

ORDINANCE NO. 05-05

AN ORDINANCE OF THE CITY OF DEBARY RELATING TO THE PROVISION OF STORMWATER UTILITY SERVICES, FACILITIES, AND PROGRAMS IN THE CITY OF DEBARY, FLORIDA AUTHORIZING THE IMPOSITION AND COLLECTION OF STORMWATER UTILITY ASSESSMENTS AGAINST PROPERTY THROUGHOUT THE CITY OF DEBARY; PROVIDING CERTAIN DEFINITIONS AND DEFINING THE TERM “STORMWATER UTILITY ASSESSMENT”; ESTABLISHING THE PROCEDURES FOR IMPOSING STORMWATER UTILITY ASSESSMENT PROVIDING THAT STORMWATER UTILITY ASSESSMENT CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF ASSESSMENT ROLL; PROVIDING THAT THE LIEN FOR A STORMWATER UTILITY ASSESSMENT COLLECTED PURSUANT TO SECTIONS 197.3632 AND 197.3635, FLORIDA STATUTES, UPON PERFECTION SHALL ATTACH TO THE PROPERTY ON THE PRIOR JANUARY 1, THE LIEN DATE FOR AD VALOREM TAXES; PROVIDING THAT A PERFECTED LIEN SHALL BE EQUAL IN RANK AND DIGNITY WITH THE LIENS OF ALL STATE, COUNTY, DISTRICT, OR MUNICIPAL TAXES AND ASSESSMENTS AND SUPERIOR IN DIGNITY TO ALL OTHER PRIOR LIENS, MORTGAGES, TITLES, AND CLAIMS; AUTHORIZING THE IMPOSITION OF INTERIM ASSESSMENTS ; PROVIDING PROCEDURES FOR COLLECTION OF STORMWATER UTILITY ASSESSMENTS; PROVIDING A MECHANISM FOR THE IMPOSITION OF ASSESSMENTS ON GOVERNMENT PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:

ARTICLE I

INTRODUCTION

SECTION 1.01. DEFINITIONS. As used in this ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

Annual Rate Resolution means the resolution described in Section 2.08 hereof, establishing the rate at which a Stormwater Utility Assessment for a specific Fiscal Year will be computed. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which a Stormwater Utility Assessment is imposed or re-imposed.

Assessed Property means all parcels of land included on the Assessment Roll that receive a special benefit from the delivery of the Stormwater Utility Services, programs or facilities identified in the Initial Assessment Resolution or the Preliminary Rate Resolution.

Assessment Roll means the special assessment roll relating to a Stormwater Utility Assessment approved by a Final Assessment Resolution pursuant to Section 2.06 hereof or an Annual Rate Resolution pursuant to Section 2.08 hereof.

Building means any structure, whether temporary or permanent, built for support, shelter enclosure of persons chattel, or property of any kind. This term shall include mobile homes or any vehicles serving in any way the function of a building.

Certificate of Occupancy means the written certification issued by the City that a building is suitable for occupancy for its intended use. For the purposes of this ordinance, a set-up permit or its equivalent issued for a mobile home shall be considered a Certificate of Occupancy.

City means the City of DeBary, Florida.

City Clerk means the City Clerk of DeBary, Florida or duly authorized representative.

City Council means the governing body of the City of DeBary, Florida.

City Manager means the City Manager of DeBary, Florida or duly authorized representative.

County means Volusia County, Florida.

Developed Property means property, which has been altered from its natural state by the addition of any improvements including, but not limited to, building structures, or improvements including, but not limited to buildings, structures, or impervious surfaces. For new construction, a property shall be considered developed pursuant to this Ordinance upon issuance of a Certificate of Occupancy, or upon completion of construction or final inspection if no such certificate is issued.

Dwelling Unit means one or more rooms in a building, forming a separate and independent housekeeping establishment, arrangement, designed or intended to be used or occupied by one family and having no enclosed space or cooking or sanitary facilities in common with any other dwelling unit with no ingress or egress through any other dwelling unit, and containing permanent provisions for sleeping facilities, sanitary facilities, and not more than one kitchen.

