

0-10-04-13

AN ORDINANCE TO AMEND CHAPTER 90 OF THE CODE OF ORDINANCES OF THE CITY OF AMERICUS; TO PROVIDE FOR A NEW ARTICLE XIV OF THE CITY CODE; TO PROVIDE FOR A STORMWATER UTILITY ENTERPRISE FUND ORDINANCE; TO PROVIDE FOR FINDINGS OF FACT; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR A STORMWATER UTILITY ENTERPRISE FUND; TO PROVIDE FOR A STORMWATER UTILITY SERVICE AREA; TO PROVIDE FOR SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES; TO PROVIDE FOR STORMWATER USER FEE CHARGES; TO PROVIDE FOR ENFORCEMENT; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ARTICLE VIX. STORMWATER.

Stormwater Utility Enterprise Fund Ordinance

Sec. 90.501. Purpose

This ordinance shall establish the Stormwater Utility Enterprise Fund. All monies deposited into this Fund shall be held in trust and expended solely for the purposes and uses set forth in this ordinance.

Sec. 90-502 Findings of Fact

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

(a) The City of Americus is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraphs I and III thereof and O.C.G.A. §36-82-62 to provide stormwater management services systems and facilities throughout the corporate boundaries of the City of Americus (hereinafter "the City" or "Americus") and to collect fees for provision of those services.

(b) In promulgating the regulations contained in this section, Americus 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:

(1) May cause erosion of lands, threaten businesses and residences, and other facilities with water damage and may environmentally impair the rivers, streams and other bodies of water within, and downstream of, the City.

(2) Failure to effectively manage stormwater can adversely affect the operations of the sanitary sewer system operated by the City thereby increasing the likelihood of infiltration and inflow into the sanitary sewer system.

(3) Failure to effectively manage stormwater contributes to the 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 comprehensive stormwater management program as well as an adequate and stable funding source for its comprehensive program operation and drainage-related capital improvement needs.

(e) The City desires to provide enhanced management of storm water runoff quality and quantity to mitigate the impacts of pollution and flooding which may impact the public municipal separate storm sewer system (MS4), private property and downstream receiving waters of the State of Georgia and/or United States. Therefore, it is appropriate for the City to establish a Stormwater Utility and impose a stormwater user fee charge upon all improved properties that may discharge, directly or indirectly, into the public MS4 and stormwater conveyance system, whether the property is private or public in nature.

(f) Compliance with applicable regulatory obligations, including but not limited to, the City's NPDES Wastewater Discharge Permit, the Comprehensive Plan and the City's Watershed Protection Plan 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, floodplain management, capital drainage projects and other program activities.

(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 received from 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 professional engineering and financing analysis and related documents prepared by the City's consulting stormwater engineer 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 professional engineering and financing analysis, it is appropriate to authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, control, regulation, use, and enhancement of stormwater management services, systems and facilities within the City in concert with other water resource 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 consistent with the present and future needs of the City.

(k) The stormwater management services rendered may differ depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater management systems and programs, and risk exposure. It is practical and equitable to allocate the cost of stormwater management among the owners and/or tenants of 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 should correlate to the stormwater management services provided to that property and the runoff demand that the property imposes on the public drainage system and the City stormwater management program.

(l) The 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 at least some benefit to all 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, and the most equitable means to implement an enhanced level of service for stormwater management within the City through stormwater user fees, development permits and inspection fees, and other mechanisms.

(n) The presence and amount of impervious surfaces on each improved property is the most important factor influencing the cost of the stormwater management services provided by the City, or to be provided by the City in the future, to that property such that the amount of impervious surface on each property is therefore the most appropriate parameter for calculating a periodic stormwater user fee charge. Therefore, 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, special assessments, revenue bonds, use of proceeds from special purpose local option sales taxes (SPLOST) and other forms of revenue, as, from time to time, 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 and/or stormwater management systems and facilities, should be taken into account to reduce the user fee charge on that property either 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 imperative that the 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, and such proceeds of user fee charges and supplemental revenues shall therefore be deposited into the City of Americus Stormwater Utility Enterprise Fund and shall remain in that fund. In trust, to be dispersed only for stormwater management capital improvements, facilities, and equipment, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for stormwater management purposes.

