ORDINANCE NO. 2021 - 14

DESOOTO COUNTY, FLORIDA

AN ORDINANCE OF DESOTO COUNTY, FLORIDA, AMENDING CHAPTER 12, CODE OF ORDINANCES, REGULATING WATER, RECLAIMED WATER AND WASTEWATER SERVICES AND UTILITIES IN DESOTO COUNTY, FLORIDA; PROVIDING FOR THE ALLOCATION AND PAYMENT OF CAPITAL CHARGES FOR WASTEWATER EQUIVALENT RESIDENTIAL UNITS (ERUs) WHEN DEMAND FOR WASTEWATER TREATMENT SERVICE FAR EXCEEDS AVAILABLE WASTEWATER TREATMENT CAPACITY; CREATING SECTION 12-36 OF DESOTO COUNTY CODE OF ORDINANCES TO PROVIDE A METHOD FOR PRIORITIZING THE ALLOCATION OF ADDITIONAL WASTEWATER TREATMENT CAPACITY AND PAYMENT OF CAPITAL CHARGES FOR ERUs WHEN THEY BECOME AVAILABLE; CREATING ALLOCATION PHASES 1 AND 2; PROVIDING FOR REPUBLICATION, INCORPORATION INTO THE COUNTY CODE, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to the authority of Sections 125.01(1), 125.01(1)(k)(1), 125.01(1)(t), 125.01(1)(w), 125.01(3) and 367.171 of the Florida Statutes, the Board of County Commissioners ("BOCC") adopted Ordinance 2010-21 pertaining to Water, Reclaimed Water and Wastewater systems in the County; and

WHEREAS, the BOCC previously amended Ordinance 2010-21, now appearing as Chapter 12, Article II, Code of Ordinances; and

WHEREAS, the BOCC wishes to further amend Chapter 12, Article II, Code of Ordinances to provide for the allocation of equivalent residential units ("ERUs") when demand far exceeds available ERUs, for the allocation of additional wastewater treatment capacity when they become available, and for the payment of charges and fees for equivalent residential units ("ERUs") under specified conditions; and
WHEREAS, the establishment of a methodology to allocate wastewater treatment capacity among competing developments and projects is necessary to ensure that such capacity is allocated fairly and equitably; and

WHEREAS, a more timely increase in the customer base of the County’s utility system will result from making the allocation of additional capacity available first for those projects and developments which have already commenced or which already have necessary approvals, compared to those for which approvals are necessary but have not yet been obtained or even sought; and

WHEREAS, an expanded customer base for the County’s utility system promotes the financial and operational stability of that utility system; and

WHEREAS, the BOCC held a workshop on October 26, 2021 to discuss the allocation of ERUs and to receive public input and comment on this matter; and

WHEREAS, a public hearing on this Ordinance held by the BOCC on December 14, 2021; and

WHEREAS, notice of said public hearing required by law has been provided; and

WHEREAS, the BOCC finds that the amendment to Chapter 12, Article II, Code of Ordinances, included herein are in the best interest of the citizens of DeSoto County and will promote to continued operation and efficiency of the DeSoto County water and wastewater utility system.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA, THAT:

Section 1. The above stated Whereas Clauses are adopted and incorporated herein as findings in support of this Ordinance.
Section 2. Section 12-36, Code of Ordinances, is created to read:

Sec. 12-36. – Allocation of Additional Wastewater Treatment Capacity (ERUs).

(a) Purpose. The purpose of this Ordinance is establish a fair and equitable method of allocating equivalent residential units (ERUs) of wastewater treatment capacity among competing developers and entities when they become available and demand far exceeds available capacity, and also establish a method by which competing developers and entities can purchase future ERUs when wastewater treatment capacity is not available at the time of purchase. Additional wastewater treatment capacity is anticipated to become available on a more immediate basis due to wastewater treatment plant rehabilitation, rerating and collection system upgrades, and on a longer term basis due to expansion of County wastewater treatment facilities and development of the necessary effluent disposal capacity. This Ordinance is solely intended to assist the County with management and administration of additional ERUs as they become available by prioritizing projects and developments, and does not create any legal or beneficial rights or entitlement to such capacity for any person, project or development. The allocation of additional capacity shall be made by the County in its sole discretion in accordance with this Ordinance and is subject to all requirements of Chapter 12, Article II, Code of Ordinances, including but not limited to payment of all capital, reservation, maintenance and connection fees and charges, except as otherwise provided herein.

(b) ERU Allocation Phases. There shall be two ERU Allocation Phases as follows:

(1) Phase I (Available ERUs) is the more immediate period of time when additional ERUs become available through wastewater treatment plant rehabilitation, rerating, sprayfield irrigation expansion and collection system upgrades.
(2) **Phase 2** (Future ERUs) is a longer term period of time when additional ERUs become available through expansion of the wastewater treatment plant and development of the necessary effluent disposal capacity.

*(c) Phase 1 Notice and Application Process.*

(1) When it becomes available, the County will provide notice of additional Phase 1 wastewater treatment capacity in the newspaper, on its website, to those persons, projects or developments that have pending applications under review by the County, and to any person that requests notification of such additional capacity.

