

**ORDINANCE NO. 2009-04**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LADY LAKE, FLORIDA, AMENDING CHAPTER 13 OF THE TOWN OF LADY LAKE CODE OF ORDINANCES TO PROVIDE FOR WATER, WASTEWATER AND RECLAIMED WATER IMPACT FEES, FINDING A NEED FOR WATER, WASTEWATER AND RECLAIMED WATER IMPACT FEES; PROVIDING FOR THE SETTING OF WATER, WASTEWATER AND RECLAIMED WATER IMPACT FEE RATES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE OF NINETY DAYS AFTER ADOPTION.**

**WHEREAS**, the Town of Lady Lake continues to develop and expand by annexation and by increased development of property currently within the municipal boundaries; and

**WHEREAS**, the Town of Lady Lake has undertaken a reasonable analysis for the determination of the impact of new development on the need for and costs of additional water, wastewater and reclaimed water facilities and capital improvements in the Town of Lady Lake; and

**WHEREAS**, the Town of Lady Lake has adopted a comprehensive plan which requires the Town to plan for the financial requirements of growth and intensified uses; and

**WHEREAS**, the imposition of water, wastewater and reclaimed water impact fees is seen as a proper means of requiring growth to help defray the capital expenditures necessary by such growth.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LADY LAKE THAT:**

**Section 1. Findings**

- A. The Town Commission has determined that the Town of Lady Lake must expand its water, wastewater and reclaimed water facilities in order to maintain current standards if new development is to be accommodated without decreasing current standards. This must be done in order to promote and protect the public health, safety, and welfare;
- B. The Town Commission has determined that the Florida Legislature, through the enactment of the "Florida Impact Fee Act," Section 163.31801, encourages local governments to adopt innovative approaches to development;
- C. The Town Commission has determined the imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital improvements necessary to accommodate such development. This must be done in order to protect the public health, safety, and welfare;
- D. The imposition of impact fees is consistent with the Town of Lady Lake Comprehensive Plan;



- E. The type of land development described in section 13-59, will create demand for the expansion of water, wastewater and reclaimed water improvements;
- F. The implementation of water, wastewater and reclaimed water impact fees to require future growth to contribute its fair share of the cost of required capital improvements and additions is an integral and vital element of the regulatory plan of growth management in the Town;
- G. The fees established by section 13-59 are derived from, are based upon, and do not exceed the costs of providing additional water, wastewater and reclaimed water improvements necessitated by the new land developments for which the fees are levied; and
- H. The report entitled "Water, Wastewater and Reclaimed Water Impact Fee Study: Prepared by Burton & Associates" sets forth a reasonable methodology and analysis for the determination of the impact of new residential development on the need for and costs for additional water, wastewater and reclaimed water facilities and capital improvements in the Town.

## **Section 2. Amendment**

Chapter 13 entitled "Special Assessments" of the Town of Lady Lake Code Of Ordinances is hereby amended as follows:

### CHAPTER 13

#### SPECIAL ASSESSMENTS\*/ IMPACT FEES/ SUPPLEMENTAL FEES

### **Article V: Town of Lady Lake Water, Wastewater and Reclaimed Water Impact Fee Ordinance**

#### **Sec. 13-53: Short Title, Authority and Applicability**

- (a) This chapter shall be known and may be cited as the "Town of Lady Lake Water, Wastewater and Reclaimed Water Impact Fee Ordinance."
- (b) The Town Commission has the authority to adopt this ordinance pursuant to Article VIII of the Constitution of the State of Florida, and Section 163.31801, Florida Statutes.
- (c) This chapter shall apply to all consumers of the Town's Water, Wastewater, and Reclaimed Water.

#### **Sec. 13-54: Intent and Purpose**

- (a) This chapter is intended to assist in the implementation of the Town of Lady Lake Comprehensive Plan.

- (b) The purpose of this chapter is to require the payment of a fee so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide water, wastewater and reclaimed water facilities.

**Sec. 13-55: Rules of Construction**

- (a) The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.
- (b) For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this chapter, the following rules of construction shall apply to the text of this chapter:
  - 1. In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
  - 2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
  - 3. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - 4. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."
  - 5. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
  - 6. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:
    - a) "And" indicates that all the connected terms, conditions, provisions or events shall apply.
    - b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
    - c) "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
  - 7. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

**Sec. 13-56 Definitions**

As applied in this article, the following words and terms shall have the following meanings, unless another meaning is clearly intended:

*Certificate of Occupancy* shall mean a Certificate of Occupancy issued by the Town of Lady Lake government pursuant to the Town building code or, if the property is outside the Town's boundaries, any other governmental entity having jurisdiction over the property. If no Certificate of Occupancy is required for the construction or occupation of a structure then the term shall be deemed to include the Building Permit or other form of final Town approval, or equivalent municipal permit or approval, for the construction or occupancy of a structure. The term "Certificate of Occupancy," as used in this article, shall be deemed to include a Mobile Home installation permit issued pursuant to the Town building code, or equivalent municipal permit or approval.

