

ORDINANCE NO. 2009 - 07

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ESTABLISHING A PROCEDURE TO UTILIZE A UNIFORM METHOD OF LEVYING, COLLECTING AND ENFORCING NON-AD VALOREM ASSESSMENTS, WHICH MAY BE LEVIED BY THE TOWN IN ACCORDANCE WITH THE PROVISIONS OF SECTION 197.3632 F.S.; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN'S CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches is authorized to levy certain assessments for operations, maintenance or capital facilities, as may be determined by the Town and further is authorized to levy special assessments pursuant to Chapter 170 F.S. for the acquisition, construction or reconstruction of assessable Improvements authorized by the Town's Charter; and

WHEREAS, the above referenced assessments are not considered to be ad valorem in nature and therefore, are subject to the provisions of Section 197.3632 F.S. in which the State of Florida through its legislature has provided a uniform method for levying, collecting and enforcing such non-ad valorem assessments; and

WHEREAS, this ordinance seeks to establish a procedure for the collection of non-ad valorem assessments.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1: The above referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town of Southwest Ranches is hereby authorized to seek the collection of non-ad valorem assessments.

Section 3. To collect a non-ad valorem assessment, the Town shall conduct a public hearing, as required by Section 197.3632 F.S., expressing its intent to use the Uniform method of collecting its non-ad valorem special assessments, including Solid Waste services, Fire services and such other services as may be determined by the Town, or such other assessments imposed by the Town as provided in Chapter 170 F.S. each of which are non-ad valorem assessments which may be levied annually by the Town for the purpose of paying capital costs principal and the cost of operating and maintaining its assessable improvements within the boundaries of the Town. Said

assessments and the Town's use of the uniform method of collecting its non-ad valorem assessments may continue for more than one (1) year.

Section 4. The Town Administrator shall provide the Property Appraiser and Tax Collector of Broward County and the Department of Revenue of the State of Florida with a certified copy of all Resolutions seeking non-ad valorem assessments prior to January 1st of each year or, if the property appraiser, tax collector, and local government agree, March 1st of each year.

Section 5. Declaration of intent; notice.

(a) Whenever the Town shall decide that a special assessment service or project needs to be provided or accomplished, the Town Council shall by Resolution, adopted by a supermajority, (the "Intent Resolution") declare the Town's intention to have such work performed or services provided, designating the nature of the work or services; the location of the work or services; the part or portion of the cost to be paid by special assessment; the manner in which special assessments shall be made; when such assessments are to be paid; and what part, if any, shall be apportioned to be paid from other funds of the Town or another participating governmental unit(s). Such Intent Resolution shall also describe the need for the levy and shall be sufficient to describe the lands on which the special assessment is to be levied, and the area receiving special benefit from the service or project. . Such Intent Resolution shall also state the Town's preliminary estimated cost of the service or project. Said estimated cost shall be the best estimate reasonably available to the Town at the time the Intent Resolution is published, said cost will be finalized prior to the Final Assessment Resolution, described in Section below. Prior to hearing the Intent Resolution, the Town's Clerk shall publish weekly for a consecutive period of four (4) weeks in a newspaper of general circulation in the Town, Broward County, Florida, notice of the Town's intent to use the uniform method for collecting assessment.

(b) At the time of the adoption of the Intent Resolution there shall be on file with the Town Clerk an assessment plan showing the area to be assessed, together with the preliminary plans and specifications and an estimate of the total or annual cost for the service or project, which assessment plan, preliminary plans and specification, and estimate shall be open to the inspection of the public.

(c) Upon adoption of the Intent Resolution, the Town may advertise for bids, provide in-house, or provide pursuant to an agreement with a third party or another public agency or a publicly regulated utility agency to provide the service or for the construction of the project. If bid, the bid shall be advertised in a newspaper of general circulation in the municipality and include in such advertisement the Intent Resolution number and title. All such bids shall conform to the Town bid procedures then in effect.

(d) If the Intent Resolution is adopted, the Town shall send a copy of it by United States mail to the property appraiser, to the tax collector, and to the Department

of Revenue by January 10 or, if the property appraiser, tax collector, and local government agree, March 10.

() Whenever it is necessary for the Town to adopt an assessment roll on an annual basis, it shall not be necessary to adopt an Intent Resolution each year. Instead, in subsequent years, the Town shall adopt a Preliminary Assessment Resolution, which shall provide for the purpose of the special assessment and the preliminary amount of such assessment. The Preliminary Assessment Resolution may also provide for the date, time and place of the public hearing, and any other information the town deems necessary. The Preliminary Assessment Resolution need not be published subsequent to adoption.

