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ORDINANCE NO. 2014-04

AN ORDINANCE OF THE TOWN OF WINDERMERE, FLORIDA, PERTAINING TO HEALTH, SAFETY AND WELFARE; AMENDING THE TOWN OF WINDERMERE’S CODE OF ORDINANCES TO CREATE A NEW ARTICLE I IN CHAPTER 33 ENTITLED THE “TOWN OF WINDERMERE PUBLIC ASSEMBLY ORDINANCE”; PROVIDING AUTHORITY, FINDINGS, PURPOSE AND INTENT; PROVIDING DEFINITIONS; REQUIRING A PERMIT FOR A PUBLIC ASSEMBLY TO BE ATTENDED BY FIFTY OR MORE PEOPLE ON TOWN RIGHT-OF-WAY OR IN A PUBLIC PARK; PROVIDING RESTRICTIONS AND EXCEPTIONS; ESTABLISHING THE APPLICATION PROCESS, PERMIT FEES, APPLICATION REVIEW PROCESS, AND DECISION PROCESS CONCERNING THE APPLICATION; SETTING FORTH REQUIREMENTS FOR PUBLIC SAFETY AT PUBLIC ASSEMBLIES; REQUIRING INDEMNIFICATION AND INSURANCE FROM APPLICANTS FOR A PUBLIC ASSEMBLY PERMIT; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

21 **BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:**
22

23 **Section 1. Amendments to the Town of Windermere’s Code of Ordinances.** A new Article
24 I entitled “Town of Windermere Public Assembly Ordinance” is hereby added to Chapter 33 of
25 the town’s Code of Ordinances to read as follows:
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27

28 **Sec. 33-1. Title.**

29 This article shall be known and may be cited as the “Town of Windermere Public Assembly
30 Ordinance.”

31 **Sec. 33-2. Authority; findings; purpose and intent.**

32 (a) This article is promulgated by the town council pursuant to the home rule powers of the
33 Town of Windermere, Florida.

34 (b) The town council finds that it should facilitate the free exercise of the constitutional rights of
35 free speech and expression and peaceful assembly on certain public property. The town
36 council also finds that certain public assemblies attract a relatively large number of people,
37 and that such gatherings may cause adverse public health and safety conditions requiring
38 regulation to ensure adequate sanitation and sewage disposal facilities, law enforcement
39 services, emergency medical personnel, parking, traffic control, crowd control, and other
40 protection and services in the interests of the public health and safety. The town council

41 further finds that it is necessary to assure preservation of public forums and to assure
42 financial accountability for damage caused by such events.

43 (c) The purpose of this ordinance is to protect the public health and safety by regulating certain
44 public assemblies, and it is the intent of the town council that this ordinance be construed
45 liberally in favor of protecting the public health and safety. This ordinance is intended to be
46 a content-neutral time, place, and manner regulation of certain activities in public forums.
47 The object of this ordinance is not directed at communicative activity, but at all activity
48 constituting a “public assembly” in a public forum.

49 **Sec. 33-3. Scope.**

50 This article is applicable within the incorporated areas of the town.

51 **Sec. 33-4. Definitions.**

52 For purposes of this article, the following terms and words shall have the following
53 definitions:

54 *Advertise* shall mean the act of publicly announcing or calling public attention to a public
55 assembly, and shall include, but not be limited to, a distribution of handbills or mailings, the use
56 of outdoor advertising, and announcements by radio, television, newspaper, the internet, or
57 e-mail.

58 *Town manager* shall mean the town manager or his designee.

59 *Public assembly* shall mean any parade, ceremony, show, exhibition, display, procession
60 (except for a funeral procession), march, walk, race, motorcade, concert, pageant, rally, protest
61 or demonstration held entirely or partially on public property.

62 *Public assembly permit* or *permit* shall mean a public assembly permit as required by this
63 article.

64 *Public park* shall mean property in the town that is kept by the town for active or passive
65 recreation and/or ornament and which is owned or leased by the town.

