



**CITY COMMISSION AGENDA  
CITY HALL COMMISSION CHAMBERS  
300 W. Plant Street**

**REGULAR MEETING**

**JANUARY 13, 2011**

**6:30 P.M.**

**CALL TO ORDER**

Determination of a Quorum

Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES**

Regular Meeting of December 9, 2010

2. **PRESENTATION**

**Proclamation 11-01** presented to Jerry Carris recognizing January 21, 2011 as Arbor Day – Mayor Rees

3. **FIRST READING OF PROPOSED ORDINANCE**

A. **Ordinance 11-06:** AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE 1988 CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN IN EFFECT ON MARCH 1, 1989; AMENDING SECTION 54-31, LEAVES OF ABSENCE AND MILITARY SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for January 27, 2011** – City Manager Bollhoefer

4. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

A. **Ordinance 11-02:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 78, ARTICLE II, WATER AND SANITARY SEWER SYSTEMS OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES BY AMENDING SECTIONS 78-51, 78-59 AND 78-60 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES AND CREATING NEW SECTIONS 78-61 AND 78-62 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; AMENDING CHAPTER 78, UTILITIES OF THE WINTER GARDEN CODE OF ORDINANCES BY CHANGING REFERENCES OF UTILITIES DEPARTMENT TO PUBLIC SERVICES DEPARTMENT; MODIFYING WATER AND WASTEWATER IMPACT FEE AMOUNTS AND ASSESSMENT METHOD TO A METER BASED IMPACT FEE; PROVIDING FOR WATER AND WASTEWATER IMPACT FEE COLLECTION, ADMINISTRATION, AND DISPOSITION; CREATING AND MODIFYING MISCELLANEOUS CHARGES AND FEES; PROVIDING FOR IRRIGATION ONLY METER CONNECTION FEE; PROVIDING FOR ADOPTION OF ADMINISTRATIVE POLICIES TO IMPLEMENT CHAPTER 78, ARTICLE II OF CITY OF WINTER GARDEN CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE – Public Services Director Cochran

- B. **Ordinance 11-03:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO CREATE A NEW ARTICLE IV, TITLED PROHIBITION OF COMMERCIAL GAMING DEVICES, SECTIONS 10-250 THROUGH 10-252 CREATING DEFINITIONS, PROHIBITING THE POSSESSION, USE, PLAYING AND OPERATION OF COMMERCIAL GAMING DEVICES WITHIN THE CITY BOUNDARIES AND PROVIDING FOR PENALTIES AND REMEDIES FOR VIOLATIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE – Community Development Director Wilson

5. **REGULAR BUSINESS**

- A. Recommend approval and work authorization for Progress Energy to install underground power lines/fiberoptic and street lights for the East Plant Street Segment #3 Project in the amount of \$401,382.23 – Public Services Director Cochran
- B. Recommendation to approve bids and award DeWitt Excavating a contract for the East Plant Street Road Widening Project Segment 3 in the amount of \$1,272,849.16 and include a 20% project contingency for a total project allowance of \$1,527,418.99 – Public Services Director Cochran
- C. Recommendation to reappoint Mark Griffith to a two-year term as the fifth trustee member on the General Employees Pension Board – Pension Board Chairman Graham
- D. Recommendation to authorize the City Manager to execute an agreement with the Orange County Supervisor of Elections office to assist in conducting the 2011 general election and any run-off election – City Clerk Golden

6. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

7. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

8. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a regular City Commission meeting on January 27, 2011 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

**ORDINANCE NO. 11-06**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE 1988 CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN IN EFFECT ON MARCH 1, 1989; AMENDING SECTION 54-31, LEAVES OF ABSENCE AND MILITARY SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:**

**SECTION 1:** That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the 1988 City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-31, Leaves of Absence and Military Service, subsection (c), *Credit for prior service upon reemployment when leave of absence not granted*, to read as follows

- (c) *Credit for prior service upon reemployment when leave of absence not granted.* When any former employee of the city is reemployed and such employee has not been granted a leave of absence, he may receive credit for prior service if and only if:
- (1) The period of prior employment was of at least ~~one year's~~ nine (9) month's duration.
  - (2) The city manager recommends that he be given credit for prior service.
  - (3) The city commission approves the recommendation.

**SECTION 2:** This ordinance retroactively amends only the 1988 Winter Garden Code of Ordinances and shall be applicable only to those persons who are subject to the 1988 Code provisions in effect on March 1, 1989.

**SECTION 3:** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 4:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 5:** That this Ordinance shall become effective retroactive to March 1, 1989.

PASSED ON FIRST READING, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PASSED AND ADOPTED ON SECOND READING, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

KATHY GOLDEN, CITY CLERK

**ORDINANCE 11-02**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 78, ARTICLE II, WATER AND SANITARY SEWER SYSTEMS OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES BY AMENDING SECTIONS 78-51, 78-59 AND 78-60 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES AND CREATING NEW SECTIONS 78-61 AND 78-62 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; AMENDING CHAPTER 78, UTILITIES OF THE WINTER GARDEN CODE OF ORDINANCES BY CHANGING REFERENCES OF UTILITIES DEPARTMENT TO PUBLIC SERVICES DEPARTMENT; MODIFYING WATER AND WASTEWATER IMPACT FEE AMOUNTS AND ASSESSMENT METHOD TO A METER BASED IMPACT FEE; PROVIDING FOR WATER AND WASTEWATER IMPACT FEE COLLECTION, ADMINISTRATION, AND DISPOSITION; CREATING AND MODIFYING MISCELLANEOUS CHARGES AND FEES; PROVIDING FOR IRRIGATION ONLY METER CONNECTION FEE; PROVIDING FOR ADOPTION OF ADMINISTRATIVE POLICIES TO IMPLEMENT CHAPTER 78, ARTICLE II OF CITY OF WINTER GARDEN CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden, Florida (“City”) owns and operates a water and wastewater system within an exclusive water and wastewater service area;

