

ORDINANCE NO. 2005-_____

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, CHAPTER 122, TITLED "UTILITIES," ARTICLE IV, "STORMWATER UTILITY"; BY AMENDING SECTION 122-151 DEFINITIONS; BY AMENDING SECTION 122-158, ADMINISTRATION OF PROGRAM; CALCULATION OF FEE; COLLECTION OF FEE; BY AMENDING SECTION 122-159, ADJUSTMENT OF FEES; BY CREATING SECTION 122-162, STORMWATER UTILITY FEE CREDITS; BY CREATING SECTION 122-163, FLOODING; BY PROVIDING FOR INCLUSION IN CODE AND SCRIVENERS ERRORS; BY PROVIDING FOR SEVERABILITY; BY PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County Council desires to amend the current Code of Ordinances, Chapter 122, Titled "Utilities", Article IV, "Stormwater Utility," and,

WHEREAS, the county is updating this ordinance to reflect current stormwater studies and analysis; and,

WHEREAS, the county desires to provide stormwater utility customers with credits for facilities that reduce the pollutant discharge and reduce flood impact from their property; and,

WHEREAS, the county stormwater utility system will benefit from improved utility customer stormwater facilities that reduce the impact and burden on the need for capital improvements and maintenance and operation of the county stormwater utility system.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA IN OPEN MEETING DULY ASSEMBLED IN THE

1 VOLUSIA COUNTY ADMINISTRATION CENTER, DELAND, FLORIDA THIS
2 _____ DAY OF _____, A.D. 2005, AS FOLLOWS:

3
4 (Words in ~~strike-through~~ type are deletions; words in underscore type are
5 additions.)

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7
8 **SECTION I:** Chapter 122, Titled “Utilities”, Article IV, “Stormwater Utility,” is
9 amended to read as follows:

10 **Sec. 122-151. Definitions.**

11 The following words, terms and phrases, when used in this article, shall
12 have the meanings ascribed to them in this section, except where the context
13 clearly indicates a different meaning:

14 *County manager* means the county manager or his a duly authorized
15 representative.

16 *Developed property* means that property which has been altered from its
17 natural state by the addition of any improvements, including but not limited to
18 buildings, structures or impervious surfaces. For new construction, a property
19 shall be considered developed pursuant to this article upon issuance of a
20 certificate of occupancy, or upon completion of construction or final inspection if
21 no such certificate is issued.

22 *Dwelling unit* means one or more rooms in a building forming a separate
23 and independent housekeeping establishment, arranged, designed or intended to
24 be used or occupied by one family, and having no enclosed space or cooking or

1 sanitary facilities in common with any other dwelling unit with no ingress or
2 egress though any other dwelling unit, and containing permanent provisions for
3 sleeping facilities, sanitary facilities and not more than one kitchen.

4 *Equivalent residential unit (ERU)* means the statistical average horizontal
5 impervious area of residential units. The horizontal impervious area includes but
6 is not limited to all areas covered by structures, roof extensions, patios, porches,
7 driveways and sidewalks. The common denominator used for relating runoff is
8 the ERU.

9 *Impervious area* means an area covered by material which retards or does
10 not permit infiltration or percolation of water into the ground. Such impervious
11 areas may include but are not limited to areas covered by roofs, roof extensions,
12 slabs, patios, porches, driveways, sidewalks, parking areas and athletic courts.

13 *Lot* means an area of land which abuts a street or other means of legal
14 access and which either complies with or is exempt from the land development
15 code, Ordinance No. 88-3, as amended (appendix A to this Code), and is
16 sufficient in size to meet the minimum area and width requirements for its zoning
17 classification as established in article VII of Ordinance No. 80-8, as amended
18 (appendix B to this Code), and a portion of a subdivision or any other tract or
19 parcel of land, including the airspace above or contiguous thereto, intended as a
20 unit for transfer of ownership or for development or both. The word "lot" includes
21 the word "plot," "tract" or "parcel."

22 *Nonresidential developed property* means any developed property that is

1 classified by the property appraiser as ~~land use types 10 through 99~~ using the
2 state department of revenue land use codes, as may be amended from time to
3 time.

4 *Parcel of land* means any quantity of land capable of being described with
5 such definiteness that its location and boundaries may be established, which is
6 designated by its owner or developer as a unit or which has been used or
7 developed as a unit.

8 *Residential developed property* means developed property that is
9 classified by the property appraiser of the county as ~~land use types 00 through~~
10 ~~09~~ using the state department of revenue land use codes, as may be amended
11 from time to time.

12 *Stormwater* means that part of the precipitation that travels over natural,
13 altered or improved surfaces to the nearest stream channel or impoundment, and
14 that which appears in surface waters.

15 *Stormwater facility* means a conveyance, storage area or system of
16 conveyances and storage areas (including, but not limited to, roads with
17 drainage systems, streets, catch basins, curbs, gutters, ditches, manmade
18 channels, storm drains, treatment ponds, and other structural best management
19 practices) which discharges to waters of the state, or to other municipal or county
20 systems.

