

# ORDINANCE 2011-05

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1<sup>st</sup> reading 5/14/11

2<sup>nd</sup> reading 6/6/11

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF POWDER SPRINGS BY ADOPTING A NEW ARTICLE IX TO CHAPTER 11 RELATING TO STORMWATER MANAGEMENT; ESTABLISHING A STORM WATER UTILITY AS A DEDICATED ENTERPRISE FUND; STATING THE SERVICE AREA, PURPOSES AND POWERS OF THE STORMWATER UTILITY AND GENERAL SERVICE CHARGE RATES AND APPLICATION; ESTABLISHING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

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WHEREAS, the City of Powder Springs (the “City”) is responsible for the protection and preservation of the public health, safety and welfare of the community;

WHEREAS, the City is authorized by Article IX, Section II, Paragraph III of the Georgia Constitution to provide stormwater management throughout its municipal boundaries;

WHEREAS, an analysis performed by an oversight committee of City residents and businesses, professional consultant and staff regarding stormwater management problems, needs, goals and funding opportunities has been examined and reviewed by the Mayor and Council;

WHEREAS, the Mayor and Council finds and concludes from the analysis that substantial stormwater management program operational and capital investment needs exist and that adequate and stable funding will be essential for the City to meet its stormwater management program needs;

WHEREAS, the Mayor and Council desire to proceed with the development, implementation and operation of a stormwater utility accounted for as a separate enterprise fund dedicated solely to stormwater management;

NOW THEREFORE the Council of the City of Powder Springs hereby ordains the following:

## SECTION ONE

The Code of Ordinances of the City of Powder Springs is hereby amended by adopting a new Article IX Stormwater Utility, to Chapter 11, Municipal Utilities and Services, as set forth in Exhibit “A”, attached hereto and incorporated herein by reference.

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## SECTION TWO

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional.

## SECTION THREE

All ordinances and parts of ordinances in conflict herewith are hereby repealed, and this ordinance shall become effective upon its adoption by the Mayor and Council.

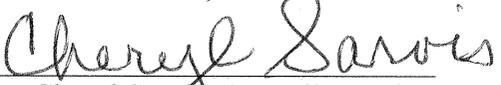
SO ORDAINED this 6 th day of June 2011.

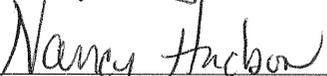
  
Patricia C. Vaughn, Mayor

  
Rosalyn G. Neat, Council Member

  
Thomas D. Bevirt, Council Member

  
Albert L. Thurman, Council Member

  
Cheryl Sarvis, Council Member

  
Nancy Hudson, Council Member

ATTEST:

  
Dawn Davis, City Clerk

## EXHIBIT “A”

### ARTICLE IX. STORMWATER UTILITY

#### Sec. 11-200. Findings.

#### **The City of Powder Springs Mayor and City Council make the following findings of fact:**

- (a) Powder Springs is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraph III thereof and O.C.G.A. § 36-82-62 to provide stormwater management services throughout Powder Springs.
- (b) The federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.), and the rules and regulations promulgated by the United States Environmental Protection Agency pursuant thereto emphasize the role of local governments in developing, implementing, conducting and funding stormwater programs that address water quality impacts of stormwater runoff.
- (c) The City is required under Federal and State regulations [i.e. National Pollutant Discharge Elimination System (NPDES) Phase I Stormwater Permit under which the City operates] 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.
- (d) Compliance with the regulatory obligations of the NPDES Phase I Stormwater Permit, Metropolitan North Georgia Water Planning District and other City stormwater program activities will affect the cost of providing stormwater management services above what is currently being spent for water quality management, drainage system maintenance, flood control and other program activities.
- (e) Stormwater management services and storm water management systems and facilities contribute to the protection of surface water quality in area water bodies, reduce the likelihood of infiltration and inflow of storm waters into the sanitary sewer system to protect operations of such system, and lessen erosion, water damage to property and impairment of water bodies, thereby assisting the City in meeting the regulatory obligations imposed by its NPDES permit.
- (f) A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within the City.
- (g) 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.
- (h) Stormwater management services and systems and facilities are 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 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 community.

