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**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: March 10, 2015 Consent Regular
 Workshop Public Hearing

Department

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, to be known as the Palm Beach County Pollutant Storage Tank System Compliance Ordinance; Providing for a Short Title; Applicability; Authority; Providing a Purpose; Providing for Definitions; Providing that Ordinance is supplemental to federal and state law; Providing for Adoption of Florida Administrative Code by reference; Providing for Violations; Enforcement; Penalties; Providing for Repeal and Replacement of Ordinance 2003-020; Providing for Repeal of Laws of Conflict; Providing for Savings Clause; Providing for Severability; Providing for Inclusion of the Code of Laws and Ordinances; Providing for Captions and Providing for an Effective Date.

Summary: This Ordinance replaces Countywide Ordinance No. 2003-020 which was approved by the BCC on May 20, 2003. The previous Ordinance repeated state rules regarding pollutant storage tanks. The proposed Ordinance incorporate by reference, the pertinent state rules. There are no material changes which affect the regulated community. The Ordinance adopts State regulations for Underground and Aboveground Storage Tanks Systems Regulations, Chapters 62-761 and 62-762, F.A.C. into a County ordinance allowing existing language and future revisions by the State to be automatically adopted by reference. The most current amendments to Chapters 62-761 and 62-762, F.A.C., are incorporated by reference.

In accordance with PPM No. CW-O-041 (Countywide Ordinances: Applicability and Notification to Municipalities), the new Ordinance was presented to the Palm Beach County League of Cities on June 25, 2014 and approved by the League's General Membership on June 25, 2014. The preliminary reading was approved by the Board of County Commissioners (BCC) on February 3, 2015. Countywide (SF).

Background and Justification: Presently, the County implements and provides enforcement of Pollutant Storage Tank System Compliance through Ordinance No. 2003-020 and under contract with the State of Florida Department of Environmental Protection (DEP). This New Ordinance replaces Ordinance No. 2003-020.

Attachments:

1. New Ordinance

Recommended by:


 Department Director

2/10/2014
 Date

Approved by:


 County Administrator

4/17/15
 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?		Yes _____		No _____	
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*There is no fiscal impact associated with this item.


Pollutant storage tank system compliance activities are currently funded through a yearly task assignment issued under DEP Contract No. GC680.

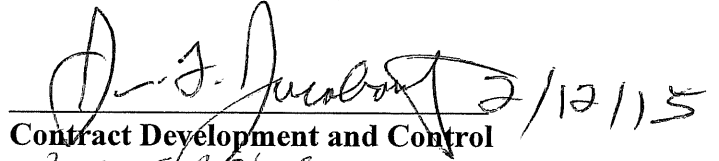
C. Department Fiscal Review:



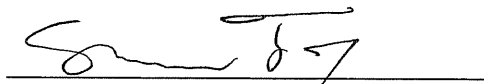
III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:


 OFMB ^{3/10} _{2/10} AK


 Contract Development and Control
 2-12-15 (B. Wheeler)

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

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ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY POLLUTANT STORAGE TANK SYSTEM COMPLIANCE ORDINANCE; PROVIDING FOR A SHORT TITLE; APPLICABILITY; AUTHORITY; PROVIDING A PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING THAT ORDINANCE IS SUPPLEMENTAL TO FEDERAL AND STATE LAW; PROVIDING FOR ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE; PROVIDING FOR VIOLATIONS; ENFORCEMENT; PENALTIES; PROVIDING FOR REPEAL AND REPLACEMENT OF ORDINANCE 2003-020; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, authorizes the Board of County Commissioners to enact ordinances and regulations necessary for the health, safety and welfare of the citizens and visitors of Palm Beach County; and

WHEREAS, the Legislature of the State of Florida has declared in Chapter 376, Florida Statutes, that the preservation of surface and ground water is a matter of the highest urgency and priority and that the storage, transportation, and disposal of petroleum products is a hazardous undertaking that poses a threat to the environment and water resources; and

WHEREAS, the State of Florida adopted rules for pollutant storage tank system compliance in 1983; and

WHEREAS, Palm Beach County has enforced pollutant storage tank system compliance rules under contract with the Florida Department of Environmental Protection (“FDEP”) since 1988; and

