

**ORDINANCE NO. 09- 2008**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, CREATING A NEW ARTICLE IN CHAPTER 32 OF THE TOWN CODE ENTITLED "UTILITIES" TO PROVIDE FOR STORMWATER MANAGEMENT; PROVIDING FOR AUTHORITY OF THE TOWN TO CREATE A STORMWATER UTILITY SYSTEM; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROCEDURES FOR THE OPERATION OF A STORMWATER SYSTEM; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, Section 1, Florida Constitution (1968), and Chapter 166, Florida Statutes, the Town Commission of the Town of Lake Park, Florida has all powers of local self-government to perform municipal functions and to render municipal services in a manner not inconsistent with general or special law, and such power may be exercised by the enactment of municipal ordinances;

**WHEREAS**, the Federal Clean Water Act, 33 U.S.C. 1251 requires certain political entities such as the Town, to implement stormwater management programs within prescribed timeframes;

**WHEREAS**, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et. seq. the United States Environmental Protection Agency has published proposed rules for stormwater outfall permits;

**WHEREAS**, the Town of Lake Park has been responsible for the maintenance of a stormwater system which has been developed over a number of years for the purpose of collecting and disposing of stormwater;

**WHEREAS**, the Plan that the Town's present stormwater system is and will continue to be inadequate to control and manage stormwater runoff within the incorporated limits of the Town;

**WHEREAS**, those elements of the system which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all property within the incorporated town, including property not presently served by the storm elements of the system;

**WHEREAS**, the costs of operating and maintaining the Town's Stormwater Management System and financing necessary repairs, replacement, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom; and

**WHEREAS**, the creation, adoption and implementation of a Stormwater Utility would be of benefit to the Town.

**NOW THEREFORE**, be it ordained by the Town Commission of the Town of Lake Park, Florida:

**Section 1. Authority**

The Town is authorized by the Florida Constitution and the provisions of F.S. Chapter 166, as amended and supplemented; F.S. Section 403.0893, as amended and supplemented; F.S. Chapter 197, as amended and supplemented; the Town Charter of the Town; and other applicable provisions of law to construct, reconstruct, improve, and extend stormwater utility systems and to issue revenue bonds and other debts or assess benefited properties as needed to finance in whole or part the cost of a stormwater system and to establish just and, equitable rates, fees, and charges for the services and facilities provided by the stormwater system.

## **Section 2. Establishment of Stormwater Utility**

The Stormwater Management Utility is hereby established by the Commission to provide for the general welfare of the Town and its residents: and

A. To provide for effective management and financing of a stormwater management system within the Town (the “System”);

B. To provide a mechanism for mitigating the damaging effects of uncontrolled and unplanned stormwater runoff from both a water quality and water quantity standpoint;

C. To provide for the safe and efficient capture and conveyance of stormwater runoff and the correction of stormwater problems;

D. To authorize the establishment and implementation of a master plan for stormwater drainage including design, coordination, construction, management, operation, maintenance, inspection and enforcement;

E. To establish a reasonable stormwater management assessment based on each property’s estimated contribution of stormwater runoff to the system and the benefit derived by each property from the use of the facilities of the system;

F. To encourage and facilitate urban water resources management techniques, including but not limited to the retention-detention of stormwater runoff, minimization of the need to construct storm sewers and the enhancement of the environment; and

G. To provide for the issuance of bonds or levy of assessments to finance additions, extensions and improvements to the system.

## **Section 3. Definitions**

For the purpose of this Ordinance, the following definitions shall apply: Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Availability Charge means a charge to a developer or individual property owner to recover the debt service and extension and replacement costs paid for the System facility that had been previously constructed, but which serves such developer or individual property owner.

Bonds means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Costs of Construction.

Costs of Construction means costs reasonably incurred in connection with providing capital improvements to the System or any portion thereof, including, but not limited to, the costs of (1) acquisition of all property, real or personal, and all interests in connection therewith, including all rights-of-way and easements therefore; (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith; (3) architectural, engineering, legal and other professional services; (4) insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation; (5) any taxes or other charges which become due during construction; (6) expenses incurred by the Town or on its behalf with its approval in seeking to enforce any remedy against any contractor or sub-contractor in respect of any default under a contract relating to construction; (7) principal of and interest of any Bonds; and (8) miscellaneous expenses incidental thereto.

Debt Service means, with respect to any particular fiscal year and any particular series of Bonds, an amount equal to the sum of (i) all interest payable on such Bonds during such Fiscal Year, plus (ii) any principal installments of such Bonds during such

Fiscal Year.

