

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO PUBLIC HEALTH, SAFETY AND WELFARE; ADDING A NEW CHAPTER 11 TO THE TOWN'S CODE OF ORDINANCES TO ESTABLISH A STORMWATER MANAGEMENT UTILITY FOR THE TOWN'S STORMWATER MANAGEMENT SYSTEM; PROVIDING FINDINGS AND THE PURPOSE FOR THE STORMWATER MANAGEMENT SYSTEM; PROVIDING DEFINITIONS; ESTABLISHING AND AUTHORIZING STORMWATER MANAGEMENT FEES; ESTABLISHING A STORMWATER MANAGEMENT FUND; PROVIDING PROPERTY CLASSIFICATIONS AND CALCULATION OF STORMWATER MANAGEMENT FEES; PROVIDING FOR CREDITS, METHOD OF COLLECTION AND APPEALS; DECLARING THE INTENT TO USE THE UNIFORM METHOD OF COLLECTION TO PLACE STORMWATER MANAGEMENT FEES ON THE TAX BILL AS NON-AD VALOREM ASSESSMENTS; PROVIDING THE PROCEDURE TO IMPOSE STORMWATER MANAGEMENT FEES; PROVIDING FOR NOTICE OF THE PUBLIC HEARING ON THE NON-AD VALOREM ASSESSMENT ROLL; PROVIDING THE CRITERIA FOR FUTURE PUBLIC HEARINGS ON NON-AD VALOREM ASSESSMENT ROLLS; PROVIDING THAT STORMWATER MANAGEMENT FEES CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF AN ASSESSMENT ROLL; PROVIDING FOR CORRECTIONS OF ERRORS AND OMISSIONS IN THE ASSESSMENT ROLL; PROVIDING FOR THE IMPOSITION OF INTERIM FEES ON PROPERTY UNDERGOING IMPROVEMENT; DECLARING THE INTENT AND PROCESS TO IMPOSE A STORMWATER MANAGEMENT FEE ON GOVERNMENT PROPERTY; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:

Section 1. Addition of a New Chapter 11 to the Code of Ordinances. The Town Council for the Town of Windermere, Florida, expressly approves the findings and determinations in new town-code sections 11-1 in this ordinance and amends the Code of Ordinances of the Town of Windermere to add the following new chapter 11, entitled "Stormwater Management Code":

**Chapter 11
STORMWATER MANAGEMENT CODE**

ARTICLE I. STORMWATER MANAGEMENT UTILITY AND FEES.

Sec. 11-1. Findings and Purpose of the Stormwater Management System.

- (1) **Findings.** The Town of Windermere, acting through its town council, finds that uncontrolled drainage and stormwater runoff has a significant adverse impact upon the health, safety and welfare of the town and its residents and properties for the following reasons:
 - (a) Impervious areas increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge.
 - (b) Improperly managed stormwater runoff may increase the incidence and intensity of flooding, which endangers property and the welfare of town residents.
 - (c) Improperly channeled water increases the velocity of stormwater runoff and increases erosion and sedimentation.
 - (d) Stormwater runoff is capable of carrying pollutants into receiving water, thereby degrading water quality.
 - (e) The increase in nutrients, such as phosphorous and nitrogen, resulting from stormwater runoff accelerates eutrophication of receiving water bodies and adversely affects flora and fauna.
 - (f) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion.

The town council bases its above findings on information and analysis received from the town manager and town staff, from the April 2010 report entitled “Stormwater Utility Fee Study – Final Report” prepared by Mike Galura Engineering Consultants, LLC (the “Galura Report”), from the town’s experience and history with stormwater issues, and from other sources.

- (2) **Purpose.** The purpose of a stormwater management system is to protect, maintain, and enhance the immediate and long-term health, safety, and general welfare of the citizens of the Town of Windermere. To effectuate this purpose, this chapter has the following objectives:
 - (a) To create one or more stormwater utilities and adopt stormwater management fees sufficient to plan, construct, operate, and maintain stormwater management systems throughout the town.
 - (b) To protect, restore, and maintain the chemical, physical, and biological integrity of the lakes.
 - (c) To maintain or restore groundwater levels.
 - (d) To minimize erosion and sedimentation.
 - (e) To prevent damage from flooding.