WHEREAS, due to the sensitive nature of the drinking water supply, it is in the best interest of Palm Beach County to have a Pollutant Storage Tank System Compliance program for regulated aboveground and underground pollutant storage tank systems to ensure these systems are in compliance with the rules and not discharging to the environment and water resources; and

1 **WHEREAS**, Palm Beach County, through its local enforcement procedures, has the
2 ability to quickly respond to pollutant storage tank system violations and reported discharges at
3 regulated facilities at the local level; and

4 **WHEREAS**, it is the intent and policy of the Palm Beach County Board of County
5 Commissioners to ensure the continued health, safety, welfare, and quality of life for the
6 existing and future residents of Palm Beach County by protecting its valuable and critical water
7 resources; and

8 **WHEREAS**, the Palm Beach County Board of County Commissioners finds that it is in
9 the best interest of the citizens of Palm Beach County to amend the countywide ordinance
10 providing for local enforcement of pollutant storage tank system compliance; and

11 **WHEREAS**, the Palm Beach County Board of County Commissioners intends to repeal
12 and replace its existing Petroleum Storage Systems Ordinance, which replicated certain
13 provisions of the Florida Administrative Code, and to instead adopt and incorporate by
14 reference certain provisions of the Florida Administrative Code pertaining to pollutant storage
15 tank systems.

16

17 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
18 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

19

20 **Section 1. SHORT TITLE; APPLICABILITY; AUTHORITY.**

21 (a) This Ordinance shall be known as the "Palm Beach County Pollutant Storage Tank
22 System Compliance Ordinance."

23 (b) All provisions of this Ordinance shall be effective within unincorporated and incorporated
24 Palm Beach County.

25 (c) This Ordinance is adopted under the authority of Article VIII, Section 1, of the Florida
26 Constitution, Chapter 125, Florida Statutes, Sections 376.303, 376.3073 and 376.317, Florida
27 Statutes, and the County Charter.

28

29 **Section 2. PURPOSE.**

30 (a) Except for aboveground mineral acid storage tank systems, the purpose of this Ordinance
31 is to provide standards for the registration, construction, installation, operation, maintenance,
32 repair, closure, and disposal of pollutant storage tank systems that store regulated substances

1 and to minimize the occurrence and environmental risks of releases and discharges. This
2 Ordinance provides standards for underground storage tank systems having individual storage
3 tank capacities greater than one hundred ten (110) gallons and aboveground storage tank
4 systems having individual storage tank capacities greater than five hundred fifty (550) gallons.

5 (b) For mineral acid storage tank systems, the purpose of this Ordinance is to minimize the
6 occurrence and environmental risks of discharges from aboveground storage tanks having
7 capacities greater than one hundred ten (110) gallons that contain hydrobromic, hydrochloric,
8 hydrofluoric, phosphoric or sulfuric acid.

9 (c) The purpose of this Ordinance is to establish a registration program for compression
10 vessels and aboveground hazardous substance storage tank systems with individual capacities
11 greater than one hundred ten (110) gallons.

12 (d) This Ordinance implements the requirements of Chapter 376, Florida Statutes.

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Section 3. DEFINITIONS.

16 The following terms when used in this Ordinance shall have the meanings ascribed to
17 them in this section. In addition, the definitions and terms contained in Section 376.301,
18 Florida Statutes, and Chapters 62-761 and 62-762, Florida Administrative Code, are hereby
19 adopted and incorporated herein by reference. When not inconsistent with the context, words
20 used in the present tense include the future, words in the plural number include the singular
21 number, words in the singular number include the plural number, and the use of any gender
22 shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are
23 mandatory and the word "may" is permissive. Words not defined shall be given their common
24 and ordinary meaning.

25 "County" means Palm Beach County.

26 "Director" means the director of the Palm Beach County Department of Environmental
27 Resources Management.

28 "ERM" means the Palm Beach County Department of Environmental Resources
29 Management.

30 "FDEP local program" means the Palm Beach County program established pursuant to
31 a contract pursuant to Section 376.3073, Florida Statutes, to assist the Florida Department of
32 Environmental Protection in the administration of the petroleum contamination site cleanup.

1 “Groundwater and Natural Resources Protection Board” (GNRPB) means that board
2 designated by the Board of County Commissioners to hear alleged violations of state and local
3 laws protecting the groundwater and natural resources of the county.