(s) In order to protect the health, safety and welfare of the public, the governing authority of Americus hereby exercises its authority to establish a Stormwater Utility Enterprise Fund, as the best available means of addressing the foregoing needs and legal requirements. By means of a separate Stormwater Utility Rate Ordinance, the City will enact a stormwater user fee rate structure in the future to establish Stormwater Utility user fee charge rates for the provision of stormwater management services.

Sec. 90-503. Definitions

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

Act means and refers to the Clean Water Act as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 *et seq.*), as amended, and the rules and regulations promulgated by the United States Environmental Protection Agency pursuant thereto.

Customers of the Stormwater Utility shall include all persons, properties, and entities serviced by and/or benefiting 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.

Hydrologic Response defines the manner and means whereby stormwater collects, remains, 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.

Impervious area shall mean and have the same definition as impervious surface.

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 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 such as compacted soil and gravel, which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Improved property (or developed property) means property altered from its natural state by construction or installation of more than five hundred (500) square feet of impervious surfaces.

Service area means the entire land area within the corporate limits of the City.

Single-Family Residential Property (or SFR) means developed property containing one residential structure with no more than two dwelling units in or attached thereto, situated upon a single lot of record. Improved property may be classified as SFR even if supplemental accessory structures are present such as garages, carports, storage buildings, guesthouses, servants or caretakers quarters, cottages or barns, or the presence of a commercial use within the residence, as long as such use does not result in significant additional amounts of impervious surfaces. SFR properties shall not include improved property containing structures used primarily for non-residential purposes; manufactured homes located within manufactured home parks where the land is owned by someone other than the owners of the manufactured homes; residential condominium developments with more than two units; or vacant/undeveloped property.

Stormwater management services mean all services provided by the City which relate to the:

- (1) Transfer, control, conveyance or movement of stormwater runoff through the incorporated portions of the City;
- (2) 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.

Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.

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, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.

Stormwater Utility Manager means the person appointed by the Mayor and City Council to administer the provisions of this article.

Stormwater user fee charge means the periodic user fee charge for the provision of stormwater management services imposed pursuant to this Article of the Americus Stormwater Utility Enterprise Fund Ordinance and applicable sections of the Americus Stormwater Utility Rate 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, post-construction maintenance and inspection of existing facilities, on-site stormwater control systems and other stormwater management related services provided by Americus for which a corresponding fee is collected for the service rendered.

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 creation or installation of five hundred (500) square feet or less of Impervious Surface.

User is defined as any person who uses property, which maintains connection to, discharges to, or otherwise receives services from the City for stormwater management.

Sec. 90-504. Stormwater Utility and Enterprise Fund Established

(a) There is hereby established within the City of Americus a Stormwater Utility Department, to be known as the "Americus 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 services.

(b) There is hereby established a Stormwater Utility Enterprise Fund in the City budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the Americus Stormwater

Management Program and Stormwater Utility, including, but not limited to, rates, charges, and fees as may be established by the City Council from time to time, and other funds that may be transferred or allocated to the Americus Stormwater Utility.

(c) All revenues and receipts of the Stormwater Utility shall be placed in the Stormwater Utility Enterprise Fund in trust, to be expended solely for stormwater management purposes. All expenses and capital investments of the Stormwater Utility shall be paid from the Stormwater Utility Enterprise Fund; provided, however, that other revenues, receipts and resources not accounted for in the Stormwater Utility Enterprise Fund may be applied to stormwater management services as deemed appropriate by the City.

(d) 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, other than road rights-of-way, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management.

Sec. 90-505. Stormwater Utility Service Area

There shall be one Stormwater Utility service area in the City which shall encompass the municipal boundaries of Americus. 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.

Sec. 90-506. Scope of Responsibility for Stormwater Management Systems and Facilities.

