

AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 26, STORMWATER UTILITY, PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS CHAPTER 26 (STORMWATER UTILITY) AS ATTACHED HERETO AND INCOPORATED HEREIN

WHEREAS: The Ordinance relating to Chapter 26, Stormwater Utility, is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

WHEREAS: This Ordinance shall be designated as Chapter 26 of the Code of Ordinances of the City of Dunwoody, Georgia; and

WHEREAS: This Ordinance shall become effective upon its adoption.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY ORDAINS that Chapter 26, Stormwater Utility, is hereby adopted and approved as part of the Code of Ordinances for the City of Dunwoody, Georgia

SO ORDAINED this the ____ day of _____, 2009.

Approved:

Ken Wright, Mayor

Attest:

Sharon Lowery, City Clerk

(Seal)

Approved as to Form and Content:

Brian Anderson, City Attorney

CHAPTER 26: STORMWATER UTILITY

Section 1: Findings

The Mayor and City Council makes the following findings of fact:

- (a) The City is authorized by the supplementary powers provisions of article IX, section II, paragraph III (a) (6) of the Georgia Constitution to provide a stormwater collection and disposal system throughout the City.
- (b) The federal Clean Water Act as amended by the Water Quality Act of 1987 (33 U.S.C. 1251 et seq.) and rules promulgated by the United States Environmental Protection Agency pursuant to the act emphasizes the role of local governments in developing, implementing, conducting and funding stormwater programs which address water quality and the impact of stormwater runoff.
- (c) Given the projected cost of stormwater management programs, systems and facilities identified in the professional engineering and financial analyses performed by DeKalb County and obtained by the City, it is appropriate to adopt a stormwater service fee rate methodology and to charge service fees to properties and persons within the city in a manner that recovers the cost of programs, systems and facilities and other costs associated therewith, including but not limited to allocations of the cost of services provided to the stormwater management utility by other funds of the city and other government entities and agencies, interest on bonds, operational and emergency reserves, allowances for delinquencies and bad debt, and such other costs as may be deemed reasonable and appropriate by the Mayor and City Council to ensure the management, maintenance, protection, control, regulation, use and enhancement of stormwater programs, systems and facilities in the City.
- (d) The stormwater conditions reflected in the study conducted by DeKalb County and obtained by the City reflect the current conditions of the stormwater system in the City.
- (e) Stormwater management is applicable and needed throughout the City. Stormwater service fee rate methodology and service fees should be applicable throughout the City to enable the City to successfully manage operate and improve stormwater programs, systems and facilities at an advanced level. Service fees will also assist the City in meeting the regulatory obligations imposed by its national pollutant discharge elimination system (NPDES) permits by reducing pollution and increasing water quality within the City.
- (f) The stormwater needs in the City include but are not limited to protecting the public health, safety and welfare. Funding of stormwater programs, systems and facilities is therefore incidental to the fundamental regulatory function of the City in protecting the public health, safety and welfare.
- (g) Provision of stormwater management programs, systems and facilities renders and/or results in both services and benefits to individual properties, property owners, citizens and residents of the City and to all properties, property owners, citizens and residents of the City concurrently in a variety of ways as identified in the professional engineering and financial analyses, and the services and benefits differ among the individual properties, property owners, citizens and residents in relation to the demands they impose individually and collectively on the stormwater systems and facilities.

- (h) The services and benefits rendered or resulting from the provision of stormwater management programs, systems and facilities may differ over time depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater systems and facilities, and risk exposure. It is not practical to allocate the cost of the City's stormwater management programs, systems and facilities in direct relationship to the services or benefits rendered to or received by individual properties or persons over a brief span of time, but it is both practical and equitable to allocate the cost of stormwater management among properties and persons in proportion to the long-term demands they impose on the City's stormwater programs, systems and facilities which render or result in services and benefits.
- (i) The City presently owns and operates stormwater management systems and facilities which have been developed, installed and acquired through various mechanisms over many years. The future usefulness and value of the existing stormwater systems and facilities owned and operated by the City, and of future additions and improvements thereto, rests on the ability of the City to effectively manage, protect, control, regulate, use and enhance the stormwater systems and facilities in the City. In order to do so, the City must have adequate and stable funding for its stormwater management program operating and capital investment needs.

Section 2: Definitions

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

Credit means a conditional reduction in the amount of a stormwater service charge to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility or the provision of a service or activity by property owner, which system, facility, service, or activity reduces the stormwater utility's cost of providing stormwater services and facilities. Credits for on-site stormwater systems shall be generally proportional to the affect that such systems have on the peak rate of runoff from the site.

