

O-20-18
AN ORDINANCE
AMENDING THE TEXT
OF THE
DECATUR CITY CODE
UNIFIED DEVELOPMENT ORDINANCE
ARTICLE 9 ENVIRONMENTAL PROTECTION

WHEREAS, the City of Decatur City Commission has updated the City's Storm Water Master Plan to guide capital improvements, mitigate development impacts, and establish policies for implementing practices to protect and enhance the environment; and

WHEREAS, the Metropolitan North Georgia Water Management District issued a revised model ordinance for participating communities that must be adopted by December 10, 2020 for continued eligibility in State and Federal programs; and

WHEREAS, the City of Decatur City Commission has proposed amendments to the text of the Unified Development Ordinance, Article 9 Environmental Protection Section 9.7 Stormwater Utility; and

NOW, THEREFORE, BE IT ORDAINED by the City Commissioners of the City of Decatur, Georgia, and it is hereby ordained by authority of the same, that Article 9 and Article 12, of the Unified Development Ordinance within the Code of the City of Decatur, Georgia, is amended in accordance with the attached Section 9.7.

Effective the 10th day of December 2020.

Approved this ____ day of _____, 2020.

Patti Garrett
Mayor

Attest:

City Clerk

Sec. 9.7. Stormwater Utility

9.7.1. Establishment of Utility

A. Findings

The City Commissioners make the following findings of fact:

1. The professional engineering and financial analyses conducted on behalf of and submitted to the City Commissioners properly assess and define the stormwater management problems, needs, goals, program priorities and funding opportunities of the City.
2. Given the problems, needs, goals, program priorities and funding opportunities identified in the professional engineering and financial analyses submitted to the City, it is appropriate to authorize the establishment of a separate accounting unit which shall be dedicated specifically to the management, maintenance, protection, control, regulation, use and enhancement of stormwater systems in the City.
3. Stormwater management is applicable and needed throughout the City. Intense urban development in the City has radically altered the natural hydrology of the area and the hydraulics of stormwater systems, with many natural elements having been replaced or augmented by man-made facilities. As a result, the specific service, system and facility demands in the City now exceed the service capability of many of the systems. An advanced level of service is needed in the City due to its urbanization. Therefore a stormwater utility service area subject to stormwater service charges should encompass the entirety of the City to enable the City to successfully manage, operate and improve stormwater systems at an advanced level.
4. It is most equitable that a portion of the needed stormwater service level continue to be funded from the City's general tax revenues, and therefore that the City Commissioners may allocate general fund support to stormwater management in the future in the form of a combination of service charge payments for City-owned properties and a supplemental allocation of general fund funding.
5. The stormwater needs in the City include but are not limited to protecting the public health, safety and welfare. Funding of stormwater services and facilities is therefore incidental to the fundamental regulatory function of the City in protecting the public health, safety and welfare.
6. Provision of stormwater management programs, systems and facilities renders and/or results in both service and benefit 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 service 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.
7. The service and benefit 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 programs, 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

9.7.1. Establishment of Utility

the City's stormwater programs, systems and facilities which render or result in services and benefits.

8. 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.
9. The City Commissioners find, conclude and determine that a stormwater utility provides the most practical and appropriate means of properly delivering stormwater management services and benefits throughout the City, and the most equitable means to fund an advanced level of stormwater services in the City through stormwater service charges and other mechanisms as described in the professional engineering and financial analyses prepared for the City.

B. Establishment of a Utility and an Enterprise Fund

1. 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 City Commissioners may from time to time determine and their compensation shall be fixed and determined by the City Manager as approved by the City Commissioners.

2. 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 City Commissioners 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 Commissioners, upon recommendation by the City Manager.
3. The City Commissioners hereby confer 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.