*Fee payer* shall mean a person commencing a land development activity by applying for the issuance of a Certificate of Occupancy or Building Permit to construct a residential or non-residential dwelling unit.

*Mobile Home* shall mean a detached Single-Family Dwelling Unit with all the following characteristics: (1) designed for long term occupancy, and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems; (2) designed for transportation after fabrication on streets or highways on its own wheels; and (3) arriving at the site where it is to be occupied as a dwelling complete, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connection to utilities and the like. A travel trailer is not to be considered as a Mobile Home.

*Residential Dwelling Unit* shall mean a room or rooms connected together, constituting a separate, independent housekeeping entity for residential occupancy or rental or lease; and physically separated from any other rooms or Dwelling Units which may be in the same structure; and containing sleeping and sanitary facilities and one kitchen. The term "Dwelling Unit," as used in this article, shall be deemed to include apartment units, condominium units, single-family homes, units in two-family and multiple-family homes, and mobile home dwellings, but shall not include motels, hotels, or boardinghouses for transient guests.

*Town Commission* means the legislative and policy-making board of the Town of Lady Lake.

### **Sec. 13-57: Imposition of Water, Wastewater and Reclaimed Water Impact Fees**

- (a) Any person who seeks to develop land by applying for a building permit for a residential or non-residential building or the extension of a building permit for a residential or non-residential building which will connect to the Town's water, wastewater and/or reclaimed water systems and will generate additional impacts is hereby required to pay a water, wastewater and/or reclaimed water impact fee as applicable in the manner and amount set forth in this chapter. The applicable impact fee shall be determined at the time of building permit application.

- (b) No certificate of occupancy for any activity requiring payment of an impact fee pursuant to section 13-59 shall be issued unless and until the water, wastewater and/or reclaimed water impact fee, as applicable, hereby required has been paid.

**Sec. 13-58: Review of Fee Amounts**

The water, wastewater and reclaimed water impact fees shall be determined and reviewed every five (5) years in accordance with the cost of any expanded or new capital facilities and equipment for facilities and capital improvements generated by new construction and the money otherwise available to meet such costs. The Town Commission may annually adjust the established fee rate to reflect changes in the costs of relevant capital facilities, capital improvement, and equipment. All changes or adjustments in the established fee rate shall be made by ordinance after advertising and public hearings and shall apply only to construction for which building permits are issued after the effective date of such ordinance.

**Sec. 13-59: Rates**

- (a) At the option of the fee payer, the amount of the water, wastewater and/or reclaimed water impact fees may be determined by the following fee schedule attached hereto as Exhibit "A."

The payment of the water, wastewater and reclaimed water impact fees shall be in addition to all other fees, charges or assessments due for the issuance of a building permit or final development order. These fees were calculated based on a model developed by Burton & Associates in their study, "Town of Lady Lake Water, Wastewater and Reclaimed Water Impact Fee Study." This model was crafted to meet the common law and statutory requirement that the fee (I) have a rational nexus between the anticipated need for additional capital facilities and growth and population, and (II) have a rational nexus between the expenditure of funds collected and the benefits accruing to the growth. See § 163.31801, *Florida Statutes*; *St. Johns County v. Northeast Florida Builder's Ass'n, Inc.*

- (b) If a fee payer opts not to have the impact fee determined according to paragraph (a) of this section, then the fee payer shall prepare and submit to the Town an independent fee calculation study for the land development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town Commission shall consider the documentation submitted by the fee payer but is not required to accept such documentation if it reasonably deems it to be inaccurate or not reliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. If an acceptable independent fee calculation study is not presented, the fee payer shall pay water, wastewater and reclaimed water impact fees based upon the schedule shown in paragraph (a) of this section.
- (c) The obligation for payment of the water, wastewater and reclaimed water impact fees shall run with the residential and non-residential land.

**Sec. 13-60: Time of Payment; Remedies for Nonpayment**

The water, wastewater and reclaimed water impact fee shall be due and payable at the time of issuance by the Town Growth Management Department of a building permit or mobile home tie down permit or as determined by written agreement between parties and shall not be refundable once such permit has been issued. No building permit or mobile home tie down permit shall be issued until all applicable fees have been received by the Town of Lady Lake.

**Sec. 13-61: Water, Wastewater and Reclaimed Water Impact Fee Trust Funds Established**

- (a) There is hereby established special impact fee trust funds for water, wastewater and reclaimed water impact fees.
- (b) Funds withdrawn from this account must be used in accordance with the provisions of section 13-62.