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

Final Assessment Resolution means the resolution described in Section 2.06 hereof which shall confirm, modify, or repeal the Initial Assessment Resolution and which shall be the final proceeding for the initial imposition of Stormwater Utility Assessments.

Impervious Area means an area covered by material which does not permit infiltration or percolation of water into the ground. Such impervious areas may include, but are not limited to,

areas covered by roofs, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas and athletic fields.

Lot means an area of land which abuts a street or other means of legal access and which either complies with or exempt from the Land Development Code as amended, is sufficient in size to meet the minimum area and width requirements for its zoning classification, and a portion of subdivision or any other tract or parcel of land, including the air space above contiguous thereto, intended as a unit for transfer of ownership or for development or both. The word “lot” includes the word plot, tract or parcel.

Non-Residential Developed Property means any developed property that is classified by the Property Appraiser as land use as types 10 through 99 using the Florida Department of Revenue Land Use codes, as may be amended from time to time.

Parcel of Land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developed as a unit or which has been used or developed as a unit, or which may be developed into a unit or units.

Residential Developed Property means developed property that is classified by the Property Appraiser of Volusia County as land use as 00 through 09 using the Florida Department of Revenue Land Use Codes, as may be amended from time to time.

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

Stormwater Utility Assessment means a special assessment lawfully imposed by the City against Assessed Property to fund all or any portion of the cost of the provision of Stormwater Utility services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of property identified in the Initial Assessment Resolution or the Preliminary Rate Resolution.

Stormwater Utility Assessed Cost means the amount determined by the City Council to be assessed in any Fiscal Year to fund all or any portion of the cost of the provision of Stormwater Utility services, facilities, or programs which provide a special benefit to Assessed Property, and shall include, but not be limited to, the following components: (i) the cost of physical construction, reconstruction or completion of any required facility or improvement; (ii) the costs incurred in any required acquisition or purchase; (iii) the cost of all labor, materials, machinery, and equipment; (iv) the cost of fuel, parts, supplies, maintenance, repairs, and utilities; (v) the cost of computer services, data processing, and communications; (vi) the cost of all lands and interest therein, leases, property rights, easements, and franchises of any nature whatsoever; (vii) the cost of any indemnity or surety bonds and premiums for insurance; (viii) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (ix) the cost of uniforms, training, travel, and per diem; (x) the cost of construction plans and specifications, surveys and estimates of costs; (xi) the cost of engineering, financial, legal, and other professional services; (xii) the cost of compliance with any contracts or agreements entered into by the City to provide Stormwater Utility services; (xiii) all costs associated with the structure, implementation, collection, and enforcement of the Stormwater Utility Assessments, including any service charges of the Tax Collector, or Property Appraiser and amounts necessary to off-set discounts received for early payment of Stormwater Utility Assessments

pursuant to the Uniform Assessment Collection Act or for early payment of Stormwater Utility Assessments collected pursuant to Section 3.02 herein; (xiv) all other costs and expenses necessary to incidental to the acquisition, provision, or construction of stormwater utility services, facilities, or programs, and such other expenses as may be necessary or incidental to any related financing authorized by the City Council by subsequent resolution; (xv) a reasonable amount for contingency and anticipated delinquencies and uncollectible Stormwater Utility Assessments; and reimbursement to the City or any other Person for any moneys advanced for any costs incurred by the City or such Person in connection with any of the foregoing components of Stormwater Utility Assessed Cost. In the event the city also imposes an impact fee upon new growth or development for Stormwater Utility related capital improvements, the Stormwater Utility Assessed Cost shall not include costs attributable to capital improvements necessitated by new growth or development.

Fiscal Year means that period commencing October 1st of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law as the fiscal year for the City.

Government Property means property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district, or a municipal corporation.

Initial Assessment Resolution means the resolution described in Section 2.02 hereof which shall be the initial proceeding for the identification of the Stormwater Utility Assessed Cost for which an assessment is to be made and for the imposition of a Stormwater Utility Assessment.

Ordinance means this Stormwater Utility Assessment Ordinance.

Owner means the Person reflected as the owner of Assessed Property on the Tax Roll.

Person means any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Preliminary Rate Resolution means the resolution described in Section 2.08 hereof initiating the annual process for updating the Assessment Roll and directing the re-imposition of Stormwater Utility Assessments pursuant to an Annual Rate Resolution.