Sec. 11-2. Definitions.

As used in this chapter, the following words, terms and phrases shall have the following meanings, except where the context clearly indicates a different meaning:

- (a) *Commercial property* includes all property zoned or used for commercial, industrial, retail, institutional, governmental, or other nonresidential purposes and shall include all developed lands in the town that are not single-family property.
- (b) *Equivalent residential unit* or *ERU* means the basic unit for the computation of stormwater management fees. An ERU equals 3,000 square feet of Gross SF of improvements on a parcel.
- (c) *Gross SF* means the gross square footage of the improvement(s) on a parcel as determined by the Orange County Property Appraiser. For properties (if any) where the gross square footage has not been determined by the property appraiser, the town manager shall use such efforts as are needed to obtain a reasonably accurate gross square footage of structures on the properties.
- (d) *Impervious area* means the portions of a parcel of land that have impermeable cover installed, erected, or constructed by the action of persons. Such cover may include, but is not limited to, buildings, parking lots, driveways, patios, decks, walkways, parking areas, athletic courts, and semi-impervious areas, such as compacted clay.
- (e) *Receiving water* means those creeks, streams, lakes, sinkholes and other bodies of water into which surface waters are directed, either naturally or in manmade ditches, pipes or open systems.
- (f) *Single-family property* includes all lands improved and used for single-family detached housing.
- (g) *Stormwater management system* means and includes all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable receiving water body or other location internal or external to the boundaries of the town. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds and other stormwater conveyance and treatment facilities, whether public or private.

Sec. 11-3. Establishment and Creation of Utility.

Pursuant to home rule power of section 2(b) of Article VIII of the Florida Constitution, Chapter 166 of the Florida Statutes, and section 403.0893 of the Florida Statutes, the town hereby establishes a stormwater management utility for the town's stormwater management system. The town hereby authorizes stormwater management fees to be imposed against property within the town in amounts sufficient to pay the cost of planning, acquiring, constructing, operating, and maintaining the stormwater management system necessary and useful to provide stormwater management services to the residents and property owners within the town.

Sec. 11-4. Establishment of ERU and Authorization for Stormwater Management Fee.

- (1) **Authorization for Stormwater Fee.** The town council is hereby authorized to impose fees for the use of, and the discharge of stormwater into, the town’s stormwater management system. Such fees shall be based on the cost of providing stormwater management services within the town and may be different for properties receiving different levels of services.
- (2) **ERU.** Based on data and analysis in the Galura Report, an ERU is hereby established to be 3,000 square feet.
- (3) **Initial Stormwater Fee.** The fee for one ERU is hereby established to be \$144.00 for fiscal year 2010-11. The number of ERU’s on individual properties shall be determined as set forth in Section 11-6. For fiscal years after 2010-11, the town council may set and impose stormwater management fees by resolution, pursuant to the procedure set forth in Article II.

Sec. 11-5. Stormwater Management Fund.

A stormwater management fund is hereby established for the deposit of all stormwater-fee revenues and for the funding of expenditures for the stormwater management system. The fund shall be a special-revenue fund. All revenue from the stormwater management fee imposed under this article shall be deposited in the fund, along with all investment earnings thereon. Monies in the fund shall not be commingled with monies in other funds and accounts of the town (except for investment purposes) and shall be expended only for the capital and operating expenses of the town’s stormwater management system.

Sec. 11-6. Determination of Stormwater Management Fees.

A stormwater management fee imposed upon property within the town shall be determined as follows:

- (1) *Property classification.* For purposes of determining the stormwater management fee, property within the town shall be classified into one of the following classes:
 - (a) Single-family property.
 - (b) Commercial property.
 - (c) Vacant property.
- (2) *Computation of stormwater management fee for single-family property.* Single-family properties shall be divided into tiers based upon the Gross SF for the residence, but excluding the portion of Gross SF for the floors above the first floor of the residence. The fee for each tier shall be an amount equal to the rate per ERU multiplied by the below ERU multiplier.