66 *Public right-of-way* shall mean any land in the town in which the state, the county, or a
67 municipality owns the fee or has an easement devoted to, or required for use as, a transportation
68 facility, including the road, street or highway and associated sidewalks.

69 *Road, street* or *highway* shall mean any place or way set aside or open to the general public
70 for purposes of vehicular traffic, including any berm or parkway, shoulder, or median strip
71 thereof.

72 *Sidewalk* shall mean any area or way within a public right-of-way that is set aside or open to
73 the general public for purposes of pedestrian traffic, whether or not it is improved.

74 **Sec. 33-5. Public assembly permit; when required.**

75 No person shall stage, promote, conduct, engage in, participate in, aid, form, advertise or
76 start any public assembly in or on any public right-of-way or public park that is attended at any
77 one time, is calculated to be attended at any one time, or is reasonably expected to be attended at
78 any one time, by fifty (50) or more people, unless a public assembly permit has been applied for
79 and obtained from the town manager pursuant to this article.

80 **Sec. 33-6. Restricted and prohibited public assemblies.**

81 No person shall stage, promote, conduct, engage in, participate in, aid, form, advertise or
82 start any public assembly in or on any public property that is not in or on a public right-of-way or
83 public park, except in an area as may be designated by the town manager and under conditions
84 which ensure that the manner in which the public assembly is conducted will not be incompatible
85 with the principal purpose and use of the public property.

86 **Sec. 33-7. Exceptions.**

87 This article shall not apply to, nor shall a permit be required for, any of the following
88 activities:

- 89 (a) A public assembly organized by the town or any department thereof.
- 90 (b) An authorized or official event, meeting, or activity of the town or any department
91 thereof.
- 92 (c) An assembly, event, meeting or activity held solely, entirely, and exclusively on private
93 property.
- 94 (d) A public assembly in or on the portion of a public right-of-way used for pedestrian
95 traffic that is attended all times, is calculated to be attended at all times, or is reasonably
96 expected to be attended at all times, by less than fifty (50) people.
- 97 (e) A public assembly in a public park that is attended at all times, is calculated to be
98 attended at all times, or is reasonably expected to be attended at all times, by less than
99 fifty (50) people.

100 **Sec. 33-8. Application for public assembly permit; fee.**

- 101 (a) Any person seeking a public assembly permit for a public right-of-way or public park shall
102 file a fully completed application with the town manager on a form provided by the town.
103 Applications for public assembly permits shall be processed in order of receipt.
- 104 (b) To the extent practicable, an application for a permit shall be filed with the town manager
105 not less than thirty (30) calendar days before the date of the public assembly.

- 106 (c) The application for a permit shall be signed by the applicant and notarized. It shall set forth
107 the following information and such other information as may, from time to time, be
108 reasonably required:
- 109 (1) If the public assembly is proposed to be organized or conducted by an individual
110 person, the name, place of residence (if applicable), street address, mailing address and
111 telephone number of the person.
- 112 (2) If the public assembly is proposed to be organized or conducted for, on behalf of, or by
113 an organization, corporation, partnership, trust, or other entity, the respective names,
114 street addresses, mailing addresses and telephone numbers of the entity and of the
115 authorized responsible head of such organization.
- 116 (3) The respective names, places of residence (if applicable), street addresses, mailing
117 addresses and telephone numbers of the individuals who will be the public assembly
118 chairperson and vice-chairperson.
- 119 (4) If the public assembly is to be held by, on behalf of, or for any person other than the
120 applicant, the applicant for such permit shall file with the town manager a notarized
121 document from the person proposing to hold the public assembly authorizing the
122 applicant to apply for the permit on his or her behalf.
- 123 (5) The date the public assembly is to be conducted.
- 124 (6) The type of public assembly.
- 125 (7) The hours when the public assembly will marshal or stage, start and terminate.
- 126 (8) A good faith and reasonable estimate of the number of people who are calculated or
127 expected to attend and participate in the public assembly. (Such estimate may be
128 adjusted by the town manager if the estimate appears to be incorrect.)
- 129 (9) The exact location or route of the public assembly.
- 130 (10) A site plan showing the layout of the public assembly area.
- 131 (11) A designation of any public facilities or equipment proposed to be utilized.
- 132 (12) Whether any roads, streets or highways are requested to be temporarily closed and, if
133 so, which roads, streets or highways are requested to be closed and the times of closing.
- 134 (13) Whether any temporary structures, including but not limited to tents, stages, or
135 grandstands, are proposed to be erected, and, if so, a detailed description of those
136 temporary structures. (Temporary structures may require permits.)
- 137 (14) Whether any alcoholic beverages are proposed to be sold or served, and if so, details as
138 to the time and place of such sale or service, and proof that the sale or service of
139 alcoholic beverages would not be unlawful at those times and places.