Property Appraiser means the Property Appraiser of the County.

Tax Roll means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

Uniform Assessment Collection Act means Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

SECTION 1.02. INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore” means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.03. GENERAL FINDINGS. It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, Section 2(b), Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, and Section 403.0893, Florida Statutes, the City Council has all powers of local self government necessary to perform municipal functions, render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of City ordinances. Said powers specifically include the authority to construct, reconstruct,

improve and extend stormwater management systems, or create stormwater utilities and to finance in whole or in part the costs of such systems and to establish just and equitable rates, fees, and charges for the services and facilities provided by such systems.

(B) The City Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the City Council may legislate on any subject matter on which the Florida Legislative may act, except those subjects described in (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes. The subject matter of Paragraphs (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Stormwater Utility services, facilities, or programs of the City.

(C) The purpose of this Ordinance is to: (i) provide procedures and standards for the imposition of city-wide Stormwater Utility Assessments under the general home rule powers of a municipality to impose special assessments; (ii) authorize a procedure for the funding of Stormwater Utility services, facilities, or programs providing special benefits to property within the City; and (iii) legislatively determine the special benefit provided to Assessed Property from the provision of Stormwater Utilities.

(D) The annual Stormwater Utility Assessments to be imposed pursuant to this Ordinance shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.

(E) The Stormwater Utility Assessment imposed pursuant to this Ordinance is imposed by the City if DeBary, not the Volusia County Board of County Commissioners, Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Ordinance shall be construed as ministerial.

SECTION 1.04. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT.

It is hereby ascertained and declared that the Stormwater Utility services, facilities, and programs of the City provide a special benefit to property within the City based upon the following legislative determinations:

(A) The City Council of the City of DeBary, Florida, does hereby find that the Legislature of the State of Florida has adopted Section 403.893, Florida Statutes, which encourages proper management of stormwater runoff and water quality.

(B) The stormwater utility services possess a logical relationship to the use and enjoyment of property by: (i) providing availability and use of facilities or improvements by owners and occupants of property to properly and safely detain, retain, convey or treat stormwater discharge from such property; (ii) stabilizing or increasing of property values; (iii) increasing safety and better access to property; (iv) improved appearance; (v) rendering property more adaptable to a current or reasonably foreseeable new and higher use; (vi) alleviating burdens caused by use of property; and (vii) fostering and enhancing environmentally responsible use and enjoyment of natural resources within the City.

(C) The benefits provided by the stormwater utility services bear a logical relationship to the value, use and characteristics of the property located within the City.

(D) The stormwater assessments authorized by this Ordinance provide an equitable method of funding stormwater utility services by fairly and reasonably allocating such costs to such benefited property classified on the basis of the stormwater burden expected to be generated by the physical characteristics and use of such property.

(E) The City Council of the City of DeBary finds that there is a desire to develop a stormwater management program to be responsible for the operation, construction, and maintenance of stormwater devices and for stormwater system planning.

(F) The City Council of the City of DeBary finds that the cost of operating and maintaining all stormwater management systems and the financing of existing and future necessary repairs, replacements, improvements, and extensions thereof, should, to the extent practicable, be allocated in relationship to the benefits enjoyed and to be enjoyed and services received and to be received therefrom.

(G) The City Council has recognized and determined that there exists a pressing need for stormwater improvements within the City of DeBary;

(H) The City Council of the City of DeBary finds that property, including occupied residential property within the City of DeBary is presently flooded or in danger of flooding and that said flooding is reoccurring and worsening;

(I) The City Council of the City of DeBary finds that stormwater control is an essential element of the public health, safety and welfare;

(J) The City Council of the City of DeBary finds that there are in excess of 2,300 vacant parcels of property within the City of DeBary which may be developed and for which stormwater facilities will be required;

(K) The City Council of the City of DeBary finds that there exists a need to enhance the existing stormwater program by extending the stormwater assessments to vacant property in order to ensure proper drainage and future drainage for such sites.