<u>Gross Square Feet</u> (excluding upper floors)	<u>ERU Multiplier</u>
2,999 square feet and smaller	1.00
3,000 to 4,999 square feet	1.33
5,000 square feet and greater	2.00

- (3) *Computation of stormwater management fee for commercial property.* The stormwater management fee for commercial property shall be an amount equal to the fee per ERU multiplied by the number obtained by dividing the Gross SF for the commercial property by the amount of square footage of one ERU. For example:

Commercial property Gross SF = 9,000 square feet
Established ERU = 3,000
Established ERU billing rate = \$144.00 per ERU per year
Commercial billing rate = $9,000/3,000 = 3.0$ ERU
Commercial billing rate = $3.0 \text{ ERU} \times \$144.00 = \432.00 per year

- (4) *Computation of stormwater management fee for vacant property.* Based on the data and analysis in the Galura Report, the stormwater management fee for each vacant parcel shall be a flat fee equal to the fee per ERU multiplied by 0.42.

Sec. 11-7. Credits.

At its discretion, when approving the assessment roll each year, the town council may allow reductions in the amount of stormwater management fees for properties that have existing or planned stormwater management systems.

Sec. 11-8. Collection.

The town council held a duly noticed public hearing on December 8, 2009, and adopted Resolution 2009-13, giving notice of its intent to utilize the Uniform Method of Collection and to place the stormwater management fees on the tax bill as a non-ad valorem assessment pursuant to sections 197.3632 and 403.0893 of the Florida Statutes. If and to the extent allowed by law, the town council may use that method of collecting the stormwater management fees authorized in this article for fiscal year 2010-11 and from year-to-year thereafter. The procedure for imposing the stormwater management fee in any year shall be as set forth in Article II.

Sec. 11-9. Appeals.

- (1) A property owner who believes that the stormwater management fee for his or her property has been assigned or computed incorrectly may petition in writing, and provide information sufficient to substantiate his or her claim, to the town manager or her designee for a review of the fee.
- (2) If not satisfied with the determination of the town manager or her designee, the property owner may ask for a hearing before the town council, whose decision shall be final. Any credit authorized by this appeal process shall be effective only for billing subsequent to the date of the authorization.

ARTICLE II. IMPOSITION OF STORMWATER MANAGEMENT FEES.

Sec. 11-10. Procedure to Impose Stormwater Management Assessments. Stormwater management fees shall be imposed and collected pursuant to the requirements for levying and collecting non-ad valorem assessments under Sections 197.3631 and 197.3632 of Florida Statutes. If

the town council elects to impose stormwater management fees in an ensuing fiscal year, it shall take the following actions:

- (1) A non-ad valorem assessment roll setting forth the stormwater management fees charged against all non-governmental properties shall be adopted preliminarily as follows:
 - (a) At a public meeting the town council shall direct or authorize its town manager to prepare a non-ad valorem assessment roll.
 - (b) The town manager shall prepare or cause to be prepared the non-ad valorem assessment roll, which shall be in the form of a resolution with attachments and shall contain at least the following:
 - (i) a brief and general description of the stormwater management services to be provided in the town during the ensuing fiscal year;
 - (ii) a summary of the costs of providing all such stormwater management services in the ensuing fiscal year;
 - (iii) the estimated fees needed in the upcoming fiscal year to cover the cost of such stormwater management services; and
 - (iv) a list of the properties to be charged such fees (which properties may be identified by use of the individual parcel identification numbers assigned by the Orange County Property Appraiser), the unit or units of measurement (if any) to be applied against such properties, and the resulting amount of fee to be imposed against each.
- (2) The town manager shall place the proposed preliminary non-ad valorem assessment roll on an agenda for consideration by the town council at a public meeting. The meeting shall be held on or before the date on which the town advises the property appraiser, pursuant to subsection 200.065(2)(b) of Florida Statutes, of its proposed millage rate and rolled-back rate of ad valorem taxes for the next fiscal year.
- (3) If the town council is willing to consider eventual adoption of the non-ad valorem assessment roll, it shall approve the roll preliminarily, with such modifications as the town council deems appropriate and as are legally permissible. The town manager shall then schedule a public hearing for a date on or before September 15 to receive public comments and to consider adoption of the roll and shall comply with the notice requirements of sections 11-11 and 11-12 and with the notice and publication requirements of subsection 197.3632(4) of Florida Statutes.
- (4) On the scheduled date, a public hearing on the non-ad valorem assessment roll shall be held by the town council as required by subsection 197.3632 of Florida Statutes and this article.
- (5) Upon completion of the public hearing, or at such later date as the town council elects (but, in no case after September 15), the town council shall vote either to adopt or not to adopt the non-ad valorem assessment roll.

