

**Barrow County, Georgia**  
**Stormwater Utility Ordinance**

AN ORDINANCE OF THE BARROW COUNTY BOARD OF COMMISSIONERS TO FULFILL OBLIGATIONS OF THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) NPDES PHASE II PERMIT AS ISSUED AND DETERMINED BY THE GEORGIA ENVIRONMENTAL PROTECTION DIVISION AND THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY.

WHEREAS, the Barrow County Board of Commissioners is committed to protecting, maintaining and enhancing the public health, safety, environment and general welfare of the County and its citizens by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development; and

WHEREAS, the Barrow County Board of Commissioners understands the impacts to many County streams and rivers as pollutants and sediment degrade the receiving waters and cause loss of property value, aquatic life and drinking water quality; and

WHEREAS, the Barrow County Board of Commissioners acknowledges that the costs for inspecting, repairing, and maintaining County stormwater infrastructure must be provided for with a funding structure that will accommodate both current and future growth of the County along with current and future state and federal environmental standards; and

WHEREAS, the Barrow County Board of Commissioners finds that a stormwater utility provides the most practical and appropriate means for properly delivering and funding stormwater management services in the County; and

WHEREAS, such a stormwater utility is authorized by State statutory and case law, including Article 9, Section 2, Paragraphs III(a)(6), (c) & (d) of the Constitution of the State of Georgia, O.C.G.A. §§ 36-82-61(4)(C)(ii) and 36-82-62(a)(2), and McCleod v. Columbia County, 278 Ga. 242 (2004);

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE BOARD OF COMMISSIONERS OF BARROW COUNTY, GEORGIA, as follows:

1.

Chapter 90, Utilities, of the Barrow County Code of Ordinances shall now include the following new Article VI, Stormwater Utility:

## ARTICLE VI. STORMWATER UTILITY

### SEC. 90-500. 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:

- (a) *The County* means Barrow County, Georgia, and its Board of Commissioners and employees.
- (b) *Customers* means all persons, properties, and entities served by and/or benefiting from the Stormwater Utility's acquisition, management, maintenance, extension, and improvement of the County Stormwater Management Systems and facilities and regulation of other public and private Stormwater Management Systems, facilities and activities related thereto, and persons, properties, and entities that will ultimately be served or benefited as a result of the County Stormwater Management Systems.
- (c) *Developed Land* means any parcel that has more than fifty (50) square feet of impervious surface located thereon.
- (d) *Fiscal Year* means October 1 of a calendar year to September 30 of the next calendar year.
- (e) *Hard Structures*: Include, but are not limited to, Flumes, Catch Basins, Drop Inlets, Outlet Control Structures, Head Walls, Junction Boxes, Culverts, or curb and gutter used to convey stormwater.
- (f) *Impervious Surface* means hardened surface areas that either prevent or limit the natural entry of water into the underlying soil, resulting in stormwater runoff. Rooftops, buildings, streets, parking lots, sidewalks, asphalt, concrete, other paving, driveways, decks, patios, and artificial turf include, without limitation, examples of impervious surfaces.
- (g) *Stormwater Management Systems* means those systems, as further described herein, which address the issues of stormwater drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation, and funding of plants, works, instrumentalities and properties used or useful in the collection, retention, detention, and treatment of stormwater or surface water drainage.
- (h) *Stormwater Service Fees* means the annual fees established under this Article and imposed on owners of parcels or pieces of developed land to fund the costs of stormwater management services provided by the Stormwater Utility and the Stormwater Utility's operation, maintenance, and improvement of the County Stormwater Management Systems.

### SEC. 90-501. FINDINGS:

(a) Because Barrow County operates under the requirements of the NPDES Phase II Permit as well as Federal and State statutory and regulatory mandates, including but not limited to the federal Clean Water Act, responsibility falls on the Board of Commissioners to provide function, personnel and means to comply with said requirements and mandates.