(i) The cost of providing stormwater management services and operating and maintaining 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.

(j) The City has undertaken a comprehensive review by an oversight committee of City residents and businesses, professional scientific consultants and staff to assess and define the City's stormwater management program problems, needs, goals, priorities as well as the stormwater management program funding strategy.

(k) Given the stormwater management program problems, needs, goals, priorities and funding strategy identified in the aforementioned professional review, the City finds that a stormwater utility provides the most practical and appropriate means of properly providing stormwater management services and stormwater management systems and facilities, and a stormwater service fee provides the most practical and appropriate means of funding stormwater management services in the City.

(l) A schedule of stormwater utility service fees 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 City. Such service fee may be complemented by other types of fees 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 Mayor and City Council.

(m) The area of impervious surfaces on each improved property is the most important factor influencing the cost of the stormwater management services provided or to be provided by the City, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service fee.

(n) The existence of privately owned and maintained on-site or off-site systems, facilities, activities or assets which reduce or otherwise mitigate the impact of a particular property on the stormwater management services and/or stormwater management systems and facilities, should be taken into account to reduce the service fee on that property either in the form of a direct reduction or credit and such reduction or credit should be conditional upon continuing provision of such services, systems, facilities, activities or assets in a manner complying with the standards and codes. The stormwater service fee credit shall be determined based on technical requirements and standards contained in the Stormwater Utility Service Fee Credit Manual in its most current edition.

(o) It is imperative that the proceeds from the stormwater utility service fees, together with any other revenues raised or otherwise allocated specifically to stormwater management services, be dedicated solely to those purposes, and such proceeds should therefore be deposited into the enterprise accounting fund and remain in that fund except for disbursement for stormwater management capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for stormwater management purposes.

## **Sec. 11-201. 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.

*City standards* mean the city ordinances that govern water quality and water quantity, including the development regulations, floodplain management ordinance, soil erosion and sediment control ordinance, illicit discharge and illegal connection ordinance, stream buffer protection, zoning stipulations, stormwater design manual and all procedures, rules and policies pertaining thereto as these may be updated or amended from time to time.

*Credit* means a conditional reduction allowed in the amount of a stormwater service fee to the owner of a property for the existence and use of privately owned, maintained and operated on-site or off-site stormwater systems or facilities, or continuing provision of services or activities that reduce or mitigate the City's cost of providing stormwater management services for that particular property based upon the design and performance standards in the City's Stormwater Utility Service Fee Credit Manual, to be adopted pursuant to this article, as it may be updated or amended from time to time.

*ERU* means equivalent residential unit, which is the average of the total square footage of the impervious surface area of improved single family residential properties in the City, as determined by the City, and used as the basis for determining storm water services fees to other properties. Two thousand eight hundred and forty square feet (2,840 sf) of impervious surface shall be the equivalent of one unit.

*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 and the parcel's size, shape, vegetative canopy, and its groundwater, antecedent moisture and geologic conditions.

*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, 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.

*Impervious Surface Area* means the number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior walls, foundation, columns or other means of support or enclosure.

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

*Public Water Influence Zone* means those areas lying downstream of a culvert, or other stormwater management conveyance system. On the downstream side of the conveyance system, the public water influence zone will extend for a length of six (6) times the diameter (or width) of the culvert from which runoff is being discharged, as established by the Field Manual for Erosion and Sediment Control in Georgia, Third Edition, pg. 99, and within the horizontal limits set forth in the aforementioned manual. For example, if a 48-inch diameter culvert is discharging to a private property, the public water influence zone shall extend 24 feet (6 times 48-inches) from the end of the culvert and for the specified width (i.e. typically the width of the creek). The Powder Springs Stormwater Utility may perform maintenance and/or capital construction activities only within that portion of the public water influence zone for which the City has an ownership interest or a dedicated easement granted to and accepted by the City for such purpose.

