THAT STORMWATER ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE STORMWATER ASSESSMENT ROLLS; ESTABLISHING PROCEDURES AND METHODS FOR THE COLLECTION OF STORMWATER ASSESSMENTS; ESTABLISHING THE PRIORITY OF THE STORMWATER LIEN OVER PRIOR RECORDED LIENS OR MORTGAGES; AUTHORIZING THE ISSUANCE OF OBLIGATIONS SECURED BY STORMWATER ASSESSMENTS; PROVIDING FOR VARIOUS RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH OBLIGATIONS; PROVIDING THAT SUCH OBLIGATIONS WILL NOT CREATE A GENERAL DEBT OR OBLIGATION OF THE CITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:**

**ARTICLE I**  
**INTRODUCTION**

**SECTION 1.01. DEFINITIONS.** When used in this Ordinance, the following terms shall have the following meanings, unless the context clearly requires otherwise:

**"Annual Stormwater Assessment Resolution"** means the resolution described in Section 3.08 hereof, approving a Stormwater Assessment Roll for a specific Fiscal Year.

**"Assessed Property"** means all parcels of real property included on the Stormwater Assessment Roll that receive a special benefit from the Stormwater Improvements and Stormwater Management Services identified in an Annual Stormwater Assessment Resolution.

**"Capital Cost"** means all or any portion of the expenses that are properly attributable to the acquisition, construction, design, installation, reconstruction, renewal or replacement (including demolition, environmental mitigation and relocation) of Stormwater Improvements under generally accepted accounting principles and including reimbursement to the City for any moneys advanced for Capital Cost and interest on any interfund or intrafund loan for such purposes.

**"City"** means the City of Pensacola, Florida.

**"City Manager"** means the chief administrative officer of the City, or such person's designee.

"**Clerk**" means the City Clerk, or such other person as may be duly authorized to act on such person's behalf.

"**Comprehensive Plan**" means the comprehensive plan adopted by the City pursuant to Chapter 163, Part II, Florida Statutes.

"**Council**" means the City Council for the City.

"**County**" means Escambia County, Florida.

"**Developed Property**" means property that has been developed with impervious area including, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas and other surfaces which similarly impact the natural infiltration or runoff patterns which existed prior to development.

"**ESU**" means "equivalent stormwater unit," the standard unit used to express the Stormwater burden expected to be generated by each parcel of property, after taking into consideration any mitigation of the Stormwater burden that results from privately maintained Stormwater management facilities and other factors affecting the quantity, quality, or rate of Stormwater runoff.

"**Final Stormwater Assessment Resolution**" means the resolution described in Section 3.07 hereof, which shall confirm, modify or repeal the Initial Stormwater Assessment Resolution and which shall be the final proceeding for the imposition of the initial Stormwater Assessment.

**"Fiscal Year"** means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the City.

**"Government Property"** means property owned by the United States of America, the State of Florida, a county, a special district, a municipal corporation, or any of their respective agencies or political subdivisions.

**"Initial Stormwater Assessment Resolution"** means the resolution described in Section 3.03 hereof, which shall be the initial proceeding for the imposition of the Stormwater Assessment.

**"Obligations"** mean a series of bonds or other evidence of indebtedness including but not limited to, notes, commercial paper, capital leases or any other obligations of the City issued or incurred to finance any portion of the Capital Cost of a Stormwater Improvement and secured, in whole or in part, by proceeds of the Stormwater Improvement Assessments.

**"Ordinance"** means this Stormwater Ordinance as amended from time to time.

**"Pledged Revenue"** means, as to any series of Obligations, (A) the proceeds of such Obligations, including investment earnings, (B) proceeds of the Stormwater Improvement Assessments pledged to secure the payment of such Obligations, and (C) any other legally available non-ad valorem revenue pledged to secure the payment of such Obligations, as specified by the resolution authorizing such Obligations.

**"Project Cost"** means (A) the Capital Cost of a Stormwater Improvement, (B) the Transaction Cost associated with the Obligations to finance the Stormwater Improvement, (C) interest accruing on such Obligations for such period of time as the City deems appropriate, (D) the debt service reserve fund or account, if any, established for the Obligations which financed the Stormwater Improvement, and (E) any other costs or expenses related thereto.

**"Property Appraiser"** means the Escambia County Property Appraiser.

**"Stormwater"** means the flow of water which results from, and which occurs following, a rainfall event.

**"Stormwater Assessment"** means either a Stormwater Improvement Assessment, a Stormwater Service Assessment, or both.

**"Stormwater Assessment Roll"** means the special assessment roll relating to Stormwater Improvements or Stormwater Management Services approved by a Final Stormwater Assessment Resolution or an Annual Stormwater Assessment Resolution pursuant to Section 3.04 hereof.

**"Stormwater Basin"** means a part of the earth's surface that contributes Stormwater runoff to a drainage system, which consists of diffuse surface waters, together with all natural or artificial tributary surface streams and/or bodies of impounded surface water.