**WHEREAS**, the City has adopted a comprehensive plan containing various elements, including a capital improvements element, which projects significant expansions to the City’s water and wastewater system;

**WHEREAS**, Florida law authorizes cities to fund capital expansion by imposing and collecting impact fees;

**WHEREAS**, the City desires to change its method of assessment of water and wastewater impact fee to a water meter based assessment system; and

**WHEREAS**, the City has engaged a consultant who has analyzed the data, applied the dual rational nexus test, and determined that the impact fees adopted by this Ordinance have a reasonable connection, or rational nexus, between the anticipated need for additional capital facilities and the growth in population;

**WHEREAS**, the City Commission finds that the charges and fees adopted by this Ordinance are in the best interest of and for the health, safety and welfare of the citizens of the City of Winter Garden and users of the City utility system.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:**

**Section I Adoption.** Chapter 78, Article II, Section 78-51 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 78-51. ~~Water and sewer impact fees, W~~water and sewer connection charges; and other utility charges.

(a) ~~Water connection fee, and water service charge, and water impact fees.~~ The water connection fee; and water service charges; ~~and water impact fees~~ shall be as follows:

(1) *Connection fee.* Charges for tapping water mains for each tap shall be as follows:

TABLE INSET:

Meter	Meter Installation	Meter Installation
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Size	Tap-In Charge(1)	Charge
5/8"	\$ 470.00	\$ 230.00
3/4"	490.00	250.00
1"	640.00	320.00
1 1/2"	1,160.00	690.00
2"	1,230.00	710.00
Above 2"	Actual cost	Actual cost

(1) Includes both meter installation and tap-in charge.

Above two inches, the actual cost shall be the costs of labor and materials, including, but not limited to, the costs of the meters, meter boxes, corporation stops, valves, street crossings and appurtenances thereof, plus a surcharge of 20 percent to cover engineering and administration costs as determined by the city. But in no event shall that fee be less than the fees charged for a two-inch service. All meters and appurtenances thereto shall be and remain the property of the city, except as otherwise specified in this article.

a. To the extent that the cost of performing installation services is extraordinary and not typical relative to the fees being charged for such service as contained in this section, or if the service line is modified from its original purpose to meet the applicant's requirements, all as determined by the city, the city shall charge the applicant requesting service the actual cost of such services and/or modifications in accordance with the application provisions of subsection above.

b. ~~Effective October 1, 2000, the rates shall be indexed by the Consumer Price Index, or two percent, whichever is greater, annually for the next five years. All rates shall have a 25 percent surcharge for customers outside of the city limits.~~

(2) *Service Turn-on charges.* There will be a charge of \$15.00 to turn on the water supply of any user during normal working hours when service has been cut off or discontinued from the applicant's premises for nonpayment of current bills, or the return of a check because of insufficient funds, or when commencing new service, and after normal hours there will be a charge of \$30.00. ~~A service charge of \$5.00 will be added to the account of each customer whose bill is not paid by the due date.~~

(3) *Late fee.* A service charge of \$5.00 will be added to the account of each user whose bill is not paid by the due date.

~~(3) *Water impact fees.* In addition to the connection fee described in this section, there shall be paid an impact fee, to ensure that new development pays its fair share of the actual or anticipated costs of water production, treatment, transmission and distribution facilities necessary to provide water services for new development. The water impact fee shall be \$1,310.00 per equivalent residential unit (ERU). The water impact fee charged to new development located outside limits which is served by the city's water system shall be 125 percent of the fee charged to development inside the city. The city manager shall report annually to the city commission indicating the amount of fees collected under this article and the amount of fees distributed. The city commission shall review the report of the city manager and continue or adjust the water impact fee as appropriate.~~

(4) *Initiation of service request.* There will be a charge of \$10.00 to process a request to initiate service only. This does not include the fee associated with the physical turn-on of utility service.

(5) *Meter re-read or special read.* There shall be a charge for meter re-read if the meter is requested to be a re-read or a special read is requested more than once in a 12-month period, or, if there was no error in the initial meter reading. For requests after the one time allowance, a fee of \$20.00 shall be charged on the next month's bill, provided no error was detected. Additionally, this fee shall be added to the meter test fee if a test has been requested.

(6) Meter testing. The public services department shall have the right to test meters to determine their accuracy whenever it sees fit, but if a user demands a test when, in the judgment of the public services department, the meter is operating correctly, the user shall pay a fee of \$50.00 for each test performed by the public services department.

(7) Return check fee. A return-check fee of \$25.00 shall be charged to the user in the event a check for payment on the user's account is returned for insufficient funds, stopped payment or closed account.

(8) Search fee. The city shall have the right to charge a search fee to conduct research on fees due to the city for a specific parcel serviced by the water and/or waste water system when such information is requested by third parties, including, but not limited to, requests for such information by a title company, closing agent, mortgagee, broker, or potential buyer. The amount of any such fee or charge may be established and modified by resolution or ordinance of the city commission.

~~(b) Sewer connection fee and sewer impact fee.~~ The sewer connection fee and sewer impact fee shall be as follows:-

~~(1) Connection fee.~~ There shall be a charge for tapping sewer mains, which shall be the cost of labor, materials and equipment, together with a surcharge of an additional 20 percent of the costs to cover engineering and administrative costs as determined by the city, but in no event shall the cost be less than \$910.00.

~~(2) Sewer impact fees.~~ In addition to the connection fee described in this section, there shall be paid an impact fee, to ensure that new development pays its fair share of the actual or anticipated costs of sewer production treatment, transmission and collection facilities necessary to provide sewer services for new development. The sewer impact fee shall be \$2,035.00 per equivalent residential unit (ERU). The sewer impact fee charged to new development located outside the city limits which is served by the city's sewer system shall be 125 percent of the fee charged to development inside the city. The city manager shall report annually to the city commission indicating the amount of fees collected under this article and the amount of fees distributed. The city commission shall review the report of the city manager and continue or adjust the sewer impact fee as appropriate.-

~~(3) Inspections.~~ No sewer service shall be connected until the plumbing and connections incident thereto shall have been inspected and approved by the city plumbing inspector.