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

*Stormwater Management Services* may address the quality and quantity of stormwater runoff and include all services provided by the City that 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;
- (4) Regulation of the use of stormwater management services, controls, systems and facilities;
- (5) Compliance with applicable State and Federal stormwater management regulations and permit requirements;
- (6) Education of the public about stormwater issues;
- (7) Storm drain cleaning and repair, street sweeping and should and ditch maintenance within the publicly owned right of way;
- (8) Inspection and monitoring of water quantity or quality to require compliance with state or local standards and stormwater management programs;
- (9) All other services related to the 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, including the quality and quantity of runoff; and
- (10) Management and administration of the stormwater utility service fee.

*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* means a fiscal entity funded by a stormwater service fee that provides stormwater management services, including infrastructure improvements.

*Stormwater Utility Manager* means the Public Works Director or other person designated by the City

Manager.

*Stormwater Utility Service Fee* means the service fee imposed by the Stormwater Utility to a parcel of improved property pursuant to this article that is based upon the amount of impervious surface area within each parcel or equivalent service units for providing stormwater management services and stormwater management systems and facilities. This term shall exclude special fees for development plan review, inspection of development projects, on-site stormwater control systems and other stormwater management services provided by the City 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. 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 owns property that maintains connection to, discharges to, or otherwise receives services from the City for stormwater management.

*Water Quality* means the chemical, physical, and biological characteristics of the State's public waters.

*Water Quantity* means the volume of runoff which is not entirely confined and retained completely upon a parcel.

#### **Sec. 11-202. Stormwater Utility and Enterprise Fund Established.**

(a) There is hereby established a Stormwater Utility which shall be responsible for stormwater management services throughout the incorporated areas of the City, and which shall provide for the management, protection, control, regulation, use and enhancement of the City's stormwater management system and facilities.

(b) There is hereby established a Stormwater Utility Enterprise Fund in the City budgeting and accounting systems separate and apart from the General Fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the Stormwater Utility. The enterprise fund may include 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 Stormwater Utility. Any 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, including capital project construction. All expenses and capital investments of the Stormwater Utility shall be paid from the Stormwater Utility Enterprise Fund; provided, however, that other funds such as grants, loans, and bond proceeds may be applied to stormwater management services as deemed appropriate by the City.

(c) The Stormwater Utility Manager shall be responsible for managing and implementing the stormwater management plan, stormwater management services and the Stormwater Utility and shall have operational control over the existing stormwater management system and facilities owned by the City as well as other related assets, including 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 for stormwater management.

## **Sec. 11-203. Scope of Responsibility for Stormwater Management Systems and Facilities**

- (a) The Stormwater Utility shall provide stormwater management services for existing and proposed stormwater management systems and facilities, subject to funding availability and policy determinations made in the best interest of public health, welfare and safety. The Stormwater Utility may accept the responsibility for providing stormwater management services to private stormwater management systems and facilities, subject to approval by the City.
- (b) The City owns, or has rights established by written agreements that allow the stormwater utility to provide stormwater management services and access, operate, maintain, and improve, stormwater management systems and facilities located:
- i. Within public road rights-of-way;
  - ii. On private property subject to easements, 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;
  - iii. On private property but within a public water influence zone after securing a right of entry, right of access, permanent easement, temporary easement or other form of written consent from the property owner;
  - iv. 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,
  - v. On public land owned by the City or another governmental entity for which the City has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (c) The operation, maintenance or improvement of stormwater management systems and facilities 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, except as otherwise provided for by the state and federal laws and regulations.
- (c) It is the express intent of this article to protect the public health, safety and general welfare of all persons and properties 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 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, 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 commissioners, officers, employees or agents.

#### **Sec. 11-204. Stormwater Service Fee**

(a) It shall be the policy of the City that fees for stormwater management services to be provided by the Stormwater Utility in the designated service areas 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. Stormwater service fee rates shall be structured so as to be uniform within the customer class, and the resultant service fees shall bear a substantial relationship to the cost of providing stormwater management services. Service fee rates shall be in addition to other rates, charges, or fees employed for stormwater management within the incorporated areas of the City, including, but not limited to, plan review and inspection fees, fees for special services, fees in lieu of regulatory requirements, system development fees and special assessments.

