

Ordinance No. _____

An Amendment to the City Code of Ordinances

CHAPTER AND PURPOSE. Chapter 74, Utilities, Article IV, Stormwater Management.

ENACTING CLAUSE. The Council of the City of Norcross, Georgia hereby ordains that the adopted Code of Ordinances is hereby amended as more particularly set forth herein. It is the intention of the Mayor and the Council, and it is hereby ordained that the following shall become and be made a part of the Code of the City of Norcross, and the Sections of the Code in this Chapter and of this ordinance may be renumbered to accomplish that intention.

Chapter 74, Utilities, Article IV, Stormwater Management, of the Code shall be amended by adding the following sections:

“Section 1. Purpose.

This ordinance shall serve as the policy and rate ordinance for the Stormwater Utility of the City of Norcross as established by Stormwater Utility Ordinance, Ordinance No. _____.

Section 2. Definitions.

- (a) *Dwelling Unit* shall mean a structure, which contains one (1) or more bedrooms, a bathroom and a kitchen facility.
- (b) *Equivalent Runoff Unit (ERU)* means 100 square foot, or any portion thereof, of horizontal impervious area on a developed property within Norcross as of the date of adoption of this ordinance. The horizontal impervious surface area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.
- (c) *Non-Residential Property* means improved property containing multiple dwelling unit residential properties, condominiums, apartments, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas, parking lots, parks, recreation properties, tennis courts, swimming pools, public and private schools and universities, research facilities and

stations, hospitals and convalescent centers, airports, agricultural uses, water and wastewater treatment plants, and any other form of use not otherwise mentioned which is not a Residential Property.

(d) *Public Water Influence Zone* means those areas lying downstream of a culvert, or other stormwater management conveyance system. On the downstream side of the conveyance system, the Public Water Influence Zone will extend for a length of six (6) times the diameter (or width) of the culvert from which runoff is being discharged (Field Manual for Erosion and Sediment Control in Georgia, Third Edition, pg. 99), and within the horizontal limits set forth in the aforementioned field manual. For example, if a 48-inch diameter culvert is discharging to a private property, the public water influence zone shall extend 24 feet (6 times 48-inches) from the end of the culvert and for the specified width (i.e. typically the width of the creek). The Norcross Stormwater Utility may perform maintenance and/or capital construction activities only within that portion of the Public Water Influence Zone which the City has an ownership interest in, or for which a dedicated easement has been granted to, and accepted by the City for such purpose.

(e) *Residential Property* means improved property containing one residential structure which contains one or more bedrooms, with bathroom and kitchen facilities, designed for occupancy by one family. A Residential Property may include a “stick-built,” industrialized, or manufactured home located on one or more individual lots or parcels of land. Improved property may be classified as a Residential Property even if there is present incidental structures associated with residential uses such as garages, carports, storage buildings, guest houses, servants or caretakers’ quarters, cottages or barns, or the presence of a commercial use within the residence, as long as such use does not result in additional areas of impervious surfaces. Residential Property shall not include improved property containing structures used primarily for nonresidential purposes, manufactured homes located within manufactured home parks where the land is owned by someone other than the owners of the manufactured homes, or multiple dwelling unit residential properties.

Section 3. Scope of Responsibility for Stormwater Management Systems and Facilities.

- (a) The City owns or has rights established by written agreements which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:
1. Within public road rights-of-way;
 2. On private property but within easements granted to, and accepted by, the City of Norcross, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
 3. On private property but within a Public Water Influence Zone after the City of Norcross secures a right-of-entry, right-of-access, permanent easement, temporary easement or other form of written consent from the property owner;
 4. On land dedicated to, and accepted by, the City solely for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon; or
 5. On public land which is owned by the City and/or land of another governmental entity upon which the City has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the City, and for which there has been no written agreement granting easements, rights-of-entry, rights-of-access, rights-of-use or other form of dedication thereof to the City for operation, maintenance, improvement and access of such stormwater management and systems and facilities shall be and remain the legal responsibility of the property owner, except as otherwise provided for by the state and federal laws and regulations.

- (c) It is the express intent of this ordinance to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any individual person, or to any specific property within or outside the boundaries of the City. The City expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the City, its elected officials, appointed officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
- (d) If any permit, plan approval, inspection or similar act is required by the City as a condition precedent to any activity or change upon property not owned by the City pursuant to this or any other regulatory ordinance, regulation or rule of the City, or under federal or state law, the issuance of such permit, plan approval or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit, negligent issuance of a permit, negligent plan approval, or negligent maintenance of any permitted stormwater management system or facility not expressly dedicated to and accepted by the City for further maintenance in an action seeking the imposition of money damages or equitable remedies against the City, its elected officials, appointed officials, officers, employees or agents.

Section 4. Stormwater Utility Customers.

