

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF JOHNS CREEK
GEORGIA BY ADDING THE JOHNS CREEK STORMWATER UTILITY
ORDINANCE WHICH CREATES A STORMWATER UTILITY AND
ENTERPRISE FUND; TO PROVIDE FOR SEVERABILITY; TO REPEAL
CONFLICTING ORDINANCES; TO ESTABLISH AN EFFECTIVE DATE; AND
FOR ALL OTHER LAWFUL PURPOSES.**

WHEREAS, the City of Johns Creek is authorized by O.C.G.A. § 36-35-3(a) to adopt clearly reasonable ordinances, resolutions or regulations related to its property, affairs and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto; and

WHEREAS, the City of Johns Creek pursuant to Section 1.12(b)(9) of its Charter is authorized to protect and preserve the natural resources, environment and vital areas of the City through the management of stormwater and establishment of a stormwater utility; and

WHEREAS, the City Council of the City of Johns Creek has the power by ordinance to assess and collect fees, charges and tolls for providing stormwater management services for the total cost to the City of providing or making said services available; and

WHEREAS, the City Council of the City of Johns Creek desires to exercise the above-stated powers to protect and preserve the natural resources, environment and vital areas of the City through the management of stormwater via a stormwater utility.

NOW THEREFORE the Council of the City of Johns Creek hereby ordains as follows:

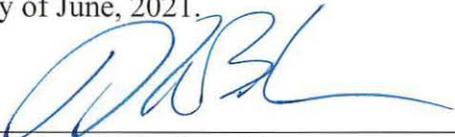
Section 1. The Code of the City of Johns Creek, Georgia is hereby amended by adding Exhibit "A" – Johns Creek Stormwater Utility Ordinance - which is attached hereto and incorporated by reference as if fully set forth herein, in its entirety.

Section 2. If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of the Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Johns Creek to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Section 3. All ordinances, resolutions or parts thereof in conflict with the terms of this Ordinance are hereby repealed to the extent of the conflict.

Section 4. This Ordinance shall be effective upon adoption by the City Council of the City of Johns Creek, Georgia, and signature of the mayor or the date of the next regularly scheduled council meeting, whichever is earlier.

SO ORDAINED this 21st day of June, 2021.



Michael E. Bodker, Mayor

ATTEST:



Allison Tarpley, City Clerk

APPROVED AS TO FORM:



E. Ronald Bennett, Jr., City Attorney



Exhibit "A"
Johns Creek
Stormwater Utility Ordinance

Article I. STORMWATER UTILITY

Section 1.01 Short title, authority and applicability.

- (1) This article shall be known and cited as the Johns Creek Stormwater Utility Ordinance.
- (2) The City of Johns Creek is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraph III, and O.C.G.A. § 36-82-62 to provide stormwater management service systems and facilities throughout the corporate boundaries of the City of Johns Creek (hereinafter "the city" or "Johns Creek") and to collect fees for provision of those services.

Section 1.02 Findings.

The Mayor and City Council of Johns Creek, Georgia make the following findings:

- (1) Stormwater management services as well as stormwater management systems and facilities will assist the city in protecting the public health, safety and welfare and the environment. Provision of stormwater management services, stormwater management systems and facilities and regulation of the use thereof renders and/or results in both service and benefit to individual parcels, parcel owners, citizens and residents of the city and to all parcels, parcel owners, citizens and the environment in a variety of ways although those benefits may be indirect or immeasurable.
- (2) In promulgating the regulations contained in this article, the city is acting pursuant to authority granted by the constitution and laws of the State of Georgia and its City Charter to provide for stormwater management collection and disposal services. A stormwater system for the collection, conveyance, storage, treatment and disposal of stormwater services provides services to all properties within the city limits.
- (3) The city is required under federal and state regulations (Federal Clean Water Act and the city's National Pollutant Discharge Elimination System ("NPDES") Phase II Stormwater Permit) to provide enhanced management of stormwater runoff quality to mitigate the impacts of pollutants which may be discharged from the public municipal separate storm

sewer system (“MS4”) into State of Georgia or United States' waters. Therefore, it is appropriate for the city to establish a stormwater utility and impose a stormwater user fee upon properties that may discharge, directly or indirectly, into the public MS4, or receive stormwater services from the city, either directly or indirectly, whether or not the property is private or public in nature.

- (4) Johns Creek presently owns and operates stormwater management systems and facilities which have been developed over many years. The future usefulness of the existing stormwater management systems and facilities 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 management systems and facilities in the city in concert with the management of other public utilities in the city. In order to do so, the city must have adequate and stable funding for its stormwater management program's operating needs and capital program.
- (5) Stormwater management services and stormwater management systems and facilities are needed throughout the corporate limits of the city because many of those areas are developed. 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 incorporated area of the city is consistent with the present and future needs of the community.
- (6) The provision of stormwater management services and stormwater management systems and facilities in the city promotes an essential regulatory purpose by influencing where stormwater runoff flows and how it is managed, thereby reducing flooding, erosion and water pollution caused by stormwater runoff.
- (7) The cost of operating and maintaining the city's stormwater management system and the funding of necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the services provided by the city's stormwater management program and the demand imposed by individual property on the city's drainage system and stormwater management program.
- (8) Given the stormwater management program problems, needs, goals, priorities and

funding strategy identified in the stormwater program assessment and financial analysis, it is appropriate that the city authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, control, regulation, use, and enhancement of stormwater management services, systems, and facilities within the city in concert with other water resources management programs. Therefore, it is appropriate for the city to establish a stormwater utility and impose a stormwater user fee upon all properties that may discharge, directly or indirectly, into the public MS4 and stormwater conveyance system, whether the property is private or public in nature.

- (9) The stormwater management services rendered may differ depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater management systems and programs, and risk exposure. It is practical and equitable to allocate the cost of stormwater management among the owners and/or tenants of properties in proportion to the demands the properties impose on the city's stormwater management systems and facilities which result in services to such properties and the owners and/or tenants thereof. The fair and equitable apportionment of costs via the stormwater user fee correlates to the stormwater management services provided to that property and the runoff demand that the property imposes on the public drainage system and the city stormwater management program.

- (10) A stormwater management program provides the most practical and appropriate means of properly delivering stormwater management services throughout the city. The imposition of a stormwater user fee is the most equitable means to allocate the costs to users of the stormwater management services and to generate revenue to implement the defined level of service for the city's stormwater management program.

- (11) The amount of pervious and impervious surfaces on each property is the most important factor influencing the stormwater runoff contribution of that property; the corresponding demand the property imposes on the stormwater management program; and the cost of providing stormwater management services to that property by the city. Therefore, the amount of pervious and impervious surface on each property is the most significant parameter for calculating a periodic stormwater user fee; and the city deems it appropriate to impose a stormwater user fee upon all properties that may discharge, directly or indirectly, into the public drainage system whether the property is private or public in nature.

- (12) A schedule of stormwater utility user fees based primarily on the amount of pervious and impervious surface located on each property is the most appropriate and equitable means of allocating the cost of stormwater management services throughout the city. Stormwater utility user fees may be designed with specific modifiers to further enhance customer equity, as well as customer understanding of the user fee rate structure, while at the same time minimizing the city's customer account management and maintenance efforts.
- (13) Stormwater utility user fees may be supplemented by other funding which addresses specific needs, including, but not limited to, special district user fees, general fund allocations, revenue bonds, use of proceeds from special purpose local option sales taxes (SPLOST) and other forms of revenue, as deemed appropriate by the Mayor and City Council.
- (14) The existence of privately owned and maintained on-site stormwater control facilities, activities or assets which reduce, or otherwise mitigate, the impact of a particular property on the city's stormwater management program, and the stormwater utility's cost of providing stormwater management services and/or stormwater management systems and facilities, should be taken into account to reduce the stormwater user fee on that property in the form of a credit, and such credit should be conditioned upon continuing provision of such services, systems, facilities, activities or assets in a manner complying with the standards and codes as determined by the stormwater utility. Credits for privately owned and maintained stormwater management systems, facilities, activities or assets shall be generally proportional to the effect that such systems have on the reduction and mitigation of the stormwater runoff impacts from the property.
- (15) In order to protect the health, safety and welfare of the public, the governing authority of Johns Creek hereby exercises its authority to establish a stormwater utility, as the best available means of addressing the foregoing stormwater management program needs and priorities. By means of this article, the city will enact a stormwater user fee rate structure and a procedure for the establishment of a user fee billing rate related to the provision of stormwater management services.

Section 1.03 Definitions.

The following definitions shall apply to this article. Any word or phrase not defined below but otherwise defined in this Code shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context clearly requires otherwise.

Act shall mean and refer to the Clean Water Act codified at 33 U.S.C. § 1251, et seq., and the rules and regulations promulgated by the United States Environmental Protection Agency pursuant thereto.

Credit shall mean a conditional reduction allowed against the stormwater user fee charged to an individual parcel based upon the technical requirements and the design and performance standards contained in the Stormwater Utility Credits Manual or other credits manual as may be adopted by the city, and as may be updated or amended from time to time.

City standards shall mean the city ordinances that govern water quality and water quantity including but not limited to the development regulations, postdevelopment stormwater management ordinance, floodplain management ordinance, soil erosion, sedimentation and pollution control ordinance, illicit discharges and illegal connections to storm sewer ordinance, stream buffer protection ordinance, zoning ordinance, the stormwater design manual, and all procedures, rules and policies pertaining thereto as these may be updated or amended from time to time.

Customers shall include all persons, parcels, and entities served by the stormwater 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, parcels, and entities which will ultimately be served or benefited as a result of the stormwater management program.

Direct lien shall mean a lien enforced against an individual or parcel prior to obtaining a judgment against the individual or parcel, such as liens established by operation of law for unpaid taxes.

Director shall mean the Director of Public Works or his/her designee.

Hydrologic response defines the manner and means whereby stormwater runoff collects, remains, diverts, infiltrates, and is conveyed from a property. Hydrologic response is dependent on several factors including, but not limited to, the amount of pervious and impervious surface, the parcel's size, the parcel's shape, the parcel's topography, the parcel's vegetative canopy, the parcel's groundwater characteristics, the parcel's on-site operations, the parcel's stormwater controls, the parcel's antecedent moisture as well as the parcel's geologic and hydro-geologic characteristics.

Impervious surfaces shall mean any paved, hardened or structural surfaces, including but not limited to, buildings, decks, driveways, parking areas, patios, streets, swimming pools, tennis courts, walkways or other structures and/or improvements on a property, which prevent or impede the infiltration of rainfall and stormwater into the soil.

Parcel shall mean a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

Partial impervious surface shall mean those areas which allow for limited infiltration of rainfall and surface water runoff into the soil in the manner that is more similar to natural conditions than "impervious surface" as defined above. Partial impervious surfaces influence and affect stormwater runoff such that the runoff is collected, concentrated and/or flows in a manner that is materially different from what would occur if the land were in an unaltered natural condition. Common partial impervious surfaces include, but are not limited to, compacted gravel and/or compacted soils.

Private stormwater management systems and facilities shall mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catch basins, pipes, headwalls, storm drains, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff or water quality, which are not public.

Public stormwater management systems and facilities (or *Johns Creek's Municipal Separate Storm Sewer System* or *MS4*) shall mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catch basins, pipes, headwalls, storm drains, public streets, curbs and gutters, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence either the movement of stormwater runoff or water quality, which are either owned by the city or over which the city has accepted an offer of dedication of a Stormwater Utility Easement or other legally binding permanent right of use for stormwater drainage, and for which the city has the obligation of maintenance for stormwater drainage purposes.

Runoff Area shall be the weighted calculation of 5 percent times the pervious area of a parcel added to 95 percent times the impervious area of a parcel. This area in square feet shall be the total calculated area contributing to the stormwater runoff from a parcel.

Stormwater management services may address the quality and the quantity of stormwater runoff and include 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) Operation, maintenance, repair, enhancement and replacement of existing public stormwater management systems and facilities;
- (3) Planning, development, design and construction of additional stormwater management and facilities to meet current and anticipated needs;
- (4) Regulation of the use of stormwater management services or of stormwater management systems and facilities;
- (5) Education of the public as to stormwater management issues;
- (6) Development plan review to require compliance with applicable city standards;
- (7) Inspection and/or monitoring for water quantity and water quality to assess compliance with applicable city, state and federal water quality standards and stormwater management program requirements; and
- (8) Other services as the Director or his/her designee may deem appropriate.

Stormwater user fee charge shall mean the periodic service charge imposed by the city to a parcel of land pursuant to this article for providing the stormwater management services and stormwater management systems and facilities, which fees shall be used only for the purpose of funding the Johns Creek Stormwater Utility's cost of providing stormwater management services and stormwater management systems and facilities. Stormwater user fee charges shall be based on the relative contribution of each parcel to the demand for stormwater management services, shall be structured so as to be fair and reasonable and shall bear a substantial relationship to the cost of providing stormwater management services and stormwater management systems and facilities. The cost of operating expenses, capital investments and reserve accounts may be included in the stormwater user fee charges.

Stormwater utility shall mean the City of Johns Creek stormwater utility as established in section 1.04 of this article.

Stormwater Utility Easement shall be an easement dedicated to the City of Johns Creek giving the City of Johns Creek Stormwater Utility the legally binding permanent right to use the easement for stormwater drainage. This right shall include inspection, maintenance and/ or construction of a stormwater management system or facilities located within the easement.

Section 1.04 Stormwater utility and enterprise fund established.

- (1) There is hereby established a stormwater utility to be known as the City of Johns Creek Stormwater Utility, which shall be responsible for use and enhancement of the city's stormwater management systems and facilities and stormwater management program services.
- (2) The city shall establish a stormwater utility enterprise fund within the city accounting systems for the purpose of dedicating and protecting all funding generated by the stormwater utility user fee charge to the operation of the stormwater management program and stormwater utility, including, but not limited to, rates, charges, and fees as may be established by the Mayor and City Council from time to time, and other funds that may be allocated to the stormwater utility.
- (3) All revenues and receipts generated from the stormwater user fee charges shall be segregated and placed into the stormwater utility enterprise fund to be held in trust, and be expended solely for stormwater management purposes; provided, however, such fund may also pay a reasonable allocation of costs provided to the stormwater utility by the city's general fund, or other utilities of the city, in order to account for applicable overhead costs. Stormwater utility user fee charge revenue shall be used only for the operating expenses and/or capital investments of the stormwater utility. However, other forms of revenue and/or financial resources, not accounted for in the stormwater utility user fee charge revenue, may be allocated as deemed appropriate by the city, to provide supplemental funding to the stormwater management program and stormwater management services.
- (4) It is required that the revenue proceeds from all user fee charges for stormwater management services, systems or facilities, together with any other supplemental revenues raised or otherwise allocated specifically to stormwater management services, systems or facilities, be dedicated solely to those purposes. Such user fee charge revenue proceeds and other supplemental revenues, shall be deposited into the City of Johns Creek Stormwater Utility Enterprise Fund. The user fee charge proceeds and other supplemental revenues shall remain in the enterprise fund, and be dispersed only for stormwater management capital improvements, facilities, equipment, operating and non-operating costs, lease payments, debt service payments, or other indebtedness related to the stormwater management program.

Section 1.05 Stormwater utility service area.

There shall be one stormwater utility service area in the city which shall encompass the municipal boundaries of Johns Creek. The city has established that all parcels within the municipal boundaries receive stormwater management program services from the city. Properties within the defined service area will receive a stormwater user fee charge bill because they contribute stormwater runoff to the public drainage system, are directly or indirectly connected to the city's drainage system, and/or receive stormwater management services from the city to varying degrees.

Section 1.06 Scope of responsibility for the stormwater utility.

- (1) The stormwater utility shall provide stormwater management services for existing and proposed public stormwater management systems and facilities as defined in this article, subject to funding availability and to policy determinations made in the best interest of public health, safety and general welfare. Additionally, the stormwater utility may accept the responsibility for providing stormwater management services to private stormwater management systems and facilities that connect to and drain the public right-of-way, acceptance of which conforms to policies established by the Mayor and City Council.
- (2) The city owns or has rights established by written agreements which allow the stormwater utility to provide stormwater management services and access those stormwater management systems and facilities which are located:
 - a. On property owned by the city;
 - b. Within public road rights-of-way of the municipal street system and, where the city has by agreement with the county or state agreed to maintain public roads and highways on the county road system and/or state highway system;
 - c. On private property but within legally dedicated Stormwater Utility Easements that have been granted to and accepted by the city, or where the city is otherwise permitted to undertake activities on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions;
 - d. On public land which is owned by another governmental entity with whom the city has a written agreement providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities

located thereon.

- (3) Stormwater management systems and facilities which are located on private property or on public property not owned by the city or leased to the city by another political subdivision of the State of Georgia, and for which there has been no written agreement granting easements which have been dedicated to and accepted by the city, 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 systems and facilities, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by applicable state and federal laws.
- (4) The city shall place responsibility with the Director or his/her designee for operation, maintenance and regulation of the stormwater utility and stormwater management systems and facilities 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.
- (5) The stormwater utility may provide periodic inspection, testing, or engineering assessment of privately-owned stormwater management systems and facilities to ascertain that said facilities are functioning as designed and approved. After notice to the property owner, the stormwater utility may provide for remedial maintenance of said private facilities based upon the severity of stormwater problems and potential hazard to the public health, safety, and welfare and the environment. In cases where such remedial maintenance is required to be performed by the city, the city shall have the right to bill the owner of said private facility for the costs of such maintenance.
- (6) It is the express intent of this article to protect the public health, safety and general welfare of people, property and the environment, in general, but not to create any special duty or relationship with any individual person, or to any specific parcel within or outside the corporate limits 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 Mayor and City Council, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
- (7) If any permit, plan approval, inspection, or similar act is required by the city as a condition precedent to any land disturbance or construction activity upon property not

owned by the city pursuant to this or any other regulatory code, 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, negligent construction of permitted system or facility, 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 Mayor and City Council members, officers, employees or agents.

Section 1.07 Rates of stormwater user fee charges to be established.

- (1) In order to recover the cost of providing stormwater services and stormwater management systems/facilities while fairly and reasonably apportioning the costs among properties throughout the corporate limits of the city, the Mayor and City Council shall establish by adoption of a fee rate schedule for stormwater user fee charge rates, which shall apply uniformly throughout the stormwater utility service area encompassing the corporate limits of the city pursuant to the jurisdiction granted by this article.
- (2) The billing rates may be modified by the Mayor and City Council from time to time to meet the financial and operational needs of the Johns Creek Stormwater Utility. In setting or modifying such rates, it shall be the goal of the city to establish rates that are fair, equitable and reasonable, and which, together with other funding sources available to the Johns Creek Stormwater Utility for services, systems, and/or facilities related to stormwater management are sufficient to support the cost of the stormwater management program, 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 stormwater utility related costs as deemed appropriate by the city.
- (3) The area of pervious and impervious surfaces on each parcel shall be calculated as of the date of the most recent aerial photography available to the stormwater utility or using best available data such as survey information provided by a registered land surveyor or permit data from the Community Development Department. However, the Director or his/her designee is authorized to make adjustments to the pervious and impervious area calculations as necessary to address the stormwater utility operational needs.

Section 1.08 Effective date of stormwater user fee charges.

The stormwater utility user fee charges shall accrue beginning July 1, 2021 in an amount to be established by resolution of the Mayor and City Council, as may be amended from time to time, and shall thereafter be billed periodically.

Section 1.09 Stormwater user fee charge exemptions.

- (1) 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 charge. The stormwater utility user fee charge is not a tax and no exception, credit, offset, or other reduction in stormwater user fee charges shall be granted based on age, tax status, economic status, race, religion, disability, or other condition unrelated to the stormwater utility's cost of providing stormwater management program services and facilities.

- (2) Exemptions to the stormwater user fee charges are as follows:
 - a. Parcels which contain 400 square feet, or less, of runoff area shall be exempt from stormwater user fee charges.

 - b. Linear railroad rights-of-way (i.e. tracks, rails, and roadbed) outside of the defined yard limits shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance and capital construction activities undertaken by the rail road company associated with rights-of-way and drainage conveyance systems. However, railroad stations, rail yards, maintenance buildings, and/or other improved property used for railroad operations shall not be exempt from stormwater user fee charges.

 - c. City of Johns Creek streets and rights-of-way shall be exempt from stormwater user fee charges and the stormwater utility shall not charge the city a user fee for the city's runoff area resulting from the city's pervious and impervious surfaces which are owned and/or maintained by the city within the public rights-of-way. This exemption is in consideration of the city allowing the stormwater utility to utilize the city's existing streets, 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. All other developed property owned by the city shall be subject to the imposition of stormwater user fee charges in accordance with this article.

- d. Fulton County roads and rights-of-way located within the city limits shall be exempt from stormwater user fee charges if Fulton County has legal responsibility to perform all drainage system maintenance and capital construction activities with respect to such roads and rights-of-way. This exemption is in recognition of the drainage system maintenance and capital construction responsibilities undertaken by Fulton County. All other developed property owned by Fulton County that is within the service area shall be subject to the imposition of stormwater user fee charges in accordance with this article.

- e. Georgia Department of Transportation (GDOT) roads 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 activities undertaken by GDOT in association with GDOT rights-of-way road and drainage conveyance systems. However, maintenance buildings and/or other developed property used for GDOT purposes shall not be exempt from stormwater user fee charges.

Section 1.10 Credits.

Owners of land may apply for and receive a stormwater user fee credit for designated on-site stormwater management systems/facilities and for other approved activities that reduce the city's cost to provide stormwater management services to the customer. The Director or his/her designee shall determine such stormwater user fee credits based on the technical requirements, design and performance standards contained in the city's stormwater utility Credits Manual, to be adopted by the Mayor and City Council pursuant to this article, as it may be updated or amended from time to time.

Section 1.11 Stormwater user fee charge, billing, delinquencies and collections.

- (1) Billing.

- a. A bill for stormwater user fee charges shall be sent through the United States Postal Service or by alternative means reasonably calculated to provide notice as may be determined by the billing authority 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.
- b. The Mayor and City Council authorizes the Director or his/her designee to bill and collect the stormwater user fee charge as part of the annual bill or other method of billing as deemed appropriate by the city. The Mayor and City Council further authorizes the Director or his/her designee to charge and collect penalties and interest as set forth in subsection (2) of this section.
- c. If a bill for a stormwater user fee charge for a particular parcel is generated, failure of the customer to receive the bill shall not be justification for nonpayment.
- d. Regardless of the party to whom the bill is initially directed, the owner of the property, as identified from the public land records of Fulton County, shall be obligated to pay the appropriate stormwater user fee charge for that property and any interest and/or penalties that have accrued.
- e. If a property is unbilled, or if no bill is sent for a particular property, the city's stormwater utility may back bill for a period of up to three years, but shall not be entitled to any interest or any penalty charges during the back billed period.

(2) Delinquencies and collection.

- a. A penalty or late charge in the amount of ten (10%) percent of the amount due and unpaid on the due date shall be assessed against the customer.
- b. In addition to the penalty stated above, interest in the amount of one (1%) percent per calendar month (12 percent annually) shall accrue on all unpaid amounts beginning on December 1 of the year in which the payment is due.
- c. The city shall assess all costs of collection, including attorneys' fees and court

costs, against the property owner.

- d. Unpaid stormwater user fee charges shall be collected in any manner permissible by Georgia law, including but not limited to: utilizing the services of a collection agency, by filing suit to collect on an unpaid account, or by using all methods allowed by Georgia law to collect on any judgment obtained, including enforcement of any lien resulting from any such judgment. Unless reduced to a judgment and a Writ of Fieri Facias (FiFa) issued, the unpaid stormwater user fee charge shall not constitute a direct lien against the owner and/or the property.

Section 1.12 Stormwater utility inspections and enforcement.

- (1) All property owners of 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 of Johns Creek Municipal Court. Each day such violation exists shall constitute a separate offense.
- (2) In the event a public nuisance is deemed to exist by the Mayor and City Council, the city may elect to litigate in 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 of Johns Creek Municipal Court, the city may enter upon the property and cause work as is reasonably necessary to be performed to remove any imminent threats to the health, safety and welfare of its citizens, with the actual cost thereof assessed against the property owner in a similar 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 of Johns Creek Municipal Court.
- (3) The city shall have the right for its employees or designated agents to inspect on-site stormwater management systems within the city to ensure compliance with the provisions of this article, and state and federal law. Such inspections shall generally be limited to the following purposes:

- a. Inspecting or conducting engineering analyses on existing stormwater management systems and facilities located on-site;
- b. Verification and review of information contained within a stormwater utility credit manual application; and
- c. Determining that stormwater management systems and facilities need to be constructed.

Section 1.13 Stormwater user fee adjustments.

- (1) The Director or his/her designee shall administer the procedures and standards for the adjustment of the stormwater user fee charge.
- (2) If a customer believes his stormwater user fee charge is incorrect, the customer may seek an adjustment of the user fee allocated to a property at any time by submitting the request in writing to the Director or his/her designee on forms provided by the city and setting forth in detail the grounds upon which relief is sought. The customer's stormwater utility account must be paid and current prior to consideration of an adjustment request by the city, except during the period prior to issuance of the first bill.
- (3) Customers requesting an adjustment shall be required, at their own expense, to provide accurate pervious and impervious area and other supplemental information to the Director or his/her designee, including, but not limited to, a survey certified by a registered land surveyor or a professional engineer, unless otherwise allowed by the city. Submittal of this information will be required if the city staff 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 Director or his/her designee, as may be reasonably extended, may result in denial of the customer's adjustment request.
- (4) Once a completed adjustment request and all required information has been received, the Director or his/her designee shall within 30 calendar days render a written decision.
- (5) In considering an adjustment request, the Director or his/her designee shall consider whether the calculation of the stormwater user fee charge for the property is correct.
- (6) The Director'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.
- (7) 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 user fee charge bill.

Section 1.14 Appeals.

- (1) Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:
 - a. An appeal must be filed in writing with the City Manager within 30 days of the decision that is appealed. In the case of user fee appeals, the appeal shall include a survey prepared and sealed by a land surveyor or professional engineer currently registered in the State of Georgia containing information on the total parcel area, the pervious and impervious surface area, and any other features or conditions which influence the hydrologic response of the parcel to rainfall events, unless an alternate means of providing the required information is authorized by the City Manager or his/her designee.
 - b. The City Manager shall conduct a technical review of the conditions on the parcel and respond to the appeal in writing within 30 days of receipt.
 - c. In response to an appeal, the City Manager may adjust the stormwater user fee applicable to a parcel in conformance with the general purpose and intent of this article.
 - d. All decisions by the City Manager shall be final.

- (2) The appeal process contained in this section shall be a condition precedent to an aggrieved customer seeking judicial relief. Any decision of the City Manager may be further appealed by application for writ of certiorari in the Superior Court of Fulton County, filed within 30 days of the date of receipt of service of the decision.