Customer of the stormwater utility means all persons, properties, and entities served by and/or benefiting from the utility's acquisition, management, maintenance, extension, and improvement of the public stormwater management systems and facilities and regulation of public and private stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited as a result of the stormwater management program.

Detached dwelling unit means developed land containing one structure which is not attached to another dwelling and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy by one family. Detached dwelling units may include houses, manufactured homes, and mobile homes located on one or more individual lots or parcels of land. Developed land may be classified as a detached dwelling unit despite the presence of incidental structures associated with residential uses such as garages, carports or small storage buildings, or the presence of a commercial use within the dwelling unit so long as such use does not result in additional impervious areas such as parking spaces, playgrounds, or structures or additions to the building which are used as offices, storage facilities, meeting rooms, classrooms, houses of worship, or similar nonresidential uses. Detached dwelling unit shall not include developed land containing: structures used primarily for nonresidential purposes, manufactured homes and mobile homes located within manufactured home or mobile home parks where the land is owned by other than the owners of the manufactured homes or mobile homes, or multiple unit residential properties.

Developed land means property altered from its natural state by construction or installation of impervious surface as defined in this Chapter.

Duplex and *triplex* mean developed land containing two (duplex) or three (triplex) attached residential dwelling units located on one or more parcels of land.

Equivalent residential unit (ERU) shall mean the unit of measure which provides the basis for comparing the runoff generated by one parcel with that generated by another. An ERU shall be the median impervious coverage of a statistical sampling of single detached dwelling lots in the City, which has been determined to be 3,000 square feet of impervious area.

Hydrologic response means the manner and means whereby stormwater collects, remains, infiltrates, and is conveyed from a property. It is dependent on several factors including, but not limited to, the presence of impervious area, the size, shape, topographic, vegetative, and geologic conditions of a property, antecedent moisture conditions, and groundwater conditions on a property.

Impervious surface means those areas which prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Multiple dwelling lot shall mean a developed lot where more than one attached or detached residential dwelling units are located.

Other developed land means, but shall not be limited to, multiple dwelling unit residential properties, manufactured home and mobile home parks, commercial and office buildings, public buildings, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools and universities, research stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water reservoirs, and water and wastewater treatment plants.

Service fees shall mean the stormwater management service fees applicable to a parcel of developed land, which charge shall be used to fund the City stormwater utility's cost of providing stormwater management services and facilities.

Stormwater management systems mean those systems which address the issues of drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation and funding of plants, works, instrumentalities and properties used or useful in the collection, retention, detention, and treatment of stormwater or surface water drainage.

Undeveloped land. Land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur if the land was in an unaltered natural state.

Section 3: Establishment of a utility and an enterprise fund

- (a) There is hereby established a stormwater utility which shall be responsible for stormwater management programs throughout the City, and which shall provide for the management, protection, control, regulation, use and enhancement of stormwater systems and facilities. The stormwater utility management unit shall be composed of such personnel, employees and agents of the City as the Mayor and City Council may from time to time determine and their compensation shall be fixed and determined by the City Manager as approved by the City Council.
- (b) A stormwater enterprise fund shall be established in the City budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater utility, including but not limited to rentals, rates, charges, fees and licenses as may be established by the Mayor and City Council and other funds that may be transferred or allocated to the stormwater utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater enterprise fund and all expenses of the utility shall be paid from the stormwater enterprise fund, except that other revenues receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, facilities, operations and capital investments as deemed appropriate by the City Council, upon recommendation by the City Manager.
- (c) The Mayor and City Council hereby confers upon the stormwater utility operational control over the existing stormwater management programs, systems and facilities performed, provided or owned and heretofore operated by the City and other related assets, including but not limited to properties other than roadways upon which such systems and facilities are located, easements, rights-of-entry and access, and certain equipment used solely for stormwater management.