4 **Section 4. ORDINANCE IS SUPPLEMENTAL TO FEDERAL AND STATE LAW.**

5 (a) The provisions of this Ordinance are not intended to and shall not be construed as
6 changing, modifying, amending, repealing, superseding, conflicting with, or substituting any
7 provisions or sections of the Florida Statutes or Florida Administrative Code related to
8 pollutant storage tank system compliance but shall be construed as supplemental and additional
9 thereto. This Ordinance shall not be construed as impairing the jurisdiction of any court within
10 the county. This Ordinance shall be deemed to be an alternative or additional method for the
11 County, its officers and agents, to affect the purposes of each of the state rules adopted by
12 reference in this Ordinance.

13 (b) Persons or entities subject to this Ordinance must comply with applicable state and
14 federal regulations. Approvals received under this Ordinance do not qualify as local approval
15 as may be required under state and/or federal rules unless the approval is expressly designated
16 as approval for both this Ordinance and another applicable state or federal rule or regulation.

17
18 **Section 5. ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE.**

19 The following portions of the Florida Administrative Code are hereby adopted and
20 incorporated by reference and shall be part of this Ordinance as if they were set out in their
21 entirety:

22 (1) Rule 62-761, Florida Administrative Code.

23 (2) Rule 62-762, Florida Administrative Code.

24
25 **Section 6. VIOLATIONS; ENFORCEMENT; PENALTIES.**

26 (a) Failure to comply with any requirement of this Ordinance shall constitute a violation of this
27 Ordinance punishable as provided herein.

28 (b) Each day a violation of a provision of this Ordinance continues constitutes a separate
29 violation.

30 (c) If the owner of the property which is the subject of enforcement proceedings under this
31 Ordinance transfers ownership of such property between the time the noncompliance letter or
32 notice of violation was served and the time of the hearing, such owner shall:

1 (1) Disclose, in writing, the existence and the nature of the proceeding to the
2 prospective transferee.

3 (2) Deliver to the prospective transferee a copy of all notices and materials relating to
4 the proceeding received by the transferor.

5 (3) Disclose in writing to the prospective transferee that the new owner may be
6 responsible for compliance with the Ordinance and with orders issued in the
7 enforcement proceeding.

8 (4) File a notice of the transfer of the property with ERM with the identity and address
9 of the new owner and copies of the disclosures made to the new owner, within five days
10 of the date of the transfer.

11 A failure to make the disclosure described herein before the transfer creates a rebuttable
12 presumption of fraud.

13 (d) The violation of any provision of this Ordinance may be enforced pursuant to Chapter 162,
14 Florida Statutes, as a civil infraction with a maximum penalty as provided by law.

15 (e) The violation of any provision of this Ordinance may be enforced pursuant to Section
16 125.69, Florida Statutes, and shall be punishable by a fine not to exceed five hundred dollars
17 (\$500.00), by imprisonment in the county jail not to exceed sixty (60) days, by both such fine
18 and imprisonment, or by such other penalty as may hereafter be provided in Section 125.69,
19 Florida Statutes.

20 (f) The violation of any provision of this Ordinance may be enforced pursuant to Sections
21 403.121, 403.141, 403.161, Florida Statutes.

22 (g) In addition to the sanctions contained herein, the county may take any other appropriate
23 legal action, including but not limited to seeking temporary and/or permanent injunctive relief
24 to enforce the provisions of this Ordinance.

25 (h) The violation of any provision of this Ordinance may be referred by ERM to the GNRPB
26 for corrective actions and civil penalties as provided in Article 10, Palm Beach County Unified
27 Land Development Code, and Section 403.121, Florida Statutes, as amended. Any person who
28 is party to the proceeding before the GNRPB may appeal a final decision of the GNRPB to the
29 circuit court of the county in accordance with the Florida Rules of Appellate Procedure. Funds
30 collected pursuant to administrative penalties levied by the GNRPB for violations of this
31 Ordinance shall be deposited in the Palm Beach County Pollution Recovery Trust Fund or such
32 other place as may be designated by resolution of the Board of County Commissioners.

