

**ORDINANCE  
2010-01**

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF AUSTELL, GEORGIA; TO PROVIDE FOR CREATION OF RATES FOR THE STORMWATER UTILITY; TO PROVIDE FOR THE MANAGEMENT AND OPERATION OF THAT UTILITY; TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE; AND FOR OTHER PURPOSES.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF AUSTELL, GEORGIA, AND IT IS HEREBY ENACTED PURSUANT TO THE AUTHORITY OF THE SAME THAT THE CODE OF ORDINANCES FOR THE CITY OF AUSTELL, GEORGIA AS IT RELATES TO STORMWATER UTILITY RATES BE AMENDED AS FOLLOWS:**

**Section 1: By enacting an entirely new Article in Chapter 14, Municipal Utilities and Services, pertaining to a Stormwater Utility, to be numbered and to read as follows:**

**ARTICLE VI. STORMWATER UTILITY RATES ORDINANCE**

**Section 14-126. Short title.**

This ordinance will be known as the Austell Stormwater Utility Rates Ordinance.

**Section 14-127. General Provisions.**

- (a) Purpose and Intent. The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the establishment of stormwater utility rates in the City of Austell. The objectives of this ordinance are to:
- (1) The professional engineering and financial analyses conducted on behalf of and considered to the Mayor and Council properly assess, define and project the cost of stormwater management systems and facilities of the city.
  - (2) 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 Mayor and Council of the city to ensure the management, maintenance, protection, control, regulation, use and enhancement of stormwater programs, systems and facilities in the city.

- (3) 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.
  - (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 Mayor and Council 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 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.
- (b) **Applicability.** The provisions of this ordinance shall apply throughout the corporate area of Austell within Cobb County.
- (c) **Compatibility with Other Regulations.** This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance imposes restrictions different from those imposed by any

other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

- (d) Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.
- (e) Responsibility for Administration. The Public Works Director or his/her designee shall administer, implement, and enforce the provisions of this ordinance.

**Section 14-128. Definitions.**

*Credits:* Credit shall mean a conditional reduction in the amount of a stormwater service fee or other fees, rates, rentals, charges, fines and penalties to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility, or continuing provision of a service or activity that reduces the stormwater utility's cost of providing stormwater management systems and facilities.

*Developed land:* Developed land shall mean property altered from its natural state by construction or installation of more than two hundred (200) square feet of impervious surfaces as defined in this chapter.

*Duplexes and triplexes:* Duplexes and triplexes shall mean developed land containing two (duplex) or three (triplex) residential dwelling units located within the same building on one or more parcels of land.

*Equivalent residential unit:* For the purposes of this article, an equivalent residential unit shall mean three thousand one hundred (3,100) square feet of impervious surfaces. The equivalent residential unit shall be used as the basis for determining stormwater service fees to single-family dwelling unit properties or classes of single-family dwelling unit properties and to other developed lands.

*Multiple-family dwelling unit residential properties:* Multiple-family dwelling unit residential properties shall mean developed land whereon more than one residential dwelling unit is located, and shall include, but not be limited to, apartment houses, structures containing multiple residential condominiums located on a single parcel of property, boarding houses, group homes, hotels and motels, personal care homes, homes for the elderly, retirement and nursing homes, and other structures in which more than one family group commonly and normally reside or could reside. In the application of stormwater service fees, multiple-family dwelling unit residential properties shall be treated as other developed lands as defined in this article.

*Other developed lands:* Other developed lands shall mean, but not be limited to, multiple-family dwelling unit residential unit properties, manufactured home and mobile home parks, commercial, retail and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, railroad stations and other transportation facilities covered by impervious surfaces, parking lots and decks, parks and other recreational properties, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, agricultural uses covered by

impervious surfaces, and water and wastewater treatment plants and all other types of developed land except single-family dwelling units.

*Single-family dwelling unit:* Single-family dwelling unit shall mean developed land upon which is located one principal structure that contains one dwelling unit designed for occupancy by one family, with a bathroom and kitchen facilities. Single-family dwelling units may include houses, duplexes, triplexes, manufactured homes and mobile homes located on one or more individual lots or parcels of land, and fee-simple ownership or condominium townhomes and attached single-family residential structures located on individual lots or parcels of land and such single units located on more than one individual lot or parcel of land. For the purposes of this article, developed land may be classified as a single-family dwelling unit despite the presence of incidental and/or accessory structures associated with residential uses such as garages, carports or small storage buildings, accessory dwellings or the presence of a commercial use within the dwelling unit so long as such use does not result in additional areas of impervious surfaces 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. Single-family dwelling units 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-family residential units that are individually owned but are located on a single parcel of developed land, such as condominiums and cooperatively-owned apartments.

*Storm water service fees:* Stormwater service fees shall mean the periodic service fee imposed pursuant to this article by the city for the purpose of recovering and/or funding costs related to stormwater management systems and facilities. The use of the area of impervious surface on each property as a measure to determine the stormwater service fee rate shall not preclude the use of other measures, or of grouping of properties having similar characteristics into classes or categories, 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 city's cost of providing stormwater management systems and facilities is relatively consistent. Stormwater service fees may also include certain special charges to individual properties or persons for stormwater management systems and facilities or services related to stormwater management, 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 service above and beyond the service levels normally provided by city.

#### **Section 14-129. Stormwater service fee rates.**

Stormwater service fee rates may be determined and modified from time to time by the Mayor and Council 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 Mayor and Council 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 Mayor and Council 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.

- (1) Single-family dwelling units. Single-family dwelling units, as defined by this article, shall be billed for one equivalent residential unit, as defined in this article.
- (2) Other developed lands. All developed lands not classified as single-family dwelling units, as defined by this article, shall be billed for one equivalent residential unit, as defined by this article, for each three thousand one hundred (3,100) square feet of impervious surfaces or partial increment thereof located on the property.

The stormwater service charge rate per equivalent residential unit, as defined in this article, shall be the following amount:

- Year 1: \$36.00 annually at \$3.00 per month for the 2011 calendar year (for period beginning January 1, 2011 and ending December 31, 2011);
- Year 2: \$42.00 annually at \$3.50 per month for the 2012 calendar year (for period beginning January 1, 2012 and ending December 31, 2012);
- Year 3: \$48.00 annually at \$4.00 per month for the 2013 calendar year (for period beginning January 1, 2013 and ending December 31, 2013);
- Year 4: \$54.00 annually at \$4.50 per month for the 2014 calendar year (for period beginning January 1, 2014 and ending December 31, 2014);
- Year 5: \$60.00 annually at \$5.00 per month for the 2015 calendar year (for period beginning January 1, 2015 and ending December 31, 2015); and subsequent years, unless modified by the City.

**Section 14-130. Exemptions and credits applicable to stormwater service fees.**

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 Application and Instructions shall be prepared by the Public Works Director and approved by the Mayor and Council 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 credits shall be calculated.

- (1) Properties not defined in this article as developed land shall be exempt from stormwater service fees.
- (2) 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.
- (3) Developed land other than single-family dwelling units, including but not limited to multiple-family dwelling unit residential properties, manufactured home and mobile home parks, commercial, retail and office buildings, government, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage

- areas covered with impervious surfaces, parking lots, parks and other recreational properties, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, agricultural uses covered by impervious surfaces, and water and wastewater treatment plants and all other types of developed land except single-family dwelling units 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 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 Application and Instructions 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.
- (4) 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 Application and Instructions 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 Application and Instructions and other requirements and conditions. Such credits shall be proportionately allocated among all properties presented 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.
- (5) 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 Application and Instructions 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 Application and Instructions

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.

**Section 14-131. Stormwater service fee billing, delinquencies, and collections.**

A stormwater service fee bill may be sent through the United States mail or by alternative means, notifying the customer of the amount of the bill, the date the payment is due, and the date when past due. The stormwater service fee bill may be billed and collected along with other fees and charges, including but not limited to, other utility bills, assessments or property taxes, as deemed most effective and efficient by the Public Works Director or his/her designee. 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 under billed or if no bill is sent for developed land, the city may back bill for a period of up to one (1) year, but shall not assess penalties for any delinquency during that back billed period. A late charge of five (5) percent of the unpaid balance of any stormwater utility service fee bill shall be charged when a bill becomes delinquent. Thereafter, an additional charge of one (1) percent based on the unpaid bill and any applicable delinquency charge shall be charged for each month the bill remains delinquent.

- (1) 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.

**Section 14-132. Appeals.**

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

- (1) An appeal must be filed in writing with the Public Works Director 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.
- (2) Using information provided by the appellant, the Public Works Director shall conduct a technical review of the conditions on the property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the Public Works Director may adjust the stormwater service fee applicable to any property in conformance with the general purposes and intent of this article.
- (3) All decisions by the Public Works Director 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 Public Works Director shall be final.
- (4) Any person aggrieved by a decision or order of the city, after exhausting his/her administrative remedies, shall have a right to appeal de novo to the superior court of Cobb County for those properties in Cobb.


Sections 14-133 through 14-150. Reserved.

**Section 2.** This Ordinance shall become effective on October 1, 2010.

**Section 3.** All other ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SO ENACTED** this 12th day of July 2010.

  
CAROLYN DUNCAN  
CITY CLERK

  
JOE JERKINS  
MAYOR

  
M. SCOTT KIMBROUGH  
CITY ATTORNEY

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Certified By:   
Carolyn Duncan, City Clerk

Date: Monday, July 12, 2010

Ordinance Effective On: Friday, October 1, 2010