(b) It is appropriate, in order to facilitate the County's compliance with applicable federal and state stormwater laws and regulations, to authorize the formation of an organizational and accounting entity, in

the form of a utility to be named the Barrow County Stormwater Utility (“Stormwater Utility”), dedicated specifically to the management, maintenance, protection, control, regulation, use, and enhancement of County Stormwater Management Systems in conjunction with other water resource management programs.

(c) The Stormwater Management Systems, located in unincorporated Barrow County, include hard structures and soft structures, identified in the recorded legal descriptions (including deeds and plat) of private properties, providing conveyance of stormwater in prevention of flooding and assurance of water quality.

(d) The future usefulness of existing Stormwater Management Systems managed and/or owned by Barrow County rests on the ability to effectively manage, protect, control, regulate, use, and enhance such systems and facilities in the County in concert with management of other water resources. In order to do so, the County must have adequate and stable funding for its Stormwater Utility operating and capital investment needs.

(e) The Stormwater Utility’s management and regulation of Stormwater Management Systems will assist the County in protecting the public health, safety and welfare of the environment and will result in both service and benefit to individual parcels, parcel owners, citizens and residents of the County in a variety of ways.

**SEC. 90-502. ESTABLISHMENT OF A STORMWATER UTILITY AND STORMWATER ENTERPRISE FUND:**

(a) There is hereby established a Stormwater Utility within and under the supervision of the County’s Department of Stormwater Management, which Stormwater Utility shall be responsible for providing stormwater management services, for providing Stormwater Management Systems and related facilities, and for determining labor, material and administrative fees for the operation of the County’s Stormwater Management Systems.

(b) The County Stormwater Enterprise Fund (“Stormwater Enterprise Fund”), established in 2008 to fund the operation of the County’s Stormwater Management Systems and performance of inspections of and repairs to County Stormwater Management Systems, is hereby designated as a funding mechanism for the Stormwater Utility and shall continue to operate as a funding mechanism for the maintenance, repair and construction of County Stormwater Management Systems.

(c) The Barrow County Board of Commissioners hereby transfers to the Stormwater Utility responsibility for stormwater services, County Stormwater Management Systems and related facilities, and other related assets, including, but not limited to, properties upon which such facilities are located, and related easements, rights-of-entry and access rights.

(d) The Barrow County Finance Department shall maintain the Stormwater Enterprise Fund in the County budget and accounting system, separate and apart from its general fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the Stormwater Utility, including but not limited to rentals, rates, fees and licenses as may be established from time to time by the Board of Commissioners. All revenues and receipts of the Stormwater Utility shall be deposited promptly upon receipt into the Stormwater Enterprise Fund, to be held and invested in trust and expended exclusively for the purposes of the Stormwater Utility, including but not limited to capital project construction. No other funds of the County shall be deposited in the Stormwater Enterprise Fund or commingled with dedicated Stormwater Utility funds, except that other revenues, receipts, and

resources not accounted for in the Stormwater Enterprise Fund, including grants, loans, and bond proceeds, may be combined with and applied to Stormwater Utility capital projects as deemed appropriate by the Board of Commissioners, upon recommendation of the Stormwater Manager.

**SEC. 90-503. SCOPE OF RESPONSIBILITY FOR THE COUNTY STORMWATER MANAGEMENT SYSTEMS:**

(a) The County Stormwater Management System consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, headwalls, and other structures, natural or manmade, within the unincorporated political boundaries of the County, which control or convey stormwater and through which the County intentionally diverts surface waters from its public streets and properties. The County owns or has legal access for purposes of operation, maintenance and improvements to those segments of the Stormwater Management System that: 1) are located within County streets, rights-of-way or easements; 2) are subject to County easements, rights of entry, rights of access, rights of use, or other permanent rights of the County for adequate access for operation, maintenance and/or improvement of Stormwater Management Systems and facilities; or 3) are located on public lands to which the County has adequate access for operation, maintenance, and/or improvement of Stormwater Management Systems and related facilities. Operation and maintenance of Stormwater Management Systems and related facilities which are located on private property, or public property not owned by or otherwise accessible pursuant to written property rights to the County, and for which there has been no public dedication of such Stormwater Management Systems and related facilities for operation, maintenance, and/or improvement of such Stormwater Management Systems and related facilities shall be and remain the legal responsibility of the applicable property owner or occupant, except as that responsibility may be otherwise affected by the laws of either the state or federal government.