(b) To the extent practicable, credits against stormwater service fees 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 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. The methodology and criteria for a property owner to apply for and obtain a potential stormwater service fee credit for the owner's property shall be established before the stormwater service fee is billed to the property owner.

#### **Sec. 11-205. Stormwater Service Fee Rates**

(a) Stormwater service fee rates shall be set and may be modified from time to time by resolution of the Mayor and City Council. A schedule of said rates shall be on file in the office of the City Clerk of the City of Powder Springs. In setting or modifying such rates it shall be the goal of the City to establish rates that are fair and reasonable, and together with other sources of support that may be available to the stormwater utility, are sufficient to support the cost of the stormwater management services, 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 costs as deemed appropriate by the City.

(b) The basis for calculation of the stormwater service fee on all improved properties shall be the ERU for impervious surface. Each residential property shall pay the equivalent of 1 ERU per month. Each nonresidential property shall pay 1 ERU for each 2840 square feet or increment thereof of impervious surface located on the property to establish the total number of ERU's for billing, with a minimum number of ERU's being 1. Fractional ERU's will be calculated to six decimals.

- (c) Stormwater service fee revenues in any given year may exceed or be less than the cost of service in that year, provided, however, that the stormwater service fee rate shall be based on meeting the long-term projected cost of stormwater management programs, services, systems and facilities. All unencumbered stormwater management funds derived from service fees and other sources of revenue not expended at the end of a fiscal year shall remain in the stormwater management utility enterprise fund account and balances shall be forwarded to the next fiscal year.

**Sec. 11-206. Stormwater Service Fee Exemptions.**

Except as provided in this section or otherwise provided by law, no public or private property located in the incorporated are of the City shall be exempt from the stormwater service fee. No exception, credit, offset, or other reduction shall be granted based on any condition unrelated to the Stormwater Utility's cost of providing stormwater management service and stormwater systems and facilities.

Exemptions to the stormwater service fee are as follows:

1. Parcels which contain less than five hundred (500) square feet of impervious surfaces.
2. Railroad tracks.
3. Any property whereby one hundred percent (100%) of the stormwater runoff is contained or infiltrated on the property and no stormwater runoff is discharged, via overland flow or manmade conveyance, to adjacent properties or rights-of-way for all storm events up to and including the 100-year 24-hour storm event, as established to the satisfaction of the Stormwater Utility Manager.

**Sec. 11-207. Stormwater Service Fee Credits.**

- (a) The Stormwater Utility Manager shall grant credits or adjustments based on the technical and procedural criteria set forth in the Stormwater Utility Service Fee Credit Manual, which shall be adopted and amended by and at the discretion of the Stormwater Utility Manager as an operating policy of the Stormwater Utility. Copies of the manual shall be maintained by and available from the Stormwater Utility Manager.
- (b) Any credit allowed against the stormwater service fee is conditioned on continuing compliance with the City's design and performance standards as stated in the manual. The Stormwater Utility Manager may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the manual or this article.
- (c) In order to obtain a credit, the property owner 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 manual.
- (d) The application for any credit must be in writing and must include the information necessary to establish eligibility for the credit. Incomplete applications will not be accepted for consideration and processing.
- (e) Within 30 days from the date of receipt of a complete application, the Stormwater Utility Manager shall grant the credit in whole or in part or deny the credit. If the Stormwater Utility Manager fails to render a decision within the 30 days, the credit application shall automatically

be deemed denied, but said denial shall be subject to appeal to the City Manager as set forth in this article.

- (f) At no time shall a credit reduce the amount charged to less than 1 ERU.