**"Stormwater Basin Plan"** means a policy document that is adopted by the Council for each Stormwater Basin or hydrologic subarea thereof in which Stormwater

Improvements are proposed and that provides for implementation of the Stormwater Master Plan.

**"Stormwater Improvement"** means land, capital facilities and improvements acquired or provided to detain, retain, convey or treat Stormwater.

**"Stormwater Improvement Area"** means one or more Stormwater Basins, or any portion or portions thereof, as identified in the Initial Stormwater Assessment Resolution, encompassing those parcels of property specially benefited by the construction, reconstruction or installation of all or any portion of a Stormwater Improvement that removes, detains, retains or treats, in whole or in part, the Stormwater burden expected to be generated by the physical characteristics and use of the Assessed Property. Each Stormwater Improvement Area will include either (A) the property which is hydrologically connected, directly or indirectly, to the Stormwater Improvement, or (B) all property located within a hydrologically defined area in which the City constructs one or more Stormwater Improvements pursuant to a Stormwater Basin Plan to correct existing deficiencies with respect to a specific level of service and provide a consistent level of Stormwater management.

**"Stormwater Improvement Assessment"** means a special assessment imposed by the City within a Stormwater Improvement Area to fund the Capital Cost or the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement.

**"Stormwater Management Service"** means (A) management and administration of the City's Stormwater Utility; (B) Stormwater program engineering; (C) Stormwater Basin planning; (D) Stormwater Improvements to be acquired or constructed during a single Fiscal Year without the issuance of any Obligations; (E) operating and maintaining the City's capital facilities for Stormwater management, including extraordinary maintenance; (F) billing and collection of Stormwater Assessments, including customer information services and reserves for statutory discounts; and (G) legal, engineering and other consultant services.

**"Stormwater Master Plan"** means a policy document adopted by the Council which identifies the levels of service for water quality and quantity management in the City, based upon the criteria in the Comprehensive Plan and applicable state and federal law, and the methods for prioritizing expenditures within the City. The Stormwater Master Plan shall designate those Stormwater Basins for which a Stormwater Basin Plan will be prepared.

**"Stormwater Utility"** means the entity established by Section 2.01 hereof to implement the Stormwater management program of the City.

**"Stormwater Utility Director"** means the City's Stormwater Utility manager or such other person as designated by the City Manager.

**"Stormwater Service Area"** means the geographic area described in the Initial Stormwater Assessment Resolution that encompasses all parcels within the City which specially benefit from the Stormwater Management Service.

**"Stormwater Service Assessment"** means a special assessment imposed by the City within the Stormwater Service Area to fund the Stormwater Service Cost.

**"Stormwater Service Cost"** means the estimated amount for any Fiscal Year of all expenditures and reasonable reserves that are properly attributable to the Stormwater Management Service provided within the Stormwater Service Area under generally accepted accounting principles, including, without limiting the generality of the foregoing, reimbursement to the City for any moneys advanced for the Stormwater Management Service, and interest on any interfund or intrafund loan for such purpose.

**"Tax Collector"** means the Escambia County Tax Collector.

**"Tax Roll"** means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

**"Transaction Cost"** means the costs, fees and expenses incurred by the City in connection with the issuance and sale of any series of Obligations, including but not limited to (A) rating agency and other financing fees; (B) the fees and disbursements of bond counsel; (C) the underwriters' discount; (D) the fees and disbursements of the City's financial advisor; (E) the costs of preparing or printing the Obligations and the documentation supporting issuance of the Obligations; (F) the fees payable in respect of any municipal bond insurance policy; and (G) any other costs of a similar nature incurred in connection with issuance of such Obligations.



**"Uniform Assessment Collection Act"** means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

**SECTION 1.02. INTERPRETATION.** Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the context indicates otherwise.

**SECTION 1.03. GENERAL FINDINGS.** It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the City has all powers of local self-government to perform municipal functions and render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of City ordinances.

(B) The Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Council may legislate on any subject matter on which the Florida Legislature may act, except those

subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of Stormwater Assessments by the City.

(C) The purpose of this Ordinance is to (1) provide procedures and standards for the imposition of Stormwater Assessments under the constitutional and statutory home rule power of the City; (2) authorize a procedure for the funding of Stormwater Management Services, facilities, or programs providing special benefit to Assessed Property within the Stormwater Service Area; and (3) legislatively determine the special benefit provided to Assessed Property from the Stormwater Utility.

(D) The Florida Legislature has mandated that local governments in the State of Florida, including the City, have the responsibility for developing mutually compatible stormwater management programs consistent with the rules and regulations of the Florida Department of Environmental Protection and the water management districts and the stormwater management programs established and maintained by other local governments.

(E) The Stormwater Assessments imposed hereby are consistent with the authority granted in section 403.0893, Florida Statutes. That statutory provision is additional and supplemental authority to the constitutional and statutory power of self-government granted to a municipality.

**SECTION 1.04. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT.** It is hereby ascertained and declared that the Stormwater Utility, the Stormwater

Management Services and the Stormwater Improvements provide a special benefit to the Assessed Property based upon the following legislative determinations:

(A) The Stormwater Utility possesses a logical relationship to the use and enjoyment of Developed Property by treating and controlling contaminated Stormwater generated by improvements constructed on Developed Property, which resulted in the alteration of such property from its natural state to accommodate such improvements.