~~(c) Irrigation only meter connection fee.~~ There shall be a charge for tapping water mains for irrigation for each tap and water connection equal to the cost, as determined by the city, of labor, materials and equipment, together with a surcharge of an additional twenty (20) percent of such costs to cover engineering and administrative costs, but in no event shall the amount charged be less than the amount charged for the ¾ inch size meter. ~~Disposition of revenues imposed by water impact fee.~~ All revenues derived from the water impact fees imposed by subsection (a)(3) shall be accounted for separately in a capital fund of the utilities department enterprise fund entitled utilities impact fee fund. All water impact fee revenues expended from the impact fee capital fund are for the purpose of improving, extending or oversizing, separating, or constructing new additions to the water plant or distribution and transmission systems or part thereof as authorized by the city commission. No part of such water impact fee revenues shall be budgeted or used for the operating expenses of the water system.-

~~(d) Disposition of revenues imposed by sewer impact fee.~~ All revenues derived from the sewer impact fees imposed by subsection (b)(2) shall be accounted for separately in a capital fund of the utilities department enterprise fund entitled utilities impact fee fund. All sewer impact fee revenues expended from the impact fee capital fund are for the purpose of improving, extending or oversizing, separating or constructing new additions to the sewer plant or collection and transmission systems or part thereof as authorized by the city commission. No part of such sewer impact fee revenue shall be budgeted or used for the operating expenses of the sewer system.-

~~(e) Disposition of funds not expended.~~ If the fees have not been expended or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, upon application of the fee payer of proof of payment or the development for which the fees were paid was never begun, the fees shall be returned with interest at the rate determined by the city based upon the average interest earning rate incurred by the city in accordance with the following procedure:-

~~(1) The then present owner must petition the city commissioners for the refund within one year following the end of the calendar quarter immediately following six years from the date on which the fee was received.~~

~~(2) The petition must be submitted to the city manager and must contain:~~

- ~~a. A notarized sworn statement that the petitioner is the current owner of the property;~~
- ~~b. A copy of the dated receipt issued for payment of the fee;~~
- ~~c. A certified copy of the latest recorded deed; and~~

d. A copy of the most recent ad valorem tax bill.

(3) If reimbursement is approved, the city shall remit to the present owner of the petition within 60 days of approval.

(f) ~~Disposition of funds on deposit.~~ Any funds on deposit in the utilities impact fee fund not immediately necessary for expenditure shall be invested in interest bearing accounts up to and including interfund loans. Interfund loans shall be made by resolution by the city commission payable in full over time at the prevailing interest rate. Applicants shall not receive a credit for or be entitled to interest from the investment of funds except as provided in section (e) above.

(g) ~~Payment schedule for impact fees.~~ The water and sewer impact fees based on equivalent residential units (ERUs) as described in this article shall be due and payable as follows:-

(1) The water and sewer impact fees for 50 percent of all requested equivalent residential units (ERUs) for a proposed residential development shall be due and payable to the city at the time of application for a FDEP permit, or, if no such permit is required, at the time application is made to the city for a building permit that requires sewer or water capacity.

(2) The water and sewer impact fees for the remaining 50 percent of the remaining requested equivalent residential units (ERUs) shall be paid at the issuance of building permits commencing with the first building permit issued and continuing until 100 percent of the sewer and water impact fees has been paid for the requested ERU capacity which is reserved. Any sewer and water reserve capacity for any remaining ERUs for the project for which water and sewer impact fees have not been paid shall be forfeited by the applicant unless 100 percent of the entire projects sewer and water impact fees has been paid no later than 24 months after the date of issuance of the FDEP permit or 12 months from the date of final plat, whichever comes first.

(3) The water and sewer impact fees for 100 percent of the requested equivalent residential units (ERUs) for a commercial or industrial development are due and payable to the city at the time of application for a FDEP permit, or, if no such permit is required, at the time application is made to the city for a building permit that requires sewer and water capacity.

(4) Water and sewer impact fees for equivalent residential units (ERUs) for a single user individual lot shall be paid at the time of the issuance of a building permit that requires sewer and water capacity.

(h) ~~Exemption for public buildings.~~ The following premises shall be exempt from the requirement under this section to pay water connection fees, water impact fees, sewer connection fees, and sewer impact fees:-

(1) Premises which are owned and operated by the city; and

(2) Government owned and operated parks and recreation facilities in which the city participates in the construction, operation or maintenance of such pursuant to an agreement between the city and another governmental entity.

**Section II Adoption.** Chapter 78, Article II, Section 78-59 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

~~Sec. 78-59. Collections of fees when building permit is issued by mistake or inadvertence; liens.~~

In the event that the impact fee is not paid prior to the issuance of a building permit for the construction of a structure because of a mistake or inadvertence, the city shall proceed to collect the impact fee as follows: The city shall serve, by certified mail, return receipt requested, an impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. The city shall also attach a copy of the impact fee statement notice to the building permit posted at the affected construction site if the building is under construction. Service of the impact fees statement notice shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.

