

Ordinance 2020- 25

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF DAHLONEGA, GEORGIA AT: SUBPART B: LAND USE AND LAND DEVELOPMENT, TO PROVIDE FOR A NEW CHAPTER 106: STORMWATER UTILITY.

Short title: "An ordinance to clarify the establishment of the Stormwater Utility, the Stormwater Use Fee Rate Structure and the procedure in which to establish the Stormwater User Fee Billing Rate."

WHEREAS, the City Council of Dahlonega desires to provide for definitions for a stormwater utility service area;

WHEREAS, the City Council desires to provide a statement of purposes and findings of fact;

WHEREAS, the City Council desires to provide for scope of responsibility for stormwater management systems and facility;

WHEREAS, the City Council desires to provide for the establishment of stormwater user fee charges;

WHEREAS, the City Council desires to provide the method for establishment of stormwater user fee charge rates, stormwater user fee charge exemptions and fee charge credits; and

WHEREAS, the City Council desires to provide for stormwater user fee billing, delinquencies, collections and adjustments, as well as, appeals.

NOW, THEREFORE, be it ordained, and it is so ordained by the authority of the City Council of Dahlonega, that Subpart B shall be amended to include Chapter 106 and read as follows:

CHAPTER 106: STORMWATER UTILITY

Section 106-1. Purpose

This Chapter is enacted for the purpose of establishing the Stormwater Utility and Stormwater User Fee System and other provisions relating thereto.

Section 106-2. Findings of Fact

The Mayor and City Council make the following findings of fact:

- (a) The City of Dahlonega 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 Dahlonega (hereinafter "the City" or "Dahlonega") and to collect fees for provision of those services.
- (b) In promulgating the regulations contained in this section, 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 collection and disposal. A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within the City limits.
- (c) Failure to effectively manage stormwater runoff can result in:
 - (1) Erosion of lands, which could threaten businesses, residences, and other structures with water damage and may environmentally impair the rivers, streams and other bodies of water within, and downstream of, the City;
 - (2) Adverse impacts to the City's sanitary sewer system operations thereby increasing the potential for infiltration and inflow into the sanitary sewer system;
 - (3) Potential degradation of the quality of both surface water and ground water resources.
- (d) The City presently owns and operates stormwater management systems and facilities, which have been developed over many years. The future usefulness and operational function of the existing stormwater management systems and facilities owned and operated by the City, and the additions and improvements thereto, rests on the ability of the City to effectively manage, protect, control, regulate, use, and enhance stormwater systems and facilities within the City in concert with the management of other water resources within the City. In order to do so, the City must have both a stormwater management program as well as an adequate and stable funding strategy for its stormwater management program operation and drainage-related capital improvement needs.

- (e) Compliance with the regulatory obligations of the City's NPDES Wastewater Discharge Permit; the National Flood Insurance Program (NFIP); the Georgia State Water Management Plan; the City's Watershed Assessment and Watershed Protection Plan; and other applicable State and Federal water resources related regulations as well as other identified stormwater management program needs will affect the cost of providing stormwater management services, systems and facilities above what is currently being spent for stormwater quality management, drainage system maintenance, flood plain management, capital drainage projects and other stormwater management program activities. Therefore, it is appropriate for the City to establish a Stormwater Utility and impose a stormwater user fee charge upon improved properties that may receive the benefit, either directly or indirectly, of regulatory compliance stormwater services from the City.
- (f) The City desires to implement a stormwater management program to address stormwater runoff quality and quantity and to mitigate the impacts of pollution and flooding which may impact the public stormwater drainage system, private property and downstream receiving waters of the State of Georgia and/or United States.
- (g) 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 improved property on the City's drainage system and stormwater management program.
- (h) The stormwater management program assessment and financial analysis performed by the City's consultant properly assesses and defines the City's stormwater management program problems, needs, goals, priorities as well as the stormwater management program funding strategy.
- (i) Given the stormwater management program problems, needs, goals, priorities and funding strategy identified in the aforementioned 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.
- (j) Stormwater management is applicable and needed throughout the incorporated areas of the City. While specific service and facility demands may differ from area to area at any given point in time, a stormwater management system and service area encompassing all lands and water bodies within the incorporated areas of the City is appropriate given the present and future needs of the City.