- (6) If the town council elects to adopt the non-ad valorem assessment roll, it shall adopt the non-ad valorem assessment roll either as preliminarily approved or with such adjustments to fees as are legally permissible and as the town determines appropriate in its legislative discretion.
- (7) The adopted non-ad valorem assessment roll shall then be certified on or before September 15 to the tax collector, as required by subsection 197.3632(5) of Florida Statutes.
- (8) If the town council votes not to adopt the non-ad valorem assessment roll, no further action shall thereafter be taken with respect to stormwater management fees for the ensuing fiscal year.

Sec. 11-11. Notice by Publication. Upon preliminary approval of the assessment roll, the town manager shall prepare and publish, once in a newspaper of general circulation within the town, a newspaper notice stating that at a public hearing of the town council, to be held at least 20 days after the date of publication, the town council will hear objections of all interested persons to the non-ad valorem assessment roll resolution. The published notice will conform to the requirements set forth in subsection 197.3632(4)(b) of the Uniform Assessment Collection Act. Such notice will contain at least the following information:

- (1) a statement that the stormwater management fees are being imposed by the town council of the Town of Windermere, Florida;
- (2) a geographic depiction of the area in which properties will be subject to the stormwater management fee;
- (3) the proposed schedule of the fee;
- (4) the fact that the fee will be collected by the tax collector; and
- (5) a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Sec. 11-12. Notice by Mail. In addition to the notice by publication required by Sec. 11-11 the town manager shall provide notice of the public hearing regarding the proposed stormwater management fee by first-class United States mail to the owner of each parcel of property (except government property) subject to the fee. The notice by mail will conform to the requirements set forth in subsection 197.3632(4)(b) of the Uniform Assessment Collection Act. Such notice will contain at least the following information:

- (1) the purpose of the stormwater management fee;
- (2) the total fee to be imposed against the owner's parcel;
- (3) the unit of measurement (if any) to be applied to determine the stormwater management fee;
- (4) the number of such units contained within the owner's parcel;
- (5) the total revenue projected to be collected by the town from the stormwater management fee;

- (6) a statement that failure to pay the stormwater management fee will cause a tax certificate to be issued against the property, which may result in a loss of title;
- (7) a statement that all affected owners have a right to appear at the hearing and to file written objections with the town council within 20 days of the notice; and
- (8) the date, time, place of the hearing.

The failure of the owner to receive such notice due to mistake or inadvertence will not affect the validity of the assessment roll nor release or discharge any obligation for payment of a stormwater management fee imposed by the town council pursuant to this chapter.

Sec. 11-13. Criteria for Future Public Hearings. As set forth in subsection 197.3631(4)(a), after the town council has imposed a stormwater management fee, a public hearing must be held in a subsequent year, between January 1 and September 15 of the year, but only if one or more of the following occur with respect to the stormwater management fee for the subsequent year:

- (1) the stormwater management fee is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition; or
- (2) the town's boundaries have changed, unless all newly affected property owners have provided written consent for such fees to the town council; or
- (3) there is a change in the purpose of the stormwater management fee or in the use of the revenue generated by the stormwater management fee.

Sec. 11-14. Lien of Stormwater Management Fees. Upon the adoption of the assessment roll, all stormwater management fees shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims until paid. The lien for a stormwater management fee shall be deemed perfected upon the town council's adoption of the non-ad valorem assessment roll. The lien for a stormwater management fee collected under the Uniform Assessment Collection Act shall attach to the property included on the assessment roll as of the prior January 1, the lien date for ad valorem taxes imposed under the tax roll.

Sec. 11-15. Correction of Errors and Omissions.