Developed Property means real property which has been altered from “natural” state by the addition of any improvements such as a building, structure, or impervious surface.

Director means the Director of Public Works or his designee.

Dwelling Unit means a single unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Equivalent Stormwater Unit or ESU means a single unit of measure equal to the average impervious area of residential developed property per dwelling unit located within the Town and as established by a Resolution of the Commission and as provided herein. An ESU is numerically equal 5,202 square feet of impervious area.

ESU Rate means an assessment rate charged on each ESU as established by the Commission’s Resolution and as provided herein to pay operations and maintenance, extensions and replacement and debt service.

Extension and Replacement means costs of extensions, additions and capital Improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the System, or land acquisition for the System and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expense with are not costs of operation and maintenance or debt service.

Fee-in-lieu-of means a charge to a developer or property owner to recover (1) the costs of construction and debt service on a new stormwater management system facility which serves

such developer or property owner; or (2) the extension and replacement costs necessitated by development undertaken by such developer or property owner.

Fiscal Year means a 12 month period commencing on the first day of October of any year, or such other 12 month period adopted as the fiscal year of the Stormwater Utility.

Impervious Area means roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, pools, driveways, sidewalks, parking areas and athletic courts, or other structures or improvements that do not permit the absorption of water into the ground surface.

Multifamily Property means a parcel designated by the Palm Beach County Property Appraiser and Tax Collector under Land Use Code 0300.

Multifamily Residential <10 Units Property means a parcel designated by the Palm Beach County Property Appraiser and Tax Collector under Land Use Code 0800.

Non-Residential Property means all parcels other than those classified by the Palm Beach County Property Appraiser and Tax Collector under Land Use Codes 0100, 300, 0400 and 0800.

Operating Budget means the annual Stormwater Utility operating budget adopted by the Town for the succeeding fiscal year.

Operations and Maintenance means the current expenses, paid or accrued, of operation, maintenance and current repair of the System, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, overhead or indirect charges, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected

to be incurred in accordance with sound accounting practice.

Property Appraiser means the Office of the Palm Beach County Property Appraiser.

Residential Condominium Property means a parcel designated by the Palm Beach County Property Appraiser and Tax Collector under Land Use Code 0400.

Residential Single Family Property means a parcel that is classified by the Palm Beach County Property Appraiser and Tax Collector under Land Use Code 0100.

Revenues mean all rates, fees, assessments, rentals or other charges or other income received by the Stormwater Utility, in connection with the management and operation of the System, including amounts received from the investment or deposit of monies in any fund or account and any amounts contributed by the Town, all as calculated in accordance with sound accounting practice.

Stormwater Management System or System means the existing stormwater management system of the Town and all improvements thereto which by this Ordinance are constituted as the property and responsibility of the Stormwater Utility, to be operated as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system. This shall include management services such as designing, permitting, planning, and reviewing the stormwater-related infrastructure; operation, maintenance, repair and replacement of the infrastructure; and the improvement or enhancement of the infrastructure related to the Town's Comprehensive Plan for the Town.

Unimproved Land means a parcel which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.

Stormwater Management Assessment A non-ad valorem assessment imposed by the Town pursuant to this Chapter and F.S. Section 403.0893, as amended and supplemented, on all real property of the town in relation to the real property's estimated contribution of stormwater runoff to the system and the benefit derived from the use of the facilities of the System, and the future improvements to be funded from stormwater management assessments. Such stormwater assessment shall include the cost of operation and maintenance of the System, extension and replacement and debt service based on the same proportion of benefit assessed against each parcel within the benefited area.

Stormwater Management Utility or Utility means the enterprise fund utility created by this Ordinance to operate, maintain and improve the System.

Uniform Collection Method means the method to be utilized by the Town for the year commencing October 1, 2008 and each year thereafter for the billing, collection and enforcement of the stormwater management assessments, as authorized pursuant to F.S. Section 403.0893, as amended and supplemented and F.S. Chapter 197, as amended and supplemented.

#### **Section 4. Operation of the Stormwater Utility**

##### **A. Operating Budget**

The Town shall adopt an Operating Budget for the Stormwater Management Utility not later than the first day of each fiscal year. The Operating Budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service.



B. Required Levels of Rates for Stormwater Management Assessments

The Commission shall require that adequate revenues are generated to provide for a balanced operating budget by at least annually levying sufficient levels of stormwater management assessments.

C. Imposition of Stormwater Management Assessment, Classification and Criteria

1. A stormwater management assessment is hereby imposed on each parcel of land within the benefited area.
2. For purposes of imposing the stormwater management assessment, all parcels of land shall have one of the following classifications.

- (a) Residential single family property
- (b) Residential condominium property
- (c) Multifamily property
- (d) Multifamily Residential <10 Units property
- (e) Non-residential property

3. The stormwater management assessment shall be fair and reasonable and levied in proportion to the special benefit each parcel receives by the use of the system, including such additions, extensions and improvements made hereto. It is also recognized that both developed property and unimproved land contributes stormwater runoff, and absent the utilization of the System, the use, enjoyment and value of each parcel will be diminished in proportion to the uncontrolled stormwater runoff attributable to each sub-parcel. It is also recognized that each user of the System derives special benefit from the effective operation and maintenance of the system.

D. Establishment of Rates for Stormwater Management Assessments

1. The rate of stormwater management assessments for each parcel within the benefited area shall be established each year by adoption of a resolution by the Commission.

2. The developer or property owner of each parcel within the benefited area, for which a stormwater management assessment is levied, shall be responsible for the payment of assessments.

3. The rate of stormwater management assessments for the various classes of property within the benefited areas shall be as follows:

(a) Residential single family property – The annual stormwater management assessment for a single-family residential unit shall be the rate for one ESU, multiplied by one ESU, multiplied by 12.

(b) Residential condominium property – The annual stormwater management assessment for each residential condominium unit shall be the rate for one ESU, multiplied by one ESU, multiplied by 12.

(c) Multifamily property – The annual stormwater management assessment for each multifamily property shall be the rate for one ESU, multiplied by one ESU, multiplied by 12 multiplied by the number of units on the property.

(d) Multifamily <10 Units property – The annual stormwater management assessment for each multifamily <10 units property shall be the rate for one ESU, multiplied by one ESU, multiplied by 12, multiplied by the number of units on the property.

(e) Non-residential property – The annual stormwater management assessment for each non-residential property shall be the rate for one ESU, multiplied by a numerical factor to be determined by dividing the total impervious area of the property (in square feet) by the impervious square footage per one ESU, multiplied by 12. The minimum

stormwater management assessment for any non-residential property shall be equal to rate for one ESU, multiplied by one ESU, multiplied by 12.

E. Billing and Payment, Penalties

The stormwater management assessments shall be imposed against the owners of all real property in the Town and collected pursuant to the uniform method of collection for fiscal year commencing October 1, 2008. Thereafter, the Town will use the uniform method of collection unless the Town determines that another method of collecting stormwater management assessments is in the best interest of the Town.

The stormwater management assessments shall be due and payable at the time set forth in the notice of non-ad valorem assessments prepared by the County Tax Collector. Stormwater management assessments collected pursuant to the uniform method of collection shall be subject to all collection provisions of Chapter 197, Florida Statutes, as amended and supplemented.

F. Adjustment of Fees

1. Request for adjustment of the utility fee shall be submitted to the Director, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. No credit shall be given for the installation of facilities required by Town or County development codes or state stormwater rules. The following procedures shall apply to all adjustment requests of the stormwater management assessment:

(a) Any developer or property owner who believes the stormwater management assessment is incorrect may, subject to the limitations set forth in this article, submit an adjustment request to the Director.

(b) The adjustment request shall be made in writing and set forth, in detail, the grounds upon which correction is sought.

(c) An adjustment request shall be made within 60 days after receipt by the developer or property owner of his or her tax bill containing the stormwater management assessment. The adjustment request will be reviewed by the Director within a two-month period from the date of filing the adjustment request. Consideration by the Director of the developer or property owner's request for adjustment shall not relieve the developer or property owner of the obligation to make timely payment of the stormwater management assessment. In the event an adjustment is granted by the Director, which decreases the stormwater management assessment, the developer or property owner shall be entitled to a refund of the excess stormwater management assessments paid. The refund shall be mailed by the Palm Beach County Tax Collector (the "Tax Collector") unless the Tax Collector and the Town agree otherwise.

(d) The developer or property owner requesting the adjustment may be required, at his own cost, to provide supplemental information to the Director including, but not limited to, survey data and engineering reports approved by either a Florida registered professional land surveyor or a professional engineer. Failure to provide such information may result in the denial of the adjustment request.