- (k) It is practical and equitable to allocate the cost of stormwater management among the owners and/or tenants of improved 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 charge correlates to the stormwater management services, provided directly or indirectly, to that property and the runoff demand that the property imposes on the public drainage system and the City stormwater management program.
- (l) Stormwater management needs in the City include, but are not limited to, protection of the public health, safety, and welfare of the community. Provision of stormwater management services renders and/or results in both a service to customers and benefit to properties, property owners, citizens, and residents of the City in a variety of ways although the benefits may be indirect or immeasurable.
- (m) 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 charge 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.
- (n) The presence and amount of impervious surfaces on each improved 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 impervious surface on each property is the most significant parameter for calculating a periodic stormwater user fee charge; and the City deems it appropriate to impose a stormwater user fee charge upon all improved properties that may discharge, directly or indirectly, into the public drainage system whether the property is private or public in nature.
- (o) A schedule of Stormwater Utility user fee charges based primarily on the amount of impervious surface located on each improved property is the most appropriate and equitable means of allocating the cost of stormwater management services throughout the City. Stormwater Utility user fee charges may be designed with specific modifiers to further enhance customer equity, as well as customer understanding of the user fee charge rate structure, while at the same time minimizing the City's customer account management and maintenance efforts.
- (p) Stormwater Utility user fee charges may be supplemented by other funding which addresses specific needs, including, but not limited to, special district service 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.

- (q) 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, programs, and/or stormwater management systems and facilities, should be taken into account to reduce the user fee charge 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 affect that such systems have on the reduction and mitigation of the stormwater runoff impacts from the property.
- (r) 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 revenue proceeds, and other supplemental revenues, shall be deposited into the City of Dahlonega Stormwater Utility Enterprise Fund. The user fee 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.
- (s) In order to protect the health, safety and welfare of the public, the governing authority of Dahlonega 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 Ordinance, the City will enact a stormwater user fee rate structure and a procedure for the establishment of a user fee charge billing rate related to the provision of stormwater management services.

Section 106-3. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Act* means and refers 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.
- (b) *Billing Unit (BU)* means the stormwater user fee charge billing unit increment of 1,000 square feet, or any portion thereof, of impervious surface.
- (c) *Credit* means a reduction in the amount of a customer's stormwater user fee charge in recognition of a customer's efforts to mitigate the stormwater runoff impact that developed property has on the City stormwater management services and systems, and/or the efforts of a customer to offset the City's cost for implementation of stormwater management program related activities.
- (d) *Customers of the Stormwater Utility* shall include all persons, properties, and entities serviced by and/or benefitting from the services provided by the City's stormwater management program and the Stormwater Utility. These services include, but are not necessarily limited to, the Stormwater Utility's administration, management, maintenance, expansion, and improvement of the stormwater management systems for the handling and disposal of stormwater runoff from private and public properties, and the regulation of the public and private stormwater management systems, controls, facilities, and activities.
- (e) *Dwelling Unit* shall mean a structure, regardless of the type or method of construction, which contains one (1) or more bedrooms, a bathroom, and cooking facilities, designed for occupancy by a one or more person(s) regardless of relationship, living as a single-family unit.
- (f) *Enterprise fund* means a fund used to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing authority is that the cost of providing services to the public on a continuing basis be financed or recovered primarily through user charges.
- (g) *Fiduciary Fund* means a trust or agency fund used to account for assets held by a local government in a trustee capacity.
- (h) *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 presence of 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.