(b) It is the intent of this Article to protect the public health, safety and general welfare of all properties and persons in the County in general, but not to create any special duty or relationship with any individual person or to any specified property within or without the boundaries of the County.

**SEC. 90-504. REQUIREMENTS FOR COMMERCIAL ON-SITE STORMWATER SYSTEMS; ENFORCEMENT METHODS AND INSPECTIONS:**

All owners and developers of developed commercial land within the County shall provide, manage, maintain, and operate on-site Stormwater Management Systems sufficient to collect, convey, detain, and discharge stormwater in a safe manner consistent with all Federal, State, and County regulations. Any failure to meet this obligation shall constitute a nuisance and be subject to an abatement action filed by the County in any court of competent jurisdiction. In the event a public nuisance is found to exist by the court, which nuisance the owner fails to properly abate within such reasonable time as allowed by the court, the County may enter upon the property and cause such remedial work as is reasonably necessary to be performed, with the actual cost thereof assessed against the property owner. From the date of the filing of such action, the County shall have lien rights which may be perfected, after judgment, by filing a notice of lien on the general execution docket of the Superior Court of the County. The County shall have the right, pursuant to the authority of this Article, for its designated officers and employees to enter upon private property, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with this Section.

**SEC. 90-505. DETERMINATION AND MODIFICATION OF STORMWATER SERVICE FEES:**

Stormwater Service Fees shall be based upon impervious surface area and shall be determined and modified from time to time by resolution of the Board of Commissioners. In setting or modifying such rates, it shall be the objective of the Board of Commissioners to establish rates and fees that are fair and reasonable, which may include flat fee rates for certain classifications of properties, reflect the value of stormwater management services and facilities to those properties that benefit therefrom and which, together with any other sources of revenue that may be made available to the Stormwater Utility, will be sufficient to meet the cost of budgeted programs, services and facilities including, but not limited to, the payment of principal and interest on revenue bond obligations incurred for construction and improvements to the County Stormwater Management Systems. Future capital investments and necessary reserve accounts, including but not limited to an emergency reserve account, may be included in the calculation of the Stormwater Service Fees.

**SEC. 90-506. EFFECTIVE DATE OF STORMWATER SERVICE FEES:**

An annual service charge is imposed upon each parcel of developed land in the County as of October 1 each fiscal year, beginning October 1, 2008, to fund Stormwater Utility programs. This annual service charge shall be known as the "Stormwater Service Fee." Stormwater Service Fees shall be maintained in the Stormwater Enterprise Fund under the Barrow County Board of Commissioners. Purchases by the Stormwater Utility shall be made through the Department of Stormwater Management for the sole purpose of performing the obligations of the Stormwater Utility under applicable state and federal laws and regulations, including but not limited to the County's NPDES Phase II Permit and the conditions outlined therein.

Stormwater Service Fees supporting Stormwater Utility needs will be determined for each fiscal year and will be approved by resolution during the budgeting process by the Barrow County Board of Commissioners.