The impact fee statement notice shall contain the legal description of the property and shall advise the applicant and the owner as follows:

(1) The amount due and the general purpose for which the impact fee was imposed;

(2) That a hearing before the city commission may be requested within 30 calendar days from the date of receipt of the impact fee statement notice, by making application to the office of the city manager;

(3) That the impact fee shall be delinquent if not paid and received by the city within 60 calendar days of the date the impact fee statement notice, or if a hearing is not requested pursuant to subsection (2) above and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid;

- ~~(4) That in the event the impact fee becomes delinquent, a lien against the property for which the building permit was secured shall be recorded in the official records book of the county;~~
- ~~(5) The impact fee shall be delinquent if, within 60 calendar days from the date of the impact fee statement notice, or the date said notice was attached to the building permit, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to subsection (2) above. In the event a hearing is requested pursuant to subsection (2), the impact fees shall become delinquent if not paid within 30 calendar days from the date the city commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of said impact fee statement notice or the hearing date of the city commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid;~~
- ~~(6) Should the impact fee become delinquent, the city shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant if the building is under construction at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the impact fee, the city shall file a claim of lien with the clerk of the circuit court in and for the county;~~
- ~~(7) Upon mailing of the notice of lien, the city attorney shall file a claim of lien with the clerk of the circuit court in and for the county for recording in the official records of the county. The claim of lien shall contain the legal description of the property, the amount of the delinquent impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien;~~
- ~~(8) After the expiration of six months from the date of recording of the claim of lien, or after the expiration of one year from the date the impact fee became due and payable, whichever is later, as provided herein, a suit may be filed to foreclosure said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim;~~
- ~~(9) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the liens of all state, county, district and municipal taxes, superior in dignity to all other subsequently filed liens and claims, until paid as provided herein;~~
- ~~(10) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the city or any applicable law or administrative regulation of the state. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the state.~~
- ~~(Ord. No. 98-88, § 1, 12-10-98)~~

**Sec. 78-59. Water and wastewater impact fees.**

(a) Imposition. A water and wastewater impact fee is hereby imposed and levied on all development requesting capacity from the city's water system and/or wastewater system to provide service to their properties and on all properties presently connected to the City's water system or wastewater collection system when structural changes, additions, or changes in permitted use result in an additional impact to the city's water system or wastewater system. The water and wastewater impact fee will be charged based on water meter size to be installed in accordance with the fee schedule adopted in this Section. A water and wastewater impact fee shall be paid for each individual water meter to be installed. When an existing development increases its water meter size, the development shall pay an additional water and wastewater impact fee equal to the difference between the current impact fee charged for the desired increased water meter size and the existing water meter size. The impact fee will be charged over and above any service connection fee, lateral charge, inspection fee, monthly user charge, and monthly service charge as may be established by city from time to time.

(b) Impact fees. Water and wastewater impact fees shall be paid in accordance with this subsection.

(1) Impact fee schedule. The following water and wastewater impact fees shall be paid based on water meter size for each water meter to be connected to the city's system:

<b>Impact Fees for Water and Wastewater Service – Water Meter Based</b>			
<u>Water Meter Size</u>	<u>ERUs</u>	<u>Water Impact Fees</u>	<u>Wastewater Impact Fees</u>
<u>3/4" Meter</u>	<u>1.00</u>	<u>\$1,086</u>	<u>\$1,767</u>
<u>1" Meter</u>	<u>2.50</u>	<u>\$2,715</u>	<u>\$4,418</u>
<u>2" Meter</u>	<u>8.00</u>	<u>\$8,688</u>	<u>\$14,136</u>
<u>3" Meter</u>	<u>15.00</u>	<u>\$16,290</u>	<u>\$26,505</u>
<u>4" Meter</u>	<u>25.00</u>	<u>\$27,150</u>	<u>\$44,175</u>
<u>6" Meter</u>	<u>50.00</u>	<u>\$54,300</u>	<u>\$88,350</u>
<u>8" Meter</u>	<u>80.00</u>	<u>\$86,880</u>	<u>\$141,360</u>
<u>10" Meter</u>	<u>115.00</u>	<u>\$124,890</u>	<u>\$203,205</u>

(2) Irrigation meter. For potable or reclaimed water meters used for irrigation only, the water impact fee shall be paid for each irrigation meter based on meter size; however, the wastewater impact fee is not charged.

(3) Connection not provided. In the event that the city provides a connection for only water or wastewater service to a development, only the impact fee applicable to the service provided shall be paid.

(c) Payment schedule for impact fees. The water and wastewater impact fees based on water meter size as described in this Section shall be due and payable as follows:

(1) New residential development. For proposed residential development, except development described in subsection (c)(2), an amount equal to fifty (50) percent of the water and wastewater impact fees based on all requested water meters for the proposed development shall be due and payable to the city at the time of application for a FDEP permit and prior to issuance of the FDEP permit in order to temporarily reserve water and wastewater capacity for the development. When fifty (50) percent of the water and wastewater impact fees are paid at the time of application for a FDEP permit, the remaining fifty (50) percent of the water and wastewater impact fees shall be paid at the time of application for each building permit requested commencing with the first building permit issued and continuing until one-hundred (100) percent of the water and wastewater impact fees have been paid for the requested water meters which are reserved. The water and wastewater impact fee payment made at the time of application for each building permit shall equal one-hundred (100) percent of the impact fees for water meters associated with the building permit requested, so that the city collects the full amount of water and wastewater impact fees for the development when approximately half of the building permits for the development have been sought. Any sewer and water reserve capacity for and any partial impact fee payment previously made concerning any remaining water meters for the project for which water and wastewater impact fees have not been paid in full shall be forfeited by the applicant unless one-hundred (100) percent of the entire projects' water and wastewater impact fees have been paid no later than 24 months after the date of issuance of the FDEP permit or 12 months from the date of final plat approval, whichever comes first. The applicant may choose to pre-pay remaining impact fees for the development in order to avoid forfeiture of reserve capacity and partial impact fee payments. In the event additional water meters are requested for the development that were not originally contemplated when applying for the FDEP permit, one-hundred (100) percent of water and wastewater impact fee associated with such additional water meters shall be paid to the city at the earlier of at the time of application for a building permit associated with water meter requested, and prior to installation of the water meter requested.

(2) De minimus new residential development. For the following residential development, one-hundred (100) percent of water and wastewater impact fees based on all requested water meters shall be paid at the time application is made to the city for a building permit that requires use of a water meter(s) and prior to

issuance of a building permit: (i) a single user individual lot; or (ii) residential development where no FDEP permit for water or wastewater is required.