- (i) *Impervious area* shall mean the area, usually expressed in square feet, that is covered by an impervious surface.
- (j) *Impervious surface* means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development and causes stormwater runoff to collect, concentrate or flow in a manner materially different from what would occur if the land were in an unaltered/undeveloped natural condition. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, 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.
- (k) *Improved property (or developed property)* means property altered from its natural state by construction or installation of more than one hundred (100) square feet of impervious and/or partially impervious surfaces.
- (l) *Manufactured Home Park* means a common development (with a single property owner or entity) of more than one factory-built or pre-fabricated housing structures that have been partially or entirely assembled at another location and moved into the development.
- (m) *Multi-Family Residential (MFR) Property* means developed property containing more than two dwelling units in or attached thereto, situated upon a single lot of record. MFR properties shall not include improved property containing structures used primarily for non-residential purposes and as defined herein or vacant/undeveloped property.
- (n) *Municipal Separate Storm Sewer System* shall mean the same thing as Public stormwater management systems and facilities.
- (o) *Parcel* shall mean a designated parcel or tract, established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.
- (p) *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.
- (q) *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, for which operation and maintenance is the responsibility of the owner or successor or assignee thereof, and which have not been conveyed or dedicated to the City for future maintenance.

- (r) *Public stormwater management systems and facilities* shall mean that portion of the drainage system consisting of natural and/or man-made structures, within the political boundaries of the city which channel or convey stormwater from its point of collection to a point of discharge, owned by the City, over which the City has a legal right of access, have been formally dedicated to and accepted by the City for maintenance, or over which the City exercises dominion and control.
- (s) *Service area* means the entire land area within the corporate limits of the City.
- (t) *Stormwater management services* mean all water quality and water quantity related services provided by the City which relate to the following:
 - (1) Transfer, control, conveyance or movement of stormwater runoff through the incorporated portions of the City;
 - (2) Maintenance, repair and replacement of existing stormwater management systems and facilities;
 - (3) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
 - (4) Regulation of the use of stormwater management services, systems and facilities; and
 - (5) Compliance with applicable State and Federal stormwater management regulations and permit requirements;
 - (6) Other services as deemed appropriate by the City.
- (u) *Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, public streets, curbs and gutters, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.
- (v) *Stormwater Utility Manager* means the person appointed by the City Manager to administer the provisions of this article.

- (w) *Stormwater user fee charge* means the periodic user fee charge for the provision of stormwater management services imposed pursuant to this Article of the Dahlonega Stormwater Utility Ordinance. This term shall exclude special charges to the owners and/or tenants of particular properties for services, systems or facilities related to stormwater management, including, but not limited to, charges for development plan review, inspection of development projects, and other stormwater management related services provided by Dahlonega for which a corresponding fee is collected for the service rendered.
- (x) *Undeveloped Land* means land in its unaltered natural condition or which is modified to such a minimal degree as to have a Hydrologic Response comparable to land in an unaltered natural condition shall be deemed undeveloped. For purposes of this Article, Undeveloped Land includes property altered from its natural condition by the existence and/or installation of one hundred (100) square feet or less of impervious surface.
- (y) *User* is defined as any person who uses property, which maintains connection to, discharges to, or otherwise receives stormwater management services from the City.

Section 106-4. Stormwater Utility and Enterprise Fund Established

- (a) There is hereby established a Stormwater Utility to be known as the City of Dahlonega Stormwater Utility, which shall be responsible for stormwater management services throughout the incorporated area of the City, and which shall provide for the management, protection, control, regulation, use and enhancement of the City's stormwater management systems and facilities and stormwater management program services.
- (b) There is hereby established a Stormwater Utility Enterprise Fund in the City accounting systems for the purpose of dedicating and protecting all funding generated by the Stormwater Utility user fee charge for 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. Such Fund shall be both an Enterprise fund and a Fiduciary fund, consistent with the definitions within this article.
- (c) All revenues and receipts generated from the stormwater user fee charges shall be segregated and placed into the Stormwater Utility Enterprise Fund 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 application 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 revenue, may be allocated as deemed appropriate by the City, to provide supplemental funding to the stormwater management program and stormwater management services.

- (d) Under the supervision and oversight of the City Manager or his designee, the City shall place responsibility with the Stormwater Utility Manager 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, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management.