**SEC. 90-507. STORMWATER SERVICE FEE BILLING, DELINQUENCIES, COLLECTIONS:**

(a) A Stormwater Service Fee bill shall be attached to and/or included in the annual tax bill generated by the Barrow County Tax Commissioner and issued through the U.S. Postal Service. The Stormwater Service Fees are due as stated on said bill as well as past due late charges. Failure to receive a bill is not justification for nonpayment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of developed land, as shown from public land records of the County, shall be ultimately obligated to pay the Stormwater Service Fee. If a customer is under-billed or if no bill is sent for developed land, the County may back-bill for a period of up to four years, but shall not assess penalties, other than the late charge described in subsection (b), for any delinquency. The inclusion of the Stormwater Services Fee with the annual tax bill is intended for convenience only, such Stormwater Services Fees being fees for utility services provided to Customers by the Stormwater Utility and not a tax or regulatory fee.

(b) A 1.0% late charge per month shall be billed based on the unpaid balance of any Stormwater Service Fee that becomes delinquent.

(c) Suits for collection of unpaid Stormwater Service Fees shall be filed in a court of competent jurisdiction. No lien shall be imposed for delinquent collections unless a judgment is first obtained.

**SEC. 90-508. REQUESTS FOR MODIFICATION OF THE STORMWATER SERVICE FEE:**

Any property owner may request a review of their Stormwater Service Fee by submitting a request in writing, along with any supporting information, to the Stormwater Manager within 30 days after the date the tax bill is mailed or issued to the property owner. Grounds for modification of the Stormwater Service Fee include, documentation and Barrow County personnel inspection verifying complete demolition and removal of all impervious surfaces on the parcel in question making up greater than 50 square feet of impervious surface area. A written response will be provided by the Stormwater Manager within 30 days of any request. All decisions of the Stormwater Manager shall be final. Any decision of the Stormwater Manager may be reviewed upon application for writ of certiorari before the Superior Court of Barrow County, filed within 30 days of the date of service of the decision.

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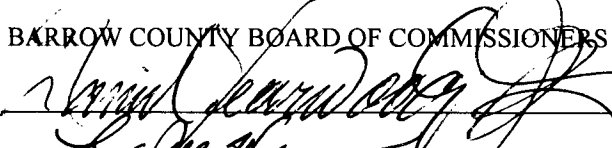
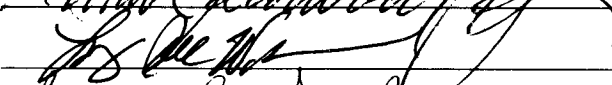
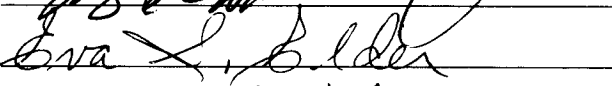
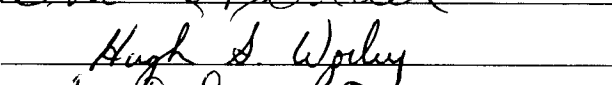
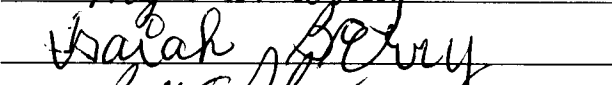

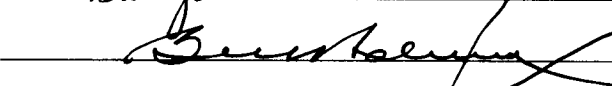
**SEVERABILITY AND REPEALER:**

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. All other prior code sections and all ordinances or parts of ordinances that may be inconsistent with the terms and conditions of this Ordinance are hereby repealed.

This Ordinance shall take effect this date.

ADOPTED AND APPROVED, this 22<sup>nd</sup> day of March, 2011.

BARROW COUNTY BOARD OF COMMISSIONERS

|   |            |
|---|------------|
|  | CHAIRMAN   |
|  | DISTRICT 1 |
|  | DISTRICT 2 |
|  | DISTRICT 3 |
|  | DISTRICT 4 |
|  | DISTRICT 5 |
|  | DISTRICT 6 |

ATTEST:

 CLERK, BOARD OF COMMISSIONERS  
(SEAL)