C. Scope of Responsibility

1. The City owns or has legal access for purposes of operation, maintenance and improvement of those stormwater systems and facilities which:
 - a. Are located within public streets, rights-of-way and easements;
 - b. 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; or

- c. Are located on public lands to which the City has adequate access for operation, maintenance and/or improvement of systems and facilities.
2. Operation, maintenance and/or improvement of stormwater systems and facilities which are located on private property or public property not owned by the City and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner, except as that responsibility may be otherwise affected by the laws of the State of Georgia and the United States of America.
3. It is the express intent of this Section to protect the public health, safety and welfare of all properties and persons in general by regulation of the stormwater system and facilities, 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 upon the City, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.
4. To the extent 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 or negligent issuance of a permit, seeking the imposition of money damages against the City, its officers, employees or agents.

D. Enforcement Methods and Inspections

1. 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.
2. In the event that the City shall file an action pursuant to Sec. 9.7.1.D.1. above, 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, Georgia. In addition, the City shall have the right to pursue collection of the service charge through other legal action or judgment.
3. The City shall have the right, pursuant to the authority of this Section, 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 there-

9.7.1. Establishment of Utility

of, 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.

E. General Funding Policy

1. 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.
2. 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.
3. 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.

4. Stormwater utility service charge rates, fees and other similar charges shall be established by the City Commissioners.

Sec. 9.8. Stormwater Management Rates

9.8.1. Findings

The City Commissioners of the City make the following findings of fact:

- A. The professional engineering and financial analyses conducted on behalf of and considered by the City Commissioners properly assess, define and project the cost of stormwater management systems and facilities of the City.
- B. Given the projected cost of stormwater management programs, systems and facilities identified in the professional engineering and financial analyses submitted to 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 City Commissioners of the City to ensure the management, maintenance, protection, control, regulation, use and enhancement of stormwater programs, systems and facilities in the City.
- C. Stormwater management is applicable and needed throughout the City and the 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.
- D. It is most equitable that a portion of the needed stormwater program, systems and facilities continue to be funded from the City's general tax revenues, and therefore that the City Commissioners may allocate general fund support to stormwater management in the future in the form of a combination of service fee payments for City-owned properties and a supplemental allocation of the general fund.
- E. 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.
- F. 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.
- G. 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-

9.8.5. Appeals

term demands they impose on the City's stormwater programs, systems and facilities which render or result in services and benefits.

- H. 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.

9.8.2. Stormwater Service Fee Rates

Stormwater service fee rates may be determined and modified from time to time by the City Commissioners of the City 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 Commissioners 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 Commissioners of the City. 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.

- A. Single-family dwelling units. Single-family dwelling units, shall be divided into four (4) classes of customers for billing purposes. All single-family dwelling units having two thousand five hundred (2,500) square feet of impervious area or less shall

be billed for four tenths (0.4) of one (1) equivalent residential unit, as defined in this Section. All single-family dwelling units having between two thousand five hundred and one (2,501) square feet and four thousand hundred (4,000) square feet of impervious area shall be billed for seven tenths (0.7) of one (1) equivalent residential unit, as defined in this Section. All single-family dwelling units having between four thousand and one (4,001) square feet and five thousand five hundred (5,000) square feet of impervious area shall be billed for one (1) equivalent residential unit, as defined in this Section. All single-family dwelling units having more than five thousand (5,000) square feet of impervious area shall be billed for one and four tenths (1.4) equivalent residential units, as defined in this Section.

- B. Other developed lands. All developed lands not classified as single-family dwelling units, as defined by this Section, shall be billed for one equivalent residential unit, as defined by this Section, for each 4,000 square feet of impervious surfaces or partial increment thereof located on the property.
- C. The stormwater service charge rate per equivalent residential unit (as defined in this Section) in accordance with the City's current fee schedule shall be charged.

9.8.3. Exemptions and Credits

Except as provided in this Section, no public or private property shall be exempt from stormwater utility service fees or receive a credit or offset against such service fees. No exemption, credit, offset or other reduction in stormwater service fees shall be granted based on the age, tax, or economic status, race or religion of the customer, or other condition unrelated to the stormwater utility's cost of providing stormwater management systems and facilities. A Stormwater Utility Service Fee Credit Technical Manual shall be prepared by the City Manager and approved by the City Commission specifying the design and performance standards of on-site stormwater systems, facilities and activities that qualify for application of a service fee credit, and how such credit shall be calculated.