Section 106-5. Stormwater Utility Service Area

- (a) There shall be one Stormwater Utility service area in the City which shall encompass the municipal boundaries of Dahlonega. The City has established that all developed parcels within the municipal boundaries receive stormwater management program services from the City. Improved/developed 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 106-6. Scope of Responsibility for Stormwater Management Systems and Facilities

- (a) 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 policy considerations made in the best interest of the public health, safety and general welfare, and of the environment. Additionally, the Stormwater Utility may accept the responsibility for providing stormwater management services to private stormwater management systems and facilities, acceptance of which conforms to policies established by the Mayor and City Council.
- (b) The City owns in fee simple, or has legal rights established by written agreements, which allow it to operate, maintain, improve, and access those stormwater management systems and facilities which are located:
 - (1) On property owned by, or within the possession and control of, the City;

- (2) Within public rights-of-way of the municipal street system;
 - (3) On private property but within legally dedicated easements granted to, and accepted by, the City;
 - (4) On private property where the City has been granted, by written agreements, rights-of-entry, rights-of-access, rights-of-use or other provisions for operation, maintenance, improvement and access to the stormwater management system facilities located thereon; or
 - (5) 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.
- (c) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the City, and for which there has been no written agreement granting easements, 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 will remain the legal responsibility of the property owner and/or tenant, except as otherwise provided for by state and federal laws and regulations.
- (d) 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 or property owner association or any members of said property owner association that have ownership of the private facility for the costs of such maintenance and impose a lien against the property(ies) to enforce collection.
- (e) It is the express intent of this article to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any person or entity, or to any specific property within or outside the municipal 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 or equitable remedies upon the City, its elected officials, officers, employees, and agents arising out of any alleged failure or breach of duty or relationship.
- (f) 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 seeking the imposition of money damages or equitable remedies against the City, its Mayor and City Council members, officers, employees or agents. This includes 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,

Section 106-7. Stormwater User Fee Charges

- (a) It shall be the policy of the City that user fee charges for stormwater management services to be provided by the Stormwater Utility in the designated service area shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater management services by individual properties and/or the level of service rendered by, or resulting from, the provision of stormwater management services by the City.
- (b) The basis for calculation of the stormwater user fee charge for developed properties within the City is established in this Ordinance. The City shall determine the amount of impervious area and other pertinent factors as may be needed for the fair, reasonable and equitable allocation of the costs to deliver stormwater management services and to calculate the stormwater user fee charges for developed properties in the City.
- (c) Stormwater user fee charge rates shall be structured so as to bear a reasonable connection, or rational nexus, to the cost of providing stormwater management services. User fee charge rates shall be in addition to other rates, charges, or fees employed for stormwater management within the incorporated areas of the City as defined herein.
- (d) To the extent practicable, credits against stormwater user fee charges shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the City's standards by public and private property owners and/or tenants which eliminate, mitigate or compensate for the impact that the property may have upon the public stormwater management systems and facilities or stormwater management program.
- (e) The stormwater user fee charges shall accrue beginning _____, 2020.

Section 106-8. Stormwater User Fee Charge Billing Rates

- (a) The Stormwater Utility shall impose a stormwater user fee charge on all developed properties within the service area in accordance with the provisions of this Ordinance.
- (b) Stormwater user fee rates shall generally be based upon the total amount of impervious area associated with developed properties within the City as impervious surface bears a reasonable correlation to the demand the property places on the City's stormwater management program, the stormwater services provided by the City and the benefits derived by the property as a result of the provision of services.
- (c) Gravel and compacted soil driveways, parking areas, and roads on developed property will be considered partial impervious surface and included in the customer's user fee calculation because of the hydrologic response characteristics of these materials. However, the total surface area associated with these materials will be calculated at 85% of the total billing units to reflect the relative hydrologic response characteristics of these materials as compared to asphalt.
- (d) The Mayor and City Council shall establish by resolution or ordinance the stormwater user fee charge rates, and 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 Dahlonega Stormwater Utility. A current schedule of said rates shall be on file in the office of the City Clerk of Dahlonega. 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 Dahlonega 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.
- (e) Calculation of User Fee Charges. The periodic stormwater user fee charges imposed on all developed properties shall be calculated by multiplying the stormwater user fee billing rate times the number of billing units for each customer account. The number of billing units that will be utilized to calculate the user fee charge for each customer account shall be in general accordance with the following
 - (1) Properties shall be treated as containing one billing unit for each 1,000 square feet, or portion thereof, of impervious area located on the property. The total number of billing units shall be round down to the next lowest tenth. (Ex. a property with 1,990 square feet of impervious area shall contain 1.9 billing units.)