Section 6. Assessment roll.

(a) Upon adoption of the Intent Resolution declaring special assessment, an assessment roll shall be made in accordance with the assessment method provided in the Resolution and shall be completed and filed with the Town Clerk as promptly as possible.

(b) The assessment roll shall show the lots and land assessed, the name of the owner of the assessed property, the amount of benefit to and the assessment against each lot or parcel of land, and if the assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall be entered and shown upon the assessment roll.

(c) Upon the completion of the assessment roll, the Council shall in a Preliminary Assessment Resolution fix a time and place at which the owners of the property to be assessed, or any other persons interested therein may appear before the governing authority and be heard as to the property and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefore and as to the amount thereof to be assessed against each property so improved.

(d) Prior to hearing the Preliminary Assessment Resolution, the Town's Clerk shall publish at least ten (10) days advance notice in a newspaper of general circulation in the Town, Broward County, Florida, notice of the Town's time, date, and place of the Preliminary Assessment meeting. This information shall also be mailed to those affected property owners to the address obtained from the records of the Property Appraiser or from such other sources as the Town Clerk or engineer deems reliable. Proof of such mailing is to be filed with the Clerk. ~~provided that failure to mail the notice of notices shall not invalidate any of the proceedings hereunder.~~

(e) After the adoption of the Preliminary Assessment Resolution, the Council, through a supermajority vote, shall adopt the final assessment roll, through a Final Assessment Resolution. The final assessment roll shall be filed in the office of the Town Clerk of the Town and such assessments shall stand confirmed and remain legal, valid, and binding first liens upon the property against which such assessments are made until paid. A statement of the confirmed assessment shall be provided to each property owner listed on the roll. The property owner shall have such time as may be provided in

the assessment within which to pay the total or annual assessment. The Town shall determine in the Final Assessment Resolution when the payment of any special assessment levied shall commence, and the frequency and amount of any scheduled collections of such assessments upon determination of the confirmed assessment roll. Upon completion of a project or termination of a service, any excess in the special assessment as originally made, approved and confirmed over the actual cost of the improvement to be paid by such special assessment, shall be credited proportionately against each special assessment against each parcel in the manner set forth in the Final Assessment Resolution, or used for any lawful purpose.

(f) Upon completion of the initial Assessment Roll, the Town Administrator shall publish, or direct the publication of, once in a newspaper of general circulation within the Town a notice stating that at a meeting of the Town 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 Town 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 (A) a geographic depiction of the property subject to the Assessment; (B) a brief and general description of the assessed services, facilities, or programs to be provided; (C) the rate of assessment; (D) the procedure for objecting; (E) the method by which the assessments will be collected; and, (F) a statement that the initial Assessment Roll is available for inspection at the office of the Town Administrator and all interested persons may ascertain the amount to be assessed against a parcel of Assessed Property at the office of the Town Administrator. In addition to the published notice required, the Town Administrator shall provide notice, or direct the provision of notice, of the proposed assessments by mail to the Owner of each parcel of property (except Government Property) subject to the assessments. The Town Administrator, at his/her discretion, may utilize the TRIM notice process to serve as the required notice by mail provided that such notice shall include (A) the purpose of the assessments; (B) the rate of the assessment to be levied against each parcel of property; (C) the unit of measurement applied to determine the assessments; (D) the number of such units contained in each parcel of property; (E) the total revenue to be collected by the Town from the assessments; (F) a statement that failure to pay the assessments 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; (G) a statement that all affected Owners have a right to appear at the hearing and to file written objections with the Town Council within 20 days of the notice; and (H) 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. 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 assessments imposed by the Town Council pursuant to this Ordinance.

(g) The Town Council shall be authorized to revise and correct errors and omissions in the assessment roll if:

(1) Any assessment made is annulled, vacated, or set aside, in whole or in part, by the judgment of any court. In such a case, the Town Council may revise the assessment to comport with the guidelines of any such judgment until such time as a valid assessment is imposed.

(2) The Town Council is satisfied that any assessment is so defective that it can not be enforced or collected.

(3) The Town Council has omitted property from the assessment roll which should have been assessed for the service or project funded by the assessment.

Section 7. Equalizing board.

