

**AN ORDINANCE**

**THE MAYOR AND BOARD OF ALDERMEN DO HEREBY ORDAIN THAT CHAPTER 50 FLOOD PREVENTION AND DRAINAGE, OF THE CITY OF ACWORTH, GEORGIA CODE OF ORDINANCES IS HEREBY AMENDED AS FOLLOWS:**

**Section 1:**

**Amending Chapter 50 Flood Prevention and Drainage – to create Article V Stormwater Utility, to incorporate Section 50-118 through Section 50-129 of the City of Acworth, Georgia, Code of Ordinances as follows:**

**Article V – Stormwater Utility****Sec 50-118. Purpose**

The City of Acworth, Georgia (the "City") is authorized by the supplementary powers provisions of Article IX, section II, paragraph III(a)(6) of the Georgia Constitution State Constitution to provide stormwater management services, systems and facilities throughout the geographic area of the city which services, systems and facilities contribute to the protection and preservation of the public health, safety and welfare, and protection of the natural resources of the city. The Federal Clean Water Act places increased emphasis on the role of local governments in developing, implementing, conducting, and making available to its citizens and property owners stormwater management services which address water quality and volume impacts of stormwater runoff. The Mayor and the Board of Aldermen has determined that development in the city to date, and the outlook for continued development at an increasing rate in the future, has created and will continue to create additional needs for stormwater management services, systems, and facilities within the city.

**Sec. 50-119. Findings**

The Mayor and Board of Aldermen make the following findings:

- (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) Stormwater management is applicable and needed throughout the corporate limits of the City. While specific service and facility demands may differ from area to area at any given point in time, a stormwater management service area encompassing all lands and

water bodies within the corporate limits of the City is consistent with the present and future needs of the community.

- (d) The stormwater needs in the City include, but are not limited to, protecting the public health, safety and welfare. Provision of stormwater management programs and facilities renders and/or results in both service and benefit to all properties, property owners, citizens, and residents of the city in a variety of ways. The service and benefit rendered or resulting from provision of stormwater management systems and facilities may differ depending on many factors and considerations, including but not limited to, location, demands and impacts imposed on the stormwater systems and programs, and risk exposure.
- (e) The City presently owns and operates stormwater management systems and facilities in the city which have been developed over many years. The future usefulness of the existing stormwater systems owned and operated by the City and of additions and improvements thereto, rests on the ability of the City to effectively manage, protect, control, regulate, use and enhance stormwater systems and facilities in the City in concert with the management of other water resources in the City. In order to do so, the City must have adequate and stable funding for the stormwater management program, operating capital and investment needs.
- (f) The Mayor and Board of Aldermen find, conclude, and determine that a utility provides the most practical and appropriate means of properly delivering and funding stormwater management services in the city.
- (g) An equitable approach to funding stormwater management services and facilities can be provided by adopting a schedule of service charges upon properties that is related to burden of stormwater quality control service requirements and costs posed by properties throughout the city. Such schedule of service charges can be complemented by other funding methods which address specific needs, including but not limited to, allocations of special purpose local option sales taxes to stormwater drainage improvement projects. A service charge credit is an appropriate means of adjusting service charges in recognition that private stormwater systems and/or actions can effectively reduce or eliminate the burden of stormwater quantity and quality control service requirements and costs that a property or properties pose for the City. Impervious area is the most important factor influencing stormwater service requirements and costs posed by properties throughout the city, and therefore is an appropriate parameter for calculating stormwater service charges and associated credits. In addition, the value to the stormwater utility of certain actions and practices performed by property owners and other stormwater utility customers may be recognized by credits based on other factors, including but not limited to, the avoided cost of public information and education realized by the utility when public information and education about stormwater management is provided by the public school system.