- (2) The stormwater user fee charge rate shall be annually established by official action of the City Council.
- (3) All properties shall be billed periodically for stormwater services on a schedule established by the City Council.

Section 106-9. Stormwater User Fee Charge Exemptions

- (a) Except as provided in this section or otherwise provided by law, no developed public or private property located in the incorporated area of the City, containing 100 or more square feet of impervious surface, shall be exempt from the stormwater user fee charges. Publicly owned developed property of the Federal and State governments, their departments, agencies, boards, commissions, and authorities, shall not be exempt from stormwater user fee charges under this article. The Stormwater Utility user fee charge is not a tax and no exception, offset, or other reduction in stormwater user fee charges shall be granted based on tax status or other condition unrelated to the Stormwater Utility's cost of providing stormwater management program services and facilities.
- (b) Exemptions to the stormwater user fee charges are as follows:
 - (1) Linear railroad rights-of-way (i.e. tracks, rails, rail bed) outside of the defined rail yard limits shall be exempt from stormwater user fee charges. This exemption is in recognition of State law and the 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.
 - (2) City of Dahlonega streets and rights-of-way shall be exempt from stormwater user fee charges. The Stormwater Utility shall not charge the City a user fee charge for the impervious surface associated with City's streets and other impervious surfaces within the rights-of-way of the City's municipal street system. This exemption is granted in recognition of the in-kind service provide by the City's General Fund, which allows 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, diverts, and conveys surface water for the purposes of collecting, diverting, transporting and controlling surface runoff 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.

- (3) Lumpkin County roads and rights-of-way on the County Road System located within the City limits shall be exempt from stormwater user fee charges inasmuch as Lumpkin 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 Lumpkin County, which benefit the Stormwater Utility. All other developed property owned by Lumpkin County that is within the service area shall be subject to the imposition of stormwater user fee charges in accordance with this Ordinance.
- (4) Georgia Department of Transportation (GDOT) highways, Federal Interstates, and rights-of-way on the State Highway System within the City limits shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance, NPDES regulatory compliance, and capital construction activities undertaken by GDOT in association with GDOT rights-of-way road and drainage conveyance systems, which benefits the Stormwater Utility. However, offices, maintenance buildings, and/or other developed property used for GDOT purposes shall not be exempt from stormwater user fee charges.

Section 106-10.

Stormwater User Fee Charge Credits

- (a) The Stormwater Utility Manager may grant credits or adjustments based on the technical and procedural criteria set forth in the City of Dahlonega Stormwater Utility Credit Manual ("Credit Manual"), which is incorporated into this Ordinance by reference and made a part hereof. Copies of the Credit Manual will be maintained by and made available from the Stormwater Utility Manager.
 - (1) Customers may apply for credits and/or adjustments in accordance with the Credit Manual.
 - (2) A stormwater user fee charge credit shall be determined based upon meeting all technical requirements, standards and criteria contained in the Credit Manual. The amount of credit, or reduction of the stormwater user fee charge, shall be in accordance with the criteria contained in the Credit Manual.
 - (3) Any credit allowed against the stormwater user fee charge is conditioned on continuing compliance, including proper future maintenance of the stormwater management systems and facilities with design and performance standards as stated in the Credit Manual and upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the customer. The Stormwater Utility Manager may revoke a

credit at any time for noncompliance with applicable standards and criteria as established in the Credit Manual or this Article.