9.8.4. Stormwater Service Fee Billing

- A. Properties not defined in this Section as developed land shall be exempt from stormwater service fees.
- B. 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.
- C. Developed land may receive a credit against the stormwater service fee applicable to the property. The stormwater utility service fee credit for on-site stormwater control systems or facilities that reduce or mitigate the impact of impervious surfaces on the subject property shall be up to forty (40) percent and shall be proportional to the extent that the on-site stormwater control systems or facilities provided, operated, and maintained by the property owner meets or exceeds the City's development and performance standards contained in the Stormwater Utility Service Fee Credit Technical Manual and other requirements and conditions. The amount of the stormwater utility service fee credit shall not be related to the cost incurred by the property owner for performing, constructing, providing and/or maintaining such programs, systems, facilities, services and activities.
- D. Groups of single-family dwelling units represented by an incorporated homeowner's association that owns, operates and maintains on-site stormwater control systems or facilities, or that provides services or activities that reduce or mitigate the impact of impervious surfaces located on the subject properties may receive a credit against the stormwater service fee applicable to the properties represented by the homeowner's association. Such service fee credit shall be based on attaining and continuing compliance with the technical requirements and performance standards contained in the Stormwater Utility Service Fee Credit Technical Manual and other requirements and conditions. The stormwater utility service fee credit for on-site stormwater control systems or facilities, or for services or activities provided by groups of single-family dwelling units represented by an incorporated homeowner's association shall be

proportional to the extent that the on-site stormwater control systems or facilities provided, operated and maintained by the homeowner's association meets or exceeds the City's development and performance standards contained in the Stormwater Utility Service Fee Credit Technical Manual and other requirements and conditions. Such credits shall be proportionately allocated among all properties represented by the incorporated homeowner's association. The stormwater utility service fee credit for services and activities that reduce or mitigate the stormwater utility's cost of providing stormwater management systems and facilities shall not be related to the cost of such services and activities to the homeowner's association or any person or entity providing same.

- E. Individual single-family dwelling units required by the City to install on-site detention or that provide services or activities that reduce or mitigate the impact of impervious surfaces located on the subject properties may receive a credit against the stormwater service fee applicable to the subject property. Such service fee credit shall be based on attaining and continuing compliance with the technical requirements and performance standards contained in the Stormwater Utility Service Fee Credit Technical Manual and other requirements and conditions. The stormwater utility service fee credit for on-site stormwater control systems or facilities, or for services or activities provided by individual single-family dwelling units shall be a fixed amount and shall be subject to the requirement that the on-site stormwater control systems or facilities provided, operated, and maintained by the property owner meet the City's development standards and performance standards contained in the Stormwater Utility Service Fee Credit Technical Manual and other requirements and conditions. The stormwater utility service fee credit for services, facilities and activities shall not be related to the cost of such services and activities to the homeowner or any person or entity providing same.

9.8.4. Stormwater Service Fee Billing, Delinquencies, and Collections

- A. A stormwater service fee bill may be sent though the

9.8.5. Appeals

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 1 year, but shall not assess penalties for any delinquency during that backbilled period. A late charge of 1% of the unpaid balance of any stormwater utility service fee bill shall be charged when a bill becomes delinquent. Thereafter, an additional charge of 1% based on the unpaid bill and any applicable delinquency charge shall be charged for each month the bill remains delinquent.

- B. Stormwater service fee bills for commercial or multiple residential condominium properties may be delivered to the individual condominium owners apportioning the stormwater service fee for the entire property equally among all properties.

9.8.5. Appeals

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

- A. 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.
- B. 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 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 Section.

- C. 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.
- D. Any person aggrieved by a decision or order of the city, after exhausting his/her administrative remedies, shall have a right to appeal to the Superior Court of DeKalb County pursuant to the provisions of Sec. 11.2.11.