

ORDINANCE NO. 21-04

AN ORDINANCE TO AMEND CHAPTER 78 OF THE CODE OF ORDINANCES OF MCDUFFIE COUNTY TO PROVIDE FOR A NEW ARTICLE, TO BE KNOWN AS ARTICLE VII ENTITLED "FIRE PROTECTION UTILITY;" TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR AN ENTERPRISE FUND; TO PROVIDE FOR FIRE PROTECTION UTILITY CUSTOMER CLASSES; TO PROVIDE FOR FIRE PROTECTION FEE CHARGES; TO PROVIDE FOR FIRE PROTECTION FEE CHARGE EXEMPTIONS; TO PROVIDE FOR FIRE PROTECTION FEE CHARGE CREDITS; TO PROVIDE FOR FIRE PROTECTION FEE BILLING, DELINQUENCIES, COLLECTIONS, AND ADJUSTMENTS; TO PROVIDE FOR APPEALS; TO PROVIDE FOR AN EFFECTIVE DATE; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES

BE IT ORDAINED BY the Board of Commissioners of McDuffie County, Georgia, and it is hereby ordained by the authority thereof that Chapter 78 of the Code of Ordinances of McDuffie County is hereby amended by adding thereto a new Article, to be known as Article VII, which Article shall provide as follows:

Section 78: Article VII and Chapter 78 of the McDuffie County Code, as amended, relating to fire protection services is amended by adding the following pertaining to the establishment of the Fire Protection Utility:

**ARTICLE VII.
FIRE PROTECTION UTILITY ORDINANCE**

Sec. 78-200. Purpose

This ordinance shall serve the purpose of establishment and set up of the Fire Protection Utility and establishment of the Fire Protection Enterprise Fund and Fire Protection Fee.

Sec. 78.201. Findings of Fact

The McDuffie County Board of Commissioners make the following findings of fact:

- (a) McDuffie County, Georgia is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraph 111 thereof, to provide fire protection service.
- (b) McDuffie County, Georgia is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraph VI thereof, to create special service districts for the provision of services within such districts, and to levy and collect within such districts fees and assessments to pay, wholly or partially, the cost of providing such services therein.
- (c) In accordance with O.C.G.A. § 36-70-20, areas of McDuffie County that are serviced by Thomson-McDuffie County Fire, EMS and Emergency Management/Homeland Security Agency (collectively, "TMCF") are defined in the Service Delivery Strategy ("SOS"), most recently certified on January 19, 2021.
- (d) A system for fire protection provides benefits to all properties within the County and surrounding areas, through increased value and marketability, heightened use and

enjoyment of the property, reduced risk to life and property due to fire, and reduced insurance premiums.

- (e) The cost of maintaining a constant state of availability, readiness and preparedness, which is the primary function of TCMF, should, to the extent practicable, be allocated in relationship to the services made available to the property serviced by the TCMF. Initial fire response to a particular property, and the cost to the TCMF to be prepared to provide such a response, is affected by building size, land use, and the risk (i.e. the probability and/or the consequence) of a fire occurring at a particular property.
- (f) The financing analysis and related documents prepared by TCMF properly assesses and defines the County's fire protection needs, goals, and priorities, as well as the TCMF funding strategy for delivery of those services. The professional financing analysis document entitled: Fire Fee Revenue Projection (dated July 23, 2019), Fire Fee Revenue Projection Updates (dated August 6, 2020), Fire Fee Rate Methodology Comparison (dated June 6, 2021), Fire Fee Rate Model Update (Dated June 21, 2021) and applicable supporting, project-related documents are incorporated herein by reference.
- (g) Given the County's fire protection program service delivery needs, goals, priorities and funding strategy, it is appropriate to authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, regulation, use, and enhancement of fire protection services, systems and facilities within the County.
- (h) It is practical and equitable to allocate the cost of maintaining a constant state of availability, readiness and preparedness to provide fire protection services among the owners of property in proportion to the demands the properties impose on TCMF which result in benefits to such properties and the owners thereof. The fair and equitable apportionment of costs via the service fee charge should correlate to the fire protection services made available to properties.
- (i) The fire protection services provided by the County include, but are not limited to: protection of the public health, safety, and welfare of the community. Provision of fire protection services renders and/or results in both a service and a benefit to all properties, property owners, citizens, and residents of the County.
- (j) The most equitable means to fund fire protection services within the County is through fire protection service fee charges and other mechanisms.
- (k) Fire protection service fee charges may be supplemented by other types of fees and charges, including, but not limited to, special service fees, special assessments, revenue bonds, use of proceeds from special purpose local option sales taxes (SPLOST) and other forms of revenue, as deemed appropriate by the Board of Commissioners.
- (l) McDuffie County reserves the right to consider the existence of privately owned and maintained on-site fire protection facilities or systems which reduce, or otherwise mitigate, the impact of a particular property on the County's fire protection program, and the Fire Protection Utility's cost of providing fire protection services, conditioned

upon continuing provision of such facilities in a manner complying with the standards and codes as determined the Fire Protection Utility.