21 *Stormwater Management System* means a system which is designed and
22 constructed or implemented to control discharges which are necessitated by

1 rainfall events, incorporating methods to collect, convey, store, absorb, inhibit,
2 treat, use or reuse water to prevent or reduce flooding, over drainage,
3 environmental degradation, and water pollution or otherwise affect the quality
4 and quantity of the discharges.

5 ...

6 **Sec. 122-158. Administration of program; calculation of fee; collection of**
7 **fee.**

8 (a) The county manager shall assign a classification of residential or
9 nonresidential to each lot or parcel, based upon the applicable state
10 department of revenue land use code.

11 (b) The county council shall, upon the recommendation of the county
12 manager from time to time, by resolution, define the square footage of
13 impervious area of the ERU.

14 (c) To the extent provided in this article, all developed property shall be
15 subject to a stormwater utility fee.

16 (d) The stormwater utility fee for residential developed properties shall be
17 calculated from the rate for one ERU, multiplied by the number of
18 individual dwelling units existing on the property (ERU rate X number of
19 dwelling units), ~~provided that:~~

20 ~~(1) For ERU's from 26 through 100, the fee shall be the rate multiplied~~
21 ~~by the number of dwelling units multiplied by 0.5 (ERU rate X~~

1 number of dwelling units X 0.5).

2 ~~(2) For ERU's above 100, the fee shall be the rate multiplied by the~~
3 ~~number of dwelling units multiplied by 0.25 (ERU rate X number of~~
4 ~~dwelling units X 0.25).~~

5 (e) The stormwater utility fee for nonresidential developed properties shall be
6 the rate for one ERU, multiplied by the numerical factor (number of ERU's)
7 obtained by dividing the total impervious area of the nonresidential
8 property by the impervious area of the an ERU (ERU rate X parcel
9 impervious area/impervious area of 1 ERU), provided that: .

10 ~~(1) For ERU's from 25.01 through 100.00, the fee shall be the rate~~
11 ~~multiplied by the number of ERU's multiplied by 0.5 (ERU rate X~~
12 ~~(parcel impervious area/impervious area of 1 ERU) X 0.5); and~~

13 ~~(2) For ERU's 100.01 and above, the fee shall be the rate multiplied by~~
14 ~~the number of ERU's multiplied by 0.25 (ERU rate X (parcel~~
15 ~~impervious area/impervious area of 1 ERU) X 0.25).~~

16 (f) The number of ERU's per lot or parcel shall be rounded to the nearest
17 hundredth.

18 (g) The county manager shall administer the stormwater utility and its related
19 program.

20 (h) The county manager shall determine impervious area on residential or
21 nonresidential property considering data supplied by the property
22 appraiser, other county staff, and/or the property owner, tenant or

1 developer. The county manager may require additional information as
2 necessary to make a determination. The number of ERU's of any lot or
3 parcel shall be updated by the county manager based on any significant
4 changes in impervious area, including that arising from an approved
5 building permit.

6 (i) The method of collection of stormwater utility fees shall be the placement
7 on the tax bill, as a non-ad-valorem assessment pursuant to F.S. §§
8 197.3631--197.3635, or an alternative method of collection; provided,
9 however, that applicable developed property not included on the property
10 appraiser assessment roll and not billed as a special assessment charge
11 on the annual tax bill as provided in this subsection shall be billed a pro
12 rata portion of the annual charge for the remaining months of the fiscal
13 year and for the next fiscal year, if applicable. The total amount shall be
14 collected by the county when permanent electrical service is authorized
15 (certificate of occupancy issued).

16 ...

17 **SECTION II:** Chapter 122, Titled "Utilities", Article IV, "Stormwater Utility,"
18 Sections 122-162 and 122-163 is created as follows:

19 **Sec. 122-162. Stormwater Utility Fee Credits.**

20 (a) The county recognizes that some developed properties subject to the
21 stormwater utility fee have constructed and currently operate and maintain
22 stormwater facilities that can reduce stormwater runoff impacts from the

1 subject property and reduce the burden on the county to maintain, operate
2 and provide capital improvements to the stormwater management system.
3 Additionally, the county recognizes that some property owners may wish
4 to mitigate the stormwater utility fee by constructing and maintaining a
5 stormwater facility that will reduce the impact of the subject property. As
6 an incentive for operating and maintaining a stormwater facility, fee credits
7 may be granted to the utility customer when the management facility
8 reduces the pollutant load on the water quality, reduces the flow of water
9 quantity from the subject property, or both.

10 (b) To qualify for the fee credit, a utility customer must operate a stormwater
11 facility that has a valid St. Johns River Water Management District Permit
12 and must provide certification by a Florida registered professional
13 engineer that the facility is operating as designed and is regularly
14 maintained.

15 (1) If the stormwater facility has a valid Chapter 40-42, F.A.C.
16 St. Johns River Water Management Permit for water quality, then
17 the facility is eligible for a 34% fee credit.

18 (2) If the stormwater facility has a valid Chapter 40C-40 or 40C-
19 4, F.A.C. St. Johns River Water Management Permit for water
20 quality and quantity, then the facility is eligible for a 68% fee credit.

21 (c) A facility may be eligible for up to a 68% credit from stormwater utility fees
22 even if it does not have a valid St. Johns River Water Management District
23 Permit. If the utility customer demonstrates that the stormwater facility

1 does not discharge stormwater to the stormwater management system
2 during the 100-year, 24-hour design storm event as defined by the St.
3 John's River Water Management District or the facility has a level of
4 treatment for stormwater which meets or exceeds the applicable criteria,
5 for a St. Johns River Water Management Permit, referenced in section
6 122-162 (b). If the utility customer provides proof that both pollutant
7 discharge affecting water quality and stormwater flow affecting water
8 quantity are reduced to standards set forth by the St. Johns Water
9 Management District, than the customer is eligible to receive a 68% credit.
10 If the applicant only establishes that the pollutant discharge affecting water
11 quality is reduced, than the customer is eligible to receive a 34% credit.
12 The customer must provide a certification with applicable plans and
13 calculations signed and sealed by a Florida registered professional
14 engineer that one or both of the above criteria are met.

15 (d) The stormwater utility customer requesting the credit must demonstrate to
16 the county on or before every third year anniversary after the granting of
17 the credit that the stormwater facilities are operating properly and being
18 maintained according to standard practices. The demonstration shall
19 include, at a minimum, current photographs of the subject stormwater
20 facilities taken during the year prior and a signed affidavit that the facilities
21 have been operated properly and maintained according to standard
22 practices. The Stormwater facility must be certified by a Florida registered

1 professional engineer that the facility is operating as designed and is
2 regularly maintained.

3 (e) After a particular property receives a stormwater drainage utility fee credit,
4 annually thereafter the county may inspect the stormwater drainage
5 facilities serving the site in order to determine whether those facilities are
6 maintained and functioning properly. If the county inspection determines
7 that they are maintained and functioning properly, the stormwater
8 drainage utility fee credit shall be continued. However, if the county
9 inspection determines that the system is improperly maintained and not
10 functioning properly, the county shall notify the property owner or owners
11 to correct the deficiency within 60 days. If the deficiency is corrected to the
12 satisfaction of the county within the 60-day period, the stormwater
13 drainage utility fee credit shall continue in effect until the next annual
14 inspection. However, if the deficiency is not corrected to the satisfaction of
15 the county within 60 days, the county may cancel the stormwater drainage
16 utility fee credit until the necessary corrections are made.

17

18 **Sec. 122-163. Flooding.** Floods from stormwater runoff may occasionally occur
19 which exceed the capacity of stormwater management facilities constructed,
20 operated or maintained by funds made available under this chapter. This chapter
21 shall not be construed or interpreted to mean that property subject to the fees
22 and charges established herein will always (or at any time) be free from
23 stormwater flooding or flood damage, or that stormwater systems capable of

1 handling all storm events can be cost-effectively constructed, operated or
2 maintained. Nor shall this chapter create any liability on the part of, or cause of
3 action against, the county, or any official or employee thereof, for any flood
4 damage that may result from such storms or the runoff thereof. Nor does this
5 chapter purport to reduce the need or the necessity for obtaining flood insurance
6 by individual property owners.

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8 **SECTION III:** Except as amended herein, the provisions of the Code of
9 Ordinances of the County of Volusia remain in full force and effect.

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11 **SECTION IV:** AUTHORIZING INCLUSION IN CODE - The provisions of this
12 ordinance shall be included and incorporated into the Code of Ordinances of the
13 County of Volusia, as additions or amendments thereto, and shall be
14 appropriately renumbered to conform to the uniform numbering system of the
15 Code.

16

17 **SECTION V:** SEVERABILITY - Should any word, phrase, sentence, subsection
18 or section be held by a court of competent jurisdiction to be illegal, void,
19 unenforceable, or unconstitutional, then that word, phrase, sentence, subsection
20 or section so held shall be severed from this ordinance and all other words,
21 phrases, sentences, subsections, or sections shall remain in full force and effect.

22

1 **SECTION VI:** EFFECTIVE DATE - A certified copy of this Ordinance shall be
2 filed with the Department of State by the County Manager within ten (10) days
3 after enactment by the County Council and this Ordinance shall take effect upon
4 filing with the Department of State.

5 ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY,
6 FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY
7 COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION
8 CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS _____ DAY
9 OF _____ A.D., 2005.

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COUNTY COUNCIL
ATTEST:

COUNTY OF VOLUSIA, FLORIDA

Cynthia A. Coto, County Manager

Frank T. Bruno, Jr., County Chair