(a) The City owns in fee simple or has rights established by written agreements which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:

- (1) Within public road rights-of-way;
- (2) On private property but within legally dedicated easements granted to, and accepted by, the City;
- (3) On private property where the City has been granted, by written agreements, for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
- (4) On land dedicated to, and accepted by, the City solely for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon; or

(5) On public land which is owned by the City and/or land of another governmental entity upon which the City has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.

(b) 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 remain the legal responsibility of the property owner and/or tenant, except as otherwise provided for by state and federal laws and regulations.

(c) 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 individual person, 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.

(d) If 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, negligent issuance of a permit, negligent plan approval, negligent construction of permitted system or facility, or negligent maintenance of any permitted stormwater management system or facility not expressly dedicated to and accepted by the City for further maintenance in an action seeking the imposition of money damages or equitable remedies against the City, its Mayor and council members, officers, employees or agents.

Sec. 90-507. 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. Stormwater user fee charge rates shall be adopted via a separate Stormwater Utility Rate Ordinance and be structured so as to be uniform within the customer class, and the resultant user fee charges shall bear a substantial relationship 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.

(b) 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 or person may have upon stormwater runoff discharged to public stormwater management systems and facilities, or to private stormwater management systems and facilities which impact the proper function of public stormwater management systems and facilities.

Sec. 90-508. Enforcement Methods and Inspections.

(a) It shall be the duty of all property owners and/or tenants of improved real property within the incorporated area of the City to provide, manage, maintain, and operate on-site stormwater management systems sufficient to collect, convey, detain, and/or discharge stormwater runoff in a safe manner consistent with all applicable Federal and state laws, regulations, City development regulations, and other pertinent ordinances. Any failure to meet this obligation shall constitute a violation of this Article and be subject to citation and prosecution in the Americus Municipal Court. Each day such violation exists shall constitute a separate offense.

(b) Alternately, in the event a public nuisance is deemed to exist by the Mayor and City Council, the City may elect to sue in Municipal Court to abate such nuisance. In the event a public nuisance is found by the court to exist, which the property owner and/or tenant fails to abate within such reasonable time as allowed by the Americus Municipal Court, the Court, by Judgment, may allow the City to enter upon the real property and cause work as is reasonably necessary to be performed, with the actual cost thereof assessed against the property by filing a lien. From date of filing of such abatement action, the City shall have lien rights which may be perfected, after judgment, by filing a notice of lis pendens on the general execution docket of the Sumter County Superior Court.

(c) The City shall have the right for its employees or designated agents to enter upon public and private property during reasonable hours, and after reasonable notice to the owner and/or tenant thereof, in order to assure compliance with the provisions of this article, and State and Federal law. Such inspections shall generally be limited to the following purposes:

- (1) Inspecting or conducting engineering analyses on existing stormwater management systems and facilities located on-site;
- (2) Verification and review of information contained within a Stormwater Utility Credit Manual Application; and
- (3) Determining that stormwater management systems and facilities need to be constructed.

Sec. 90-509. Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

Sec. 90-510. Repealer

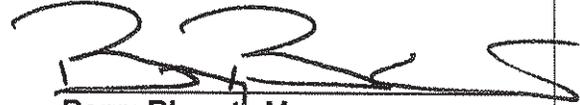
All ordinances or parts thereof which are in conflict with any provision or any section, subsection, paragraph, provision or clause of this ordinance are hereby repealed to the extent of the conflict.

BE IT FURTHER ORDAINED that this Ordinance shall become effective as of the date of its approval by the governing body of the City of Americus.

SO ORDAINED, this the 22 day of April, 2010.

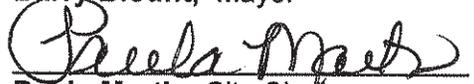
City of Americus

By:



Barry Blount, Mayor

Attest:



Paula Martin, City Clerk

ACTION TAKEN

First Reading Approval:

3-18-10

Second Reading Approval:

4-22-10

Unanimous Consent for Waiver
Of Second Reading Approved:
