

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of the Second and Final reading of Ordinance 2023-20 to amend Article X. Nonstormwater Discharges, Section 20-150 to add additional best practices to address stormwater and sediment and erosion control: operation and maintenance, and Section 20-153 to add stop work orders and emergency actions to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) Permit. **Public Hearing.**

Date: December 21, 2023

The City Council approved the first reading on December 12, 2023.

The City of South Daytona participates in the National Pollutant Discharge Elimination System (NPDES) Stormwater Program which regulates point source discharges from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities and industrial activities. The NPDES permit renews every 4 years and certain updates to codes and best practices are often required.

In 2008, the City Council created Article X of the City Code to prohibit non-stormwater discharges to the City of South Daytona's municipal separate storm sewer system through the regulation of spills, improper dumping and discharges to the City of South Daytona's separate storm sewer system in order to comply with our NPDES Permit.

The City's current NPDES Permit requires the City to make updates to Article X, Section 20-150 with additional best practices, address Stormwater and Sediment and Erosion Control: Operation and Maintenance, as well Section 20-153 to add Stop Work Orders and Emergency Actions.

The attached Ordinance is a housekeeping measure to ensure the City compliance with the program requirements and industry best practices. Within the attached Ordinance underlined type constitutes additions to the original text, *** constitutes ellipses to the original text and strikethrough constitutes deletions to the original text.

Staff recommends the City Council approve the second and final reading Ordinance No. 2023-20 in order to fulfill the requirements of our NPDES permit.

ORDINANCE NO. 2023-20

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY OF SOUTH DAYTONA CODE OF ORDINANCES, ARTICLE X. NONSTORMWATER DISCHARGES, SECTION 20-150 TO ADD ADDITIONAL BEST PRACTICES TO ADDRESS STORMWATER AND SEDIMENT AND EROSION CONTROL: OPERATION AND MAINTENANCE, AND SECTION 20-153 TO ADD STOP WORK ORDERS AND EMERGENCY ACTIONS TO COMPLY WITH REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND RELATED REVISIONS; AND PROVIDING FOR ADMINISTRATIVE ACTIONS, CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of South Daytona participates in the National Pollutant Discharge Elimination System (NPDES) Stormwater Program which regulates point source discharges from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities and industrial activities; and

WHEREAS, In 2008, the City Council created Article X of the City Code to prohibit non-stormwater discharges to the City of South Daytona's municipal separate storm sewer system through the regulation of spills, improper dumping and discharges to the City of South Daytona's separate storm sewer system; and

WHEREAS, the City's NPDES Permit requires the City to make updates to Article X, Section 20-150 with additional best practices, address Stormwater and Sediment and Erosion Control: Operation and Maintenance, as well Section 20-153 to add Stop Work Orders and Emergency Actions; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~strike through~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA, THAT:

SECTION 1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. Article X. Nonstormwater Discharges, Section 20-150. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices and Section 20-153. Violations and Stop Work Orders and Emergency Actions of the City of South Daytona Code of Ordinances are amended to read as follows:

ARTICLE X. NONSTORMWATER DISCHARGES

Sec. 20-150. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

The city manager will approve requirements identifying BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, State Waters or Waters of the United States. The person of a commercial or industrial establishment shall provide, at

their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the City of South Daytona's MS4 or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. The approved BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit and shall change as necessary to ensure proper erosion and sediment controls.

Construction site operators are required to control wastes at the construction site and dispose of all waste lawfully; including but not limited to discarded building materials, truck washout, chemicals, paint, refuse, litter, and sanitary waste that could cause adverse impacts to water quality. Building materials that are still in use must be properly stored to prevent adverse impacts to water quality.

(a) Stormwater and Sediment and Erosion Control: Operation And Maintenance

(1) Erosion and Sediment Controls: All soil erosion and stormwater runoff control facilities and measures shall be maintained in accordance with South Daytona Site Permit conditions.

(2) The person(s) or organization(s) responsible for maintenance shall be designated in the Soil Erosion and Stormwater Runoff Control Plan or the permit application submitted to the Public Works Director. Options include:

(a) The owner of the property.

(b) Property owners association or other nonprofit organization, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements.

(c) Public Works Director

(3) Maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including but not limited to the procedures specified in section b.

(4) The Public Works Director will make the final decision of what maintenance option is appropriate in a given situation. Natural features, proximity of site to lakes, streams and protected wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision.

(b) Stormwater Management Easements

(1) Stormwater management easements shall be provided by the property owner if necessary for: (1) access for facility inspections and maintenance, or (2) preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event. The purpose of the easement shall be specified in the maintenance agreement signed by the property owner.

(2) Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Public Works Director.

(3) Easements shall be recorded with the Volusia County Clerk of Court prior to issuance of a permit by the Public Works Director.

(c) Compliance Assurances

(1) Performance Guarantees

(a) Applicants proposing subdivision plats, road construction projects, or other developments identified by the Public Works Director with a high potential for soil erosion shall be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount determined by the Public Works Director.

(b) Letters of credit, if used as a performance guarantee, shall extend for a minimum of one year with the option of renewal. Letters of credit will be returned to the applicant when the site is certified by the licensed professional who designed the site plan and the site is completely stabilized to meet requirements set forth by the Public Works Director.

(2) Construction Certification by Registered Professional

(a) For any sites that required a professional site plan, a certification letter shall be submitted after soil erosion and stormwater runoff control facilities have been installed to affirm that construction has been completed in accordance with the approved soil erosion and stormwater runoff control plan. Inspections will be scheduled throughout the project with progress inspections occurring at least monthly. This certification letter can be prepared by one of the following registered professionals: civil engineer, land surveyor, architect, and/or landscape architect unless it was specified by the Public Works Director that a civil engineer prepare a plan, it would need to be a civil engineer that approves the plan.

(b) If there are changes during the course of construction, the Public Works Director may require final "as built" drawings for final approval of the site work.

(3) Certificate of Compliance

(a) Upon receipt and approval of the certification letter, the Public Works Director shall issue a certificate of compliance to the property owner.

(4) Violations and Penalties

Whenever the City determines that activity on a property does not comply with the approved plans, including those control measures which were specified to be utilized during construction activity, or that a drainage system is unlawfully obstructed, the City may cause the issuance of a stop work order and notice of violation to the responsible owner or his agent. The case will be brought to the City's Special Master where a fine of up to \$250.00 per day will be assessed.

(d) Inspections

(1) Authorized representatives of the Public Works Director may enter at reasonable times upon any property to conduct on-site inspections. Such inspections may take place before, during and after any earth change activity for which a permit has been issued.

(2) If upon inspection, existing site conditions are found not to be as stated in the permit or approved Soil Erosion and Stormwater Runoff Control Plan, the South Daytona Site Permit will be invalid. No earth disrupting work shall be undertaken, or continued, until the issue has been resolved and the South Daytona Inspector has authorized continuance of work.

(3) Requests for revisions must be submitted to and approved by the Public Works Director in writing before being effective unless approved by the field inspector on the site. If approved, a revised site plan shall be submitted for review and approval.

Sec. 20-153. Violations and Stop Work Orders and Emergency Actions

(a) Violations

~~(a)-(1)~~ (1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in Chapter 2, Article VII (Code Enforcement) of the City of South Daytona's Code of Ordinances or may be restrained by injunction or otherwise abated in a manner provided by law.

~~(b)-(2)~~ (2) In the event the violation constitutes an immediate danger as determined by the city to public health or public safety, the city manager or designee is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or rectify the property. The city manager or designee is authorized to seek costs of the abatement as outlined in the article. It shall be unlawful for any person, in possession of any premises to refuse to allow the city or designated city contractor to enter upon the premises for the purposes set forth above.

(b) Stop-Work Orders and Emergency Actions

(1) If necessary to assure compliance with the permit requirements, standards, and other provisions of this Ordinance, or to protect public health safety and welfare, the Public Works Director may issue a stop-work order for the purpose of preventing or minimizing accelerated soil erosion, stormwater runoff, or other conditions posing imminent and substantial danger to public health, safety, welfare, or natural resources.

(2) If necessary to protect public safety or water resources, including lakes, streams, protected wetlands, and other receiving bodies of water, the Public Works Director may initiate emergency action to abate imminent and substantial danger and risk.

(3) Except as otherwise provided through maintenance agreements, the property owner may be held responsible for reimbursing the city for all costs incurred as a result of emergency action, including administrative costs, provided that a finding is made that the property owner violated provisions of this Ordinance, a permit, or an approved maintenance agreement.