- (a) There shall be one Stormwater Utility service area which shall include all property which is now in or may be in the future annexed into the City of Norcross. Within the Stormwater Utility service area, there shall be one customer class that will be reflective of the demand that those customers' properties place on the City Stormwater Management Program and drainage system. The specified customer class shall consist of all improved non-residential and residential properties.
- (b) Documentation pertaining to the designated Norcross Stormwater Utility service area and information regarding the Stormwater Utility customer class definition shall be kept on file in the office of the Stormwater Manager for public inspection.

Section 5. Stormwater User Fee Charge Rates.

- (a) In order to adequately fund the cost of providing stormwater services and facilities while fairly and equitably apportioning the cost of providing stormwater services and facilities among improved properties throughout the City, the City Council has established the following Stormwater user fee charge rates. A user fee charge rate schedule shall be on file in the office of the City Clerk of the City of Norcross.
- (b) Stormwater User Fee Charge Rates shall be assigned to all improved properties as follows:
1. Residential properties shall be treated as containing one ERU for each 100 square feet, or portion thereof, of impervious area located on the property to establish the total number of ERUs for billing.
 2. Non-residential properties shall be treated as containing one ERU for each 100 square feet, or portion thereof, of impervious area located on the property to establish the total number of ERUs for billing.
 3. The stormwater user fee charge rate shall be \$2.17 per ERU (100 square feet of impervious area) per year.
 4. All properties shall be billed periodically for stormwater services on a schedule established by the City Council

Section 6. Stormwater User Fee Charge Exemptions.

Except as provided in this section or otherwise provided by law, no public or private property located in the incorporated area of Norcross shall be exempt from the stormwater user fee charges. No exception, credit, offset, or other reduction in stormwater user fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the Stormwater Utility's cost of providing stormwater management services and facilities.

Exemptions to the stormwater user fee charges are as follows:

- (a) Parcels which contain five hundred (500) square feet, or less, of impervious surfaces shall be exempt from stormwater user fee charges.

- (b) Railroad rights-of-way (tracks) shall be exempt from stormwater user fee charges. However, railroad stations, maintenance buildings, and/or other improved property used for railroad purposes shall not be exempt from stormwater user fee charges.
- (c) Georgia Department of Transportation (GDOT) streets and rights-of-way shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance and capital construction services undertaken by GDOT in association with GDOT rights-of-way, road and drainage conveyance systems. However, maintenance buildings and/or other improved property used for GDOT purposes shall not be exempt from stormwater user fee charges. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.
- (d) Gwinnett County (County) streets and rights-of-way shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance and capital construction services undertaken by the County. However, other improved property used for County purposes shall not be exempt from stormwater user fee charges.
- (e) In consideration for the City allowing the Stormwater Utility to use the City's existing street, curbs, gutters, drainage ways and ditches, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural and man-made within and owned by the City which controls and diverts surface water for the purposes of collecting, diverting, transporting and controlling surface and storm waters; the utility shall not charge the City a stormwater user fee charge for the City's impervious surface area resulting from the City's impervious surfaces which are owned and/or maintained by the City within the public right of ways.
- (f) Any property whereby one hundred percent (100%) of the stormwater runoff is contained or infiltrated on the property and no stormwater runoff is discharged, via overland flow or manmade conveyance to adjacent properties or rights-of-way for all storm events up to and including the 100-year 24-hour storm event.

Section 7. Stormwater User Fee Charge Credits.

- (a) The Stormwater Manager shall grant credits or adjustments based on the technical and procedural criteria set forth in the Stormwater Utility Credit Technical Manual. Copies of the Credit Technical Manual will be maintained by and be made available by the Stormwater Manager.
1. A stormwater user fee charge credit shall be determined based on the technical requirements, standards and criteria contained in the Credit Technical Manual. The amount of credit, or reduction of the stormwater user fee charge, shall be in accordance with the criteria contained in the Credit Technical Manual.
 2. Any credit allowed against the stormwater user fee charge is conditioned on continuing compliance with the City's design and performance standards as stated in the Credit Technical Manual and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Stormwater Manager may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Technical Manual or this ordinance.
 3. In order to obtain a credit, the property owner must make application to the City on forms provided by the Stormwater Manager for such purpose, and in accordance with the procedures outlined in the Credit Technical Manual.
 4. Property owners may apply for any credits and/or adjustments in accordance with the Credit Manual.
 5. The application for any credit or adjustment must be in writing and must include the information necessary to establish eligibility for the credit or adjustment, and be in the format established by the Stormwater Manager. Incomplete applications will not be accepted for consideration and processing.
- (b) When an application for a credit is deemed complete by the Stormwater Manager, he shall have thirty (30) days from the date the complete application is accepted to either grant the credit in whole, grant the credit

Section 8. Stormwater User Fee Charge Billing, Delinquencies, Collections, Adjustments.