- (m) It is imperative that the proceeds from all service fee charges for fire protection services, systems or facilities, together with any other supplemental revenues raised or otherwise allocated specifically to fire protection services, systems or facilities, be dedicated solely to those purposes, and such proceeds of service fee charges and supplemental revenues shall therefore be deposited into the Fire Protection Enterprise Fund and shall remain in that fund and be dispersed only for fire protection capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for fire protection purposes.
- (n) In order to protect the health, safety and welfare of the public, the Board of Commissioners of McDuffie County, Georgia hereby concludes a Fire Protection Utility, funded by a dedicated Fire Protection Service Fee, is warranted as the best available means of addressing the foregoing needs.

Sec. 78-202. 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:

Customers of the Fire Protection Utility shall include all persons, properties, and entities serviced by and/or benefiting from the services provided by TMCF and the Fire Protection Utility. These services include, but are not necessarily limited to, the utility's administration, management, and operation of fire protection systems for the purposes of fire protection.

Dwelling Unit shall mean a structure, regardless of the type or method of construction, which contains one (1) or more bedrooms, a bathroom, and cooking facilities, designed for occupancy by one or more person(s) regardless of relationship, living as a single-family unit.

Fire Protection Services mean all services provided by the County which directly or indirectly relate to the following:

- a. Fire safety prevention and protection;
- b. Management and operation of the fire protection program;
- c. Maintenance, repair and replacement of existing fire protection facilities and equipment;
- d. Planning, development, design and construction of additional fire protection facilities to meet the current and anticipated future needs;
- e. Emergency management services;
- f. Regulation and enforcement of fire safety prevention and protection services and facilities; and
- g. Compliance with applicable State and Federal fire protection regulations and permit requirements.

Fire Protection Personnel and Facilities means all personnel, equipment, physical works, and properties which are used to provide fire protection services.

Fire Department means the Thomson-McDuffie County Fire, EMS and Emergency Management/Homeland Security Agency.

Fire Protection Fee means the periodic service fee charge imposed pursuant to this Article, and other applicable Articles, by the McDuffie County Fire Protection Utility for providing fire protection services. This term shall exclude special charges to the owners of particular properties for services or facilities related to fire protection, including, but not limited to, charges for fire inspections for which a corresponding fee may be collected for the service rendered.

McDuffie County Fire Utility Service Area means the entire land area within McDuffie County, excluding the City of Dearing, as defined in the Service Delivery Strategy most recently certified on January 19, 2021.

Fire Protection Utility Manager means the person appointed by the County Manager to administer and oversee the TMCF operations and the provisions of this Article.

Non-Single Family Residential (NSFR) Property shall mean a developed parcel of land that consists of various non-single family residential land uses including, but not limited to: (1) multi-family, commercial (including mixed commercial & residential), office/institutional, public, transportation, industrial, manufacturing and storage buildings and facilities; (2) government facilities, public and private schools, universities and hospitals; (3) houses of worship, and (4) any other form of use not specifically defined as a single family residential property (SFR).

Non-Single Family Residential (NSFR) Customer shall mean a utility customer whose property meets the definition of NSFR whether such customer is the owner of the parcel or a tenant of the owner.

Risk Response Factor is based on the relative cost of responding to high- risk commercial/industrial fire calls versus residential or small NSFR property calls. This user fee rate reflects the additional cost born by the TMCF to stand ready to respond to high-risk fires that require additional equipment, personnel, and time.

Single-Family Residential (SFR) Property means developed property containing one residential structure or manufactured home 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 materially alter the single-family residential structure or necessitate additional needed fire flow. SFR properties shall not include improved property containing structures used primarily for non-residential purposes and as defined herein; 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.

Single-family Residential (SFR) Customer means a utility customer of the County residing in a dwelling unit whether such customer is the owner of the dwelling unit, a tenant of the owner of the dwelling unit, or a resident of the dwelling unit.

TMCF means Thomson-McDuffie County Fire, EMS and Emergency Management/Homeland Security Agency.

Undeveloped Property means a parcel with no structures located within the parcel boundaries.

Undeveloped Property Customer shall mean a utility customer whose property meets the definition of an undeveloped property.

Sec. 78-203. Fire Protection Utility established.