ARTICLE II

ANNUAL STORMWATER UTILITY ASSESSMENTS

SECTION 2.01. GENERAL AUTHORITY

(A) The City Council is hereby authorized to impose an annual Stormwater Utility Assessment to fund all or any portion of the Stormwater Utility Assessed Cost upon benefitted property at a rate of assessment based on the special benefit accruing to such property from the City's provision of Stormwater Utility services, facilities, stormwater control, conservation, and aquifer recharge (also referred to as stormwater management). All Stormwater Utility Assessments shall be imposed in conformity with the procedures set forth in this Article II.

(B) The amount of the Stormwater Utility Assessment imposed in a Fiscal Year against a parcel of Assessed Property shall be determined pursuant to an apportionment methodology based upon a classification of property designed to provide a fair and reasonable apportionment of the Stormwater Utility Assessed Cost among properties on a basis reasonably related to the special benefit provided by Stormwater Utility services, facilities, or programs funded with assessment proceeds. Nothing contained in this Ordinance shall be construed to require the imposition of Stormwater Utility Assessments against Government Property.

SECTION 2.02. INITIAL PROCEEDINGS. The initial proceeding for the imposition of a Stormwater Utility Assessment shall be the adoption of an Initial Assessment Resolution by the City Council (i) contain a brief and general description of the Stormwater Utility services, facilities, or programs to be provided; (ii) estimating the Stormwater Utility Assessed Cost to be assessed; (iii) describing the method of apportioning the Stormwater Utility Assessed Cost and the computation of the Stormwater Utility Assessment for specific properties; (iv) providing a summary description of

the parcels of property (conforming to the description contained on the Tax Roll) located within the City that receive a special benefit from the provision of Stormwater Utility services, facilities, or programs or describing a specific geographic area in which such service, facility, or program will be provided; (v) establishing an assessment rate for the upcoming Fiscal Year; and (vi) directing the City Manager to (a) prepare the initial Assessment Roll, as required by Section 2.03 hereof, (b) publish the notice required by Section 2.04 hereof, and (c) mail the notice required by Section 2.05 hereof using information then available from the Tax Roll.

SECTION 2.03. INITIAL ASSESSMENT ROLL

(A) The City Manager shall prepare, or direct the preparation of, the initial Assessment Roll, which shall contain the following:

- (1) A summary description of all Assessed Property conforming to the description contained on the Tax Roll.
- (2) The name of the Owner of the Assess Property.
- (3) The amount of the Stormwater Utility Assessment to be imposed against each such parcel of Assessed Property.

(B) The initial Assessment Roll shall be retained by the City Manager and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Stormwater Utility Assessment for each parcel of property can be determined by use of a computer terminal available to the public.

SECTION 2.04. NOTICE BY PUBLICATION. Upon completion of the initial Assessment Roll, the City Manager shall publish, or direct the publication of, once in the newspaper of general circulation within the City a notice stating that at a meeting of the City Council on a certain day and

hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the City Council will hear objections of all interested persons to the Final Assessment Resolution which shall establish the rate of assessment and approve the aforementioned initial Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such notice shall include (i) a geographic depiction of the property subject to the Stormwater Utility Assessment; (ii) a brief and general description of the Stormwater Utility services, facilities, or programs to be provided; (iii) the rate of assessment; (iv) the procedure for objecting provided in Section 2.06 hereof; (v) the method by which the Stormwater Utility Assessment will be collected; and (vi) a statement that the Initial Assessment Roll is available for inspection at the office of the City Clerk and all interested persons may ascertain the amount to be assessed against a parcel of Assessed Property at the office of the City Clerk.

SECTION 2.05. NOTICE BY MAIL. In addition to the published notice required by Section 2.04, the City Manager shall provide notice, or direct the provision of notice, of the proposed Stormwater Utility Assessment by first class mail to the Owner of each parcel of property (except Government Property) subject to the Stormwater Utility Assessment. Such notice shall include: (i) the purpose of the Stormwater Utility Assessment; (ii) the rate of assessment to be levied against each parcel of property; (iii) the unit of measurement applied to determine the Stormwater Utility Assessment; (iv) the number of such units contained in each parcel of property; (v) the total revenue to be collected by the City from the Stormwater Utility Assessment; (vi) a statement that failure to pay the Stormwater Utility Assessment will cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property; (vii) a statement that all affected Owners have a right to appear at the hearing and to file written

objections with the City Council within 20 days of the notice; and (viii) the date, time, and place of the hearing. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each Owner at such address as is shown on the Tax Roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The City Manager may provide proof of such notice by affidavit. Failure of the Owner to receive such notice due to mistake or in-advertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Stormwater Utility Assessment imposed by the City Council pursuant to this Ordinance.