- 140 (15) Whether any fireworks or pyrotechnics are proposed to be set off, and, if so, a detailed
141 description of those fireworks and pyrotechnics, and a detailed plan for the use of such
142 fireworks or pyrotechnics.
- 143 (16) Whether any signs are proposed to be erected in conjunction with the public assembly,
144 and, if so, a detailed description of those signs, and proof that the erection of the signs
145 would not be in violation of the town sign ordinance.
- 146 (17) Whether any entertainment will be involved, and, if so, giving details as to nature, time
147 and place of such entertainment.
- 148 (18) Whether any products, materials, goods or services other than entertainment, will be
149 provided, and if so, who will furnish or provide those products, materials, goods or
150 services, including specifically contracted or regularly licensed vendors.
- 151 (19) Whether any rides, mechanical entertainment or amusement devices will be provided,
152 and if so, who will furnish, provide and operate those rides or devices.
- 153 (20) Consistent with section 255.045, Florida Statutes, the applicant's detailed plan to ensure
154 the necessary cleanup, repair and restoration of the public assembly area to its condition
155 prior to the public assembly, with such cleanup, repair or restoration to be accomplished
156 within twenty-four (24) hours after the public assembly is concluded.
- 157 (21) The applicant's detailed plan to provide adequate sanitation and sewage disposal
158 facilities.
- 159 (22) If the public assembly is to be held during hours of darkness, the applicant's detailed
160 lighting plan.
- 161 (23) If the application is for a parade, march, walk, race, or procession in the public right-of-
162 way, it shall also set forth the following information:
- 163 a. The time at which units or components of the parade, march, walk, race, or
164 procession will begin to arrive at the marshaling or staging area or areas, and the
165 times at which all such units or components will depart.
- 166 b. The exact route to be traveled, including the starting point and termination point.
- 167 c. The approximate number of persons, animals (if any), floats (if any), and vehicles
168 (if any) which will constitute such parade, march, walk, race or procession.
- 169 (d) A non-refundable fee the amount which will be set by the town council to defray the
170 administrative costs and expenses incident to processing and reviewing the application
171 shall be paid to the town by the individual applying for the public assembly permit at
172 the time of filing of the application. The amount of the application fee shall be set forth
173 in the town fee directory, and may be amended by resolution, from time to time, by the
174 town council.

175 **Sec. 33-9. Review of application for public assembly permit in public right-of-way and**
176 **public parks.**

177 (a) (1) Within three (3) business days after receipt of a completed public assembly permit
178 application for a public assembly in a public right-of-way or public park and the
179 application fee, the town manager shall deliver copies of the application to the public
180 works department, the police department, and all other applicable departments.