- (4) In order to obtain a credit, the customer must make application to the City on forms provided by the Stormwater Utility Manager for such purpose, and in accordance with the procedures outlined in the Credit Manual.
- (5) The application for any credit or adjustment must be in writing and must include the information necessary to establish eligibility for the credit or adjustment, and be in the format described in the Credit Manual. The customer's public utility account must be paid and current prior to review and approval of a Stormwater Utility credit application by the City. Incomplete applications will not be accepted for consideration and processing.
- (6) When an application for a credit is deemed complete and is approved by the Stormwater Utility Manager, the credit shall be applied to the stormwater user fee in accordance with the terms defined in the Credit Manual.

Section 106-11. Stormwater User Fee Charge Billing; Delinquencies and Collections; and Adjustments

- (a) Billing. The City shall bill the utility customer account holder or the property owner, as identified from City public utility billing database information, Lumpkin County Tax Digest, and other public records of the City and/or Lumpkin County, and the entity receiving the bill shall be obligated to pay the applicable stormwater user fee charge in a similar manner to other City utility services (i.e. water, sewer, sanitation, etc).
 - (1) The stormwater user fee charge will be billed and collected on a combined utility bill and collected along with other City utility services. If and when the account is closed or becomes delinquent, the bills for unpaid previous service as well as for current service shall be reverted to the property owner.
 - (2) Customers that do not have another utility service shall receive a utility bill with stormwater user fees only or shall be billed via another method and frequency established by the City.
 - (3) The City reserves the right to bill the stormwater user fee charge to either the property owner or the utility customer account holder (i.e. the tenant) as described herein.
 - i. The City shall reserve the right to bill the landlord or property owner for stormwater services where accurate and equitable apportionment of the user fee charges to multiple tenant accounts on a parcel is not practical as determined by the City, and/or to facilitate efficient billing and collection of customer stormwater user fee charges from multiple tenants.

- ii. The City shall have the authority to bill the property owner's tenant for the stormwater user fee charge in situations where the tenant has opened an account with the City for public utility services, however, the property owner shall remain ultimately liable for payment of the stormwater user fee charge imposed on the property and the utility accounts associated with that property.
 - iii. In situations where an individual utility account holder is billed monthly for utility services on behalf of a property owner, the City may require that the landlord or property owner enter into an agreement with the City to remit payment for any unpaid stormwater user fee charges that are incurred during the City's fiscal year.
 - (4) Frequency of the billing of stormwater user fee charges shall be specified by the Mayor and City Council.
 - (5) Failure of the customer to receive a utility bill or a stormwater user fee charge shall not be justification for nonpayment. Regardless of the party to whom the bill is initially directed, the property owner of each developed property subject to stormwater user fee charges shall be ultimately obligated to pay stormwater user fee charges and any interest on delinquent stormwater user fee charge payments.
 - (6) If a property is unbilled, or if no bill is sent for a particular tract of developed property, the Stormwater Utility may back bill for a period of up to three (3) years, but shall not be entitled to any interest or any delinquency charges during the back billed period.
- (b) Application of payments. With respect to payments received by the City for any and all utility services, such payment shall be applied pro rata to each of the utility services itemized on the customer's bill.
- (c) Delinquencies and Collections.
- (1) The Stormwater Utility user fee charge shall be billed and collected as an integral part of the City's billing for other utility services and the customer may not elect to separate such fee from the remainder of the utility bill for nonpayment. If the customer fails to include payment of the Stormwater Utility user fee charge portion of the utility bill when the utility bill is paid, or otherwise separates the Stormwater Utility user fee charge from the remainder of the bill for nonpayment, the entire billing will be in default notwithstanding any other payment made towards the bill, and, in addition to all other remedies which the City may have for nonpayment, any or all other utility services, including water service, may be terminated on the date printed on the bill in accordance with the procedures established in the City Code of

Ordinances for such termination. Acceptance and retention by the City of any portion of the utility bill shall not constitute a waiver of the foregoing provisions.