(3) New non-residential development. The water and wastewater impact fees for one-hundred (100) percent of the water meters for a commercial or industrial development are due and payable to the city at the time of application for a FDEP permit, or, if no such permit is required, at the time application is made to the city for a building permit that requires use of the water meter and prior to the issuance of a building permit.

(4) Existing development. When an existing development increases its water meter size, the development shall pay an additional water and wastewater impact fee as specified in this Section at the earlier of (i) the time application is made to the city for a building permit that requires use of the larger water meter and prior to the issuance of such building permit; and (ii) prior to the installation of the water meter. When an existing development that is not currently connected to the city's system desires to connect to the city's water and/or wastewater system, the development shall pay the city the applicable impact fees based on water meter size prior to connection to the city's system.

(5) Non-transferable. Reserved water and wastewater capacity is not transferable to any other property or development. Water and wastewater impact fee payments or credits are not transferable to any other property or development and cannot be applied towards other types of impact fees.

(6) Administrative policies. The city shall have the right to adopt and enforce policies and rules consistent with this Section in order to administer the collection of water and wastewater impact fees.

(d) *Disposition of revenues imposed by water impact fee.* All revenues derived from the water impact fees imposed by this Section shall be accounted for separately in a capital fund of the public services department enterprise fund. All water impact fee revenues expended from the impact fee capital fund shall be used for the purpose of providing growth necessitated capital improvements and extending, oversizing, or separating existing water system improvements, or constructing new additions to the water plant, distribution or transmission systems or part thereof as authorized by the city commission, including, but not limited to expenses for: (i) design or construction plan preparation; (ii) permitting and related fees; (iii) land or utility system acquisition, including acquisition or condemnation costs; (iv) construction and design of water systems buildings, facilities, or improvements and additions thereto; (v) design and construction of drainage facilities reasonably required by, or convenient to, the construction of water systems buildings, facilities, or improvements and additions thereto; (vi) relocating utilities required by the construction of water systems buildings, facilities, or improvements and addition thereto; (vii) construction management, inspection, or both; (viii) surveying, soils and material testing, and the evaluation and development of raw water, alternative water, and reuse water resources and supplies; (ix) acquisition of plant or equipment necessary or convenient to expand the water system; and (x) payment of principal and interest, reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth impacted improvements, and additions to the water system. No part of such water impact fee revenues shall be budgeted or used for the operating expenses of the water system.

(e) *Disposition of revenues imposed by wastewater impact fee.* All revenues derived from the wastewater impact fees imposed by this Section shall be accounted for separately in a capital fund of the public services department enterprise fund. All wastewater impact fee revenues expended from the impact fee capital fund shall be used for the purpose of providing growth necessitated capital improvements and extending, oversizing, or separating existing wastewater system improvements, or constructing new additions to the sewer plant, distribution or transmission systems or part thereof as authorized by the city commission, including, but not limited to expenses for: (i) design or construction plan preparation; (ii) permitting and related fees; (iii) land or utility system acquisition, including acquisition or condemnation costs; (iv) construction and design of wastewater systems buildings, facilities, or improvements and additions thereto; (v) design and construction of drainage facilities reasonably required by, or convenient to, the construction of wastewater systems buildings, facilities, or improvements and additions thereto; (vi) relocating utilities required by the construction of wastewater systems buildings, facilities, or improvements and addition thereto; (vii) construction management, inspection, or both; (viii) surveying, soils and material testing, and the evaluation and development of reuse water resources and supplies; (ix) acquisition of plant or equipment necessary or convenient to expand the wastewater system; and (x) payment of principal and interest, reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth impacted improvements, and additions to the wastewater system. No part of such wastewater impact fee revenues shall be budgeted or used for the operating expenses of the wastewater system.

(f) Disposition of funds not expended. If the impact fees have not been expended or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, upon application of the fee payer of proof of payment or the development for which the fees were paid was never begun, the fees shall be returned with interest at the rate determined by the city based upon the average interest earning rate incurred by the city in accordance with the following procedure:

(1) The then present owner must petition the city commissioners for the refund within one year following the end of the calendar quarter immediately following six years from the date on which the fee was received.

(2) The petition must be submitted to the city manager and must contain:

(i) A notarized sworn statement that the petitioner is the current owner of the property;

(ii) A copy of the dated receipt issued for payment of the fee;

(iii) A certified copy of the latest recorded deed; and

(iv) A copy of the most recent ad valorem tax bill.

(3) If reimbursement is approved, the city shall remit to the present owner of the petition within 60 days of approval.

(g) Disposition of funds on deposit. Any funds on deposit in the utilities impact fee fund not immediately necessary for expenditure shall be invested in interest-bearing accounts up to and including interfund loans. Interfund loans shall be made by resolution by the city commission payable in full over time at the prevailing interest rate. Applicants shall not receive a credit for or be entitled to interest from the investment of funds except as provided in section (f) above.

**Section III Adoption.** Chapter 78, Article II, Section 78-60 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

~~Sec. 78-60. Determination of equivalent residential unit factors.~~

~~(a) For the purpose of calculating and imposing the water and wastewater impact fees provided for in section 78-51, the ERU factor for any particular connection shall be calculated and imposed in the manner provided as follows:  
 TABLE INSET:~~

<del>Establishment</del>	<del>Unit</del>	<del>Factor</del>
<del>Residential:</del>		
<del>Single family home</del>	<del>Per Unit</del>	<del>1.000</del>
<del>Duplex (1 or 2 bedrooms)</del>	<del>Per Unit</del>	<del>0.833</del>
<del>Duplex (3 or more bedrooms)</del>	<del>Per Unit</del>	<del>1.000</del>
<del>Multi family (2 bedrooms)</del>	<del>Per Unit</del>	<del>0.833</del>
<del>Multi family (1 bedroom)</del>	<del>Per Unit</del>	<del>0.583</del>
<del>Multi family (efficiency less than 500 square feet)</del>	<del>Per Unit</del>	<del>0.500</del>
<del>Multi family (3 or more bedrooms)</del>	<del>Per Unit</del>	<del>1.000</del>

