

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF BRASELTON AT CHAPTER 21, STORMWATER; TO PROVIDE FOR A NEW ARTICLE III "STORMWATER UTILITY"; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR A STORMWATER UTILITY SERVICE AREA; TO PROVIDE A STATEMENT OF PURPOSES AND FINDINGS OF FACT; TO PROVIDE FOR SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES; TO PROVIDE FOR THE ESTABLISHMENT OF STORMWATER USER FEE CHARGES; TO PROVIDE FOR STORMWATER UTILITY CUSTOMER CLASSES; TO PROVIDE THE METHOD FOR ESTABLISHMENT OF STORMWATER USER FEE RATES; TO PROVIDE FOR STORMWATER USER FEE EXEMPTIONS; TO PROVIDE FOR INSPECTIONS AND ENFORCEMENT; TO PROVIDE FOR STORMWATER USER FEE BILLING, DELINQUENCIES, COLLECTIONS, AND ADJUSTMENTS; TO PROVIDE FOR APPEALS; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; TO RESTATE AND REAFFIRM THE CODE OF ORDINANCES, AS MODIFIED HEREBY; TO REPEAL ALL CODE PROVISIONS, ORDINANCES, OR PARTS THEREOF, IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

Chapter 21: STORMWATER

Article III. STORMWATER UTILITY

Section 21-301 - Purpose.

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

Section 21-302 – Findings of Fact.

The Town of Braselton Mayor and Council make the following findings of fact:

1. The Town of Braselton, Georgia (hereinafter "the Town") 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 Town.
2. In order to protect the health, safety and welfare of the public, the governing authority of the Town hereby exercises its authority to establish a stormwater utility enterprise fund and establish rates for stormwater management services.
3. In promulgating the regulations contained in this section, the Town is acting pursuant to authority granted by the Constitution and laws of the State of Georgia and its Town Charter to provide for stormwater collection, conveyance, storage, treatment, and disposal.
4. A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within the Town's service area and surrounding areas.
5. The Town 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 Town, and the additions and improvements thereto, rests on the ability of the Town to

effectively manage, protect, control, regulate, use, and enhance stormwater systems and facilities within the Town in concert with the management of other water resources within the Town's service area. In order to do so, the Town 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.

6. Improper management of stormwater runoff 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 the Town's service area.
7. The Town is required under federal and state regulations [i.e. the Federal Clean Water Act, the Town's National Pollutant Discharge Elimination System (hereinafter "NPDES") Phase II stormwater permit to provide enhanced management of stormwater runoff quality to mitigate the impacts of pollutants which may be discharged from the public municipal separate storm sewer system (MS4) and stormwater conveyance system into State of Georgia or United States' waters. Therefore, it is appropriate for the Town to impose a stormwater user fee charge upon all improved properties that may prevent the natural flow and infiltration of stormwater, whether the property is private or public in nature.
8. Compliance with the regulatory obligations of the NPDES Phase II stormwater permit and Upper Oconee Water Planning Region along with other Town stormwater program activities will affect the cost of providing stormwater management services, systems and facilities above what is currently being spent for water quality management, drainage system maintenance, flood control and other program activities.
9. The cost of operating and maintaining the Town's stormwater management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.
10. The Town's staff and professional consultant have properly assessed and defined the Town's stormwater management program problems, needs, goals, priorities as well as the stormwater management program funding strategy.
11. The stormwater needs in the Town 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 and a benefit to all properties, property owners, citizens, and residents of the Town in a variety of ways even though the benefits may be indirect or immeasurable.
12. Stormwater management is applicable and needed throughout the Town's service area. 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 Town's service area is consistent with the present and future needs of the Town.
13. It is practical and equitable to allocate the cost of stormwater management among the owners of improved properties in proportion to the long term demands the properties impose on the Town's stormwater management services which result in services to such properties and the owners thereof.

14. A stormwater management program (hereinafter "SWMP") provides the most practical and appropriate means of properly delivering stormwater management services throughout the Town's service area, and the most equitable means to regulate the use of a higher level of stormwater management services within the Town's service area through stormwater user fee charges and other mechanisms.
15. The area of impervious surfaces on each improved property is the most important factor influencing the cost of the stormwater management services provided by the Town or to be provided by the Town in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater user fee charge.
16. A stormwater utility user fee charge based in part on the area 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 Town's service area. Such user fee charge may be complemented by other types of charges which address specific needs, including, but not limited to, special service fees, special assessments, revenue bonds, use of proceeds from special purpose local option sales taxes and other forms of revenue, as deemed appropriate by the Town Manager.

Section 21-303 - 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:

1. "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.
2. "Customers of the stormwater utility" shall include all persons, properties, and entities serviced by and/or benefiting from the services provided by the Town's SWMP 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 public stormwater management systems for the handling of stormwater runoff of private and public properties, and the regulation of the public and private stormwater management systems, controls, facilities, and activities.
3. "Impervious area" shall mean and have the same definition as impervious surface.
4. "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. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, graveled areas, parking lots, storage areas, awnings and other fabric or plastic coverings.
5. "Improved property" means property altered from its natural state by construction of buildings or impervious surfaces.

6. "Non-single family residential" means a developed parcel of land consisting of any of the following uses: multifamily apartment dwellings, commercial uses, office/institutional, public, transportation, industrial, manufacturing, or any other use not specifically defined as a single-family residential property.
7. "Service area" means the entire land area within the incorporated and annexed limits of the Town.
8. "Single Family Residential" means property containing one residential structure on one parcel of land, or fee-simple attached residential dwellings (duplexes, triplexes, townhomes, etc.). This definition applies only to this article.
9. "Stormwater management manual" shall mean that 2016 Edition of the Georgia Stormwater Management Manual adopted and published by the Atlanta Regional Commission or latest edition.
10. "Stormwater management services" mean all services provided by the Town which relate to the:
 - A. Transfer, control, conveyance or movement of stormwater runoff through the incorporated portions of the Town;
 - B. Operation, maintenance, replacement or enhancement of existing stormwater management systems and facilities;
 - C. Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
 - D. Regulation of the use of stormwater management services, systems and facilities;
 - E. Education of the public as to stormwater issues;
 - F. Development plan review to require compliance with Town Standards; and
 - G. 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.
11. "Stormwater management systems and facilities" mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, 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.
12. "Stormwater coordinator" means the person designated by the Town Manager to administer the provisions of this article.
13. "Stormwater user fee" means the periodic user fee charge imposed pursuant to this article by the Town of Braselton for providing stormwater management services.
14. "Undeveloped land" means land or a parcel of land that has not been altered from its natural condition. For the 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.
15. "User" is defined as any person who uses property, which maintains connection to, discharges to, or otherwise receives services from the Town for stormwater management.

Section 21-304 - Stormwater utility and enterprise fund established.

1. There is hereby established a stormwater utility to be known as the Town of Braselton Stormwater Utility, which shall be responsible for stormwater management services throughout the Town's service area, and which shall provide for the management, protection, control, regulation, use and enhancement of the Town's stormwater management systems and facilities and stormwater management services.
2. There is hereby established a stormwater utility enterprise fund in the Town budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the Town's SWMP and stormwater utility, including, but not limited to, rates, charges, and fees as may be established by the Town Manager from time to time, and other funds that may be transferred or allocated to the Braselton Stormwater Utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater utility enterprise fund and shall be used solely for stormwater management services. 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 Town Manager.
3. The stormwater coordinator shall be responsible for operation, maintenance and regulation of the SWMP and stormwater management services performed, owned and operated or maintained by the Town of Braselton, 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.

Section 21-305 - Scope of responsibility for stormwater management systems and facilities.

1. The Town owns 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:
 - A. Within public road rights-of-way and public road easements;
 - B. On private property but within easements granted to and accepted by the Town, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions; or
 - C. On land dedicated to, and accepted by, the Town solely for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon; or
 - D. On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
2. Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the Town, 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 Town for operation, maintenance, improvement and access of such stormwater management and systems and facilities shall be

and remain the legal responsibility of the property owner, except as otherwise provided for by the state and federal laws.

3. 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 boundaries of the Town. The Town expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the Town, its elected officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
4. The stormwater utility may provide stormwater management services to privately owned stormwater management systems and facilities to ascertain that said facilities are functioning as designed and approved. 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, and in cases where such remedial maintenance is required the Town shall bill the owner or owners of said private facility for the costs of such maintenance.
5. If any permit, plan approval, inspection or similar act is required by the Town as a condition precedent to any activity or change upon property not owned by the Town pursuant to this or any other regulatory ordinance, regulation or rule of the Town, 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, or negligent maintenance of any permitted stormwater management system or facility not expressly dedicated to and accepted by the Town for further maintenance in an action seeking the imposition of money damages or equitable remedies against the Town, its council members, mayor, officers, employees or agents.

Section 21-306 – Rates of stormwater service fee to be established.

1. In order to adequately fund the cost of providing stormwater services and facilities while fairly and equitably apportioning the cost of providing stormwater services and facilities among improved properties throughout the Town, the Town council shall establish by resolution a stormwater service fee rate, which shall apply uniformly throughout the service area. A copy of the user fee charge rate schedule shall be on file in the office of the town clerk.
2. Stormwater service fee rates shall be assigned to all improved properties as follows:
 - A. The area of impervious area shall be determined from county property appraisal records, aerial images, GIS applications or a combination thereof.
 - B. The unit rate for the user fee charge shall be established by Town Council and based on the square feet of impervious area.
 - C. All properties will be billed according to the schedule as shown in Table 21.1.
3. The stormwater user fee rate has been established above and may be amended from time to time by official action of the Mayor and Town Council at their discretion.

Table 21.1 Stormwater Utility User Fee Rate Schedule

CUSTOMER CLASS	ANNUAL RATE
Single Family Residential* Tier 1 (501 sf to 4,500 sf)	\$38
Single Family Residential* Tier 2 (4,501 sf to 10,000 sf)	\$72
Single Family Residential* Tier 3 (>10,000 sf)	\$120
Non-Single Family Residential*	\$1.25 per 100 sf of impervious area

*See definition of Single Family Residential in this article.

Section 21-307 – Effective date of stormwater user fee charges.

The stormwater user fee charge shall accrue upon adoption of this ordinance and shall be billed periodically thereafter.

Section 21-308 - Stormwater user fee charge exemptions.

Except as provided in this section or otherwise provided by law, no public or private property located in the service area of Braselton shall be exempt from the stormwater user fee charges. No exception, credit, offset, or other reduction in stormwater user fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the stormwater utility's cost of providing stormwater management services and facilities. Exemptions to the stormwater user fee charges are as follows:

1. Railroad rights-of-way (tracks, rails, rail bed) shall be exempt from stormwater user fee charges. However, railroad stations, maintenance buildings, and/or other improved property used for railroad purposes shall not be exempt from stormwater user fee charges.
2. Georgia Department of Transportation (GDOT) streets and rights-of-way shall be exempt from stormwater user fee charges. However, other improved property owned by GDOT shall not be exempt from stormwater user fee charges.
3. Gwinnett, Hall, Barrow, and Jackson County streets and rights-of-way shall be exempt from stormwater user fee charges. However, all other improved property owned by the counties shall not be exempt from stormwater user fee charges.
4. The Town of Braselton, the Urban Redevelopment Authority, and the Downtown District Authority shall be exempt from stormwater user fee charges.

Section 21-309 - Stormwater utility fee billing, delinquencies, collections, adjustments.

Failure to receive a stormwater utility bill is not justification for nonpayment. The property owner, as identified from public land records of the appropriate county, shall be obligated to pay the appropriate stormwater user fee charge for that property.

1. Billing.

- A. A bill for stormwater user fee charges may be sent through the United States postal service or by alternative means, notifying the owner of the property being billed of the amount of the stormwater user fee charge, the date the payment is due and the date when payment is past due.
- B. The stormwater user fee charge will be billed and collected as deemed most effective and efficient by the Town Manager.
- C. Frequency of the billing of stormwater user fee charges shall be biannually.
- D. Failure to receive a bill shall not be justification for nonpayment. Regardless of the party to whom the bill is initially directed, the owner of each developed property subject to stormwater user fee charges shall be obligated to pay stormwater user fee charges and any interest on delinquent stormwater user fee charge payments.
- E. If a property is unbilled, or if no bill is sent for a particular tract of improved property, the Town may back bill for a period of up to one year but shall not be entitled to any interest or any delinquency charges during the back billed period.

2. Delinquencies and collection.

- A. Unpaid stormwater user fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby.
- B. A late charge of ten percent of the amount due per year shall be assessed against the customer for the unpaid balance of any stormwater utility user fee charge that becomes delinquent in accordance with applicable state law. In addition, the Town shall assess all costs of collection, including attorney's fees and court costs, against the property owner.

3. Adjustments.

- A. The stormwater coordinator is authorized to make adjustments to the impervious area upon request by a customer. Adjustments shall be in accordance with the following procedures:
 - 1) If a customer believes their stormwater user fee is incorrect and is due an adjustment, the customer shall submit the request in writing to the stormwater coordinator, setting forth in detail the basis of the request.
 - 2) Customers requesting the adjustment shall be required, at their own expense, to provide supplemental information to the stormwater coordinator including, but not limited to, a survey certified by a registered land surveyor or a professional engineer. Submittal of this information will be required if the Town staff cannot make a determination based on field inspection and/or review of existing aerial photography. Failure to provide the required information within the time limits established by the stormwater coordinator,

as may be reasonably extended, may result in denial of the adjustment request.

- 3) Once a completed adjustment request and all required information are received by the stormwater coordinator, the stormwater coordinator shall have thirty calendar days within which to render a written decision. Concurrent payment of any charges allocated to the property is not required as a condition precedent to this request for review.
- 4) In considering an adjustment request, the stormwater coordinator shall consider whether the calculation of the stormwater utility user fee charge for the property is correct.
- 5) 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' next stormwater bill.

Section 21-310 - Stormwater utility inspections and enforcement.

1. All property owners of improved property within the incorporated areas of the town shall provide, manage, maintain, and operate on-site stormwater management systems sufficient to collect, convey, detain, and discharge stormwater runoff in a safe manner consistent with all applicable town development regulations, ordinances, and state and federal laws. Any failure to meet this obligation shall constitute a violation of this article and be subject to citation and prosecution in the Town of Braselton Municipal Court. Each day such violation exists shall constitute a separate offense.
2. In the event a public nuisance is deemed to exist by the mayor and town council, the town 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 fails to abate within such reasonable time as allowed by the Town of Braselton Municipal Court, the town may enter upon the property and cause work as is reasonably necessary to be performed to remove any imminent threats to the health, safety and welfare of its citizens, with the actual cost thereof assessed against the property owner in a similar manner as a tax levied against the property. From date of filing of such abatement action, the town shall have lien rights which may be perfected, after judgment, by filing a notice of lien on the general execution docket of the Town of Braselton Municipal Court.
3. The town shall have the right for its employees or designated agents to inspect on-site stormwater management systems within the town to ensure compliance with the provisions of this article, and state and federal law. Such inspections shall generally be limited to the following purposes:
 - A. Inspecting or conducting engineering analyses on existing stormwater management systems and facilities located on-site; and
 - B. Determining that stormwater management systems and facilities need to be constructed.

Section 21-311- Appeals, hearings.

1. Appeals. An appeal to the Town Manager may be taken by any property owner or customer aggrieved by any decision of the stormwater coordinator. The appeal shall be taken within thirty days of the decision of the stormwater coordinator by filing with the Town Manager a notice of appeal in writing specifying the grounds thereof. Upon the filing of the notice of appeal, the stormwater coordinator shall forthwith transmit to the Town Manager all documentation constituting the record upon which the decision appealed from was taken.
2. The Town Manager shall affirm, reverse, affirm in part, or reverse in part the decision of the stormwater coordinator after hearing the evidence. If the decision of the stormwater coordinator is reversed in whole or in part, resulting in a refund or credit due to the property owner, then such refund or credit shall be calculated retroactive to the date of the initial appeal.
3. The decision of the Town Manager shall be final, and there shall be no further administrative action. Any person aggrieved or dissatisfied with the decision of the Town Manager may appeal that decision by application for writ of certiorari in the superior court of the county in which the property is located.