Failure to receive a Stormwater Utility bill is not justification for non-payment. The property owner, as identified from public land records of Gwinnett County, shall be obligated to pay the appropriate stormwater user fee charge for that property.

(a) Billing.

1. Stormwater user fee charges shall begin to accrue January 1, 2008, and shall be billed retroactively. A bill for stormwater user fee charges may be sent through the United States Postal Service or by alternative means, notifying the owner of the property being billed of the amount of the stormwater user fee charge, less credits, the date the payment is due and the date when payment is past due.
2. The stormwater user fee charge will be billed and collected as deemed most effective and efficient by the City Council.
3. Frequency of the billing of stormwater user fee charges shall be specified by the City Council.
4. Failure to receive a bill shall not be justification for nonpayment. Regardless of the party to whom the bill is initially directed, the owner of each developed property subject to stormwater user fee charges shall be obligated to pay stormwater user fee charges and any interest on delinquent stormwater user fee charge payments.
5. If a customer is underbilled or if no bill is sent for a particular tract of improved property, the Norcross Stormwater Utility may back bill for a period of up to one (1) year, but shall not assess penalties for any delinquency due to the failure to send a bill or an underbilling.

(b) Delinquencies and collection.

1. A one percent (1%) per month late charge shall be assessed against the customer for the unpaid balance of any stormwater user fee charge that becomes delinquent.
2. Unpaid stormwater user fee charges shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment. Unless reduced to a judgment and a writ of fieri facias issued, the unpaid stormwater user fee charge shall not constitute a direct lien against the owner and/or the property.

(c) Adjustments.

1. The Stormwater Manager shall administer the procedures and standards for the adjustment of the stormwater user fee charge.
 - i. Customers who believe their stormwater user fee is incorrect may seek an adjustment of the stormwater user fee charge allocated to a property at any time by submitting the request in writing to the Stormwater Manager and setting forth in detail the grounds upon which relief is sought.
 - ii. Customers requesting the adjustment shall be required, at their own expense, to provide supplemental information to the Stormwater Manager, including, but not limited to, a survey certified by a registered land surveyor or a professional engineer. Submittal of this information will be required if Stormwater Manager or his designee cannot make a determination based on field inspection and/or review of existing City aerial photography. Failure to provide the required information within the time limits established by the Stormwater Manager, as may be reasonably extended, may result in denial of the adjustment request.
 - iii. Once a completed adjustment request and all required information are received by the Stormwater Manager, the Stormwater Manager shall have thirty (30) calendar days within

which to render a written decision. Concurrent payment of any charges allocated to the property is not required as a condition precedent to this request for review.

- iv. In considering an adjustment request, the Stormwater Manager shall consider whether the calculation of the stormwater utility user fee charge for the property is correct.
- v. The Stormwater Manager's decision shall be in writing and will be mailed to the address provided on the adjustment request, and service shall be complete upon mailing.
- vi. If the result of an adjustment is that a refund is due the applicant, the refund will be applied as a credit on the applicant's next stormwater bill.

Section 9. Appeals, Hearings.

- (a) Appeals. An appeal to the City Manager may be taken by any property owner or customer aggrieved by any decision of the Stormwater Manager. The appeal shall be taken within thirty (30) days of the decision of the Stormwater Manager by filing with the City Manager a notice of appeal in writing specifying the grounds thereof. Upon the filing of the notice of appeal, the Stormwater Manager shall forthwith transmit to the City Manager all documentation constituting the record upon which the decision appealed from was taken.
- (b) Hearing. The City Manager shall fix a reasonable time for hearing the appeal and give written notice to the appellant at least ten (10) days prior to the hearing date. The notice shall indicate the place, date and time of the hearing. The City Manager shall affirm, reverse, affirm in part, or reverse in part the decision of the Stormwater Manager after hearing the evidence. If the decision of the Stormwater Manager is reversed in whole or in part, resulting in a refund or credit due to the property owner, then such refund or credit shall be calculated retroactive to the date of the initial appeal.
- (c) The decision of the City Manager shall be final, and there shall be no further administrative action. Any person aggrieved or dissatisfied with

the decision of the City Manager may appeal that decision to the Superior Court of Gwinnett County by Writ of Certiorari.

Section 10. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any ordinance, section, subsection, paragraph, subdivision or clause of this ordinance.

Section 11. Repealer.

All ordinances or parts thereof which are in conflict with any provision or any section, subsection, paragraph, subdivision or clause of this ordinance are hereby repealed to the extent of the conflict.”

IN WITNESS WHEREOF, I have hereunto set my hand and caused this seal to be affixed, this the _____ day of May, 2008.

Bucky Johnson, Mayor

ATTEST:

Susan B. Wuerzner, City Clerk