SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: A-1

DATE: August 14, 2008

SUBJECT: Ordinance No. 986-08 – First Reading to establish Stormwater Utility Rates

CONTACT PERSON: Deborah Knight, City Administrator
Connie Dunn, Public Works Director

ISSUE:

The issue before the City Council is to have First Reading of Ordinance No. 986-08 (Attachment A) to establish a stormwater utility rate structure levied upon all developed real property within the boundaries of the utility.

STAFF RECOMMENDATION:

Have First Reading of Ordinance No. 986-08 to establish a stormwater utility rate structure levied upon all developed real property within the boundaries of the utility.

SUMMARY:

The City Council discussed four rate structure alternatives (Attachment B) for the Stormwater Utility at its July 10, 2008 meeting. The City Council selected Alternative 1 and directed staff to prepare an adopting ordinance for Council action.

DISCUSSION:

Establishing the Utility

The proposed Ordinance establishes the Stormwater Utility (Utility) rate structure. The Utility is established by separate Ordinance (Ordinance No. 985-08) as described in Consent Agenda Item No. 6 in the Council's August 14, 2008 Agenda Packet.

There are a number of state statutes that pertain either directly or indirectly to the City's authority to form a surface water utility. One of the more broad based statutes pertains to municipal utilities in general and states that a code city may provide utility service within and outside its city limits and this includes the exercise of all powers to the extent authorized by law (RCW 35A.80.010).

Proposed Ordinance

The proposed ordinance establishes the stormwater utility fee (fee) in accordance with Ordinance No. 985-08. The fee for each developed property is based on:

1. Rate Policy
2. Equivalent Residential Units
3. Property Classification

Rate Policy

In accordance with the policy established by the Stormwater Utility, the stormwater utility fee shall be determined by the amount of impervious area contained on each parcel of real property as determined by the Public Works Department.

Equivalent Residential Units (ERU)

ERU's are used for the purpose of calculating the stormwater user's rate. An ERU represents the average square footage of impervious surface of a detached single-family residential property and is applied to commercial properties to calculate the commercial rate.

The ERU is established by reviewing a representative sample of recorded date, maps, surveys or field measurement to obtain the average impervious area for a single-family lot. Non-residential properties are converted into ERUs based on the amount of impervious area on the property.

“Impervious Area” means that hard surface area which prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development.

Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff.

For the City of Sultan, the calculated ERU is 4,519 square feet. Of the 14 jurisdictions examined in the phone survey for the study, Sultan's ERU was the second highest. This is largely due to the rural nature of residential properties and the number of barns and outbuildings.

The total number of ERUs in the City are:

Multifamily Residential 1-4 plexes	75
Commercial Properties	920
Residential Properties	1,246
Schools	398
Total	2,639

Property Classification

For purposes of determining the Stormwater Utility Fee, all properties in the City are classified into one of the following classes:

- Single-family detached residential property = 1 ERU
- Two-, three- and four-family residential property = 1.75 ERU
- Commercial and Other developed property including multi-family (5 or more units) = the numerical factor obtained by dividing the total impervious surface area (square feet) of the property by one ERU.

Stormwater Utility Fee

For all single-family residences and detached single-family condominiums, the monthly Stormwater Utility Fee shall be $5.75 per month.

For two-, three-, and four-family residential property, the monthly Stormwater Utility Fee shall be the fee established and approved for 1.75 ERUs ($5.90/month).

For all other development property including commercial, institutional, manufacturing, multi-family greater than four (4) residences, attached condominiums of greater than four (4) units and mobile home parks, the monthly Stormwater Utility Fee is determined by dividing the total square fee of impervious surface on the subject property by one ERU.

By way of illustration:

12,500 square fee of impervious surface / 4,519 square fee (1 ERU) = 2.77 ERU
2.77 ERU = $5.90/month in accordance with the fee schedule in the adopting ordinance.