1 (i) In order to provide an expeditious settlement that is beneficial to the enforcement of this
2 Ordinance and is in the best interest of the citizens of the county, the Director of ERM is
3 authorized to enter into voluntary consent (settlement) agreements with alleged violators. Any
4 such agreement shall be a formal written consent agreement between ERM on behalf of the
5 county, by and through its Director, and any such alleged violators, and shall be approved as to
6 form and legal sufficiency by the county attorney's office. The agreement can be entered into at
7 any time prior to the hearing before the GNRPB.

8 (1) Conditions. Such consent agreements may be conditioned upon a promise by the
9 alleged violator to:

- 10 a. Bring the parcel into compliance with this Ordinance and maintain it in that
11 condition, and
- 12 b. Remit payment of a monetary settlement not to exceed the maximum amount
13 allowed per violation, as set forth in this Ordinance, and
- 14 c. Remit payment for costs and expenses of the county for investigation and
15 enforcement, and
- 16 d. Any other remedies and corrective action deemed necessary and appropriate
17 by the Director of ERM to ensure compliance with this Ordinance.

18 (2) The consent agreement shall not serve as evidence of a violation of this Ordinance
19 and shall expressly state that the alleged violator neither admits nor denies culpability
20 for the alleged violations by entering into such agreement. In addition, prior to
21 entering into any such consent agreement, each alleged violator shall be apprised of the
22 right to have the matter heard by the GNRPB in accordance with the provisions of this
23 Ordinance and that execution of the agreement is not required.

24 (3) The consent agreement shall be valid and enforceable in a court of competent
25 jurisdiction in the county and shall abate any enforcement proceedings available to
26 ERM for so long as the terms and conditions of such agreement are complied with. In
27 the event the alleged violator fails to comply with the terms and conditions set forth in
28 the executed agreement, the director of ERM may either:

- 29 a. Consider the consent agreement void and pursue any remedies available for
30 enforcement of the applicable provisions of this Ordinance; or
- 31 b. Initiate legal proceedings for specific performance of the consent agreement.

1 (j) Funds collected pursuant to a consent agreement shall be deposited in the Palm Beach
2 County Pollution Recovery Trust Fund.

3 (k) An action taken pursuant to the authority granted by this Ordinance shall not preclude any
4 other legal or administrative action lawfully pursued by any governmental entity.

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6 **Section 7. REPEAL AND REPLACEMENT OF ORDINANCE 2003-020.**

7 This Ordinance repeals and replaces Ordinance 2003-020.

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9 **Section 8. REPEAL OF LAWS IN CONFLICT.**

10 All local laws and ordinances in conflict with any provisions of this Ordinance are
11 hereby repealed to the extent of such conflict.

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13 **Section 9. SAVINGS CLAUSE.**

14 All noncompliance letters, notices of noncompliance, enforcement orders, ongoing
15 enforcement actions, lien orders and all other actions of the Board of County Commissioners,
16 the Groundwater Natural Resource Protection Board, all other County decision-making and
17 advisory boards, Special Masters, Hearing Officers and all other County officials, issued
18 pursuant to Ordinance 2003-020 prior to the effective date of this Ordinance shall remain in full
19 force and effect for the limited purpose of enforcing any alleged violations of Ordinance 2003-
20 020 which occurred prior to its repeal and collection of any fines, costs or lien orders related to
21 said violations.

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23 **Section 10. SEVERABILITY.**

24 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
25 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
26 such holding shall not affect the remainder of this Ordinance.

27

28 **Section 11. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

29 The provisions of this Ordinance shall become and be made a part of the Palm Beach
30 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
31 such, and the word ordinance may be changed to section, Ordinance, or other appropriate word.

32

1 **Section 12. CAPTIONS.**

2 The captions, section headings, and section designations used in this Ordinance are for
3 convenience only and shall have no effect on the interpretation of the provisions of this
4 Ordinance.

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6 **Section 13. EFFECTIVE DATE.**

7 The provisions of this Ordinance shall become effective upon filing with the
8 Department of State.

9
10 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
11 County, Florida, on this the ____ day of _____, 20____.

12 **SHARON R. BOCK, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

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14
15
16 By: _____
17 Deputy Clerk

By: _____
Shelley Vana, Mayor

18
19 **APPROVED AS TO FORM AND
20 LEGAL SUFFICIENCY**

21
22
23 By:  _____
24 County Attorney

25
26
27
28 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
29 _____, 20____.

30