

*H.H.M. Katrina Hansen*

## ORDINANCE NO. 04-27

AN ORDINANCE OF THE CITY OF DORAVILLE PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF DORAVILLE BE AMENDED BY ADDING ARTICLE VI TO CHAPTER 6.5; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

BE IT ORDAINED AND IT IS HEREBY ORDAINED by the Mayor and Council of the City of Doraville, a political subdivision of the State of Georgia, as follows:

**Section 1. Amendment.** The Code of Ordinances of the City of Doraville are hereby amended by adding the following Article VI to Chapter 6.5:

“Article VI

STORMWATER UTILITY

**Sec. 6.5-101. Findings.**

The Mayor and City Council make the following findings:

The City of Doraville 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 of Doraville;

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 storm water runoff;

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.

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.

DeKalb County 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 County and of additions and improvements thereto, rests on the ability of the City and County 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 and County. In order to do so, the City and County must have adequate and stable funding for the stormwater management program, operating and capital investment needs.

The Mayor and City Council 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.

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 the 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.

The "Feasibility Study for a Stormwater Utility User Fee" prepared by HDR/WL Jorden, Inc., CH2M HILL, Brown Design Associates, Inc. and CFA International, LLC properly assesses and defines the stormwater management problems, needs, goals, program priorities and funding opportunities for all of DeKalb County.

Given the problems, needs, goals, program priorities and funding opportunities identified in the "Feasibility Study for a Stormwater Utility User Fee", 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 DeKalb County.

It would be advantageous for the City and DeKalb County to enter into an intergovernment

agreement to effectively provide stormwater services and charge and collect reasonable fees for such services.

**Sec. 6.5-102. Establishment of a utility and enterprise fund.**

(a) There is hereby established a stormwater management utility within the City which shall be responsible for stormwater management throughout the City's corporate limits, and shall provide for the management, protection, control, regulation, use, and enhancement of stormwater systems and facilities. Such utility shall be under the direction of the City Council.

(b) The City Council shall establish a stormwater enterprise fund in the City budget and accounting system, separate and apart from its general fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility, including but not limited to rentals, rates, charges, fees, and licenses as may be established by the City Council. All revenues and receipts of the stormwater utility shall be deposited promptly upon receipt into the stormwater enterprise fund, to be held and invested in trust for the purposes dedicated, and expended exclusively for purposes of the utility, including capital project construction. No other funds of the City shall be deposited in the stormwater enterprise fund or commingled with dedicated stormwater revenues, except that other revenues, receipts, and resources not accounted for in the stormwater enterprise fund, including grants, loans, and bond proceeds may be combined with and applied to stormwater management capital projects as deemed appropriate by the City Council.

(c) The City Council hereby transfers to the stormwater utility director operational control over the existing stormwater management systems and facilities owned and heretofore operated by the City and County and other related assets, including but not limited to properties upon which such facilities are located, easements, rights-of-entry and access, and certain equipment.

**Sec. 6.5-103. 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:

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

the peak rate of runoff from the site.

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

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

Developed land means property altered from its natural state by construction or installation of more than 200 square feet of impervious surface as defined in this article.

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

Equivalent residential unit (ERU) of impervious area means the median average impervious coverage of detached dwelling unit properties in the City as determined by the City Council, and shall be used as the basis for determining stormwater service charges to detached dwelling unit properties or classes of detached dwelling unit properties and other properties. Three thousand (3,000) square feet of impervious area shall be one equivalent unit.

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

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

Multiple dwelling unit residential properties means developed land whereon four or more attached residential dwelling units are located and shall include, but are not limited to, apartment houses, condominiums, townhomes, attached single-family homes, boarding houses, group homes, hotels and motels, retirement centers, and other structures in which four or more family groups commonly and normally reside or could reside. In the application of stormwater service charge rates, multiple dwelling unit properties shall be treated as other developed land.

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

Service charges means the periodic rate, fee, or charge applicable to a parcel of developed land, which charge shall be reflective of the service provided by the City stormwater utility. Service charges are based on measurable parameters which influence the stormwater utility's cost of providing services and facilities, with the most important factor being the amount of impervious area on each parcel of developed land. The use of impervious area as a service charge rate parameter shall not preclude the use of other parameters, or the grouping of properties having similar characteristics through the use of ranges or rounding up or down to a consistent numerical interval, or the use of flat-rate charges for one or more classes of similarly-situated properties whose impact on the stormwater utility's cost of providing stormwater management services and facilities is relatively consistent. Stormwater service charges may also include special charges to the owners of particular properties for services or facilities uniquely related to stormwater management of that property, including but not limited to charges for development plan review, inspection of development projects and on-site stormwater control systems, and enhanced levels of stormwater services above those normally provided by the City.

Stormwater management systems mean those systems which address the issues of drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation and funding of plants, works, instrumentalities and

properties used or useful in the collection, retention, detention, and treatment of stormwater or surface water drainage.

Undeveloped land means land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state which shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur if the land was in an unaltered natural state. For purposes of this article, undeveloped land shall also include property altered from its natural state by the creation or installation of less than 200 square feet of impervious surface.

**Sec. 6.5-104. Scope of responsibility for the drainage system in the City.**

(a) The City drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainageways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural or manmade, within the corporate boundaries of the City which control and/or convey stormwater through which the City intentionally diverts surface waters from its public streets and properties. The City or the County owns or has legal access for purposes of operation, maintenance and improvements to those segments of this system which (i) are located within public streets, rights-of-way, and easements; (ii) 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 (iii) are located on public lands to which the City has adequate access for operation, maintenance, and/or improvement of systems and facilities. Operation and maintenance of stormwater systems and facilities which are located on private property or public property not owned by the City or County and for which there has been no public dedication of such systems and facilities shall be and remain the legal responsibility of the property owner, or its occupant, except as that responsibility may be otherwise affected by the laws of the state and the United States of America.

(b) It is the intent of this article to protect the public health, safety and general welfare of all properties and persons in general, but not to create any special duty or relationship with any individual person or to any specified property within or without 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. To the extent any permit, plan approval, inspection or similar act is required by the City as a condition precedent to any activity by or 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 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.

**Sec. 6.5-105. Requirements for on-site stormwater systems; enforcement methods and inspections.**

All property owners and developers of developed real property within the City shall provide, manage, maintain, and operate on-site stormwater systems sufficient to collect, convey, detain, and discharge stormwater in a safe manner consistent with all City development regulations and the laws of the state 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 assessed against the owner in the same manner as a tax levied against the property. From date of the filing of such 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 Superior Court of Dekalb County. The City shall have the right, pursuant to the authority of this article, for its designated officers and employees to enter upon private and public property owned by entities other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance.

**Sec. 6.5-106. Determination and modification of stormwater service charges.**

Stormwater service charges shall be determined and modified from time to time by resolution of the City Council. In setting or modifying such rates it shall be the objective of the City Council to establish rates, fees and charges that are fair and reasonable, reflect the value of stormwater management services and facilities to those properties who benefit therefrom and, which together with any other sources of revenue that may be made available to the stormwater utility, will be sufficient to meet the cost of budgeted programs, services and facilities.

**Sec. 6.5-107. Effective date of stormwater service charges.**

Stormwater service charges shall accrue beginning January 1, 2005 and shall be billed periodically thereafter to customers, except as specific exemptions and credits may apply.

**Sec. 6.5-108. Stormwater service charges.**

In order to recover the cost of providing stormwater services and facilities while fairly and reasonably apportioning the costs among developed properties throughout the City based

on the use of stormwater services and facilities, the following stormwater rates shall apply:

(1) Stormwater service charge rate per equivalent residential unit (ERU) or increment thereof. The stormwater service charge per equivalent residential unit shall be four dollars (\$4.00) per month or as amended by official action of the City Council.

(2) Single Detached Dwelling Lots. All single detached dwelling lots shall be charged the rate applicable to one (1) equivalent residential unit.

(3) Multiple Dwelling Lots. All multiple dwelling lots shall be charged the rate applicable to one (1) equivalent residential unit times the number of dwelling units located on the multiple dwelling unit property times an adjustment factor that adjusts the ERU to equal the median impervious coverage of a statistical sampling of a single dwelling unit within a multiple dwelling lot in DeKalb County, which has been determined to be 0.5.

(4) Other Developed Land. All other developed lands shall be billed for one (1) equivalent residential unit for each three thousand (3,000) square feet of impervious surface or increment thereof on the property, rounded to the next highest tenth of an equivalent residential unit.

**Sec. 6.5-109. Exemptions and credits applicable to stormwater service charges.**

Except as provided in this section, no public or private property shall be exempt from stormwater utility service charges or receive a credit or offset against such service charges. No exception, credit, offset, or other reduction in stormwater service charges 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 services and facilities.

Undeveloped land as defined in this article shall be exempt from stormwater service charges.

Railroad rights-of-way (tracks) shall be exempt from stormwater service charges. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from stormwater service charges.

Developed land other than individual detached dwelling units, including but not limited to, multiple dwelling unit residential properties, manufactured home and mobile home parks, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools and



universities, research stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water reservoirs, and water and wastewater treatment plants may receive a stormwater service charge credit. The stormwater service charge credit shall be determined based on the technical requirements and standards contained in the Stormwater Utility Service Charge Credit Technical Manual. The stormwater service charge credit may be up to 100 percent (100%) of the service charge applicable to a property, and shall be proportional to the extent that on-site systems, facilities, services, and activities provided, operated, and maintained by the property owner reduce or mitigate the stormwater utility's cost of providing services and facilities.

Groups of detached dwelling units represented by an incorporated homeowners association providing on-site systems, facilities, services, or activities which reduce or mitigate the stormwater utility's cost of providing services and facilities may receive a stormwater service charge credit. The stormwater service charge credit shall be determined based on the technical requirements and standards contained in the Stormwater Utility Service Charge Credit Technical Manual. The stormwater service charge credit available to groups of detached dwelling units may be up to 100 percent (100%) of the service charge applicable to the individual properties, and shall be proportional to the extent that on-site systems, facilities, services, and activities provided, operated, and maintained by the homeowner association reduce or mitigate the stormwater utility's cost of providing services and facilities.

Any credit allowed against the service charge is conditioned on continuing provisions of the systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. A credit may be revoked by the City at any time for noncompliance.

#### **Sec. 6.5-110. Stormwater service charge billing, delinquencies, collections.**

(a) A stormwater service charge 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. Failure to receive a bill is not justification for nonpayment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of developed land, as shown from public land records of the County, shall be ultimately obligated to pay such fee. If a customer is underbilled or if no bill is sent for developed land, the City may backbill for a period of up to four (4) years, but shall not assess penalties for any delinquency. A 1.5% late charge shall be billed based on the unpaid balance of any stormwater utility service charge that becomes delinquent.

(b) Suit for collection shall be commenced by the City in the court of the owner's

residence; provided, however, if the owner is not a resident of this state, suit may be filed in the Superior Court of Dekalb County. No lien shall be imposed for delinquent collections unless a judgment is first obtained from a court of competent jurisdiction.

**Sec. 6.5-111. Stormwater utility service charges billed in common.**

The stormwater utility service charge may be billed on a common statement and collected along with City taxes or County taxes or both City and County taxes.

**Sec. 6.5-112. Appeals.**

Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:

(1) An appeal must be filed in writing with the City Clerk. In the case of service charge 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 which influence the hydrologic response of the property to rainfall events.

(2) Using the information provided by the appellant, the stormwater utility director shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days.

(3) In response to an appeal the stormwater utility director may adjust the stormwater service charge applicable to a property in conformance with the general purpose and intent of this article.

(4) A decision of the stormwater utility director which is adverse to an appellant may be further appealed to the City Council within 30 days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the City Council by the appellant, stating the grounds for the appeal. The City Council shall issue a written decision on the appeal within 30 days. All decisions of the City Council shall be served on the appellant personally or by registered or certified mail, sent to the billing address of the appellant.

(5) All decisions by the City Council shall be final.

(6) The appeal process contained in this section shall be a condition precedent to an aggrieved customer seeking judicial relief. Any decision of the City Council may be reviewed upon application for writ of certiorari before the Superior Court of Dekalb County, filed within 30 days of the date of service of the decision.

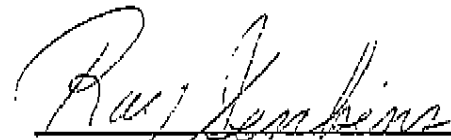
Section 2. Penalties. Any violation of this Ordinance shall be subject to punishment as provided in Sec. 1-12 of the Municipal Code of the City of Doraville, Georgia.

Section 3. Severability. If any clause, subsection, section, sentence, phrase or 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 situation or set of facts or circumstances shall be declared invalid or unconstitutional such invalidity or unconstitutionality shall not be construed to affect the portion of this Ordinance not so held to be invalid or the application of the Ordinance to certain other circumstances not so held to be invalid. It is the intent that this Ordinance would have been adopted if such invalid portions had not been included herein.

Section 4. Repealer. All Ordinances or parts of ordinances in conflict herewith are held repealed.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its passage by the Mayor and Council of the City of Doraville.

This 6 day of December, 2004.



RAY JENKINS, Mayor  
CITY OF DORAVILLE, GEORGIA

ATTEST:

  
BETTY CLOER, City Clerk

FIRST READING:

SECOND READING:

11-15-04

12-6-04