(B) The special benefit received by Assessed Property is the control, management and treatment of the Stormwater burden generated by the improvements on Developed Property.

(C) Substantially all of the Stormwater burden managed, controlled and treated by the Stormwater Utility is generated by Developed Property and the amount of Stormwater generated by property in its natural state that is managed, controlled and treated by the Stormwater Utility is inconsequential.

(D) The creation and maintenance of the Stormwater Utility is designed to implement municipal and state policies mandating Stormwater management programs by local governments.

## ARTICLE II

### STORMWATER UTILITY

**SECTION 2.01. STORMWATER UTILITY.** There is hereby established a Stormwater Utility, which shall be the operational means of implementing and otherwise carrying out the functional requirements of the City's Stormwater management system to construct or acquire Stormwater Improvements and provide Stormwater Management Services. The Stormwater Utility shall provide administration and management services in: the operation and maintenance of the City's capital facilities for Stormwater management; the preparation of Stormwater studies and the implementation of the Stormwater Utility; the regulation of Stormwater Basins; and the repair, replacement, improvement and extension of the City's capital facilities for Stormwater management. The Stormwater Utility shall place emphasis on the achievement of maximum efficiency through identifying programs and funding sources which are complementary to other regional, state and federal programs. The Stormwater Utility Director shall be responsible for administration of the Stormwater Utility.

**SECTION 2.02. STORMWATER UTILITY FUND.** The Council intends to fund the cost of providing services and capital facilities for Stormwater management through Stormwater Assessments. The Council has further concluded that periodic determination of revenues earned and expenses incurred in connection with the provision of services and

capital facilities for Stormwater management will enhance accountability and management control of the City's Stormwater Utility and will facilitate implementation of the Council's funding policy for Stormwater management. Accordingly, there shall be established a Stormwater Utility Fund. From an accounting perspective, the Stormwater Utility Fund shall be established as a "special revenue fund." Proceeds of the Stormwater Service Assessment shall be used for payment of the Stormwater Service Cost. Proceeds of the Stormwater Improvement Assessments shall be used for payment of the Capital Cost of Stormwater Improvements and the payment of debt service on Obligations issued to finance Stormwater Improvements.

**ARTICLE III**  
**STORMWATER ASSESSMENTS**

**SECTION 3.01. STORMWATER SERVICE ASSESSMENTS.** The Council is hereby authorized to impose Stormwater Service Assessments against property located within the Stormwater Service Area. The Stormwater Service Cost may be assessed against Developed Property located within the Stormwater Service Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Management Service provided by the City, measured by the number of ESUs attributable to each parcel or classification of property. Notwithstanding the foregoing, if the Council specifically determines that any portion of the Stormwater Service Area receives a distinct special benefit from any component of the Stormwater Management Service that is materially different in kind or degree from the special benefit received by other portions of the Stormwater Service Area, the Stormwater Service Cost related to such component shall be assessed against the portion of the Stormwater Service Area receiving the distinct special benefit.

**SECTION 3.02. STORMWATER IMPROVEMENT ASSESSMENTS.** The Council is hereby authorized to impose Stormwater Improvement Assessments to fund all or any portion of the Capital Cost or the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement identified in any Stormwater Basin

Plan. Stormwater Improvement Assessments to fund the Capital Cost or the debt service and related cost of Obligations issued to finance the Project Cost of each Stormwater Improvement may be imposed against all parcels of property within the Stormwater Improvement Area at a rate of assessment based upon the special benefit accruing to such property from the Stormwater Improvement, measured by the number of ESUs attributable to each parcel or classification of property. If Stormwater Improvement Assessments are imposed to fund the debt service and related cost of Obligations issued to finance the Project Cost of a Stormwater Improvement, the Stormwater Improvement Assessment may include the amount required to fund any amounts withdrawn during the prior Fiscal Year from any debt service reserve account established for Obligations and the amount of any principal of and interest on Obligations that has become due and remains unpaid.

**SECTION 3.03. INITIAL STORMWATER ASSESSMENT RESOLUTION.**

The initial proceeding for imposition of a Stormwater Assessment shall be the Council's adoption of an Initial Stormwater Assessment Resolution. The Initial Stormwater Assessment Resolution shall (A) describe the Stormwater Improvement or Stormwater Management Service proposed for funding from the proceeds of the Stormwater Assessments; (B) estimate the Capital Cost or Stormwater Service Cost; (C) describe with particularity the proposed method of apportioning the Capital Cost or Stormwater Service Cost among the parcels of property located within the Stormwater Improvement Area or Stormwater Service Area, as applicable, such that the owner of any parcel of property can

objectively determine the amount of the Stormwater Assessment, based upon its value, use or physical characteristics; and (D) include specific legislative findings that recognize the equity provided by the apportionment methodology and specific legislative findings that recognize the special benefit provided by the Stormwater Improvement or Stormwater Management Service. At its option, the Council may adopt separate Initial Stormwater Assessment Resolutions for the Stormwater Service Assessment and each Stormwater Improvement Assessment.