181 (2) Within seven (7) business days after receipt of an application for a public assembly
182 permit, each such town department shall review the application and prepare and deliver
183 a written report to the town manager relating to the application. The application shall
184 be reviewed against the requirements of this ordinance, any other applicable laws or
185 ordinances, and any applicable technical codes or manuals, including those related to
186 safety, traffic control, structures and buildings. The report shall include comments or
187 findings regarding the application. If any governmental services are to be provided to
188 facilitate or serve the public assembly, the reviewing department shall estimate the costs
189 of such services, and indicate those costs in the report. The report may also include
190 conditions, restrictions or requirements which the reviewing department determines are
191 necessary for the permit to be issued. Such conditions, restrictions or requirements may
192 include that the applicant prepare an acceptable traffic plan, apply for and obtain other
193 necessary permits and licenses, and make a pre-payment or security deposit for traffic
194 and crowd control, cleanup of the public assembly area, and removal of any structures
195 or equipment erected or used in conjunction with the public assembly. However, in
196 determining whether to require a pre-payment, the reviewing department shall consider
197 the applicant's ability to pay and the purpose of the public assembly, provided that if the
198 purpose of the public assembly is to engage in speech or protection that is protected
199 under the United States Constitution or the Constitution of the State of Florida, no such
200 pre-payment may be required.

201 (b) Nothing in this article shall be construed as exempting or excusing an applicant or permittee
202 from having to obtain any other required permits, licenses or certificates needed to lawfully
203 operate or conduct the public assembly, including a building permit, a business tax receipt, a
204 certificate of occupancy, a fireworks permit, or an alcoholic beverage license.

205 **Sec. 33-10. Decision regarding application; conditional approval; final approval; denial;**
206 **grounds for denial.**

207 (a) Within three (3) business days after receipt of the department reports, the town manager
208 shall either approve, conditionally approve, or deny the permit application, and notify the
209 applicant by hand delivering a copy of the decision to the street address listed on the
210 application and/or by faxing, e-mailing or mailing a copy of the decision by next day
211 delivery to the mailing address listed on the application. The town manager shall base his
212 decision solely on the reports timely received and the requirements of this article. If no
213 decision is timely made regarding the application, it shall be deemed approved.

214 (b) If the permit application is conditionally approved, the town manager shall inform the
215 applicant of any conditions precedent and notify the applicant that final approval of the

216 application shall be subject to the applicant proving at least three (3) business days before
217 the date of the public assembly that the applicant has complied with or satisfied all the
218 conditions precedent. In addition, at least three (3) business days before the date of the
219 public assembly, the applicant shall tender the indemnification agreement and certificates of
220 insurance required under section 33-14. If the applicant fails to provide such proof or fails
221 to tender the requisite indemnification agreement or certificates of insurance at least three
222 (3) business days before the date of the public assembly, the application shall be deemed
223 denied. However, if the applicant provides such proof and tenders the requisite
224 indemnification agreement and certificates of insurance at least three (3) business days
225 before the date of the public assembly, the application shall be given final approval as of the
226 date proof was received and the requisite indemnification agreement and certificates of
227 insurance were tendered. The town manager shall promptly notify the public works
228 department, the police department, and all other applicable departments of final approval of
229 the application.

230 (c) (1) If an application for a public assembly permit is denied, the town manager shall provide
231 the applicant with the reasons for the denial, and shall afford the applicant an
232 opportunity to cure or resolve the problems or issues which caused the denial. If the
233 applicant cures and resolves the problems and issues at least three (3) business days
234 before the date of the public assembly, the town manager shall inform the applicant that
235 the application is approved, subject to the applicant also complying in a timely manner
236 with all conditions precedent, including tendering the required indemnification
237 agreement and certificates of insurance. Furthermore, if an application is or will be
238 denied by the town manager because the public assembly would take place at the same
239 time and place as a previously scheduled or approved event, the town manager shall
240 inform the applicant of alternative locations or routes where the public assembly could
241 be held.