- (2) All user fees not paid by the due date are subject to the late payment charge in accordance with City policy for other utilities. In addition, all costs of collection, including attorney's fees and court costs, will be added.
- (3) 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. Unpaid stormwater user fees may also be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any civil judgment obtained thereby, including enforcement of any lien resulting from any such judgment. Unless reduced to a judgment and a *writ of fieri facias* issued, the unpaid user fee charge shall not constitute a direct lien against the owner or the property.
- (4) In the event of non-payment and service cut-off, the customer must pay the bill in full, the late payment charge, a cut-off charge if applicable, and pay a deposit if it was either waived, previously refunded, or was used to make the payment, late payment charge, and/or the cut-off charge. The City Manager or his designee is authorized to work out a payment plan for customers that demonstrate the ability to pay. Such a payment plan can only be entered into once in a 12-month period. Failure to meet any payment date of a payment plan shall terminate the payment plan, and the City reserves the right to discontinue utility services to that customer account.

(d) Adjustments. The Stormwater Utility Manager shall administer the procedures and standards for the adjustment of the stormwater user fee charge.

- (1) If a customer believes his stormwater user fee charge amount is incorrect, the customer may seek an adjustment of the stormwater user fee charge for the account at any time by submitting the request in writing to the Stormwater Utility Manager and setting forth in detail the grounds upon which relief is sought. The customer's public utility account must be paid and current prior to consideration of an adjustment request by the City.
- (2) Customers requesting the adjustment shall be required, at their own expense, to provide accurate impervious area and other supplemental information to the Stormwater Utility Manager, including, but not limited to, a survey certified by a registered land surveyor or a professional engineer or as otherwise allowed by the Stormwater Utility Manager. 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 Stormwater Utility Manager, as may be reasonably extended, may result in denial of the customer's adjustment request.

- (3) Once a completed adjustment request and all required information are received by the Stormwater Utility Manager, the Stormwater Utility Manager shall render a written decision.
- (4) In considering an adjustment request, the Stormwater Utility Manager shall consider whether the calculation of the stormwater user fee charge for the account is correct.
- (5) The Stormwater Utility Manager'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.
- (6) 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. However, if the account has been closed, a refund will be issued to the account holder.

Section 106-12. Appeals and Hearings

- (a) Appeals. An appeal to the City Manager may be taken by any customer aggrieved by any decision of the Stormwater Utility Manager. The appeal shall be taken within 30 calendar days of the decision of the Stormwater Utility Manager by filing with the City Manager a notice of appeal in writing specifying the grounds thereof. Upon the filing of the notice of appeal, the Stormwater Utility Manager shall forthwith transmit to the City Manager all documentation constituting the record upon which the decision appealed from was taken.
- (b) Hearings. The City Manager shall fix a reasonable time for hearing the appeal and give written notice to the appellant at least ten (10) calendar days prior to the hearing date. The notice shall indicate the place, date and time of the hearing. The City Manager shall affirm, reverse, affirm in part, or reverse in part the decision of the Stormwater Utility Manager after hearing the evidence. If the decision of the Stormwater Utility Manager is reversed in whole or in part, resulting in a refund or credit due to the property owner or customer, then such refund or credit shall be calculated retroactive to the date of the initial appeal. The decision of the City Manager shall be final, and there shall be no further administrative appeal.

Any person aggrieved or dissatisfied with the decision of the City Manager may petition the Superior Court of Lumpkin County for *Writ of Certiorari*.

Section 2. All ordinances and Code sections, or parts thereof, in conflict with the foregoing are expressly repealed.

Section 3. Should any provision of this ordinance be rendered invalid by any court of law, the remaining provisions shall continue in force and effect until amended or repealed by action of the municipal governing authority.

Section 4. Except as modified herein, City of Dahlonega Code of Ordinances, is hereby reaffirmed and restated. The codifier is hereby granted editorial license to include this amendment in future supplements of said Code by appropriate section, division, article or chapter.

Section 5. This ordinance shall become effective immediately upon adoption on second and final reading.

Effective Date: JANUARY 1, 2021

City of Dahlonega
By: [Signature]
Sam Norton, Mayor
Attest: [Signature]
Mary Csukas, City Clerk