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-	-	Mobile home (1 or 2 bedrooms) —	Per Unit —	0.667-
-	-	Mobile home (3 or more bedrooms) —	Per Unit —	0.833-
<del>Commercial: —</del>				
-	-	Auditorium —	Seat —	0.017-
-	-	Barber/beauty shop —	Opr. Sta. —	0.300-
-	-	Bowling alley —	Lane —	0.333-
-	-	Convenience store (no gas pumps) —	Use fixture units —	N/A —
<del>Food Service: —</del>				
-	-	Restaurant/cafeteria —	Seat —	0.100-
-	-	Restaurant (24 hour) —	Seat —	0.167-
-	-	Restaurant (fast food) —	Seat —	0.050-
-	-	Bar/cocktail lounge —	Seat —	0.067-
-	-	Hotel, motel (not including food service, banquet and meeting rooms, and laundries) —	Room —	0.500-
-	-	Industrial building (not including food service; not including industrial waste flows; industrial wastewater flows to be determined on fixture unit basis unless director or his designee agrees to alternative flow calculation: —		
-	-	— Without showers —	Employee —	0.050-
-	-	— With showers (emergency showers not included) —	Employee —	0.117-
<del>Laundry, self service —</del>			Per machine —	1.333-
Motel (see hotel) —				
Office building (add food service and retail space) —			1,000 sq. ft. —	0.334-
Service station —			Per bay —	1.000-
-	-	Add: —	Per wash bay —	3.200-

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-	Add:—	Per toilet room—	1.000-
-			-
	Theater—	Per seat—	0.010-
			-
-	Theater (dinner)—	Per seat—	0.067-
-			-
	Trailer park (overnight)—	Space—	0.333-
			-
	Dentist office—	Per dentist-	0.833-
		-	-
	Medical office—	Per doctor-	0.833-
		-	-
	Church—	Per seat—	0.017-
			-
	Hospital—	Per bed—	0.833-
			-
	Nursing home—	Per bed—	0.417-
			-
	Warehouse office:—		
	Use fixture units for warehouse area and see "Office category" for calculating ERUs in that area. (Add for food service and add for retail space if applicable.)—		
	Warehouse space—	Use fixture units—	N/A—
-	Meeting and/or banquet rooms	Per seat—	0.017-
-	(Total sq. ft./15 sq. ft./person x .017 x # of seats)—		-
	Automotive repair and maintenance store—	Per bay—	0.250-
			-
	Retail space—	Use fixture units—	N/A—
	Retail store/self-service gas pumps (Add remaining fixture units)—	Per restroom—	1.000-
			-
	Extended care facilities—	Per efficiency—	0.500-
			-
	Convenience store without gas pump—	Use fixture units—	
	Schools, middle and high—	Per student-	0.067-
		-	-
	Schools, elementary and nursery—	Per student-	0.025-
		-	-

(b) One equivalent residential unit (ERU) shall, for the purposes of this section, have an assigned value of 1.000. One water system ERU is hereby established and determined to be equal to a flow of 350 gallons per day (GPD);

average annual basis. One sewer system ERU is hereby established and determined to be equal to a flow of 250 gallons per day (GPD), average annual basis. The "total equivalent residential unit value" for an establishment shall be calculated by multiplying the ERU factor listed in subsection (a) above times the number of units.

~~(c) For all establishments not listed above, the total equivalent residential unit (ERU) value shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by 25, and then dividing that numerator by 350 GPD for water customers and 250 GPD for sewer customers. For example for the water customers:~~

~~Total ERU Value =  $\frac{\text{Number of Fixture Units} \times 25}{350 \text{ GPD}}$~~

**Sec. 78-60. Collection of past due impact fees.**

In the event that the water and/or wastewater impact fee, or any portion thereof, is not paid when due for any reason, including by mistake or inadvertence, the city may proceed to collect the impact fee as follows:

(1) The city shall serve, by certified mail, return receipt requested, an impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. Service of the impact fees statement notice shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.

(2) The impact fee statement notice shall contain a description of the property and shall advise the applicant and the owner as follows:

(i) The amount due and the general purpose for which the impact fee was imposed.

(ii) That a hearing before the city commission to challenge the impact fee assessed may be requested within 30 calendar days from the date of receipt of the impact fee statement notice, by filing a written application to the office of the city manager. The written application shall state with specificity the basis of the challenge.

(iii) That the impact fee shall be delinquent if not paid and received by the city within 30 calendar days of the date the impact fee statement notice, or if a hearing is not requested pursuant to subsection (2) ii. above and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid.

(iv) That in the event the impact fee becomes delinquent, a lien against the applicable property for which the building permit was secured shall be recorded in the official records book of the county.

(3) The impact fee shall be delinquent if, within 30 calendar days from the date of the impact fee statement notice, or the date said notice was attached to the building permit, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to subsection (2)(ii) above. In the event a hearing is requested pursuant to subsection (2)(ii), the impact fees shall become delinquent if not paid within 30 calendar days from the date the City Commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of said impact fee statement notice or the hearing date of the city commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.

(4) Should the impact fee become delinquent, the city shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and owner that due to their failure to pay the impact fee, the city shall record a claim of lien in the official public records of the county.

(5) Upon mailing of the notice of lien, the city attorney shall cause the recording of a claim of lien in the official public records of the county. The claim of lien shall describe the property, the amount of the delinquent impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien.

(6) After the expiration of three (3) months from the date of recording of the claim of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

(7) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the liens of all state, county, district and municipal taxes, superior in priority to all other recorded liens and claims whether recorded prior to or after the city's lien, except as otherwise provided by law, until paid as provided herein.