- (1) No act or error or omission on the part of the property appraiser, tax collector, town manager, or town council, or their deputies or employees, shall operate to release or discharge any obligation for payment of a stormwater management fee imposed by the town council under this chapter.
- (2) When a stormwater management fee should have been imposed against a parcel, but that property was omitted from the assessment roll, or such property erroneously assessed, or was not listed on the tax roll as an individual parcel as of the effective date of the assessment roll approved by the town council for any upcoming fiscal year, the town council may, upon provision of a notice by mail provided to the owner of the omitted or erroneously assessed parcel in the manner and form provided in Sec. 11-12, impose the applicable stormwater management fee for the fiscal year in which such error or omission is discovered, in addition

to the applicable stormwater management fee due for the prior two fiscal years. Such stormwater management fee shall constitute a lien against the property equal in rank and dignity with the liens of the state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles, and claims in and to or against the real property involved, shall be collected as provided herein, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent fees.

Sec. 11-16. Interim Fees. An interim stormwater management fee may be imposed against property for which a certificate of occupancy is issued after the adoption of the non-ad valorem assessment roll. The amount of the interim stormwater management fee shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the amount of fees for the fiscal year for which the interim stormwater management fee is being imposed. Such monthly rate shall be imposed for each full calendar month remaining in the fiscal year. Issuance of the certificate of occupancy without the payment in full of the interim stormwater management fee shall not relieve the owner of such property of the obligation of full payment. Any interim stormwater management fee not collected prior to the issuance of the certificate of occupancy may be collected pursuant to the Uniform Assessment Collection Act or by any other method authorized by law. Any interim stormwater management fee shall be deemed due and payable on the date the certificate of occupancy was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of the state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved and shall be deemed perfected upon the issuance of the certificate of occupancy.

Sec. 11-17. Collection of the Stormwater Management Fees. Unless otherwise directed by the town council, the stormwater management fees shall be collected pursuant to the uniform method provided in the Uniform Assessment Collection Act, and the town shall comply with all applicable provisions of the Uniform Assessment Collection Act. The fees collected pursuant to this section will be included in the combined notice for ad-valorem taxes and non-ad valorem assessments as provided in section 197.3635 of Florida Statutes. Stormwater management fees collected pursuant to this section are subject to all collection provisions in section 197.3632 of Florida Statutes, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

ARTICLE III. STORMWATER MANAGEMENT FEES FOR GOVERNMENT PROPERTY

Sec. 11-18. Billing and Collection.

- (1) In the event a stormwater management fee is imposed against government property, the town council shall provide stormwater management bills by first-class mail to the owner of each affected parcel of government property. The bill or accompanying explanatory material shall include:
 - (a) a brief explanation of the stormwater fee;
 - (b) a description of the ERU rate used to determine the amount of the stormwater fee;

- (c) the number of ERUs contained within the parcel;
 - (d) the total amount of the parcel's stormwater fee for the appropriate period;
 - (e) the location at which payment will be accepted; and
 - (f) the date on which the stormwater fee is due.
- (2) A stormwater management fee imposed against government property is due on the same date as all other stormwater fees and, if applicable, is subject to the same discounts for early payment.
- (3) A stormwater management fee will become delinquent if it is not paid within 30 days from the date payment is due. The town council shall notify the owner of any government property that is delinquent in payment of its service charge within 60 days from the date such assessment was due and that the town council may initiate a mandamus or other appropriate judicial action to compel payment.
- (4) All costs, fees and expenses, including reasonable attorneys' fees and title search expenses related to any mandamus or other action to compel payment shall be included in any judgment or decree.

Section 2. Severability. If any provision or portion of this ordinance is declared by a court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full effect.

Section 3. Inclusion in Code. This ordinance shall be re-numbered and codified and made part of the official Code of Ordinances of the Town of Windermere.

Section 4. Effective Date. This ordinance takes effect immediately upon its enactment.

ENACTED this ____ day of ____, 2010, at a regular meeting of the Town Council of the Town of Windermere, Florida.

Town of Windermere, Florida
 by: Town Council

by: _____
 Gary Bruhn, Mayor

Attest:

 Dorothy Burkhalter, CMC
 Town Clerk

First reading: June ____, 2010
 Second reading: July ____, 2010