242 (2) An application for a public assembly permit may be denied if any of the following
243 problems have been found to exist:

244 a. The applicant did not fully or properly complete and execute the application and
245 any related forms for a permit (including any required attachments or submissions);

246 b. The applicant did not tender the required non-refundable application fee with the
247 application, or has not tendered the indemnification agreement, the insurance
248 certificate, or the security deposit;

249 c. The applicant did not file the application by the minimum time period prescribed
250 by the ordinance;

251 d. The application contained a material falsehood or misrepresentation;

252 e. Under Florida law, the applicant is legally incompetent to enter into a contract or to
253 sue and be sued;

- 254 f. The applicant or the person on whose behalf the application was filed has on prior
255 occasions damaged town property and has not paid in full for such damage, or has
256 any other outstanding and unpaid debts to the town;
- 257 g. Another fully executed application for a permit for the same time and place has
258 been filed, and a permit has been or will be granted to the prior applicant
259 authorizing a public assembly for the same time and place, or which would not
260 reasonably permit multiple occupancy of the particular public park, public right-of-
261 way, or part thereof;
- 262 h. The requested public assembly would conflict with a program, event, meeting or
263 activity organized and/or conducted by the town previously scheduled or planned
264 for the same time and place;
- 265 i. The public assembly would substantially interfere with or would have an
266 unmitigatable adverse impact upon residential or commercial access and traffic
267 circulation in the area in which it is to be conducted;
- 268 j. The public assembly would substantially interrupt the safe and orderly movement
269 of aerial or marine navigation, or of public transportation or other vehicular or
270 pedestrian traffic in the area of the public assembly, or would cause an
271 unmitigatable conflict with construction or development in the particular public
272 right-of-way or public park;
- 273 k. The public assembly proposed by the applicant would present an unreasonable
274 danger to the health or safety of the applicant, participants, observers, spectators, or
275 other users of the particular public right-of-way or public park, town employees, or
276 the general public;
- 277 l. The applicant has not complied or cannot comply with applicable licensing or other
278 permitting requirements, including building permits, sign permits, and occupational
279 licenses;
- 280 m. The applicant has not complied or cannot comply with all of the conditions,
281 restrictions or requirements found necessary by the town's reviewing departments,
282 including any conditions precedent; or
- 283 n. The use or activity proposed by the applicant is prohibited by law, by court order,
284 by this article or by any other ordinances of the town.

285 **Sec. 33-11. Revocation or suspension of permit.**

286 The town manager may summarily suspend or revoke a permit issued under this article for a
287 material violation of this article or for a material violation of any condition, restriction, or
288 requirement of the permit.

289 **Sec. 33-12. Judicial review.**

290 In the event an application for a permit is denied, the granting of a permit is made subject to
291 conditions, a permit is suspended or revoked, or a decision is not rendered in accordance with the
292 time requirements of this article, the applicant or the permittee, whichever is applicable, may
293 seek judicial review before a court of competent jurisdiction upon the filing of an appropriate
294 pleading.

295 **Sec. 33-13. Public safety at public assemblies.**

296 (a) The police department shall be the primary provider of personal safety and property security
297 at a public assembly, as necessary.

298 (b) The public works department, as necessary, may prohibit or restrict the parking or driving of
299 vehicles along, across, or in close proximity to the route of a public assembly in order to
300 ensure the safe and efficient flow of vehicular and pedestrian traffic, and may post signs to
301 such effect.

302 **Sec. 33-14. Indemnification; insurance.**

303 (a) The applicant for a public assembly permit and any other person on whose behalf the
304 application for a public assembly permit is made, by filing an application, shall represent,
305 stipulate, contract and agree that he, she or they shall, jointly and severally, to the fullest
306 extent provided in section 768.28, Florida Statutes, indemnify and hold the town and the
307 police department harmless from any and all claims, damages, losses, and expenses made
308 against or incurred or suffered by the town or the police department because of injury or
309 death to persons or damage to property, including court costs and attorneys' fees, and
310 attorneys' fees on appeal, resulting from the intentional or negligent acts or omissions of the
311 applicant or of any person on applicant's behalf in connection with the holding of a public
312 assembly or the issuance of the permit. The applicant for a public assembly permit and any
313 other person on whose behalf the application for a public assembly permit is made shall
314 deliver to the town manager not later than three (3) business days before the date of the
315 public assembly, an indemnification agreement consistent with the terms of this section.