**SECTION 3.04. STORMWATER ASSESSMENT ROLL.**

(A) The Stormwater Utility Director shall prepare, or direct the preparation of, a preliminary Stormwater Assessment Roll that contains the following information:

- (1) a summary description of each parcel of property (conforming to the description contained on the Tax Roll) subject to the Stormwater Assessment;
- (2) the name of the owner of record of each parcel as shown on the Tax Roll;
- (3) the number of ESUs attributable to each parcel;
- (4) the estimated maximum Stormwater Improvement Assessment to become due in any Fiscal Year for each ESU;
- (5) the estimated maximum Stormwater Improvement Assessment to become due in any Fiscal Year for each parcel; and



(6) at the option of the Council, the Stormwater Assessment Roll may also include the estimated maximum annual Stormwater Service Assessment to become due in any Fiscal Year for each ESU and each parcel.

(B) Copies of the Initial Stormwater Assessment Resolution and the preliminary Stormwater Assessment Roll shall be on file in the office of the Stormwater Utility Director and open to public inspection. The foregoing shall not be construed to require that the Stormwater Assessment Roll be in printed form if the amount of the Stormwater Assessment for each parcel of property can be determined by use of a computer terminal available for use by the public.

**SECTION 3.05. NOTICE BY PUBLICATION.** After filing the Stormwater Assessment Roll in the office of the Stormwater Utility Director, as required by Section 3.04 hereof, the Stormwater Utility Director shall publish once in a newspaper of general circulation within the County a notice stating that a public hearing of the Council will be held on a certain day and hour, not earlier than 20 calendar days from such publication, at which hearing the Council will receive written comments and hear testimony from all interested persons regarding adoption of the Final Stormwater Service Assessment Resolution and approval of the Stormwater Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act.

**SECTION 3.06. NOTICE BY MAIL.** In addition to the published notice required by Section 3.05, the Stormwater Utility Director shall provide notice of the

proposed Stormwater Assessment by first class mail to the owner of each parcel of property subject to the Stormwater Assessment. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each property owner at such address as is shown on the Tax Roll on the twentieth calendar day prior to the date of mailing. Notice shall be deemed mailed upon delivery thereof to the possession of the U.S. Postal Service. The Stormwater Utility Director shall provide proof of such notice by affidavit. Failure of the owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Stormwater Assessment Roll nor release or discharge any obligation for the payment of a Stormwater Assessment imposed by the Council pursuant to this Ordinance.

**SECTION 3.07. FINAL STORMWATER ASSESSMENT RESOLUTION.**

At the time named in such notice, or such time to which an adjournment or continuance may be taken, the Council shall receive written objections and hear testimony of interested persons and may then, or at any subsequent meeting of the Council, adopt the Final Stormwater Assessment Resolution which shall (A) confirm, modify or repeal the Initial Stormwater Assessment Resolution with such amendments, if any, as may be deemed appropriate by the Council; (B) approve the Stormwater Assessment Roll, with such amendments as it deems just and right; and (C) determine the method of collection. All objections to adoption of the Final Stormwater Assessment Resolution shall be made in writing, and filed with the Clerk at or before the time or adjourned time of such hearing.

**SECTION 3.08. ANNUAL STORMWATER ASSESSMENT RESOLUTION.**

During its budget adoption process, the Council shall adopt an Annual Stormwater Assessment Resolution for each Fiscal Year following adoption of the Final Assessment Resolution. The Final Stormwater Assessment Resolution shall constitute the Annual Stormwater Assessment Resolution for the initial Fiscal Year. The Annual Stormwater Assessment Resolution shall approve the Stormwater Assessment Roll for such Fiscal Year. The Stormwater Assessment Roll shall be prepared in accordance with the Initial Stormwater Assessment Resolution, as confirmed or amended by the Final Stormwater Assessment Resolution. If the proposed Stormwater Assessment for any parcel of Developed Property exceeds the maximum amount established in the Final Stormwater Assessment Resolution or if a Stormwater Assessment is imposed against property not previously subject thereto, the Council shall provide notice to the owner of such property in accordance with Sections 3.05 and 3.06 hereof and conduct a public hearing prior to adoption of the Annual Stormwater Assessment Resolution. Failure to adopt an Annual Stormwater Assessment Resolution during the budget adoption process for a Fiscal Year may be cured at any time.

**SECTION 3.09. EFFECT OF STORMWATER ASSESSMENT RESOLUTIONS.** The adoption of the Final Stormwater Assessment Resolution or Annual Stormwater Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the apportionment methodology, the rate of assessment, the

adoption of the Stormwater Assessment Roll and the levy and lien of the Stormwater Assessments), unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Council adoption of the Final Stormwater Assessment Resolution. The Stormwater Assessments for each Fiscal Year shall be established upon adoption of the Annual Stormwater Assessment Resolution. The Stormwater Assessment Roll, as approved by the Final Stormwater Assessment Resolution or Annual Stormwater Assessment Resolution, shall be delivered to the Tax Collector, or such other official as the Council, by resolution, deems appropriate.