- (h) The "Stormwater Utility Study" prepared by CPL Architecture, Engineering, & Planning, dated 9/10/2020, properly assesses and defines the stormwater management problems, needs, goals, program priorities and funding opportunities for all of City of Acworth.
- (i) Given the problems, needs, goals, program priorities, and funding opportunities identified in the Stormwater Utility Study," it is appropriate to authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, control, regulation, use and enhancement of stormwater systems in the city in concert with similar programs in City of Acworth.

#### **Sec. 50-120. 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:

*Act* means and refers to the Clean Water Act as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.), as amended, and the rules and regulations promulgated by the United States Environmental Protection Agency pursuant thereto.

*Credit* means a reduction in the amount of a stormwater user fee charge to the owner of a particular property for the existence and use of privately owned, maintained, and operated on-site or off-site stormwater systems or facilities, or continuing provision of services or activities that reduce or mitigate the city's cost of providing stormwater management services for that particular property.

*Customers of the stormwater utility* shall include all persons, properties, and entities serviced by and/or benefiting from the services provided by the city's SWMP and the stormwater utility. These services include, but are not necessarily limited to, the stormwater utility's administration, management, maintenance, expansion, and improvement of the public stormwater management systems for the handling of stormwater runoff of private and public properties, and the regulation of the public and private stormwater management systems, controls, facilities, and activities.

*Single family residential property* or *SFR* means improved property containing one residential structure of one or more bedrooms, with bathroom and kitchen facilities, designed for occupancy by one family. A single family 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 single family 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. Single family residential properties 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.

*Dwelling unit* shall mean a structure, which contains one or more bedrooms, a bathroom, and a kitchen facility.

*Equivalent runoff unit (ERU)* means the statistical median horizontal impervious surface area of a detached single-family residential property within the city as of the date of adoption of this article. The horizontal impervious surface area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways, and sidewalks.

*Hydrologic response* defines the manner and means whereby stormwater collects, remains, infiltrates, and is conveyed from a property. Hydrologic response is dependent on several factors including, but not limited to, the presence of impervious surface, the parcel's size, the parcel's shape, the parcel's vegetative canopy, the parcel's groundwater, the parcel's antecedent moisture and the parcel's geologic condition.

*Impervious surface* means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, 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.

*Improved property* means property altered from its natural state by construction or installation of more than 500 square feet of impervious surfaces.

*Non-single family residential property* or *NSFR* 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 single family residential (SFR), and which has private parking lots and private drives or roads.

*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 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 (six times 48 inches) from the end of the culvert and for the specified width (i.e. typically the width of the creek). The city 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.

*Service area* means the entire land area within the corporate limits of the city.

*Stormwater management services* mean all services provided by the city which relate to the:

- (1) Transfer, control, conveyance or movement of stormwater runoff through the incorporated portions of the city;
- (2) Maintenance, repair and replacement of existing stormwater management systems and facilities;
- (3) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
- (4) Regulation of the use of stormwater management services, systems and facilities; and
- (5) Compliance with applicable state and federal stormwater management regulations and permit requirements.

*Stormwater management services* may address the quality of stormwater runoff as well as the quantity thereof.

*Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat, or otherwise influence the movement of stormwater runoff.

*Stormwater manager* means the person appointed by the city manager to administer the provisions of this article.

*Stormwater user fee charge* means the periodic user fee charge imposed pursuant to this article by the city stormwater utility for providing stormwater management services. This term shall exclude special charges to the owners of particular properties for services, systems or facilities related to stormwater management, including, but not limited to, charges for development plan review, inspection of development projects, on-site stormwater control systems and other stormwater management services provided by the city for which a corresponding fee is collected for the service rendered.

*Undeveloped land* means land in its unaltered natural condition or which is modified to such a minimal degree as to have a hydrologic response comparable to land in an unaltered natural condition shall be deemed undeveloped. Undeveloped land shall have minimal impervious surface, which impedes the infiltration of stormwater runoff or causes stormwater runoff to collect, concentrate or flow in a manner materially different from what would occur if the land were in an unaltered natural condition. For purposes of this article, undeveloped land includes property altered from its natural condition by the creation or installation of 500 square feet or less of impervious surface.