SECTION 2.06. ADOPTION OF FINAL ASSESSMENT RESOLUTION. At the time named in such notice, or to which an adjournment or continuance may be taken by the City Council, the City Council shall receive any written objections of interested persons and may then, or at any subsequent meeting of the City Council adopt the Final Assessment Resolution which shall: (i) confirm, modify, or repeal the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the City Council; (ii) establish the rate of assessment to be imposed in the upcoming Fiscal Year; (iii) approve the initial Assessment Roll, with such amendments as it deems just and right; and (iv) determine the method of collection. The adoption of the Final Assessment Resolution by the City Council shall constitute a legislative determination that all parcels assessed derive a special benefit from the Stormwater Utility services, facilities, or programs to be provided or constructed and a legislative determination that the Stormwater Utility Assessments are fairly and reasonably apportioned among the properties that receive the special benefit. All objections to the

Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which Stormwater Utility Assessments are imposed or reimposed hereunder.

SECTION 2.07. EFFECT OF FINAL ASSESSMENT RESOLUTION. The Stormwater Utility Assessment for the initial Fiscal Year shall be established upon adoption of the Final Assessment Resolution. The adoption of the Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the initial rate of assessment, the initial Assessment Roll, and the levy and lien of the Stormwater Utility Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the City Council action on the Final Assessment Resolution. The initial Assessment Roll, as approved by the Final Assessment Resolution, shall be delivered to the Tax Collector, as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 3.02 hereof is used to collect the Stormwater Utility Assessments, or such other official as the City Council by resolution shall designate.

SECTION 2.08. ADOPTION OF ANNUAL RATE RESOLUTION.

(A) The City Council shall adopt an Annual Rate Resolution during its budget adoption process for each Fiscal Year following the initial Fiscal Year for which a Stormwater Utility Assessment is imposed hereunder.

(B) The initial proceedings for the adoption of an Annual Rate Resolution shall be the adoption of a Preliminary Rate Resolution by the City Council (i) containing a brief and general description of the Stormwater Utility services, facilities, or programs to be provided; (ii) estimating the Stormwater Utility Assessed Cost to be assessed for the upcoming Fiscal Year; (iii) establishing

the assessment rate for the upcoming Fiscal Year; (iv) authorizing the date, time, and place of a public hearing to receive and consider comments from the public and consider the adoption of the Annual Rate Resolution for the upcoming Fiscal Year; and (v) directing the City Manager to (a) update the Assessment Roll, (b) provide notice by publication and first class mail to affected Owners in the event circumstances described in subsection F of this Section so require, and (c) directing and authorizing any supplemental or additional notice deemed proper, necessary or convenient by the City.

(C) The Annual Rate Resolution shall: (i) establish the rate of assessment to be imposed in the upcoming Fiscal Year; and (ii) approve the Assessment Roll for the upcoming Fiscal Year with such adjustments as the City Council deems just and right. The Assessment Roll shall be prepared in accordance with the method of apportionment set forth in the Initial Assessment Resolution together with modifications, if any, as confirmed in the Final Assessment Resolution or as provided in the Preliminary Rate Resolution.

(D) Nothing herein shall preclude the City Council from providing annual notification to all Owners of Assessed Property in the manner provided in either or both Sections 2.04 or 2.05 hereof.

(E) Nothing herein shall preclude the City Council from establishing by resolution a maximum rate of assessment provided that notice of such maximum assessment rate is provided pursuant to Sections 2.04 and 2.05 hereof.