**SECTION 3.10. LIEN OF STORMWATER ASSESSMENTS.**

(A) Upon adoption of the Annual Stormwater Assessment Resolution for each Fiscal Year, Stormwater Assessments to be collected under the Uniform Assessment Collection Act shall constitute a lien against Assessed Property 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 prior liens, titles and claims, until paid. The lien shall be deemed perfected upon adoption by the Council of the Annual Stormwater Assessment Resolution and shall attach to the property included on the Stormwater Assessment Roll as of the prior January 1, the lien date for ad valorem taxes.

(B) Upon adoption of the Final Stormwater Assessment Resolution, Stormwater Assessments to be collected under the alternative method of collection provided in Section

4.02 hereof shall constitute a lien against Assessed Property 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 prior liens, titles and claims, until paid. The lien shall be deemed perfected on the date notice thereof is recorded in the Official Records of Escambia County, Florida.

**SECTION 3.11. REVISIONS TO STORMWATER ASSESSMENTS.** If any Stormwater Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Council is satisfied that any such Stormwater Assessment is so irregular or defective that the same cannot be enforced or collected, or if the Council has failed to include any property on the Stormwater Assessment Roll that should have been so included, the Council may take all necessary steps to impose a new Stormwater Assessment against any such property, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Stormwater Assessment is annulled, the Council may obtain and impose other Stormwater Assessments until a valid Stormwater Assessment is imposed.

**SECTION 3.12. PROCEDURAL IRREGULARITIES.** Any irregularity in the proceedings in connection with the levy of any Stormwater Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Stormwater Assessment as finally approved shall be competent and sufficient evidence that such Stormwater Assessment was duly levied, that the Stormwater Assessment was duly

made and adopted, and that all other proceedings adequate to such Stormwater Assessment were duly had, taken and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section 3.12, any party objecting to an Stormwater Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed in Section 3.09 of this Ordinance.

**SECTION 3.13. CORRECTION OF ERRORS AND OMISSIONS.**

(A) No act of error or omission on the part of the Council, Stormwater Utility Director, Property Appraiser, Tax Collector, Clerk, or their respective deputies, employees or designees, shall operate to release or discharge any obligation for payment of any Stormwater Assessment imposed by the Council under the provisions of this Ordinance.

(B) The number of ESUs attributed to a parcel of property may be corrected at any time by the Stormwater Utility Director. Any such correction which reduces a Stormwater Assessment shall be considered valid from the date on which the Stormwater Assessment was imposed and shall in no way affect the enforcement of the Stormwater Assessment imposed under the provisions of this Ordinance. Any such correction which increases a Stormwater Assessment or imposes a Stormwater Assessment on omitted property shall first require notice to the affected owner in the manner described in Section 3.06 hereof,

providing the date, time and place that the Council will consider confirming the correction and offering the owner an opportunity to be heard.

(C) After the Stormwater Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

## ARTICLE IV

### COLLECTION OF STORMWATER ASSESSMENTS

**SECTION 4.01. METHOD OF COLLECTION.** Unless directed otherwise by the Council, Stormwater Assessments (other than Stormwater Assessments imposed against Government Property) shall be collected pursuant to the Uniform Assessment Collection Act, and the City shall comply with all applicable provisions thereof. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

**SECTION 4.02. ALTERNATIVE METHOD OF COLLECTION.** In lieu of using the Uniform Assessment Collection Act, the City may elect to collect the Stormwater Assessment by any other method which is authorized by law or under an alternative collection method provided by this Section.

(A) The City shall provide Stormwater Assessment bills by first class mail to the owner of each affected parcel of property, other than Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Stormwater Assessment, (2) a description of the ESU calculation used to determine the amount of the Assessment, (3) the number of ESUs attributed to the parcel, (4) the total amount of the parcel's Stormwater Assessment for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Stormwater Assessment is due, and (7)



a statement that the Stormwater Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Stormwater Assessments shall be recorded in the Official Records of Escambia County, Florida. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The City shall have the right to appoint or retain an agent to foreclose and collect all delinquent Stormwater Assessments in the manner provided by law. A Stormwater Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City or its agent shall notify any property owner who is delinquent in payment of his or her Stormwater Assessment within 60 days from the date the Stormwater Assessment was due. Such notice shall state in effect that the City or its agent will initiate a foreclosure action and cause the foreclosure of such property subject to a delinquent Stormwater Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real estate, or otherwise as provided by law.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the City may be the purchaser to the same extent as an individual person or corporation. The

City may join in one foreclosure action the collection of Stormwater Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent property owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City and its agents, including reasonable attorney fees, in collection of such delinquent Stormwater Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Stormwater Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the owner in the manner required by law and this Ordinance, and (2) any existing lien of record on the affected parcel for the delinquent Stormwater Assessment is supplanted by the lien resulting from certification of the Stormwater Assessment Roll to the Tax Collector.