Section 4: Scope of responsibility for the city stormwater system and facilities

- (a) The stormwater utility shall be responsible for plan approval and construction inspection of both private stormwater facilities and public stormwater facilities located within the City. The stormwater utility shall be responsible for the design and construction of public stormwater facilities owned by the City and shall inspect, operate, and maintain them as prescribed herein.
- (b) The City drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural or manmade, within the political boundaries of the City which control and/or convey stormwater through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access for purposes of operation, maintenance and improvement of those stormwater systems and facilities which:
 - (1) Are located within public streets, rights-of-way and easements;
 - (2) Are subject to easements, rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for adequate access for operation, maintenance and/or improvement of systems and facilities;

- (3) Are located on public lands to which the City has adequate access for operation, maintenance and/or improvement of systems and facilities; or
 - (4) Are determined by the City Attorney to be the city's responsibility.
- (b) The stormwater utility shall provide for inspection of private facilities to ascertain that the stormwater systems are operating as intended. The stormwater utility may provide for remedial maintenance of facilities based upon the severity of problems and the potential hazard to the public health, safety, and welfare.

Section 5: Requirements for on-site stormwater systems; enforcement methods and inspections

- (a) All property owners and developers of real property to be developed within the City shall provide, manage, maintain and operate on-site stormwater systems and facilities sufficient to collect, convey, detain, control and discharge stormwater in a safe manner consistent with all City development regulations and the laws of the State of Georgia and the United States of America. Any failure to meet this obligation shall constitute a nuisance and be subject to an abatement action filed by the City in the municipal court. In the event a public nuisance is found by the court to exist, which the owner fails to properly abate within such reasonable time as allowed by the court, the City may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof charged to the owner in the same manner as a stormwater service charge.
- (b) In the event that the City shall file an action pursuant to this Chapter, from the date of filing such action the City shall have lien rights in relation to any service charge assessed against the property in the same manner as a tax levied against the property, which rights may be perfected, after judgment, by filing a notice of lien on the general execution docket of the Superior Court of DeKalb County. In addition, the City shall have the right to pursue collection of the service charge through other legal action or judgment.
- (c) The City shall have the right, pursuant to the authority of this article, for its designated officers and employees to enter upon private property and public property owned by other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with any order or judgment entered pursuant to this section.

Section 6: General funding policy

- (a) It shall be the policy of the City that funding for the stormwater utility program, systems and facilities shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater program, systems and facilities by individual properties or persons and/or the level of service rendered by or resulting from the provision of stormwater programs, systems and facilities. Stormwater service charge rates shall be structured so as to be fair and reasonable, and the resultant service charges shall bear a substantial relationship to the cost of providing services and facilities. Similarly situated properties shall be charged similar rentals, rates, charges, fees or licenses. Service charge rates shall be structured to be consistent and coordinated with the use of other funding methods employed for stormwater management within the City, including but not limited to general tax revenues allocated to stormwater management, plan review and inspection fees, special fees for services, fees in-lieu of regulatory requirements, impact fees, system development charges and special assessments.

- (b) The cost of stormwater management programs, systems and facilities may include operating, capital investment and reserve expenses, and may consider stormwater quality as well as stormwater quantity management problems, needs and requirements.
- (c) To the extent practicable, credits against stormwater service charges and/or other methods of funding stormwater management shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the City's standards by private property owners which eliminate, mitigate or compensate for the impact that the property or person may have upon stormwater runoff discharged to public stormwater systems or facilities or to private stormwater facilities which impact the proper function of public stormwater systems or facilities.
- (d) Stormwater utility service charge rates, fees and other similar charges shall be established by the City Council.

Section 7: Stormwater service fee rates

Stormwater service fee rates may be determined and modified from time to time by the Mayor and City Council so that the total revenue generated by said fees and any other sources of revenues or other resources allocated to stormwater management by the City Council shall be sufficient to meet the cost of stormwater management programs, systems and facilities, including but not limited to the payment of principal and interest on debt obligations, operating expense, capital outlays, non-operating expense, provisions for prudent reserves and other costs as deemed appropriate by the City Council. Stormwater service fee revenues in any given year may exceed or be less than the cost of service in that year, provided, however, that the stormwater service fee rate shall be based on meeting the long-term projected cost of stormwater management programs, systems and facilities. All unencumbered stormwater management funds derived from service fees and other sources of revenue not expended at the end of a fiscal year shall remain in the stormwater management utility enterprise fund account and balances shall be forwarded to the next fiscal year.

Section 8: Exemptions

The following properties are exempt from stormwater utility fees:

- (1) Undeveloped land;
- (2) All public rights-of-way;
- (3) Railroad tracks shall be exempt from stormwater service fees. However, railroad stations, maintenance buildings or other developed land used for railroad purposes shall not be exempt from stormwater service fees; and
- (4) Any property whereby one hundred percent (100%) of the stormwater runoff is contained on the premises and no runoff enter into the Stormwater Management System.