(F) In the event (i) the proposed Stormwater Utility Assessment for any fiscal Year exceeds the maximum rate of assessment adopted by the City Council and included in the notice previously provided to the Owners of Assessed Property pursuant to Sections 2.04 and 2.05 hereof;

(ii) the method of apportionment is changed or the purpose for which the Stormwater Utility Assessment is imposed is substantially changed from that represented by notice previously provided to the Owners of Assessed Property pursuant to Sections 2.04 and 2.05 hereof; (iii) Assessed Property is reclassified in a manner which results in an increased Stormwater Utility Assessment from that presented by notice previously provided to the owners of Assessed Property pursuant to Sections 2.04 and 2.05 hereof; or (iv) an Assessment Roll contains Assessed Property that was not included on the Assessment Roll approved for the prior Fiscal Year, notice shall be provided by publication and first class mail to the Owners of such Assessed Property. Such notice shall substantially conform with the notice requirements set forth in Sections 2.04 and 2.05 hereof and inform the Owner of the date, time, and place for the adoption of the Annual Rate Resolution. The failure of the Owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Stormwater Utility Assessment imposed by the City Council pursuant to this Ordinance.

(G) As to any Assessed Property not included on an Assessment Roll approved by the adoption of the Final Assessment Resolution or a prior year's Annual Rate Resolution, the adoption of the succeeding Annual Rate Resolution shall be the final adjudication of the issues presented as to such Assessed Property (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll, and the levy and lien of the Stormwater Utility Assessment), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the City Council action on the Annual Rate Resolution. Nothing contained herein shall be construed or interpreted to affect the finality of any Stormwater Utility Assessment not challenged

within the required 20 day period for those Stormwater Utility Assessments imposed against Assessed Property by the inclusion of the Assessed Property on an Assessment Roll approved in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(H) The Assessment Roll, as approved by the Annual Rate Resolution, shall be delivered to the Tax Collector as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 3.02 hereof is used to collect the Stormwater Utility Assessments, such other official as the City Council by resolution shall designate. If the Stormwater Utility Assessment against any property shall be sustained, reduced, or abated by the court, an adjustment shall be made on the Assessment Roll.

SECTION 2.09. LIEN OF STORMWATER UTILITY ASSESSMENTS. Upon the adoption of the Assessment Roll, all Stormwater Utility Assessments 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 Utility Assessment shall be deemed perfected upon adoption by the City Council of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable. The lien for a Stormwater Utility Assessment 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. The lien for a Stormwater Utility Assessment collected under the alternative method of collection provided in Section 3.02 shall be deemed perfected upon adoption by the City Council of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable, and shall attach to the property of such date of adoption.

SECTION 2.10. REVISIONS TO STORMWATER UTILITY ASSESSMENTS. If any Stormwater Utility Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the City Council is satisfied that any such Stormwater Utility Assessment is so irregular or defective that the same cannot be enforced or collected, or if the City Council has omitted any property on the Assessment Roll which property should have been so included, the City Council may take all necessary steps to impose a new Stormwater Utility Assessment against any property benefitted by the Stormwater Utility Assessed Costs, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Stormwater Utility Assessment is annulled, vacated, or set aside, the City Council may obtain and impose other Stormwater Utility Assessments until a valid Stormwater Utility Assessment is imposed.

SECTION 2.11. PROCEDURAL IRREGULARITIES. Any informality or irregularity in the proceedings in connection with the levy of any Stormwater Utility Assessment under the provision of this Ordinance shall not affect the validity of the same after the approval thereof, and any Stormwater Utility Assessment as finally approved shall be competent and sufficient evidence that such Stormwater Utility Assessment was duly levied, that the Stormwater Utility Assessment was duly made and adopted, and that all other proceedings adequate to such Stormwater Utility Assessment were duly had, taken, and performed as required by this Ordinance; and such variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

SECTION 2.12. CORRECTION OF ERRORS AND OMISSIONS.

(A) No uniform Assessment Collection Act of error or omission on the part of the Property Appraiser, Tax Collector, City Manager, City Council, or their deputies or employees, shall operate to release or discharge any obligation for payment of a Stormwater Utility Assessment imposed by the City Council under the provision of this Ordinance.

(B) When it shall appear that any Stormwater Utility Assessment should have been imposed under this Ordinance against a parcel of property specially benefitted by the provision of Stormwater Utility services, facilities, or programs, but that such property was omitted from the Assessment Roll or was not listed on the Tax Roll as an individual parcel of property as of the effective date of the Assessment Roll approved by the Annual Rate Resolution for any upcoming Fiscal Year, the City Council may, upon provision of a notice by mail provided to the Owner of the omitted parcel in the manner and form provided in Section 2.05, impose the applicable Stormwater Utility Assessment for the Fiscal Year in which such error is discovered, in addition to the applicable Stormwater Utility Assessment due for the prior two Fiscal Years. Such Stormwater Utility Assessment 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, 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 in Article III hereof, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent assessments.

(C) Prior to the delivery of the Assessment Roll to the Tax Collector in accordance with the Uniform Assessment Collection Act, the City Manager shall have the authority at any time, upon his or her own initiative or in response to a timely filed petition from the Owner of any property

subject to a Stormwater Utility Assessment, to reclassify property based upon presentation of competent and substantial evidence, and correct any error in applying the Stormwater Utility Assessment apportionment method to any particular parcel of property not otherwise requiring the provision of notice pursuant to the Uniform Assessment Collection Act. Any such correction shall be considered valid ab initio and shall in no way affect the enforcement of the Stormwater Utility Assessment imposed under the provisions of this Ordinance. All requests from affected property owners of any such changes, modifications or corrections shall be referred to, and processed by, the City Manager and not the Property Appraiser or Tax Collector.

(D) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the Tax Roll upon timely written request and direction of the City Manager.

SECTION 2.13. INTERIM ASSESSMENTS. An interim Stormwater Utility Assessment shall be imposed against all property for which a Certificate of Occupancy is issued after adoption of the Annual Rate Resolution. The amount of the interim Stormwater Utility Assessment shall be calculated upon a monthly rate, which shall be one twelfth (1/12) of the annual rate for such property computed in accordance with the Annual Rate Resolution for the Fiscal Year's Stormwater Utility Assessment. No Certificate of Occupancy shall be issued until full payment of the interim Stormwater Utility Assessment is received by the City. Issuance of the Certificate of Occupancy by mistake or inadvertence, and without the payment in full of the interim Stormwater Utility Assessment, shall not relieve the Owner of such property of the obligation of full payment. For the purpose of this provision, such interim Stormwater Utility Assessment 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 all 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.

ARTICLE III

COLLECTION AND USE OF STORMWATER UTILITY ASSESSMENTS

SECTION 3.01. METHOD OF COLLECTION.

(A) Unless otherwise directed by the City Council, the Stormwater Utility Assessments shall be collected pursuant to the uniform method provided in the Uniform Assessment Collection Act. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

(B) The amount of a Stormwater Utility Assessment to be collected using the uniform method pursuant to the Uniform Assessment Collection Uniform Assessment Collection Act for any specific parcel of benefitted property may include an amount equivalent to the payment delinquency, delinquency fees and recording costs for a prior year's assessment for a comparable service, facility, or program provided: (i) the collection method used in connection with the prior year's assessment did not employ the use of the uniform method of collection authorized by the Uniform Assessment Collection Uniform Assessment Collection Uniform Assessment Collection Act; (ii) notice is provided to the Owner as required under the Uniform Assessment Collection Uniform Assessment Collection Uniform Assessment Collection Act; and (iii) any lien on the affected parcel for the prior year's assessment is supplanted and transferred to such Stormwater Utility Assessment upon certification of a non-ad valorem roll to the Tax Collector by the City.

SECTION 3.02. ALTERNATIVE METHOD OF COLLECTION. In lieu of utilizing the Uniform Assessment Collection Uniform Assessment Collection Uniform Assessment Collection Act, the City may elect to collect the Stormwater Utility Assessment by any other method which is authorized by law or under the alternative collection method provided by this Section:

(A) The City shall provide Stormwater Utility Assessment bills by first class mail to the Owner of each affected parcel of property, other than Government Property. The bill or accompanying explanatory material shall include: (i) a brief explanation of the Stormwater Utility Assessment; (ii) a description of the unit of measurement used to determine the amount of the Stormwater Utility Assessment; (iii) the number of units contained within the parcel; (iv) the total amount of the Stormwater Utility Assessment imposed against the parcel for the appropriate period; (v) the location at which payment will be accepted; (vi) the date on which the Stormwater Utility Assessment is due; and (vii) a statement that the Stormwater Utility Assessment constituted a lien against assessed property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Stormwater Utility Assessments shall be recorded in the Official Records of the County. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The City shall have the right to foreclose and collect all delinquent Stormwater Utility Assessments in the manner provided by law for the foreclosure of mortgages on real property or appoint or retain an agent to institute such foreclosure and collection proceedings. A Stormwater Utility Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City or its agent shall notify any property owner who is delinquent in payment of his or her Stormwater Utility Assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the City or its agent will either: (i) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent Stormwater Utility Assessment in a method now or hereafter provided by law for foreclosures of

mortgages on real property; or (ii) cause an amount equivalent to the delinquent Stormwater Utility Assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the City may be the purchaser to the same extent as any Person. The City or its agent may join in one foreclosure action the collection of Stormwater Utility Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent Owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City and its agents, including reasonable attorney fees, in collection of such delinquent Stormwater Utility Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Utility Assessments and the same shall be collectible as a part of, or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Stormwater Utility Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act, provided however, that: (i) notice is provided to the Owner in the manner required by the Uniform Assessment Collection Act and this Ordinance; and (ii) any existing lien of record on the affected parcel for the delinquent Stormwater Utility Assessment is supplanted by the lien resulting from certification of the Assessment Roll, as applicable, to the Tax Collector.

(F) Notwithstanding the City's use of an alternative method of collection, the City Manager shall have the same power and authority to correct errors and omissions as provided to him or county officials in Section 2.12 hereof.

(G) Any City Council action required in the collection of Stormwater Utility Assessments may be by resolution.

SECTION 3.03. GOVERNMENT PROPERTY.

(A) If Stormwater Utility Assessments are imposed against Government Property, the City shall provide Stormwater Utility Assessment bills by first class mail to the Owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include: (i) a brief explanation of the Stormwater Utility Assessment; (ii) a description of the unit of measurement used to determine the amount of the Stormwater Utility Assessment; (iii) the number of units contained within the parcel; (iv) the total amount of the parcel's Stormwater Utility Assessment for the appropriate period; (v) the location at which payment will be accepted; and (vi) the date on which the Stormwater Utility Assessment is due.

(B) Stormwater Utility Assessments imposed against Government Property shall be due on the same date as all other Stormwater Utility Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) A Stormwater Utility Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City shall notify the Owner of any Government Property that is delinquent in payment of its Stormwater Utility Assessment within 60 days from the date such assessment was due. Such notice shall state that the City will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent Owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City, including reasonable attorney fees, in collection of such delinquent Stormwater Utility Assessments and any other costs incurred by the City as a result of such delinquent Stormwater Utility Assessments and the same shall be collectible as a part of, or in action to, the costs of the action.

(E) As an alternative to the foregoing, a Stormwater Utility Assessment imposed against Government Property may be collected as a surcharge on a utility bill provided to such Government Property in periodic installments with a remedy of a mandamus action in the event of non-payment. The City Council may contract such billing services with any utility, whether or not such utility is owned by the City.

ARTICLE IV

GENERAL PROVISIONS

SECTION 4.01. APPLICABILITY. This Ordinance and the City's authority to impose assessments pursuant hereto shall be applicable throughout the City.

SECTION 4.02. ALTERNATIVE METHOD.

(A) This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarding as in derogation of any powers not existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the City, shall be liberally construed to effect the purposes hereof.

(B) Nothing herein shall preclude the City Council from directing and authorizing, by resolution, the combination with each other of: (i) any supplemental or additional notice deemed proper, necessary, or convenient by the City; (ii) any notice required by this Ordinance; or (iii) any notice required by law, including the Uniform Assessment Collection Act.

SECTION 4.03. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 4.04. CONFLICTS. That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 4.05. EFFECTIVE DATE. This Ordinance shall be in force and take effect immediately upon its passage and adoption.

ADOPTED on First Reading the 2nd day of February 2005.

ADOPTED on Second Reading the 28th day of February 2005.

Carmen Rosamonda, Mayor

ATTEST:

Maryann Courson, City Clerk