(8) The applicant and owner shall be responsible for and the city shall be entitled to reimbursement for the payment of all administrative expenses and costs, including attorney's fees and litigation costs and recording and filing fees, incurred by the city in the collection of impact fees, filing of liens and in actions to foreclose such liens or actions for a monetary judgment.

(9) The applicant and owner shall be jointly and severally liable to the city for unpaid impact fees. The city may take any and all actions at law or in equity to collect unpaid impact fees from the applicant and owner, including but not limited to, the city withholding issuance of subsequent permits sought by applicant and/or owner until the impact fees are paid.

(10) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the city or any applicable law or administrative regulation of the state. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the state.

**Section IV Adoption.** Chapter 78, Article II of the City of Winter Garden Code is amended to add a new Section 78-61 to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

**Sec. 78-61. Impact fee protest and appeals.**

(a) A person may protest or challenge the imposition of or a decision on an impact fee imposed pursuant to this article by filing with the city manager, within 30 days from the occurrence of the decision, event, or imposition of an impact fee sought to be challenged, a written notice of protest containing the following minimum information:

- (i) The name and address of the person protesting and property owner;
- (ii) The legal description of the property at issue;
- (iii) If issued, the date of the building permit(s) issued for the property at issue; (iv) If paid, the date of and the amount of the impact fee paid; and
- (v) A full statement of the reasons why the person is protesting.

The person who files the protests bears the burden of proof to demonstrate that the fee, decision or matter challenged is improper and/or should be modified.

(b) Upon receipt of such protest, including all the information required pursuant to subsection (a), the city manager or his designee shall review the protest, and within forty-five (45) days of the receipt of the complete request, approve or deny the request. If the person making the protest disagrees with the determination of the city

manager or his designee, such person may appeal the decision to the city commission, provided a written appeal is filed with the city clerk within ten (10) days from the issuance of the city manager's decision.

(c) Upon receipt of an appeal, a hearing shall be scheduled before the city commission at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the person who filed the appeal written notice of the time and place of the hearing. Such hearing shall be held within sixty (60) days of the date the appeal was filed. The determination of the city commission shall be final.

(d) Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality, or validity of any impact fee or decision related thereto must be filed within thirty (30) days following the date of the imposition of the impact fee or the final determination of the city commission on an appeal, which occurs later.

(e) Failure to timely file a protest, appeal or judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest, appeal or challenge to the applicable imposition of an impact fee or decision concerning an impact fee.

**Section V Adoption.** Chapter 78, Article II of the City of Winter Garden Code is amended to add a new Section 78-62 to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

**Sec. 78-62. Administrative rules and policies.**

The city manager is hereby authorized to adopt administrative rules and policies to implement the provisions of this Article as the city manager deems necessary and appropriate.

**Section VI Adoption.** All divisions and sections of Chapter 78 of the City of Winter Garden Code are hereby amended to replace references to the words “utilities department” with “public services department.”

**Section VII Conflicts.** In the event of a conflict or conflicts between this ordinance and other ordinances, this Ordinance controls.

**Section VIII Severability.** If any portion of this Ordinance is determined to be void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

**Section IX Codification.** Sections I, II, III, IV, V and VI of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections and exhibits of this Ordinance may be renumbered or relettered to accomplish such intention. The word “Ordinance” may be change to “Section,” “Article,” or other appropriate word.

**Section X Effective Date.** This Ordinance shall become effective upon adoption.

FIRST READING: \_\_\_\_\_ December 9, 2010 \_\_\_\_\_.

SECOND READING AND PUBLIC HEARING: \_\_\_\_\_ January 13, 2011 \_\_\_\_\_.

City of Winter Garden City Commission  
Regular Meeting Agenda for January 13, 2011

APPROVED:

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John Rees, Mayor/Commissioner

ATTEST:

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KATHY GOLDEN, City Clerk

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**ORDINANCE 11-03**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA;  
AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO  
CREATE A NEW ARTICLE IV, TITLED PROHIBITION OF  
COMMERCIAL GAMING DEVICES, SECTIONS 10-250 THROUGH 10-  
252 CREATING DEFINITIONS, PROHIBITING THE POSSESSION,  
USE, PLAYING AND OPERATION OF COMMERCIAL GAMING  
DEVICES WITHIN THE CITY BOUNDARIES AND PROVIDING FOR  
PENALTIES AND REMEDIES FOR VIOLATIONS; PROVIDING FOR  
CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE  
DATE.**

WHEREAS, Article X, Section 7 of the 1968 Florida Constitution prohibits lotteries within Florida, other than the types of pari-mutuel pools authorized by law as of the effective date of the 1968 Florida Constitution; and

WHEREAS, Article X, Section 23 of the Florida Constitution, as adopted in a 2004 Amendment to the Florida Constitution, authorizes slot machine gaming only in certain eligible licensed facilities in Broward and Miami-Dade Counties, Florida, and such authorization is subject to the requirements and conditions set forth in Article X, Section 23 of the Florida Constitution and the extensive regulatory requirements of Chapter 551, Florida Statutes; and

WHEREAS, under no circumstances does the Florida Constitution or the Florida Statutes authorize or permit slot machine gambling or any activity resembling slot machine gambling in Winter Garden, Orange County, Florida; and

WHEREAS, the possession, use, playing and operation of a slot machine as defined by Section 849.16, Florida Statutes within the City of Winter Garden is illegal; and

WHEREAS, there is presently in Central Florida an increasing proliferation of establishments employing devices that simulate slot machine games or other games of chance that display, disclose or reveal whether a user is to receive or become entitled to receive a payout, jackpot, or prize in a raffle, sweepstakes, contest or other promotion conducted by the establishment; and

WHEREAS, the possession, use, playing and operation of devices at commercial establishments utilizing simulated or actual slot machine games or other games of chance to display, disclose or reveal whether a user is to receive or become entitled to receive a payout, jackpot, or prize is inherently deceptive and causes users to play and operate said devices as if they were engaging in gambling activities prohibited by Florida law; and