STORMWATER MONTHLY RATE SCHEDULE PER TAX PARCEL	
RESIDENTIAL PARCELS	
Single Family	$5.75/MO
Low-Income Senior	$2.88/MO
Two-, three-, and four-family residential	$5.90/MO
COMMERCIAL, INSTITUTIONAL, MANUFACTURING, MULTI-FAMILY (GREATER THAN 4 UNITS) AND MOBILE HOME PARKS	
Base Rate by Equivalent Residential Unit (ERU) The calculated ERU is 4,519 square feet	
≤ 1 ERU	$5.75/MO
1.01-5.00 ERU	$5.90/MO
5.01-10.00 ERU	$6.00/MO
10.01-15.00 ERU	$6.10/MO
15.01 – 20.00 ERU	$6.20/MO
20.01 – 25.00 ERU	$6.30/MO
25.01 – 50.00 ERU	$6.40/MO
50.01-100.00 ERU	$6.50/MO
> 100.00 ERU	$6.60/MO

Exemptions

The Utility exempts three categories of properties:

1) **City street rights-of-way**, because the City Council has determined that the value of the in-kind service provided by the rights-of-way in collecting and transporting storm and surface water from adjacent properties is equal to or exceeds the Stormwater Utility Fee that would be charged by the Utility.

2) **State of Washington highway rights-of-way and Snohomish County road rights-of way** so long as the State of Washington and Snohomish County shall agree to maintain, construct and improve all drainage facilities contained within such rights-of-way as required by the Utility in conformance with all Utility standards for maintenance, construction and improvement hereafter established by the Utility and so far as such maintenance, construction and improvements shall be achieved at no cost to the Utility or to the City.

3) **Real property within the boundaries of the Utility that are in an entirely undeveloped state** and are deemed by the Public Works Director or his/her designee not to make use of the services of the Utility.

Credits

Section 14.04.080 “Credits Available Against Stormwater Fees” was deleted per Council direction from the Stormwater Utility Ordinance (985-08) between First and Second

Reading. The credit for low income seniors was moved to section 14.04.060(4) Initial Stormwater Utility Fee.

Billing & Collection of Utility Fees

1) The stormwater fee will be billed in conjunction with the property owner's or user's customary water and sanitary sewer bill issued by the City and for the purposes of billing only the city shall be deemed to have a consolidated sewer, water and stormwater utility and therefore the City may allocate receipts on billings first to stormwater and sewer to preserve its right to shut off water. For developed properties subject to the stormwater utility fee that do not otherwise receive a water or sanitary sewer bill from the City of Sultan, the stormwater utility fee may be billed at intervals set by the Public Works Director, but not less than annually.
2) Delinquent accounts shall be determined and administered in a manner consistent with that provided for water and sewer.
3) Billings may be made in the name of tenant or other occupants of the premises that are provided Stormwater Utility services at the mailing address of the property. Such billings shall not relieve the owner of the property from liability for the payment of the charges for furnishing of such stormwater services nor in any way affect the lien rights of the City against the premises to which said stormwater services are furnished. Failure to receive mail properly addressed to the mailing address provided above shall not be a valid defense for failure to pay the delinquent charges and penalties. Any change in the mailing address provided above must be properly filed in writing with the Office of the City Clerk before it will become effective.
4) In the event the City must bring legal action to collect stormwater utility fees and/or penalties, the City, in addition to such charges and penalties, shall recover its attorney's fees and other costs incurred in connection with such collection.

ALTERNATIVES:

1. Have First Reading of Ordinance No. 986-08 to establish a stormwater utility rate structure levied upon all developed real property within the boundaries of the utility.
2. Do not have First Reading of Ordinance No. 986-08 to establish a stormwater utility rate structure and direct staff to areas of concern.

RECOMMENDED ACTION:

Have First Reading of Ordinance No. 986-08 to establish a stormwater utility rate structure levied upon all developed real property within the boundaries of the utility.