*User* is defined as any person who uses property, which maintains connection to, discharges to, or otherwise receives services from the city for stormwater management.

**Sec. 50-121. Stormwater utility and enterprise fund established.**

- (a) There is hereby established a stormwater utility to be known as the city stormwater utility, which shall be responsible for stormwater management services throughout the incorporated areas of the city, and which shall provide for the management, protection, control, regulation, use and enhancement of the city's stormwater management services.
- (b) There is hereby established a stormwater utility enterprise fund in the city budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the city SWMP and stormwater utility, including, but not limited to, rates, charges, and fees as may be established by the Board of Aldermen from time to time, and other funds that may be transferred or allocated to the city stormwater utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater utility enterprise fund and shall be used solely for stormwater management services. All expenses and capital investments of the stormwater utility shall be paid from the stormwater utility enterprise fund; provided, however, that other revenues, receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management services as deemed appropriate by the city.
- (c) The city shall place responsibility with the stormwater manager for operation, maintenance, and regulation of the SWMP and stormwater management services performed, owned and operated or maintained by the city, and other related assets, including, but not limited to, properties, other than road rights-of-way, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management.

**Sec. 50-122. 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, 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;
  - (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 article 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, 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 commissioners, officers, employees or agents.

**Sec. 50-123. Stormwater utility customer classes.**

(a) There shall be one stormwater utility service area in city with specified customer classes to reflect variations in services provided to stormwater utility customers and the respective demand that those customers' properties place on the city stormwater management program and drainage system. The specified customer classes for the city stormwater utility are as follows:

(1) Single family residential (SFR) customers as defined in section 50-120 of this article.

(2) Non-single family residential (NSFR) customers shall consist of all properties located in the city that are not classified as SFR.

(b) Documentation pertaining to the city stormwater utility customer classes shall be kept on file in the office of the stormwater manager for public inspection.

**Sec. 50-124. Stormwater user fee charges.**

(a) It shall be the policy of the city that user fee charges for stormwater management services to be provided by the stormwater utility in the designated service areas shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater management services by individual properties and/or the level of service rendered by, or resulting from, the provision of stormwater management services.

Stormwater user fee charge rates shall be structured so as to be uniform within the customer class, and the resultant user fee charges shall bear a substantial relationship to the cost of providing stormwater management services. User fee charge rates shall be in addition to other rates, charges, or fees employed for stormwater management within the incorporated areas of the city, including, but not limited to, plan review and inspection fees, fees for special services, fees in lieu of regulatory requirements, system development charges and special assessments.

(b) To the extent practicable, credits against stormwater user fee charges shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the city's standards by public and 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 management systems and facilities or to private stormwater management systems and facilities which impact the proper function of public stormwater management systems and facilities.

**Sec. 50-125. Stormwater user fee charge rates.**

(a) Stormwater user fee charge rates shall be set and may be modified from time to time by the Board of Aldermen. A schedule of said rates shall be on file in the office of the city clerk. In setting or modifying such rates it shall be the goal of the city to establish rates that are fair and reasonable, and together with other sources of support available to the city stormwater utility, are sufficient to support the cost of the stormwater management services, including, but not limited to, the payment of principal and interest on debt obligations, lease payments, operating expenses, capital outlays, non-operating expenses, provisions for prudent reserves and other costs as deemed appropriate by the city.

(1) *Single family residential (SFR) customer class.* Single family residential properties shall be equal to 1.00 ERU and charged at a single ERU rate.

(2) *Non-single family residential (NSFR) customer class.* NSFR properties shall be billed one ERU for each 3,300 square feet, or portion thereof, of impervious surfaces located on the property to establish the total number of ERUs for billing. Fractional ERUs for NSFR properties will be rounded to two decimal places to establish the actual number of ERUs for billing. If a NSFR property has less than 1.00 ERU, then the customer will be billed a minimum of 1.00 ERU.