(2) Persons wishing to be considered for an allocation of new, available wastewater treatment capacity must provide the following information to the County within sixty (60) days of newspaper publication of the County’s notice, unless extended for good cause as determined in the sole discretion of the County, or due to force majeure:

a. Name of property owner and/or developer requesting the allocation;

b. Name and location of project or development, including parcel identification number;

c. Number of wastewater equivalent residential units (ERUs) being requested, as calculated by the property owner and/or developer in accordance with the Utilities Standards Handbook and broken down by phases if appropriate;
d. Whether a zoning change or special exception approval will be necessary, and if so, whether applications for such approval have been filed;

e. Whether an application for development permit or improvement plan approval has been filed, and if so, the status of review of said application;

f. If applicable, the amount of monthly reservation and maintenance charges paid by the property owner/developer on other projects and whether payment of said charges is current; and

g. Whether the applicant is only interested in available Phase 1 ERUs or also wishes to be considered for the purchase of Phase 2 ERUs that are not yet available.

(3) The County will evaluate the information that is received and request additional information when necessary. If the property owner/developer is delinquent on payment of applicable reservation and maintenance fees on any project in DeSoto County, their request for an allocation of ERUs shall be denied. If it is determined that a request qualifies for an allocation of wastewater treatment capacity under the priority list set forth in sec. 12-36(d), below, the County will notify the person submitting the request and require the execution of a utility service and conveyance agreement within forty-five (45) days, unless extended for good cause as determined in the sole discretion of the County, or due to force majeure. If an agreement is not executed by the applicable deadline, the allocation of capacity identified to satisfy the request will be released and may be made available to other qualified persons, developments, or projects.
(4) The County may repeat this process whenever additional wastewater treatment capacity becomes available.

d) **Phase 1 Allocation Priority.** The following categories establish a priority list for the allocation of Phase 1 wastewater treatment capacity and ERUs when they become available. These categories will be applied by the County, in the exercise of its sole discretion, in a manner that best serves the interests of the County, its utility system, and its residents:

(1) Expansion or next phase of an existing development with development and improvement plan approval already granted;

(2) Expansion or next phase of existing development for which development plan and/or improvement plan are under review;

(3) Proposed new project for which development plan and improvement plan approval have been granted;

(4) Proposed new project for which development plan has been approved and improvement plan is under review;

(5) Proposed new project for which development plan application has been submitted and is under review;

(6) Proposed new project for which there was a previous allocation of ERUs but there is currently no pending development plan application;

(7) Proposed new project for which there has been no application of any kind or prior allocation of ERUs; and
(8) Proposed new project described in accordance categories (5) through (7), above, but which requires approval of a land use or zoning change, and/or special exception, and no application for such approval has been filed.

(e) *Phase 2 Allocation Agreement.* The County may enter into an agreement for the allocation and purchase of future ERUs when wastewater treatment capacity is not available, provided that:

1. The purchaser identifies the property and project for which the ERUs will be used and which support the calculation of requested ERUs;
2. The purchaser pays all capital charges that are due for said ERUs;
3. The purchaser agrees that such payment of capital charges is nonrefundable; provided, however, if the County affirmatively decides not to move forward with design and construction of the capital project for which capital charges have been paid, the County may refund to the purchaser any capital charges paid, without interest, based on the capital charge schedule in effect at the time of the original payment, and terminate the allocation agreement;
4. The County waives all monthly reservation, maintenance and other fees until the County is ready to serve, at which the monthly reservation, maintenance and other fees shall become due and payable prospectively from the date of readiness to serve;
5. The purchaser shall receive priority allocation of ERUs when they become available in accordance with sec. 12-36(f);
6. If applicable, the purchaser is current on payment of any monthly reservation and maintenance fees due on other projects or developments;
(7) The parties to the agreement acknowledge that unless otherwise stated in the agreement, the County makes no representation and has no obligation regarding when ERUs will become available; and

(8) The agreement contains such other provisions as the parties deem appropriate including, but not limited to, the assignability of ERUs to another property or to another owner for use on the same or a different parcel from the one originally identified by the purchaser.

(f) *Phase 2 Allocation Priority.* When Phase 2 ERUs become available, they shall first be allocated to those purchasers who have entered into a Phase 2 Allocation Agreement. Thereafter, if any ERUs remain available, they shall be allocated in accordance with the allocation priorities set for the in sec. 12-36(d), above.

**Section 3. Repeal of conflicting provisions.** All provisions of Chapter 12, Article II, Code of Ordinances, including Schedules thereto, which conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**Section 4. County Code.** The provisions of this Ordinance shall be incorporated into the County Code, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word, and the sections of this ordinance may be renumbered or re-lettered to accomplish such intentions.

**Section 5. Severability.** If any section, part of a sentence, paragraph, phrase or word of this ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this ordinance without such unconstitutional, invalid or inoperative part.
**Section 6. Effective Date.** The provisions of this Ordinance shall become effective in accordance with law.

PASSED AND DULY ADOPTED this 14th day of December 2021.

ATTEST:

Mandy Hines, County Administrator

BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA

By Chairman

Approved as to Form and Correctness:

Donald D. Conn, County Attorney