ATTACHMENTS

Attachment A – Ordinance No. 986-08
Attachment B – Proposed Budget Alternatives
Attachment C – Public Participation

City of Sultan
Snohomish County, Washington

Ordinance 986-08
AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON ESTABLISHING A STORMWATER UTILITY RATE STRUCTURE LEVIED UPON ALL DEVELOPED REAL PROPERTY WITHIN THE BOUNDARIES OF THE UTILITY

Whereas, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the City, to implement stormwater management programs within prescribed time frames, and the Environmental Protection Agency, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., has published rules for stormwater outfall permits; and

Whereas, pursuant to RCW Ch. 35 A.11, Ch. 35.67 and Ch. 35.92, the City has the authority to establish a Stormwater Utility and set utility rates, and

Whereas, for purposes of convenience and efficiency, the City has combined its rates and charges for water, sewer, garbage and stormwater into one ordinance; and

Whereas, the City commissioned a Surface Water Quality Management Plan Report including analysis of existing conditions and recommendations for a Stormwater Utility and Stormwater Utility rate. A written report was developed by a qualified consultant. Said report is dated December 1, 2002 and is hereby incorporated by this reference; and

Whereas, the City Council finds that the extent of impervious area preventing infiltration or hastening the drainage of storm and surface water from a parcel of property, and carrying contaminants into the streams and receiving waters is a primary factor determining an individual property's contribution into the City stormwater system; and

Whereas, increases in impervious surfaces has increased flood events in recent years; and

Whereas, all property within the City will benefit from the Stormwater Utility, which will protect property from stormwater effects; and

Whereas, the City Council has determined that the value of the in-kind service provided by the rights-of-way in collecting and transporting storm and surface water from adjacent properties is equal to or exceeds the Stormwater Utility Fee that would be charged by the Utility; and

Whereas, the City desires to establish a Stormwater Utility to be responsible for the operation, construction and maintenance of stormwater facilities; for stormwater system planning, and for review of stormwater development plans for compliance with stormwater management codes; and

Whereas, the City Clerk did give notice of a public hearing as required by law; and

Whereas, on August 21, 2003 the City Council did conduct a public meeting for a Surface Water Quality Management Plan to include the establishment of a Stormwater Utility and Stormwater Utility rate; and

Whereas, the City adopted and incorporated the Surface Water Quality Management Plan into the Comprehensive Plan in February 2006 by Ordinance No. 913-06; and

Whereas, the City did create and involve a Citizen's Advisory Board to participate in the formation of the Stormwater Utility establishing Stormwater Utility rates; and

Whereas, the Citizen's Advisory Board met on February 10, 2007, March 6, 2007, April 17, 2007 and May 1, 2007; and

Whereas, the City noticed all residents in the Sultan zip code and held on Open House on March 13, 2007 to share information on the proposed utility and take public comment; and

Whereas, the Planning Board held a Public Hearing to take public comment on July 17, 2007;

Whereas, the City Council held a Public Hearing to take public comment on August 9, 2007;

Whereas, the City notified all commercial, industrial and retail property owners by mail in October 2007 regarding the proposed utility and rates; and

Whereas, the City Council held a second Public Hearing on January 24, 2008 to take public comment; and

Whereas, the Public Hearing was continued to February 28, 2008 to allow additional comment opportunities; and

Whereas, the City Council formed a Stormwater Stakeholders Group comprised of city residents, business owners, planning board and council representatives to review the proposed utility and rates and make recommendations to the City Council; and

Whereas, the Stormwater Stakeholders met on March 10, 2008, March 24, 2008, April 7, 2008, and April 21, 2008; and

Whereas, the Stormwater Stakeholders made a recommendation to the City Council to adopt a stormwater utility rate structure to support maintenance and operations and capital improvements to the City's stormwater facilities;

Now therefore, the City Council of the City of Sultan, Washington do ordain as follows:

Section 1. Definitions. The following words when used herein shall have the following meanings, unless the context clearly indicates otherwise:

1) "City" means the City of Sultan, Washington or another city with whom Sultan has an interlocal agreement for stormwater rate collection.

2) "Developed" means the state, status, or condition of the subject property at the time the proposed project has been completed or development permits have expired, which may include existing buildings, impervious areas, and topography as is affected.

3) "Equivalent Residential Unit (ERU)" shall mean the measure of impervious square feet to be used by the Utility in assessing stormwater utility fees against each parcel of property. The calculated ERU is 4,519 square feet.