(e) The adjustment to the stormwater management assessment shall be made upon the granting of the adjustment request, in writing, by the Director. The document granting the adjustment request shall be provided to the developer or property owner and shall also be sent to the Tax Collector. A denial of an adjustment request shall be made

in writing by the Director, a copy of which shall be provided to the developer or property owner.

G. Capital Contributions

1. Where the Town has constructed or plans to construct stormwater facilities which are proposed to be used by a developer or property owner in lieu of a facility usually required to be constructed by him, the Town may accept a capital contribution from the developer or property owner and waive certain construction requirements.

2. Procedures and standards developed by the Town shall define appropriate means by which to optimize the property owner or developers' capital contributions in the construction or refunding of stormwater systems. These capital contributions shall take the form of Fee-in-lieu-of or Availability Charges. Each situation will be analyzed by the Town and a specific written decision will be developed. The application of each is defined as follows:

(a) Fee-in-lieu- of is applied to a site specific negotiated procedure, wherein a development's stormwater contribution (quantity and quality) is assessed its share of the capital needs of the facilities required to serve the development in question. This capital contribution would be used for the construction or refunding of the Town-owned stormwater facilities. The process does not apply wherein the stormwater facilities are privately held. Each application is evaluated against the Town's Master Plan, or where the Master Plan is incomplete, against the cumulative impacts from the development.

(b) Availability Charge is administered on a site specific basis identical to the Fee-in-lieu-of procedure noted above. The only difference is that the capital investment advanced by the Town in implementing a stormwater facility is now recovered through an availability charge. The capital charge is determined on a pro-rata share of the

capacity used by the new developer as measured by the cumulative impact from the development upon all impacted facilities applied to the present worth of the original capital expenditure. In the case of a developer constructing Stormwater Management Facilities in excess of the site needs, the Town may enter an agreement with that developer to rebate Fee-in-lieu-of charges paid to the Town by other developers utilizing those facilities over a period of time not exceeding 7 years from the date of the agreement.

H. Program Responsibility

It shall be the duty of the Director of the Department of Public Works to administer the Stormwater Management Utility. The Director shall keep an accurate record of all persons using the services and facilities of said stormwater management system of the Town and to make changes in accordance with the rates and charges established in this ordinance.

I. Stormwater Management Enterprise Funds

There shall be established a Stormwater Management Enterprise Fund for the deposit of all fees and charges collected by the stormwater utility. These funds shall be for the exclusive use of the Town's Stormwater Management Utility, including, but not limited to, the following:

1. Administrative Costs associated with the management of the Stormwater Management Utility, including any assessment programs implemented.
2. Planning and Engineering fees.
3. Legal
4. Operation and Maintenance of the System.

5. Funding of pollution abatement devices constructed on stormwater systems discharging to the surface water of the Town.

6. Extensions and Replacements.

7. Debt Service

**Section 5. Repeal of Laws in Conflict**

All ordinance or parts of ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of any conflict.

**Section 6. Codification.**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the Town of Lake Park, Florida. The Sections of the Ordinance may be renumbered or relettered to accomplish such, and the word “Ordinance” may be changed to “section,” “article,” or any other appropriate word.

**Section 7. Severability**

In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

**Section 8. Effective Date**

This ordinance shall take effect immediately upon its adoption by the Lake Park Town Commission.

Upon First Reading this 16 day of July, 2008, the foregoing Ordinance, was offered by Commissioner Carey who moved its approval. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

**PUBLISHED IN THE PALM BEACH POST THIS 20 DAY OF July, 2008**

Upon Second Reading this 6 day of August, 2008, the foregoing Ordinance, was offered by Vice-Mayor Daly who moved its adoption. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>✓</u>	_____
VICE MAYOR ED DALY	<u>✓</u>	_____
COMMISSIONER CHUCK BALIUS	<u>✓</u>	_____
COMMISSIONER JEFF CAREY	<u>✓</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>Absent</u>	_____

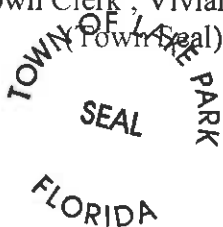
The Mayor thereupon declared **Ordinance No. 09-2008** duly passed and adopted this 6 day of August, 2008.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois  
Mayor, Desca DuBois

ATTEST:

Vivian Mendez Lemley  
Town Clerk, Vivian Mendez Lemley  
(Town Seal)



Approved as to form and legal sufficiency:

Thomas J. Baird  
Town Attorney, Thomas J. Baird