316 (b) (1) The applicant for a public assembly permit shall deliver to the town manager not later
317 than the three (3) business days before the date of the public assembly, certificates of
318 insurance for coverages and amounts which shall be determined by the town. The town
319 shall determine the coverages and amounts based upon an objective risk assessment,
320 and shall keep a uniform schedule of insurance guidelines for particular types of public
321 assemblies.

322 (2) An insurer holding a current certificate of authority pursuant to chapter 624, Florida
323 Statutes, shall underwrite the insurance. Such insurance shall be endorsed to provide
324 for a waiver of underwriter's rights of subrogation in favor of the town. The certificates
325 shall provide that no material alteration or cancellation, including expiration and non-
326 renewal, shall be effective until fifteen (15) days after receipt of written notice by the
327 risk management division.

328 (3) All coverages shall be provided on an occurrence form. In the event that coverage is
329 only available on a claims made form, the insured shall agree to maintain extended
330 reporting coverage for a minimum of two (2) years past the expiration of the annual
331 policy term.

332 (4) Notwithstanding anything to the contrary, the liabilities of the applicant for obtaining
333 and maintaining the coverage(s) required under this section shall survive and not be
334 terminated, reduced or otherwise limited by any expiration or termination of particular
335 policies for insurance coverage.

336 (5) Federal, state and municipal agencies eligible for sovereign immunity may submit a
337 statement of self-insurance and liability as allowed by an applicable federal or state
338 statute. Such a statement shall be accepted in place of the insurance requirements of
339 this section.

340 **Sec. 33-15. Duties of permittee, chairperson and vice-chairperson.**

341 (a) The application for a public assembly permit, after being finally approved by the town
342 manager and the written decision approving the application, including any attachments
343 thereto, shall become the actual permit and shall be kept in the physical possession of the
344 permittee, public assembly chairperson or vice-chairperson before and during the public
345 assembly. The public assembly permit shall be displayed upon demand to the town manager
346 or to any law enforcement officer. The town manager shall keep a copy of the permit, and
347 may distribute copies to the reviewing departments and divisions.

348 (b) The permittee, chairperson, and/or vice-chairperson shall be present at all times during the
349 public assembly. The permittee, chairperson and vice-chairperson shall be jointly and
350 individually responsible for conducting the public assembly in a manner that complies with
351 the public assembly permit, including its conditions, and with the requirements of all
352 applicable laws, regulations, and ordinances, including this article.

353 **Sec. 33-16. Penalties; legal or equitable relief.**

354 (a) Any person knowingly violating any provision of this ordinance may be punished as
355 provided in section 1-12, code of ordinances of the Town of Windermere, or as provided
356 under any applicable state law.

357 (b) The town may seek legal or equitable relief against any person violating any provision of
358 this article or any condition of the public assembly permit. To the extent not inconsistent
359 with Florida law, a violation of this article or a public assembly permit may be subject to an
360 injunction, temporary or permanent, without the necessity of a showing of actual irreparable
361 harm.

362 **Section 2. Severability.** If any provision or portion of this ordinance is declared by a court of
363 competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining
364 provisions and portions of this ordinance shall remain in full effect.
365

366 **Section 3. Codification.** The provisions of this Ordinance shall become and be made a part of
367 the Town of Windermere's Code of Ordinances.

368
369 **Section 4. Effective Date.** This Ordinance takes effect immediately upon its enactment.
370

371 **ENACTED** this 13th day of May, 2014, at a regular meeting of the Town Council of
372 the Town of Windermere, Florida.

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Town of Windermere, Florida

by: Town Council

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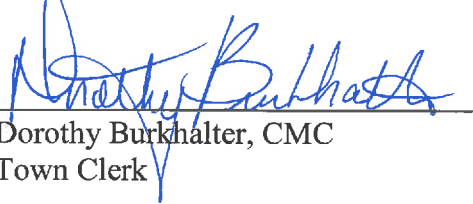
by: 

379
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Gary Bruhn, Mayor

381 Attest:

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Dorothy Burkhalter, CMC
Town Clerk

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388 First reading: April 22, 2014

389 Second reading: May 13, 2014