WHEREAS, it has been well documented that that gambling can lead to harmful behavior in some people and be an addictive activity that can lead to uncontrollable wagering and loss of money and valuables; and

WHEREAS, due to the inherently deceptive nature of commercial gaming devices, as herein defined, the possession, use, playing and operation of such devices within the City has or will have an unreasonable adverse effect upon persons that are statistically at risk for gambling addictions and other similar compulsive behaviors; and

WHEREAS, there is a direct relationship between establishments that possess and use devices that simulate or play actual slot machine games or other games of chance and disturbances of the peace and good order of the community, and the concurrency of these activities is hazardous to the health, safety, and welfare of those persons in attendance; and

WHEREAS, in order to preserve the public peace and good order, and to safeguard the health, safety, morals and welfare of the community and citizens thereof, it is necessary and advisable to prohibit the possession, use, playing and operation of devices defined herein as commercial gaming devices within the City of Winter Garden; and

WHEREAS, in terms of negative impact recited herein, there is little or no material difference between the effects of slot machines and the effects of commercial gaming devices as defined herein; and

WHEREAS, the City has home rule authority pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, to enact this Ordinance.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:**

**Section I** The above recitals represent the legislative findings of the City Commission of the City of Winter Garden supporting the need for this Ordinance.

**Section II** Chapter 10 of the City of Winter Garden Code of Ordinance is amended to create a new Article IV, Sections 10-250 through 10-252 to read as follows:

Article VI. PROHIBITION OF COMMERCIAL GAMING DEVICES.  
Sec. 10-250. Definitions.

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

*Commercial establishment* means any establishment, whether operated for profit or not, that exchanges goods, product, services, or property of any kind for compensation or donation, or facilitates the exchange of goods, services, or property of any kind for compensation or donation in the ordinary course of trade, business, or fundraising, regardless of the land use designation assigned to the location of the commercial establishment.

*Commercial gaming device* means any electronic, mechanical or electromechanical device that, by the use or insertion of coin, bill, token, slug, form of payment, passcode, electronic or magnetic card in conjunction with the device or other reader or system connected or networked to the device or with the aid of some physical act by the user or commercial establishment representative, the device will allow an operator to use, play or operate the device such that the device displays simulated or actual games of chance, slot machine games, spinning wheels, line ups or arrangements of objects, symbols, colors, fruit, numbers or letters, or any game known as or similar to keno, roulette, faro, game at cards, poker, blackjack, "Fruit Paradise," "New Cherry," "Fruit Bonus," "Triple Jack," "Magical Odds," "Mystery J&B," "Klondike," or "Reel of Fortune" in such a way as to display, disclose or reveal whether the user is to receive or become entitled to receive a payout, jackpot, or prize, which may include money, credits, tokens, or anything of value, or anything that may be exchanged for money, credits, tokens or anything of value, regardless of whether such payout, jackpot, or prize is made automatically from the device or other reader or system connected or networked to the device, or manually, and such device is located and used, played or operated in or at a commercial establishment in connection with the promotion, sale or purchase of good(s), product(s) or service(s). The term commercial gaming device further includes, without limitation, a "slot machine" as defined by Section 849.16, Florida Statutes. "Commercial gaming device" shall not be construed so as to preclude the lawful use or possession of: (i) reverse vending machines authorized pursuant to Section 849.16(2), Florida Statutes, (ii) amusement games or machines authorized pursuant to Section 849.161, Florida Statutes, (iii) bingo, instant bingo or pull tab machines or dispensers operated in accordance with Section 849.0931, Florida Statutes, (iv) a State of Florida lottery device authorized by Florida Statutes, or (v) any other device expressly authorized by and complying with the Florida Statutes and the Florida Administrative Code. Commercial gaming device shall not be construed to include devices not otherwise prohibited by general law that are not located in or at a commercial establishment and are used, played or operated for non-commercial purposes (*i.e.*, not in connection with the promotion, sale or purchase of goods, products or services).

*Person* means an individual, association, partnership, limited liability company, joint venture, not for profit corporation, corporation, or a director, executive, manager or officer of an association, partnership, limited liability company, joint venture, not for profit corporation, or corporation.

Sec. 10-251. Prohibition of commercial gaming device.

It is unlawful for any person to possess, use, play, or operate a commercial gaming device within the municipal boundaries of the city. Each individual use, play, operation or possession of a commercial gaming device shall be a separate violation of this Section. A violation of this Section shall constitute a public nuisance.

Sec. 10-252. Remedies and penalties.

In the event that a violation of this Article occurs, the City shall have the right to one or more of the following remedies or actions:

- (a) Institute code enforcement proceedings and prosecute code violations against the violator and the property owner of the real property where the violation occurs;
- (b) Prosecute the violator for a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court;
- (c) Issue a civil citation as a Class IV violation to the violator for each violation in accordance with Chapter 2, Article II, Division III;
- (d) Institute any appropriate action to bring about compliance or remedy, including but not limited to, instituting an action in court to enjoin violating actions, in which case the violating person shall be liable to the City for reimbursement of the City's attorneys' fees and costs concerning such action; and
- (e) Take any other action or remedy authorized by law or in equity, in which case the violating person shall be liable to the City for reimbursement of the City's attorneys' fees and costs concerning such action.

**Section III** Section II of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

**Section IV** In the event of a conflict or conflicts between this ordinance and other ordinances, this Ordinance shall control to the extent of the conflict.

**Section V** It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

**Section VI** This Ordinance shall become effective upon adoption by the City Commission.

FIRST READING:

December 9, 2010

SECOND READING AND PUBLIC HEARING:

January 13, 2011

City of Winter Garden City Commission  
Regular Meeting Agenda for January 13, 2011

**ADOPTED** this 11th day of January, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

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John Rees, Mayor/Commissioner

ATTEST:

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Kathy Golden, City Clerk

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