- (a) There is hereby established a Fire Protection Utility consisting of four (4) members, two (2) of which shall be County Commissioners and two (2) of which shall be City Council members. All members of the Fire Protection Utility shall live within the McDuffie County Fire Utility Service Area.
- (b) It shall be the responsibility of the Fire Protection Utility to oversee and make recommendations to the governing body of the County regarding the management and operation of the Fire Protection Enterprise Fund, to oversee the provision of Fire Protection Services throughout the McDuffie County Fire Utility Service Area, and to fulfill all other duties and responsibilities as provided for in the Fire Protection Utility Ordinance. The governing body of the County shall be the final decision maker regarding all matters related to fire protection services, unless otherwise provided herein.

Sec. 78-204. Fire Protection Enterprise Fund established.

- (a) There is hereby established a fire protection account within the general fund to be known as the Fire Protection Enterprise Fund which will help finance protection services throughout the McDuffie County Fire Utility Service Area, and which shall provide for the management and operations associated with the Fire Protection Services.
- (b) All revenues and receipts of the Fire Protection Enterprise Fund shall be expended solely for the provision of Fire Protection Services; provided, however, that the County may allocate other revenues and/or resources not accounted for in the Fire Protection Enterprise Fund for Fire Protection Services as deemed appropriate by the County.

Sec. 78-205. Fire Protection Utility Customer Classes.

- (a) The Fire Protection Utility shall recommend to the governing body of the County for approval specified customer classes within the service area to reflect differences in building structure and contents; fire risk; fire protection services provided by the County to the Fire Protection Utility customers; and the respective demand that those customers' properties place on the TMCF. All State, Federal, County, and City properties are subject to the user fee charges on the same basis as private properties. The Fire

Protection Utility classes will encompass all developed and undeveloped properties within the County and are defined as follows:

- (1) The Single Family Residential (SFR) Class shall consist of all developed properties classified as SFR Property per the applicable definition.
 - (2) The Non-Single Family Residential (NSFR) Class shall consist of all developed properties classified as NSFR Property per the applicable definition.
 - (3) The Undeveloped Class shall consist of properties classified as undeveloped per the applicable definition.
- (b) Documentation pertaining to the Fire Protection Utility customer classes shall be kept on file in the office of the Fire Protection Utility Manager for public inspection.

Sec. 78-206. Fire Protection Fee Charge Rates

- (a) The Fire Protection Utility shall recommend to the governing body of the County for approval a fire protection fee on all properties within the service area in a fair and equitable manner. The Fire Protection Utility recommendation shall apportion the cost of delivering fire protection services to all properties based on the demand the property places on the TMDF and the fire protection services provided.
- (b) Fire Protection fee charge rates shall be set and may be modified from time to time by the governing body of the County. A schedule of said rates shall be on file in the office of the County Clerk of McDuffie County. In setting or modifying such rates, it shall be the goal of the County to establish rates that are fair, equitable and reasonable, and together with other funding sources available to the McDuffie County Fire Protection Utility for services, systems, and/or facilities related to fire protection services are sufficient to support the cost of the TMCF, 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 County.
- (c) The basis for calculation of the fire protection fee charge to all property within the County is established in this Article. The County shall assign or determine the customer class, land use, building square footage, parcel acreage, risk and other pertinent factors as may be needed for the fair, reasonable and equitable allocation of the costs to deliver fire protection services and to calculate the fire protection fee charges for all properties in the County.
- (d) Fire protection fee shall be reflective of the following three (3) important factors in the County's cost of providing fire protection services to individual properties, including: (1) the acreage of each parcel of land; (2) the square footage of structures on each property; and (3) the assigned risk response factor.
- (e) The total fire protection fee for each property shall include two (2) charges, if applicable, as described below:

- a. **Wildfire Charge:** This charge shall apply to all properties within the Fire Protection Service Area and shall be correlated to the cost to the TMCF to respond to wildfires, which may occur on any property, developed or undeveloped. This charge shall be based upon the total acreage of the parcel.
 - b. **Structure Charge:** This charge shall be applied to all properties upon which any structure is built. This charge shall be based upon the square footage of all structures on the property.
- (f) To ensure that the fire service fee is reasonably correlated to the cost to TMCF to make service available to high risk properties within the Fire Protection Service Area, fire service fee charges shall be subject to a risk rate modifier, based upon the risk classification assigned to a parcel by the TMCF. A risk modifier of 2.2 can be applied to the square footage calculation for each building identified as meeting the criteria for high risk.

Sec. 78-207. Fire Protection Fee Charge Exemptions.