**Sec. 13-62: Use of Water, Wastewater and Reclaimed Water Impact Fees**

- (a) Funds collected from the water, wastewater and reclaimed water impact fees shall be used solely for the purpose of acquiring and/or making capital improvements to water, wastewater and reclaimed water systems facilities respectively under the jurisdiction of the Town of Lady Lake and shall not be used for maintenance or operations.
- (b) Funds shall be expended in the order in which they are collected.
- (c) In the event that bonds or similar debt instruments are issued for advanced provision of water, wastewater or reclaimed water capital improvements for which the subject impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the improvements provided are of the type described in paragraph (a) above and are located within the Town.
- (d) At least once each fiscal period, the Town Manager shall present to the Town Commission an annual report of impact fees collected, credit provided, the total account balance for the water, wastewater and reclaimed water impact fee trust funds, and projects under construction or completed.
- (e) The annual capital improvements program shall clearly identify the amount of water, wastewater and reclaimed water impact fees used for a project. Monies, including any accrued interest, not assigned to a project in any fiscal period shall be retained in the subject impact fee trust fund until the next fiscal period.
- (f) Projects funded with water, wastewater or reclaimed water impact fees shall be consistent with the capital improvements element of the comprehensive plan. If a project is not in the capital improvements element, then it shall be added during the next update of the comprehensive plan.

- (g) Funds collected, not to exceed the cost set forth in section 13-64, shall be used to fund the administrative cost to implement and operate the impact fee program including the salary and benefits of the impact fee administrator.

**Sec. 13-63: Exceptions**

This Article shall apply to all new residential and non-residential construction within the Town limits except the following:

- (a) Remodeling, replacing, rebuilding or making additions to a residential structure, including a mobile home, which does not create an additional water, wastewater or reclaimed water demand;
- (b) Construction of accessory buildings not connected to the Town's water, wastewater or reclaimed water system(s);
- (c) The replacement of any structure on the same site with a new structure provided the replacement does not create any additional water, wastewater or reclaimed water demand. If an additional demand is created, the additional demand is not exempt from the requirements of this ordinance.
- (d) The installation of a replacement mobile home on the same which does not create an additional water, wastewater or reclaimed water demand;
- (e) The replacement of a conventionally built home with a conventionally built home when a conventionally built home legally existed on such site and has been moved to another site.

**Sec. 13-64: Cost to Implement**

The cost to implement and administer the water, wastewater and reclaimed water impact fee ordinance shall be based upon the actual cost to implement and administer the ordinance in accordance with Section 163.31801(3)(c), Florida Statutes.

**Section 3. Severability**

The provisions of this ordinance are declared to be separable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, sentences, clauses or phrases of this ordinance, but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

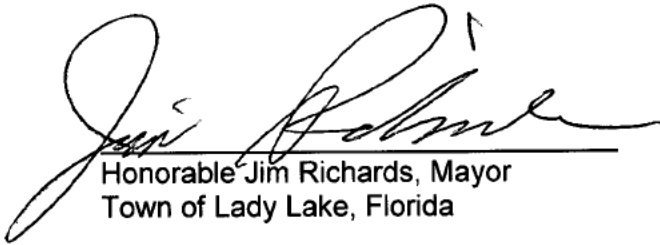
**Section 4. Inclusion in the Town of Lady Lake Code of Ordinances and the Town of Lady Lake Land Development Regulations**

It is the intention of the Town Commission of the Town of Lady Lake that the provisions of this ordinance shall become and be made a part of the Town of Lady Lake Code of Ordinances and the Town of Lady Lake Land Development Regulations and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section", "article" or such other appropriate word or phrase to accomplish such intentions.

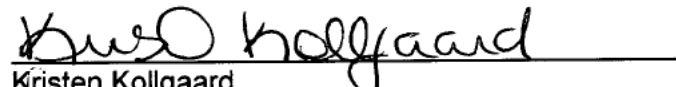
**Section 5. Effective Date**


This ordinance shall become effective on the ninetieth day after final reading and adoption by the Town Commission of Town of Lady Lake, Florida as provided by law.

PASSED AND ORDAINED in regular session of the Town Commission of the Town of Lady Lake, Lake County, Florida, this 25<sup>th</sup> day of March, 2009.

  
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Honorable Jim Richards, Mayor  
Town of Lady Lake, Florida

ATTEST:

  
\_\_\_\_\_  
Kristen Kollgaard  
Town Clerk

  
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Derek Schroth  
Town Attorney

Passed First Reading 3-16-09

Passed Second Reading 3-25-09



**EXHIBIT "A"**

**SCHEDULE OF WATER, SEWER, AND RECLAIMED WATER IMPACT FEES**

<b>Water</b>	
Impact Fee per ERU	\$1,499
<b>Sewer</b>	
Impact Fee per ERU	\$3,172
<b>Reclaimed Water</b>	
Impact Fee per ERU	\$292