**SECTION 4.03. RESPONSIBILITY FOR ENFORCEMENT.** The City and its agent, if any, shall maintain the duty to enforce the prompt collection of Stormwater Assessments by the means provided herein. The duties related to collection of Stormwater Assessments may be enforced at the suit of any holder of Obligations in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

**SECTION 4.04. GOVERNMENT PROPERTY.**

(A) If Stormwater Assessments are imposed against Government Property, the City shall provide Stormwater Assessment bills by first class mail to the owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Stormwater Assessment, (2) a description of the ESUs used to determine the amount of the Stormwater Assessment, (3) the number of ESUs attributed to the parcel, (4) the total amount of the parcel's Stormwater Assessment for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Stormwater Assessment is due.

(B) Stormwater Assessments imposed against Government Property shall be due on the same date as all other Stormwater Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) A Stormwater Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City shall notify the owner of any Government Property that is delinquent in payment of its Stormwater Assessment within 60 days from the date the Stormwater Assessment was due. Such notice shall state in effect that the City will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent owners of Government Property

against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City, including reasonable attorney fees, in collection of such delinquent Stormwater Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, a Stormwater Assessment imposed against Government Property may be collected on the bill for any utility service provided to such Government Property. The Council may contract for such billing services with any utility not owned by the City.

## ARTICLE V

### ISSUANCE OF OBLIGATIONS

#### SECTION 5.01. GENERAL AUTHORITY.

(A) Upon adoption of the Final Stormwater Assessment Resolution imposing Stormwater Improvement Assessments or at any time thereafter, the Council shall have the power and is hereby authorized to provide by ordinance or resolution, at one time or from time to time in series, for the issuance of Obligations of the City to fund the Project Cost thereof and any amounts to be paid or accrued in connection with issuance of such Obligations, including, but not limited to capitalized interest, Transaction Costs and reserve account deposits.

(B) The principal of and interest on each series of Obligations shall be payable from Pledged Revenue. At the option of the Council, the City may agree, by ordinance or resolution, to budget and appropriate funds to make up any deficiency in the reserve account established for the Obligations or in the payment of the Obligations, from other non-ad valorem revenue sources. The Council may also provide, by ordinance or resolution, for a pledge of or lien upon proceeds of such non-ad valorem revenue sources for the benefit of the holders of the Obligations. Any such ordinance or resolution shall determine the nature and extent of any pledge of or lien upon proceeds of such non-ad valorem revenue sources.

**SECTION 5.02. TERMS OF THE OBLIGATIONS.** The Obligations shall be dated, shall bear interest at such rate or rates, shall mature at such times as may be determined by ordinance or resolution of the Council, and may be made redeemable before maturity, at the option of the City, at such price or prices and under such terms and conditions as may be fixed by the Council. Said Obligations shall mature not later than 40 years after their issuance and may, at the option of the Council, bear interest at a variable rate. The Council shall determine by ordinance or resolution the form of the Obligations, the manner of executing such Obligations, and shall fix the denominations of such Obligations, the place or places of payment of the principal and interest, which may be at any bank or trust company within or outside of the State of Florida, and such other terms and provisions of the Obligations as it deems appropriate. The Obligations may be sold at public or private sale for such price or prices as the Council shall determine by ordinance or resolution. The Obligations may be delivered to any contractor to pay for its work in constructing the Stormwater Improvements or may be sold in such manner and for such price as the Council may determine by ordinance or resolution to be for the best interests of the City.

**SECTION 5.03. VARIABLE RATE OBLIGATIONS.** The City may, at its option, issue Obligations bearing a variable rate of interest.

**SECTION 5.04. TEMPORARY OBLIGATIONS.** Prior to the preparation of definitive Obligations of any series, the Council may, under like restrictions, issue interim

receipts, interim certificates, or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The Council may also provide for the replacement of any Obligations which shall become mutilated, destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Ordinance.

**SECTION 5.05. ANTICIPATION NOTES.** In anticipation of the sale of Obligations, the Council may, by resolution, issue notes and may renew the same from time to time. Such notes may be paid from the proceeds of the Obligations, the proceeds of the Stormwater Assessments, the proceeds of the notes and such other legally available moneys as the Council deems appropriate by ordinance or resolution. Said notes shall mature within five years of their issuance and shall bear interest at a rate not exceeding the maximum rate provided by law. The Council may issue Obligations or renewal notes to repay the notes. The notes shall be issued in the same manner as the Obligations.

**SECTION 5.06. TAXING POWER NOT PLEDGED.** Obligations issued under the provisions of this Ordinance shall not be deemed to constitute a pledge of the faith and credit of the City, but such Obligations shall be payable only from Pledged Revenue and, if applicable, proceeds of the Stormwater Assessments, in the manner provided herein and by the ordinance or resolution authorizing the Obligations. The issuance of Obligations under the provisions of this Ordinance shall not directly or indirectly obligate the City to

levy or to pledge any form of ad valorem taxation whatever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any such Obligations or the interest thereon or to enforce payment of such Obligations or the interest thereon against any property of the City, nor shall such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City, except the Pledged Revenue.