- (a) Except as provided in this section or otherwise provided by law, no public or private property located in the incorporated area of the County shall be exempt from the fire protection fee charges. The fire protection fee charge is not a tax and no exception, credit, offset, or other reduction in fire protection fee charges shall be granted based on age, tax status, economic status, race, religion, disability, or other condition unrelated to the Fire Protection Utility's cost of providing fire protection services and facilities.
- (b) Exemptions to the fire protection fee charges are as follows:
 - (1) Linear rights-of-way (i.e. roads, tracks, rails, roadbed) outside of defined parcel limits shall be exempt from Fire Protection fee charges. This exemption is in recognition of the right of the TMCF to collect emergency response fees for emergency response services provided within the right-of-way.

Sec. 78-208. Fire Protection Fee Charge Credits. (Reserved)

Sec. 78-209. Fire Protection Fee Charge Billing, Delinquencies, Collections, Adjustments.

The property owner or account holder, as identified from County Tax Assessor parcel GIS database information, Tax Digest and other public records of McDuffie County, shall be obligated to pay the applicable fire protection fee charge.

- (a) **Billing.** Fire Protection user fee charges shall be billed on the customer's annual Ad Valorem Property Tax bill starting with the first billing cycle in September 2021 as provided in this Article.
 - (1) Customers that do not receive an Ad Valorem Property Tax bill from the County Tax Assessor shall be billed for fire protection services via another method and frequency established by the County.

- (2) The property owner will be charged the fire fee for multi-family residential properties that are part of a larger common development such as apartment complexes or manufactured home parks.
 - (3) A bill for fire protection fee charges may be sent through the United States Postal Service or by alternative means, notifying the Fire Protection Utility customer of the following items (as a minimum): the fire protection fee charge amount (less any approved credits), the date the payment is due and the date when payment is past due.
 - (4) 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 property subject to fire protection fee charges shall be ultimately obligated to pay fire protection fee charges and any interest at the rate of equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statically release H.15 or any publication that may supersede it, plus three (3%) percent to accrue monthly on delinquent fire protection fee charge payments.
 - (5) If a property is unbilled, or if no bill is sent for a particular tract of property, the Fire Protection Utility may back bill for a period of up to three (3) years, but shall not be entitled to any interest or any delinquency charges during the back billed period.
- (b) Delinquencies and Collections
- (1) Unpaid fire protection service fees shall be collected by any means allowed under law, including but not limited to filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment. Unless reduced to a judgment and a writ of fieri facias issued, the unpaid user fee charge shall not constitute a direct lien against the owner or the property.
 - (2) A late charge shall be assessed against the customer for the unpaid balance of any fire protection fee charge that becomes delinquent in accordance with applicable State law and County ordinance provisions. In addition, the County shall assess all costs of collection, including attorney's fees and court costs, against the property owner.
- (c) Adjustments. The Fire Protection Utility Manager shall administer the procedures and standards for the adjustment of the fire protection fee charge.
- (1) If a customer believes their fire protection fee is incorrect, the customer may seek an adjustment of the fire protection fee charge allocated to a property at any time by submitting the request in writing to the Fire Protection Utility Manager and setting forth in detail the grounds upon which relief is sought. The customer's fire protection fee account must be paid and current prior to consideration of an adjustment request by the County.

- (2) Customers requesting the adjustment shall be required, at their own expense, to provide accurate information to the Fire Protection Utility Manager, including, but not limited to, inspection reports from a certified fire protection professional or building construction plans certified by a registered architect or a professional engineer. Submittal of this information may be required if the County staff cannot make a determination based on field inspection and/or review of existing County information. Failure to provide the required information within the time limits established by the Fire Protection Utility Manager, as may be reasonably extended, may result in denial of the customer's adjustment request.
- (3) Once a complete adjustment request and all required information are received by the Fire Protection Utility Manager, the Fire Protection Utility Manager shall within 30 calendar days render a written decision.
- (4) In considering an adjustment request, the Fire Protection Utility Manager shall consider whether the calculation of the fire protection fee charge for the property is correct.
- (5) The Fire Protection Utility Manager's decision shall be in writing and will be mailed to the address provided on the adjustment request, and service shall be complete upon mailing.
- (6) If the result of an adjustment is that a refund is due the applicant, the refund will be applied as a credit on the applicant's next fire protection fee charge bill.

Sec. 78-210. Appeals and Hearings

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

Sec. 78-211. 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. 78-212. 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.

Sec. 78-213- Sec. 78-220 (Reserved)

BE IT FURTHER ORDAINED that this Ordinance shall become effective as of the date of its approval by the governing body of the McDuffie County, Georgia.

SO ORDAINED, this the 1st day of September, 2021.

McDuffie County, Georgia

By: 

Chairman

Attest: 

County Clerk