(4) The stop-work order, when issued, shall require all specified earth change activities to be stopped. A copy of the stop-work order shall immediately be submitted to other state and local agencies with regulatory jurisdiction.

(5) If the Public Works Director determines that soil erosion and sedimentation of the waters of this state has or will reasonably occur from a parcel of land in violation of this Ordinance, it may seek to enforce the ordinance by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of specific soil and sedimentation control measures which, if implemented by the property owner, would bring the owner into compliance.

(6) A person who owns land subject to this ordinance shall implement and maintain soil erosion and stormwater runoff control measures in conformance with this ordinance within ten (10) days after the notice of violation has been given as specified in the previous paragraph.

SECTION 3. Administrative Actions. The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies,

procedures, processes and rules.

SECTION 4. Codification. The provisions of this Ordinance shall become and be made a part of the City of South Daytona, Florida Code of Ordinances, and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that portions other than Section 2 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. Conflicts. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon enactment.

APPROVED upon first reading on the 12th day of December 2023 at a regular meeting of the City Council of the City of South Daytona.

APPROVED AND ADOPTED upon second and final reading on the 9th day of January 2024 at the regular meeting of the City of South Daytona City Council.

CITY OF SOUTH DAYTONA:

ATTEST:

William C. Hall, Mayor

James L. Gillis, Jr., City Manager

CERTIFIED AS TO FORM:

Wade C. Vose, City Attorney

City of South Daytona
Office of the City Manager

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Business Impact Estimate Form

This Business Impact Estimate Form is provided to document compliance with and exemption from the requirements of Sec. 166.041(4), Fla. Stat. If one or more boxes are checked below under “Applicable Exemptions”, this indicates that the City has determined that Sec. 166.041(4), Fla. Stat., does not apply to the proposed ordinance and that a business impact estimate is not required by law. If no exemption is identified, a business impact estimate required by Sec. 166.041(4), Fla. Stat. will be provided in the “Business Impact Estimate” section below. In addition, even if one or more exemptions are identified, the City may nevertheless choose to provide information concerning the proposed ordinance in the “Business Impact Estimate” section below. This Business Impact Estimate Form may be revised following its initial posting.

Proposed ordinance’s title/reference:

Ordinance 2023-20. An Ordinance of the City of South Daytona, Florida, amending the City of South Daytona Code of Ordinances, Article X. Nonstormwater Discharges, Section 20-150 to add additional best practices to address stormwater and sediment and erosion control: operation and maintenance, and section 20-153 to add stop work orders and emergency actions to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit and related revisions; and providing for administrative actions, codifications, conflicts, severability, and an effective date.

Applicable Exemptions:

- ☒ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:

- ☐ Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements, and development permits;
- ☐ Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- ☐ Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- ☐ Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

Business Impact Estimate:

The City hereby publishes the following information:

- 1. A summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):**

The City's NPDES Permit requires the City to make updates to Article X, Section 20-150 with additional best practices, address Stormwater and Sediment and Erosion Control: Operation and Maintenance, as well Section 20-153 to add Stop Work Orders and Emergency Actions.

- 2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the municipality, including the following, if any:**

- (a) An estimate of direct compliance costs that businesses may reasonably incur if the ordinance is enacted:**

No additional costs will be incurred.

- (b) Identification of any new charge or fee on businesses subject to the proposed ordinance, or for which businesses will be financially responsible:**

None.

- (c) An estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs:**

None.

- 3. A good faith estimate of the number of businesses likely to be impacted by the ordinance:**

None.

4. Additional information the governing body determines may be useful (if any):

This Ordinance updates Article X, Section 20-150 with additional best practices to address Stormwater and Sediment and Erosion Control: Operation and Maintenance. The Ordinance also updates Section 20-153 to add Stop Work Orders and Emergency Actions.

Note: *The City's provision of information in the Business Impact Estimate section above, notwithstanding an applicable exemption, shall not constitute a waiver of the exemption or an admission that a business impact estimate is required by law for the proposed ordinance. The City's failure to check one or more exemptions below shall not constitute a waiver of the omitted exemption or an admission that the omitted exemption does not apply to the proposed ordinance under Sec. 166.041(4), Fla. Stat., Sec. 166.0411, Fla. Stat., or any other relevant provision of law.*