(a) At the time and place named in the notice provided in Section 5, the Council shall meet as an equalizing board to hear and consider any and all complaints as to the special assessments and shall adjust and equalize the assessments on a basis of justice and right; and when so equalized and approved by resolution or ordinance of the town, such assessments shall stand confirmed and remain legal, valid, and binding first liens, upon the property against which such assessments are made, until paid.

(b) Upon completion of the improvement, the town shall credit to each of the assessments the difference in the assessment as originally made, approved, and confirmed and the proportionate part of the actual cost of the improvement to be paid by special assessments as finally determined upon the completion of the improvement, but in no event shall the final assessments exceed the amount of benefits originally assessed.

(c) Promptly after such confirmation, the amounts shall be recorded in a special book, to be known as the "improvement lien book". The record of the lien in this book shall constitute prima facie evidence of its validity.

(d) The Council may by Resolution grant a discount equal to all or a part of the payee's proportionate share of the cost of the project consisting of bond financing costs, such as capitalized interest, funded reserves, and bond discount included in the estimated cost of the project, upon payment in full of any assessment during such period prior to the time such financing costs are incurred as may be specified by the Council.

Section 8. Method of making special assessments.

(a) Special assessments upon the property deemed to be benefited by a public improvement shall be by any one of the following methods; provided the method to be employed in making said special assessment shall be set forth in the Intent Resolution:

(1) By a percentage of the assessed taxable value of the property assessed.

(2) In proportion to the benefits which may result from the improvement.

(3) By the foot frontage of the property bounding or abutting upon the improvement.

(b) When a majority of the recorded owners of the frontage of lands liable to be assessed for any special local improvement shall petition the Town Council for any such improvement, the Council may order such improvement to be made. In other cases, public improvements shall be made in the discretion of the Town Council.

Section 9. Objections to improvements. At the meeting for hearing objections, or at a time and place to which the same may be adjourned, any person aggrieved may appear in person, by attorney, or by petition, and may object to or protest against said improvement. The Town Council shall consider the objections and protests, if any, and may confirm, amend, modify or rescind the Resolution of necessity, and shall determine whether the same improvement shall be made, and how the cost thereof shall be paid. The determination of the Town Council shall be final and conclusive. If the Council determines to proceed with such improvement as originally proposed or in an amended or modified form, it shall adopt a Resolution determining to proceed, as hereinafter set out. The Town Council, in its sole discretion, may in the alternative adopt a Resolution to place the special assessment on a future ballot as a referendum to be considered by the affected electorate.

Section 10. Security of lien; interest; and method of payment. The special assessments shall be payable at the time and in the manner stipulated in the Final Assessment Resolution providing for the improvement. The special assessments shall remain liens co-equal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid. The special assessments shall bear interest, at a rate not to exceed eight (8) percent per year, or, if bonds are issued therefore, at a rate not to exceed one (1) percent above the rate of interest at which the improvement bonds authorized pursuant to this chapter and used for the improvement are sold, from the date of the acceptance of the improvements. Special assessments made for capital outlay projects be made payable in equal installments over a period not to exceed twenty (20) years, to which and if not paid when due, there shall be added a penalty at the rate of one (1) percent per month until paid. The assessments may be paid without interest at any time within thirty (30) days after the improvement is completed and a resolution accepting the same has been adopted by the Council.

Section 11. Legal proceedings instituted upon failure of property owner to pay special assessment or interest when due; foreclosure; service of process.

(a) Each annual installment shall be paid upon the dates specified in the Resolution with interest upon all deferred payments until the entire amount of the assessment has been paid. Upon the failure of any property owner to pay any annual installment due or any part thereof or any annual interest upon deferred payments, the town shall cause to be brought the necessary legal proceedings to enforce payment

thereof with all accrued interest and penalties together with all legal costs incurred including a reasonable attorney's fee to be assessed as part of the costs. In the event of default in the payment of any installment of an assessment or any accrued interest on the assessment, the whole assessment with the interest and penalties thereon shall immediately become due and payable and subject to foreclosure.

(b) In the foreclosure of any special assessment service of process against unknown party, or nonresident defendants may be had by publication, as now provided by law in other chancery suits. The foreclosure proceeding shall be prosecuted to a sale and conveyance of the property involved in the proceedings as now provided by law in suits to foreclosure mortgages; or, in the alternative, proceedings may be instituted and prosecuted under Chapter 173, F.S.

