

**ORDINANCE  
2009-01**

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF AUSTELL, GEORGIA; TO PROVIDE FOR CREATION OF A 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 A STORMWATER UTILITY 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 ORDINANCE**

**Section 14-105. Short title.**

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

**Section 14-106. 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 a stormwater utility in the City of Austell. The objectives of this ordinance are to:
- (1) The professional engineering and financial analyses conducted on behalf of and submitted to the Mayor and Council properly assess and define the stormwater management problems, needs, goals, program priorities and funding opportunities of the city.
  - (2) Given the problems, needs, goals, program priorities and funding opportunities identified in the professional engineering and financial analyses submitted to the city, it is appropriate to authorize the establishment of a separate accounting unit which shall be dedicated specifically to the management, maintenance, protection, control, regulation, use and enhancement of stormwater systems in the city.
  - (3) Stormwater management is applicable and needed throughout the city. Intense urban development in the city has radically altered the natural hydrology of the area and the hydraulics of stormwater systems, with many natural elements having been replaced or augmented by man-made facilities. As a result, the specific service, system and facility demands in the city now exceed the service capability of many of the systems. An advanced level of service is needed in the city due to its urbanization: therefore, a stormwater utility service area subject to stormwater service charges should encompass the entirety of the city to enable the city to successfully manage, operate and improve stormwater systems at an advanced level.
  - (4) It is most equitable that a portion of the needed stormwater service level continue to be funded from the city's general tax revenues, and therefore that the 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.
  - (9) The Mayor and Council find, conclude and determine that a stormwater utility provides the most practical and appropriate means of properly delivering stormwater management services and benefits throughout the city, and the most equitable means to fund an advanced level of stormwater services in the city through stormwater service charges and other mechanisms as described in the professional engineering and financial analyses prepared for the city.
- (b) **Applicability.** The provisions of this ordinance shall apply throughout the corporate area of Austell.
- (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 or her designee, shall administer, implement, and enforce the provisions of this ordinance.

**Section 14-107. Establishment of a utility and an enterprise fund.**

- (a) There is hereby established a stormwater utility which shall be responsible for stormwater management programs throughout the city, and which shall provide for the management, protection, control, regulation, use and enhancement of stormwater systems and facilities. The stormwater utility management unit shall be composed of such personnel, employees and agents of the city as the Mayor and Council may from time to time determine and their compensation shall be fixed and determined by the Public Works Director, or his or her designee, as approved by the Mayor and Council.
- (b) A stormwater enterprise fund shall be established in the city budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater utility, including but not limited to rentals, rates, charges, fees and licenses as may be established by the Mayor and Council and other funds that may be transferred or allocated to the stormwater utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater enterprise fund and all expenses of the utility shall be paid from the stormwater enterprise fund, except that other revenues receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, facilities, operations and capital investments as deemed appropriate by the Mayor and Council, upon recommendation by the Public Works Director or his or her designee.
- (c) The Mayor and Council hereby confer upon the stormwater utility operational control over the existing stormwater management programs, systems and facilities performed, provided or owned and heretofore operated by the city and other related assets, including but not limited to properties other than roadways upon which such systems and facilities are located, easements, rights-of-entry and access, and certain equipment used solely for stormwater management.

**Section 14-108. Definitions.**

Customers of the stormwater utility. Customers of the stormwater utility shall include all persons, properties and entities served by and/or benefitting from the utility’s acquisition, management, maintenance, extension, regulation and improvement of the stormwater management programs, 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.

Hydrologic response. The hydrologic response of a property is the manner 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 surfaces. Impervious surfaces are 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, paved areas and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development or other imposition of impervious surfaces.

Stormwater management systems and facilities. Stormwater management systems and facilities are those natural and man-made channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, area drains, drop inlets, junction boxes, pipes, head walls, flared end sections, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff.

Undeveloped land. 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 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.