**SECTION 5.07. TRUST FUNDS.** The Pledged Revenue received pursuant to the authority of this Ordinance shall be deemed to be trust funds, to be held and applied solely as provided in this Ordinance and in the ordinance or resolution authorizing issuance of the Obligations. Such Pledged Revenue may be invested by the City, or its designee, in the manner provided by the resolution authorizing issuance of the Obligations. The Pledged Revenue upon receipt thereof by the City shall be subject to the lien and pledge of the holders of any Obligations or any entity other than the City providing credit enhancement on the Obligations.

**SECTION 5.08. REMEDIES OF HOLDERS.** Any holder of Obligations, except to the extent the rights herein given may be restricted by the ordinance or resolution authorizing issuance of the Obligations, may, whether at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance or resolution, and may enforce and



compel the performance of all duties required by this part, or by such ordinance or resolution, to be performed by the City.

**SECTION 5.09. REFUNDING OBLIGATIONS.** The City may, by ordinance or resolution of the Council, issue Obligations to refund any Obligations issued pursuant to this Ordinance, or any other obligations of the City theretofore issued to finance the Project Cost of a Stormwater Improvement, and provide for the rights of the holders hereof. Such refunding Obligations may be issued in an amount sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding Obligations to be refunded. If the issuance of such refunding Obligations results in an annual installment of the Stormwater Assessment that exceeds the estimated maximum annual installment of assessments set forth on the preliminary Stormwater Assessment Roll prepared pursuant to Section 3.04 hereof, the Council shall provide notice to the affected property owners and conduct a public hearing in the manner required by Article III of this Ordinance.

**ARTICLE VI**  
**GENERAL PROVISIONS**

**SECTION 6.01. APPLICABILITY.** This Ordinance and the City's authority to impose Stormwater Assessments pursuant hereto shall be applicable throughout the City.

**SECTION 6.02. ALTERNATIVE METHOD.** This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the City, shall be liberally construed to effect the purposes hereof.

**SECTION 6.03. SEVERABILITY.** The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

**SECTION 6.04. CONFLICTS.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

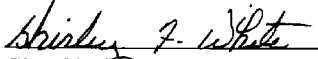
**SECTION 6.05. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage by the City Council.

PASSED: November 16, 2000

APPROVED:   
Mayor

(MUNICIPAL SEAL)

ATTEST:

  
City Clerk


Legal in form and valid if enacted:

  
City Attorney

# CITY COUNCIL MEMORANDUM

ITEM 11-B

TO: Mayor and City Council

FROM: Thomas J. Bonfield, City Manager 

DATE: November 16, 2000

SUBJECT: Proposed Ordinance No. 48-00 – Creating a Stormwater Utility for the City of Pensacola.

RECOMMENDATION: That City Council approve Proposed Ordinance No. 48-00 on second reading.

SUMMARY: The Stormwater Management Financial Plan prepared for the City recommended the creation of a stormwater utility to provide the City with a recurring and dedicated source of revenue to address stormwater challenges. An ordinance has been prepared that will create a stormwater utility. Adoption of the proposed ordinance in conjunction with other subsequent actions would allow the city to begin receiving utility revenue by the end of 2001. The amount of revenue potentially received is dependent upon the annual assessment rate set by the City Council through the adoption of an assessment rate resolution.

PRIOR ACTION: October 26, 2000, City Council approved Proposed Ordinance No. 48-00 on first reading.

CURRENT ACTION:

FUNDING: None required.

ATTACHMENTS: Proposed Ordinance No. 48-00.

STAFF CONTACT: George J., Maiberger, Assistant to the City Manager; John W. Fleming, Assistant City Attorney; and Richard Barker, Jr., Director of Finance.

PRESENTATION: No.

City of  
Pensacola



STATE OF FLORIDA  
County of Escambia

Before the undersigned authority personally appeared Kay Gaskin  
\_\_\_\_\_ who is personally known to me and who on oath says that he/she  
is a representative of The Pensacola News Journal, a daily newspaper published at Pensacola in  
Escambia County, Florida; that the attached copy of advertisement, being a Legal  
in the matter of Notice Of Proposed Ordinances  
\_\_\_\_\_ in the \_\_\_\_\_ Court, was published  
in said newspaper in the issues of November 5, 2000

Affiant further says that the said Pensacola News Journal is a  
newspaper published at Pensacola, in said Escambia County, Florida, and that the said newspaper has  
heretofore been continuously published in said Escambia County, Florida each day and has been  
entered as second class mail matter at the post office in Pensacola, in said Escambia County, Florida,  
for a period of one year next preceding the first publication of the attached copy of  
advertisement; and affiant further says that he/she has neither paid nor promised any person, firm,  
or corporation any discount, rebate, commission or refund for the purpose of securing this  
advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 8th day of Nov A.D.,  
20 00

Bereth Ferguson  
\_\_\_\_\_  
Notary Public

**BERETH FERGUSON**  
"Notary Public-State of FL"  
My comm. expires: Oct. 10, 2001  
Comm. No. C0687988

**NOTICE OF PROPOSED ORDINANCES**

Please be advised that Proposed Ordinance Nos. 47-00, 48-00, 49-00 and 51-00 were presented to the City Council of the City of Pensacola for the first reading on Thursday, October 26, 2000, and will be presented for final reading and adoption on Thursday, November 16, 2000, in the Council Chambers on the First Floor of City Hall, 180 Governmental Center, Pensacola.

The titles of the proposed ordinances are as follows:

P.O. #47-00:  
AN ORDINANCE AMENDING SECTIONS 2-2-7 AND 2-2-8 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, PROVIDING FOR THE COMPENSATION OF THE MAYOR AND CITY COUNCIL; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

P.O. #48-00:  
AN ORDINANCE RELATING TO THE PROVISION OF SEWER AND CAPITAL FACILITIES FOR STORMWATER MANAGEMENT AND THE IMPOSITION OF STORMWATER ASSESSMENTS RELATED TO THOSE SERVICES AND FACILITIES WITHIN THE CITY OF PENSACOLA; PROVIDING DEFINITIONS AND FINDINGS; ESTABLISHING A STORMWATER UTILITY AND PROVIDING ITS RESPONSIBILITIES; ESTABLISHING A STORMWATER UTILITY FUND; AUTHORIZING THE IMPOSITION AND COLLECTION OF STORMWATER ASSESSMENTS TO FUND THE COST OF PROVIDING SERVICES AND CAPITAL FACILITIES FOR STORMWATER MANAGEMENT; ESTABLISHING PROCEDURES FOR NOTICE AND ADOPTION OF STORMWATER ASSESSMENT ROLLS AND FOR CORRECTING ERRORS AND OMISSIONS; PROVIDING THAT STORMWATER ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE STORMWATER ASSESSMENT ROLLS; ESTABLISHING PROCEDURES AND METHODS FOR THE COLLECTION STORMWATER ASSESSMENTS; ESTABLISHING THE PRIORITY OF THE STORMWATER ASSESSMENT OVER PRIOR RECORDED LIENS OR MORTGAGES; AUTHORIZING THE ISSUANCE OF OBLIGATIONS SECURED BY STORMWATER ASSESSMENTS; PROVIDING FOR VARIOUS RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH OBLIGATIONS; PROVIDING THAT SUCH OBLIGATIONS WILL NOT CREATE A GENERAL DEBT OR OBLIGATION OF THE CITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

P.O. #49-00:  
AN ORDINANCE CREATING SECTION 12-9-10 THROUGH SECTION 12-9-19 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; RELATING TO STORMWATER MANAGEMENT AND CONTROL OF EROSION, SEDIMENTATION, AND RUNOFF; PROVIDING FOR FINDINGS AND DETERMINATIONS RELATING TO ILLICIT DISCHARGES; PROVIDING FOR DEFINITIONS; PROVIDING FOR CONTROL OF STORMWATER DISCHARGES TO THE CITY'S MUNICIPAL SEWER AND STORMWATER SEWER SYSTEM AND WATERS OF THE UNITED STATES; PROVIDING FOR CONTROL OF STORMWATER DISCHARGES FROM INDUSTRIAL AND CONSTRUCTION ACTIVITIES; PROVIDING FOR CONTROL OF POLLUTANT CONTRIBUTIONS FROM INTERCONNECTED MUNICIPAL SEWER AND STORM SEWER SYSTEMS; PROHIBITING ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING AUTHORITY TO PERFORM INSPECTIONS AND MONITORING FOR COMPLIANCE; PROVIDING FOR THE MAINTENANCE OF BEST MANAGEMENT PRACTICES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES AND LEGAL PROCEEDINGS; PROVIDING SEVERABILITY CLAUSE; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

P.O. #51-00:  
AN ORDINANCE PROPOSING AN AMENDMENT TO THE CHARTER OF THE CITY OF PENSACOLA; PROVIDING FOR THE SELECTION OF THE MAYOR AND CITY COUNCIL IN THE FALL OF EVEN NUMBERED YEARS; PROVIDING FOR A REFERENDUM THEREON; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

A copy of the proposed ordinances may be inspected by the public in the City Clerk's office on the seventh floor of the City Hall, 180 Governmental Center, Pensacola, Florida. Interested parties may appear at the Council meeting and be heard with respect to the proposed ordinances.

If any person decides to appeal any decision made with respect to any matter considered at this meeting, such person will need a record of the proceedings, and that for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans With Disabilities Act and will make reasonable modifications for access to City services, programs and activities. Please call 435-1800 (or T.D.C. #435-1769) for further information. Requests must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

For additional information on this request, please call the City Planning Office at (850)435-1870.

**CITY OF PENSACOLA**  
180 GOVERNMENTAL CENTER  
PENSACOLA, FLORIDA 32502  
City Clerk: Shirley F. White  
City Manager: Robert J. White  
Visit [www.ci.pensacola.fl.us](http://www.ci.pensacola.fl.us) to learn more about city activities. Council agendas posted on-line before meetings.  
Legal No. 60680 - T November 5, 2000