Section 9: Credits

Credits are available based on the following:

- (a) Property owners of developed land may receive a stormwater service charge credit for on-site systems or facilities. Stormwater service charge credits shall be determined based on the technical requirements, design and performance standards contained in the Georgia Stormwater Management Manual as may be updated or amended from time to time. Stormwater service charge credits may total up to 40 percent of the service charge applicable to a property, and shall be granted in the following increments:
- (1) 10% credit for on-site systems or facilities sized and functioning to meet water quality in accordance with the City Code and the Georgia Stormwater Management Manual as may be updated or amended from time to time.
 - (2) 10% credit for on-site systems or facilities sized and functioning to meet the channel protection in accordance with the City Code and the Georgia Stormwater Management Manual as may be updated or amended from time to time.
 - (3) 10% credit for on-site systems or facilities sized and functioning to meet the overbank flood protection in accordance with the City Code and the Georgia Stormwater Management Manual as may be updated or amended from time to time.
 - (4) 10% credit for on-site systems or facilities sized and functioning to meet the extreme flood protection properly as defined in the Statewide Stormwater Sizing Criteria for Stormwater Control and Mitigation [Georgia Stormwater Management Manual, Vol. 2 (Technical Handbook), section 1.3] as may be updated or amended from time to time.
- (b) Property owners seeking service charge credits must apply for stormwater service charge credits through completion and submittal to the City of a stormwater service charge credit application prior to January 1 of the year in which stormwater service charges are to be billed. Credits will only be granted through applications approved by the City for the remainder of the year in which stormwater service charges are to be billed. Any credits issued by DeKalb County in 2008 or any application received by DeKalb County before January 1, 2009 are hereby accepted as valid credits and applications for the City for the calendar year 2009.
- (c) Upon receipt of a timely filed completed application, the City Manager or his designee shall review the application and make a determination as to whether the applicable criteria for a credit has been met. All decisions regarding the approval or disapproval of a stormwater credit shall be made within 45 days of the date the completed application was submitted to the City.
- (d) Any credit allowed against the service charge is conditioned on (1) Continuing compliance with the City's design and performance standards as stated in the Georgia Stormwater Management Manual as may be updated or amended from time to time; and (2) upon continuing provision of the systems or facilities provided, operated, and maintained by the property owner or owners upon which the credit is based. The City may revoke any credit at any time for noncompliance with this Chapter.

Section 10: Stormwater service fee billing, delinquencies, and collections

A stormwater service fee bill may be sent though the United States mail or by alternative means, notifying the customer of the amount of the bill, the date the payment is due, and the date when past due. The stormwater service fee bill may be billed and collected along with other fees and charges, including but not limited other utility bills, assessments or property taxes, as deemed most effective and efficient by the City

manager of the City. Failure to receive a bill is not justification for non-payment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of developed land shall be ultimately obligated to pay such fees and other charges and any associated fines or penalties, including but not limited to interest on delinquent service fees. If a customer is underbilled or if no bill is sent for developed land, the City may backbill for a period of up to one year, but shall not assess penalties for any delinquency during that backbilled period. A late charge of one percent of the unpaid balance of any stormwater utility service fee bill shall be charged when a bill becomes delinquent. Thereafter, an additional charge of one percent based on the unpaid bill and any applicable delinquency charge shall be charged for each month the bill remains delinquent.

Section 11: Appeals

Any customer who believes the provisions of this Chapter have been applied in error may appeal in the following manner and sequence.

- (1) An appeal must be filed in writing with the City Manager or her/his designated representative. In the case of stormwater service fee appeals, the appeal shall include a survey prepared by a registered land surveyor or professional engineer containing information on the total property area, the impervious surface area, and any other features or conditions that influence the hydrologic response of the property to rainfall events.
- (2) Using information provided by the appellant, the City Manager shall conduct a technical review of the conditions on the property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the City Manager may adjust the stormwater service fee applicable to any property in conformance with the general purposes and intent of this Chapter.
- (3) All decisions by the City Manager shall be served on the appellant personally or by registered or certified mail, sent to the billing address of the appellant. All decisions of the City Manager shall be final.
- (4) Any person aggrieved by a decision or order of the City, after exhausting his/her administrative remedies, shall have a right to appeal by writ of certiorari to the Superior Court of DeKalb County within thirty (30) days of the City's order or decision.