   ERU's are used for the purpose of calculating the stormwater user's rate. An ERU represents the average square footage of impervious surface of a detached single-family residential property and is applied to commercial properties to calculate the commercial rate.
   The ERU is established by reviewing a representative sample of recorded date, maps, surveys or field measurement to obtain the average impervious area for a single-family lot. Non-residential properties are converted into ERUs based on the amount of impervious area on the property.

4) "Impervious Area" means that hard surface area which prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff.

5) "Stormwater Utility Fee" means the monthly fee levied by the Utility upon all developed real property within the boundary of the Utility as authorized herein.

6) "Undeveloped Property" means the state, status, or condition of the subject property prior to any development of the property, which may include trees, pastures, or native features.

7) "Utility" means the Sultan Stormwater Utility, created by Ordinance No. 985-08 a utility which operates and maintains the storm or surface water drains, channels and facilities, outfalls for storm drainage and the rights and interests in property relating to the system the boundaries of which shall be the city limits of the City of Sultan and future additions thereto.

Section 2. Rate Policy. In accordance with the policy established by the Utility, the stormwater utility fee shall be determined by the amount of impervious area contained on each parcel of real property as determined by the Public Works Department.

Section 3. Stormwater Utility Fee. In accordance with the rate structure established herein, there is hereby levied upon all developed real property within the boundaries of the Utility the following Stormwater Utility Fee:

1) For all single-family residences and detached single-family condominiums, the monthly Stormwater Utility Fee shall be $5.75 per month.

2) For two-, three- and four-family residential property, the monthly stormwater utility fee shall be the fee established and approved for 1.75 ERUs.

3) For all other developed property including commercial, institutional, manufacturing, multi-family greater than four (4) residences, attached condominiums of greater than four (4) units and mobile home parks within the boundaries of the Utility, except as exempt under Section 4 below, the monthly Stormwater Utility Fee is determined by dividing the total square fee of impervious surface on the subject property by one ERU.

   By way of illustration:

   12,500 square feet of impervious surface / 4,519 square fee (1 ERU) = 2.77 ERU

   2.77 ERU = $5.90/month

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25.01 – 50.00 ERU	$6.40/MO
50.01-100.00 ERU	$6.50/MO
> 100.00 ERU	$6.60/MO

Section 4. Property Exempt From the Stormwater Utility Fee. The following special categories of property are exempt from the Stormwater Utility Fee:

4) City street rights-of-way.
5) State of Washington highway rights-of-way and Snohomish County road rights-of way so long as the State of Washington and Snohomish County shall agree to maintain, construct and improve all drainage facilities contained within such rights-of-way as required by the Utility in conformance with all Utility standards for maintenance, construction and improvement hereafter established by the Utility and so far as such maintenance, construction and improvements shall be achieved at no cost to the Utility or to the City.
6) Real property within the boundaries of the Utility that are in an entirely undeveloped state and are deemed by the Public Works Director or his/her designee not to make use of the services of the Utility.

Section 5 Severability: This ordinance is severable and if any portion of it shall be declared invalid or unconstitutional, the remaining portion shall remain valid and enforceable.

Section 6 Effective Date. This ordinance shall become effective: September 1, 2008.

PASSED by the City Council and APPROVED by the Mayor this _____ day of August 2008.

CITY OF SULTAN

By_____
Carolyn Eslick, Mayor

ATTEST:

By_____
LAURA KOENIG, City Clerk

Approved as to form:

By_____
Kathy Hardy, City Attorney

Attachment B

	Alternative 1 (Attachment A)	**Alternative 2 (Attachment B)**	**Alternative 3 (Attachment C)**	**Alternative 4 (Attachment D)**
Base Rate	$5.75-6.60 ERU sliding scale No annual adjustment Reassess in 2012	$5.75-$6.60 in Yr. 1 $10.50-$11.50 in Yr. 5 ERU sliding scale **ANNUAL ADJUST** Reassess in 2012	$12.35 - $13.23 ERU sliding scale No annual adjust. Reassess in 2012	$12.35/ ERU **BASED ON ERU** no annual adjust. Reassess in 2012
Employees	.3 FTE $24,000	.3 FTE-1 FTE $24K-100K	1 FTE $100,000	3 FTE $209K-$248K
Credits	No	Yes	Yes	Yes
Cost share with Street Budget	Yes	No	No	No
Maintenance / Operations	$80,000 1/3 catch basins No HOA ponds Monthly street sweep	$80K-$122K 1/3 catch basins HOA ponds yr. 5 Mo. street sweep	$121,800 All catch basins HOA ponds Mo. street sweep	$320-$340 All catch basins HOA ponds Mo. street sweep Inspections
Capital Equipment	None. Services through vendors	Capital equip. Share w/other budget	$45,000. Share w/other budget	$62K yr 1 (start-up costs) $21K yr 2-yr. 5
Capital Improvements	$20,000	$20,000-$50000 over 5 years	$50,000	$50,000
Annual Budget	$100,000	$100k-$182k	$214,201	$530K-$445k
Pros and Cons	Pros • Low fees ($69/yr residential - $79/yr commercial) • Establishes utility • Begins maint. program Cons • Fund not fully supported • Deferred maint. continued	Pros • Fees start low and gradually increase • Establishes utility • Begins maint. program Cons • Fund not fully supported • Deferred maint continued in first 4 years	Pros • Fees support utility • Improved maint. program • Fix flooding/drainage Cons Higher fees ($148.20/yr residential - $159/yr commercial.	Pros • Fees support utility • Full maintenance program Cons • Highest fees ($148.20/yr residential - $6000/yr commercial.

Attachment C

PUBLIC PARTICIPATION

The City has endeavored to keep the community informed and involved in the discussion to establish a stormwater utility.

The City established a Small Work Group comprised of a city resident, business owner, and Planning Board member to review alternatives and make a recommendation to the Planning Board.

- The Small Work Group met on February 20, March 6, April 17, and May 1.
- The City held an open house on March 13, 2007. The Open House included information on the proposed Stormwater Utility. Notice of the Open House was mailed to all residents and businesses within the Sultan zip code, including residents outside the City limits.
- On March 20, 2007 the Planning Board received an update from the Small Work Group – the Board reviewed the need to form a stormwater utility and the survey of stormwater utilities across the state.
- On April 12, 2007 the City Council received an update from the Small Work Group – the Council reviewed the need to form a stormwater utility and the survey of stormwater utilities across the state, and key policy questions.
- A second Open House was held on May 15, 2007
- On May 1, 2007 the Planning Board reviewed the calculations for the ERU, draft Stormwater Utility Report, and budget, and directed staff to areas of concern.
- On May 17, the City Council subcommittee received a similar update.
- Notice of the proposed formation of the Stormwater Utility was included in the June and July utility billing statements.
- On May 24, the full Council reviewed the calculations for the ERU, draft Stormwater Utility Report, and budget.
- On June 26, the Planning Board discussed credits for private facilities, public schools, non-profit organizations, and senior citizens and low-income residents. The Board also reviewed the draft ordinance and credit manual, and directed staff to set the Public Hearing for July 17, 2007.
- July 23, meeting with the Sultan School Board to discuss the proposed utility, calculation of equivalent residential units, and grass as a pervious/impervious surface.
- August 9, 2007 Public Hearing
- On November 30, 2007, the City issued a SEPA determination of non-significance on the proposed stormwater utility. The SEPA comment period closed December 14, 2007.

- City staff notified commercial property owners by letter on December 5, 2007 about the proposed utility.
- November and December 2007 – Equivalent Residential Units calculated for each commercial, industrial and retail property
- January 24, 2008 Public Hearing.
- February 28, 2008 continued Public Hearing.
- March 10, 2008 Stormwater Stakeholder's Group Formed. Meetings on March 10, 2008, March 17, 2008, April 7, 2008 and April 21, 2008.
- May 29, 2008 presentation by Stormwater Stakeholder's Group.
- May 29, 2008 Council holds a public hearing on June 12, 2008
- July 10, 2008 Council has First Reading Ordinance No. 985-08 to establish Stormwater Utility.
- July 10, 2008 Council directs staff to prepare Ordinance to establish utility rates

The schedule to review and adopt a Stormwater Utility is as follows:

- City Council action to adopt ordinance and establish fee schedule – July 2008
- Public outreach and implementation – August and September
- Implementation - October 1, 2008