(b) Stormwater user fee charge rates shall be applied to customers as follows:

(1) The stormwater user fee shall be established at the amount as approved annual by the Mayor and Board of Aldermen as reflected in the fee schedule per ERU per year.

a. All SFR customers shall be billed periodically for stormwater services on a schedule established by the Board of Aldermen.

(2) The NSFR stormwater user charge for each ERU, or fractional ERU, shall be as follows:

a. The amount as approved annually by the Mayor and Board of Aldermen as reflected in the fee schedule

b. All NSFR customers shall be billed periodically for stormwater services on a schedule established by the Board of Aldermen.

**Sec. 50-126. 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 the city 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:

- (1) Parcels which contain 1/10<sup>th</sup> of an ERU or less of impervious surfaces shall be exempt from stormwater user fee charges.
- (2) 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.
- (3) 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 and road 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, county, and City of Acworth properties are subject to the user fee charges on the same basis as private properties.
- (4) Basins used for the development or treatment of drinking water or wastewater, such as water reuse ponds, aerators, clarifiers, sedimentation, and flocculation tanks, in use by public utilities.

**Sec. 50-127. Enforcement methods and inspections.**

- (a) All property owners of improved property within the incorporated areas of the city shall provide, manage, maintain, and operate on-site stormwater management systems sufficient to collect, convey, detain, and discharge stormwater runoff in a safe manner consistent with all applicable city development regulations, ordinances, and state and federal laws. Any failure to meet this obligation shall constitute a violation of this article and be subject to citation and prosecution in the city municipal court. Each day such violation exists shall constitute a separate offense, subject to the penalties set forth in section 50-117 of this Code.
- (b) Alternately, in the event a public nuisance is deemed to exist by the stormwater manager, the city may elect to sue in the city municipal court to abate such nuisance. In the event a public nuisance is found by the court to exist, which the property owner fails to abate within such reasonable time as allowed by the city municipal court, the city may enter upon the property and

cause work as is reasonably necessary to be performed, with the actual cost thereof assessed against the property owner in the same manner as a tax levied against the property. From date of filing of such abatement action, the city shall have lien rights which may be perfected, after judgment, by filing a notice of lien on the general execution docket of the city municipal court.

(c) The city shall have the right for its designated officers and employees to enter upon public and private property during reasonable hours, and after reasonable notice to the owner thereof, in order to assure compliance with the provisions of this article, and state and federal law. Such inspections shall generally be limited to the following purposes:

- (1) Inspecting or conducting engineering analyses on existing stormwater management systems and facilities located on-site; or
- (2) Determining that stormwater management systems and facilities need to be constructed.

**Sec. 50-128. 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 City of Acworth, shall be obligated to pay the appropriate stormwater user fee charge for that property.

The stormwater service fee may be billed separately, or on a customer statement and collected along with other fees for services, at the City of Acworth's sole discretion, provided that in no instance shall the service fee constitute a direct lien against the parcel. Unpaid stormwater service fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by state law to collect on any judgment obtained thereby.

A stormwater service fee bill may be sent through 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. 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 fee. If a customer is underbilled or if no bill is sent for developed land, the City of Acworth may backbill for a period of up to one year but shall not assess penalties for any delinquency due to the failure to send a bill or an under billing. A one percent per month late charge shall be assessed against the owner for the unpaid balance of any stormwater utility service charge that becomes delinquent.

**Sec. 50-129. 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 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 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 Cobb County by writ of certiorari.

**Section 2:**

**It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.**

**Section 3:**

**All Ordinances in conflict with this Ordinance are hereby repealed.**

**Section 4:**

**This Ordinance shall become effective upon passage by the Mayor and Board of Aldermen of the City of Acworth and signature of the Mayor subject to Georgia Laws 1983, page 4119.**

**Date:** \_\_\_\_\_

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**Thomas W. Allegood, Mayor**

**Attest:**

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**Regina R. Russell, City Clerk**