### **Sec. 11-208. Stormwater Service Fee Billing Delinquencies and Collections**

- (a) A stormwater service fee bill may be sent through the United States mail or by alternative means notifying the customer of the amount of the bill, the date the payment is due, and the date when past due. Failure to receive a bill is not justification for non-payment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of developed land shall be ultimately obligated to pay such fee. The stormwater service fee will be billed and collected as deemed most effective and efficient by the City Manager. If a customer is under billed or if no bill is sent for a particular tract of improved property, the Stormwater Utility may back bill for a period of up to one year.
- (b) Unpaid stormwater service fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by state law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment.
- (c) A late charge of five percent (5%) of the unpaid balance of any stormwater utility service fee bill shall be charged when a bill becomes delinquent. Thereafter, an additional charge of one percent (1%) based on the unpaid bill and any applicable delinquency charge shall be charged for each month the bill remains delinquent. In addition, the City shall assess all costs of collection, including attorney's fees and court costs, against the property owner.

### **Sec. 11-209. Enforcement Methods and Inspections**

(a) All property owners of improved property within the incorporated areas of the City 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 City development regulations, ordinances, and State and Federal laws.

(b) The Stormwater Utility Manager or person designated by the Manager or City Manager shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this article.

- (1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to the manager or designee.
- (2) The owner or operator shall allow the manager or designee ready access to all parts of the premises for the purposes of inspection, sampling, testing, photography and videotaping in order to ensure compliance with this article. The manager or designee shall be permitted to examine and copy records that are required under the conditions of an NPDES permit or development permit to discharge stormwater.
- (3) The manager or designee shall have the right to set up on any property or facility such devices as are necessary in his or her opinion to conduct monitoring and/or sampling of flow discharges.

- (4) The manager or designee may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his or her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the director or designee and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- (6) Unreasonable delays in allowing the manager or designee access to a facility is a violation of this article.
- (7) If the manager or designee has been refused access to any part of the premises from which stormwater is discharged, and he or she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the manager or designee may seek issuance of an inspection warrant from any court of competent jurisdiction.
- (8) The manager or designee may determine inspection schedules necessary to enforce the provisions of this article.

(c) Any failure to meet the obligations set forth in this section shall constitute a violation of this article and be subject to citation and prosecution in the Powder Springs Municipal Court. Each day such violation exists shall constitute a separate offense, subject to the penalties allowed by law.

(d) Alternately, in the event a public nuisance is deemed to exist by the Stormwater Utility Manager, the City may elect to sue in the Powder Springs 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 Powder Springs Municipal Court, the City may enter upon the property and cause work as is reasonably necessary to be performed, and the actual cost thereof shall become a special assessment upon said property, which special assessment may be enforced and collected in accordance with Section 8-16 et. seq. of this code.

### **Sec. 11-210. Appeals, Hearings.**

(a) Any customer who believes the provisions of this Article have been applied in error may appeal in the following manner:

- (1) Within 30 days of an adverse decision, an appeal must be filed in writing with the Stormwater Utility Manager. In the case of service fee appeals, the appeal shall include a survey prepared by

a registered land surveyor or professional engineer containing information on the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to rainfall events.

- (2) Using the information provided by the appellant, the Stormwater Utility Manager shall conduct a technical review of the conditions on the property and respond to the appeal in writing within thirty (30) days. On the basis of this review, the stormwater service fee applicable to a property may be adjusted.
- (3) The decision by the Stormwater Utility Manager may be further appealed by filing a written notice of appeal to the City Manager within thirty (30) days of the decision. Notice of the appeal shall be delivered to the City Manager by the appellant, stating the grounds for the further appeal. 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.
- (4) The City Manager shall fix a reasonable time, not to exceed 60 days, for hearing the appeal and give written notice to the appellant at least ten 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. All decisions of the City Manager shall be served on the customer personally or by registered or certified mail, sent to the billing address of the customer. If the decision of the City Manager results in a refund or credit to the property owner, then such refund or credit shall be calculated retroactive to the date of the initial appeal.
- (5) The decision of the City Manager shall be final, and there shall be no further administrative action. Any person aggrieved by the decision of the City Manager may appeal that decision to the Superior Court of Cobb County by Writ of Certiorari within 30 days of the decision.