**Section 14-109. Scope of responsibility for the city stormwater system and facilities.**

- (a) The city owns or has legal access for purposes of operation, maintenance and improvement of those stormwater systems and facilities which:
  - (1) Are located within public streets, rights-of-way and easements;
  - (2) 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
  - (3) Are located on public lands to which the city has adequate access for operation, maintenance and/or improvement of systems and facilities.
- (b) Operation, maintenance and/or improvement of stormwater systems and facilities which are located on private property or public property not owned by the city and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner, except as that responsibility may be otherwise affected by the laws of the state of Georgia and the United States of America.
- (c) It is the express intent of this article to protect the public health, safety and welfare of all properties and persons in general by regulation of the stormwater system and facilities, but not to create any special duty or relationship with any individual person or to any specific property within or outside the boundaries of the city. The city expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the city, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.
- (d) To the extent any permit, plan approval, inspection or similar act is required by the city as a condition precedent to any activity or change upon property not owned by the city, pursuant to this or any other regulatory ordinance, regulation, or rule of the city or under federal or state law, the issuance of such permit, plan approval or inspection shall not be

deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages against the city, its officers, employees or agents.

**Section 14-110. Requirements for on-site stormwater systems: Enforcement methods and inspections.**

- (a) All property owners and developers of real property to be developed within the city shall provide, manage, maintain and operate on-site stormwater systems and facilities sufficient to collect, convey, detain, control and discharge stormwater in a safe manner consistent with all city development regulations and the laws of the state of Georgia and the United States of America. Any failure to meet this obligation shall constitute a nuisance and be subject to an abatement action filed by the city in the municipal court. In the event a public nuisance is found by the court to exist, which the owner fails to properly abate within such reasonable time as allowed by the court, the city may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof charged to the owner in the same manner as a stormwater service charge.
- (b) In the event that the city shall file an action pursuant to section 14-110 (a), from the date of filing such action the city shall have lien rights in relation to any service charge assessed against the property in the same manner as a tax levied against the property, which rights may be perfected, after judgment, by filing a notice of lien on the general execution docket of the Superior Court of Cobb County, Georgia for those properties in Cobb County and of Douglas County, Georgia for those properties in Douglas County. In addition, the city shall have the right to pursue collection of the service charge through other legal action or judgment.
- (c) The city shall have the right, pursuant to the authority of this article, for its designated officers and employees to enter upon private property and public property owned by other than the city, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with any order or judgment entered pursuant to this section.

**Section 14-111. General funding policy.**

- (a) It shall be the policy of the city that funding for the stormwater utility program, systems and facilities shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater program, systems and facilities by individual properties or persons and/or the level of service rendered by or resulting from the provision of stormwater programs, systems and facilities. Stormwater service charge rates shall be structured so as to be fair and reasonable, and the resultant service charges shall bear a substantial relationship to the cost of providing services and facilities. Similarly situated properties shall be charged similar rentals, rates, charges, fees or licenses. Service charge rates shall be structured to be consistent and coordinated with the use of other funding methods employed for stormwater management within the city, including but not limited to, general tax revenues allocated to stormwater management, plan review and inspection fees, special fees for services, fees in-lieu of regulatory requirements, impact fees, system development charges and special assessments.

- (b) The cost of stormwater management programs, systems and facilities may include operating, capital investment and reserve expenses, and may consider stormwater quality as well as stormwater quantity management problems, needs and requirements.
- (c) To the extent practicable, credits against stormwater service charges and/or other methods of funding stormwater management shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the city's standards by private property owners which eliminate, mitigate or compensate for the impact that the property or person may have upon stormwater runoff discharged to public stormwater systems or facilities or to private stormwater facilities which impact the proper function of public stormwater systems or facilities.
- (d) Stormwater utility service charge rates, fees and other similar charges shall be established by the Mayor and Council.

**Sections 14-112 through 14-125. Reserved.**

**Section 2.** This Ordinance shall become effective immediately upon its adoption by the Mayor and Council of the City of Austell.

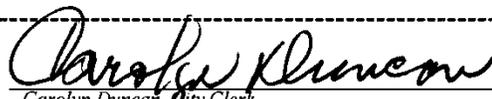
**Section 3.** All other ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**ADOPTED** by the City Council of the City of Austell this 6th day of April 2009.

  
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CAROLYN DUNCAN  
CITY CLERK

  
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JOE JERKINS  
MAYOR

  
\_\_\_\_\_  
M. SCOTT KIMBROUGH  
CITY ATTORNEY

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Certified By:   
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*Carolyn Duncan, City Clerk*

Date: Monday, April 6, 2009

Ordinance Effective On: Wednesday, May 6, 2009