Section 12. Invalid assessments. If any special assessment made under the provisions of this Ordinance to shall be either in whole or in part annulled, vacated or set aside by the judgment of any court or if the Town shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected or if the town shall have omitted to make such assessment when it might have done so, the Council shall take all necessary steps to cause a new assessment to be made for the whole or any part of any improvement or against any property benefited by any improvement, following as nearly as may be the provisions of this chapter. If the second assessment shall be annulled, the Town may make other assessments until a valid assessment shall be made.

Section 13. Payments by the Town. The Town may pay out of its general fund or out of any special fund that may be provided for that purpose such portion of the cost of any improvement as it may deem proper.

Section 14. Bonds.

(a) After the equalization, approval and confirmation of the levying of the special assessments for improvements and as soon as a contract for improvement has been finally let, the Council may by Resolution or Ordinance authorize the issuance of bonds, to be designated "improvement bonds, series No. _____", in an amount not in excess of the aggregate amount of the liens levied for such improvements. The bonds shall be payable from a special and separate fund, to be known as the "improvement fund, series No. _____" and for no other purpose. The funds shall be deposited in a separate bank account and all the proceeds collected by the Town from the principal, interest, and penalties of the liens shall be deposited and held in the fund. The bonds so issued shall never exceed the amount of liens assessed, and the bonds shall mature not later than two (2) years after the maturity of the last installment of the liens. The bonds shall bear certificates signed by the Town Clerk certifying that the amount of liens levied, the proceeds of which are pledged to the payment of the bonds, are equal to the amount of liens issued. The bonds may be delivered to the contractor in payment for his work or may be sold at public or private sale for not less than ninety-five (95) percent of par and accrued interest, the proceeds to be used in paying for the cost of

the work. The bonds shall not be a charge on, or payable out of, the general revenues of the Town, but shall be payable solely out of the assessments, installments, interest, and penalties. Any surplus remaining after payment of all bonds and interest thereon shall revert to the Town and be used for any municipal purpose.

(b) All bonds issued under this chapter shall be the denomination of five hundred dollars (\$500.00), or some multiple thereof, and shall bear interest as provided in section 215.84, F.S., payable annually or semiannually thereafter until maturity, and ten (10) percent per year after maturity. Principal and interest shall be payable at such place or places as the Town may determine. The form of such bonds shall be fixed by resolution and the bonds shall be signed by the mayor and the town clerk under the seal of the Town. The coupons, if any, shall be executed by the facsimile signatures of said officers. The delivery of any bond and coupon so executed at any time thereafter shall be valid although before the date of delivery the person signing such bond or coupons shall cease to hold office.

Section 15. Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 16. Severability. If any word, phrase, clause, sentence or section of this Ordinance is, for any reason, held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Section 17. Inclusion in the Code. This Ordinance shall be codified and included as part of the Town's Code of Ordinances. It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Town of Southwest Ranches Code; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

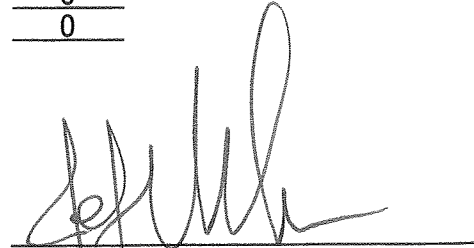
Section 18. Effective Date. This Ordinance shall become effective immediately upon its adoption.

PASSED ON FIRST READING this 15th day of January, 2009, on a motion made by Council Member Aster Knight and seconded by Council Member Freddy Fisikelli.

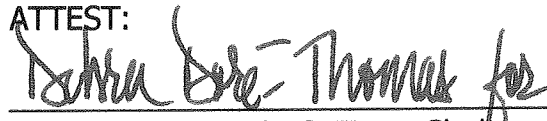
PASSED AND ADOPTED this 5th day of February, 2009, on a motion made by Council Member Doug McKay and seconded by Vice Mayor Steve Breitkreuz.

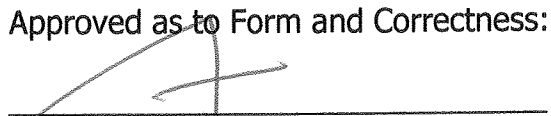
Nelson	<u>Y</u>
Breitkreuz	<u>Y</u>
Fisikelli	<u>Y</u>
Knight	<u>Y</u>
McKay	<u>Y</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>



Jeff Nelson, Mayor

ATTEST:

Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney