SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: C-6

DATE: August 14, 2008

SUBJECT: Second Reading Ordinance No. 985-08 Establishing a Stormwater Utility

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to have Second Reading of Ordinance No. 985-08 (Attachment A) to establish a stormwater utility.

Ordinance No. 986-08 (Action Item #1) is a separate Ordinance to establish the stormwater utility fee.

STAFF RECOMMENDATION:

Have Second Reading of Ordinance No. 985-08 to establish a stormwater utility.

SUMMARY:

Proposed Ordinance

The proposed ordinance creates a new chapter (Chapter 14.04) in the Sultan Municipal Code for the Stormwater Utility. The new chapter establishes the utility, rate policy, affected properties, initial utility fee rates (i.e. equivalent ERU), exemptions, billings, adjustments and appeals. The utility fee is established by Ordinance No. 986-08.

Changes to the Ordinance

At the Council meeting on July 10, 2008, the City Council approved establishing the stormwater base fee at $5.75 per equivalent residential unit. This level of service at this base rate does not include the credit program or maintenance of retention/detention ponds not currently owned by the City of Sultan.

Ordinance No. 985-08 is amended to remove Section 14.04.080 - Credits available against Stormwater Fees.

Establishing the Utility

A surface water utility is essentially a special assessment district set up to generate funding specifically for surface water management. Users within the district pay a surface water fee, and the revenue generated directly supports maintenance and upgrade of existing storm drain systems; development of drainage plans, flood control measures, and water-quality programs; administrative costs; and sometimes construction of major capital improvements. Unlike a surface water program that draws on the general tax fund or uses property taxes for revenue, the people who benefit are the only ones who pay.

Surface water management within the City is governed by federal, state, regional, county and city laws including the Clean Water Act, Endangered Species Act, the Growth Management Act, Shoreline Management Act, State Environmental Policy Act, Stormwater Management Performance Standards, and Puget Sound Water Quality Action Plan (Attachment B).

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).

Rates and Policies

The stormwater utility is made up of three components:

1. Calculation of Equivalent Residential Units (ERU)
2. Annual budget needed to accomplish stormwater functions within the City (e.g. maintenance, operations, capital improvements, public outreach, etc.)
3. Stormwater fee charged to for each ERU

Equivalent Residential Units

The Equivalent Residential Unit is the most prevalent method for calculating a stormwater rate. 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.

Each single family residential customer = 1 ERU
Each non-residential customer = n ERUs

When n = the property's impervious area divided by the average single-family parcel impervious area (x square feet)

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

The Stormwater Utility Rate Study (available at City Hall upon Request) includes a section Appendix B to the Study titled "Equivalent Residential Unit – City of Sultan Stormwater Utility". This section provides the detail on how the ERU was calculated for the City. Appendix C to the Study details the impervious surface calculation for each commercial property.

Real Property in an Undeveloped Condition

Stormwater utility fees are based on impervious surface which is the nexus between stormwater runoff and impact to the stormwater system. No stormwater fee will be imposed on parcels of real property that are in an entirely undeveloped state and are determined by the Public Works Director to not make use of the services of the Utility.

Rate Policy.

The stormwater fee is based on the relative contribution of increased surface and stormwater runoff from a given parcel to the stormwater system.

The percentage of impervious surfaces on the parcel and the total parcel acreage is used to indicate the relative contribution of increased surface and stormwater runoff from the parcel to the stormwater system.

The relative contribution of increased stormwater runoff from each parcel will determine that parcel’s share of the Stormwater Utility Fee revenue needs.

The Stormwater Utility Fee revenue needs of the Utility are based upon all or any part, as determined by the Council, of the cost of stormwater services or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

Property Classification for Stormwater Utility Fee.

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

1. Single-family detached residential property;
2. Two-, three- and four-family residential property; or
3. Commercial and Other developed property including multi-family (5 or more units).

Single-family residential fee: The City Council finds that the intensity of development of most parcels of real property in the City classified as single-family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as building, structures, and other impervious areas) on each such parcel. Therefore, all single-family residential properties in the City shall be charged a flat stormwater management fee equal to 1 ERU regardless of the size of the parcel or the improvements.

Two-, three- and four-family residential fee: The City Council finds that the intensity of development of most two-, three- and four-family residential properties is approximately 1.75 times that of the average single-family residential properties. Therefore, all two-, three- and four-family residential properties will be 1.75 ERUs.

Commercial and Other developed property fee: The fee for commercial and all other developed property in the City shall be based on the numerical factor obtained by dividing the total impervious surface area (square feet) of the property by one (1) ERU. The minimum stormwater utility fees for other developed property shall be equal to one (1) ERU.

Properties Exempt from Fees

The following special categories of property are exempt from the Stormwater Utility Fee:

1) City street rights-of-way.
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 Available Against Stormwater Utility Fees

The proposed ordinance eliminates Section 14.04.080 Credits available against Stormwater Fees originally developed by the Small Work Group in 2007.

Billing

The charges will be billed in conjunction with the property owner's or user's customary water and sanitary sewer bill issued by the City. 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 service charge that do not otherwise receive a water or sanitary sewer bill from the City of Sultan, the stormwater service charge may be billed at intervals set by the Public Works Director, but not less than annually.

Delinquent accounts shall be determined and administered in a manner consistent with that provided for water and sewer.

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.

The owner of the property will have liability payment of the charges

In the event the City must bring legal action to collect stormwater service charges and/or penalties, the City, in addition to such charges and penalties, will recover its attorney's fees and other costs incurred in connection with such collection.

Low income senior citizens may apply for a 50% discount to their stormwater utility fee. "Low income senior citizen" means persons 62 years of age or older, on or before January 31st of the year of the filing for the discount. Low income is based on 125 percent of the federal poverty guidelines.

Appeals

The appeal for on-site surface water control facilities (see [d] below) is deleted to be consistent with the Council's direction on eliminating the credit for properties with on-site stormwater facilities.

1) Any person billed a stormwater fee may file an "Adjustment Request" with the Public Works Director within sixty (60) days of the date of the billing statement. The Public Works Director will review the request and make a preliminary determination after a review of Utility records or a site visit. The Public Works Director may grant a rate adjustment only upon a finding that one or more of the following conditions exist:

    a. The parcel charged is not within the Sultan city limits.

    b. The impervious surface area of the parcel would change the number of Equivalent Residential Units used in determining the stormwater fee.

c. The parcel is in an undeveloped condition and not paved, graveled or covered with any impervious surface.

d. ~~The parcel is not single-family and contains a constructed or natural on-site surface water control facility that is determined by the stormwater engineer or inspector to be maintained at optimum operating condition and improves water quality at the outlet to meet State standards for stormwater discharge.~~

e. The rate charged was otherwise not calculated in accordance with the terms of this chapter.

2) If the property owner does not agree with the preliminary determination, the property owner may submit further evidence supporting the calculation prepared by a licensed surveyor, engineer or professional. This may include an approved drainage plan, a detailed site plan or other information required by the Public Works Director.

3) The property owner will have the burden of proving by a preponderance of the evidence that the desired Adjustment Request meets the requirements of this section.

4) When granted, an Adjustment Request will only apply to the Service Charge bills subsequently issued. If an Adjustment Request is granted which reduces the rate charge for the current year, the applicant shall be refunded the amount overpaid in the current calendar year only. If the Public Works Director finds that a rate charge bill has been undercharged, then at the Director's discretion, either an amended bill shall be issued which reflects the increase in the service charge, or the undercharged amount shall be added to the next bill. Any amended bill shall be due and payable under the provisions set forth in this chapter.

5) Decisions of the Public Works Director on Adjustment Requests shall be final unless appealed to the Snohomish County Superior Court within thirty (30) days of the final decision on the Adjustment Request.

PUBLIC OUTREACH:

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 17,2007 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, 2007 the full Council reviewed the calculations for the ERU, draft Stormwater Utility Report, and budget.
- On June 26, 2007 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, 2007 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 sets the public hearing for June 3, 2008.
- The City Council holds a public hearing.
- July 10, 2008 Council has First Reading of Ordinance No. 985-08

The schedule to implement the Stormwater Utility is as follows:

- City Council action to establish utility and base rate – August 2008
- Public outreach and implementation –September/October 2008.
- Implementation - December 1, 2008

FISCAL IMPACT:

Cost to Adopt a Surface Water Utility

The proposed public education/awareness program consists of press releases, community workshop(s), flyers, discussions with interested citizen groups, and public hearings. The estimate for education/awareness is approximately $100.

The cost of establishing a billing system is estimated at $2,500 to adapt the City's existing billing system.

The stormwater utility will be established as an enterprise fund and will reduce expenditures in the General Fund as a result of moving stormwater maintenance functions such as street sweeping, vactoring and staff time to maintain the stormwater system from the General Fund.

RECOMMENDED ACTION:

Have Second Reading of Ordinance No. 985-08 to establish a stormwater utility.

ATTACHMENTS

Attachment A – Ordinance No. 985-08
Attachment B – Stormwater Utility Applicable Law

Attachment A

City of Sultan
Snohomish County, Washington

Ordinance 985-08
An ordinance of the City of Sultan, Washington enacting a new Title 14 and establishing a Stormwater Utility for the City

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, the City currently combines its Sewer and Stormwater Utility rates into a single utility rate; and

Whereas, in 2001 the City received a loan for $140,000 from the Washington State Revolving Fund to develop a Surface Water Quality Management Plan; 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 have 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, 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 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; 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, on March 20, 2007 the City did update the Planning Board on the progress of the Stormwater Utility development and associated research activities and public involvement; and

Whereas, on May 10, 2007 the City did update the Planning Board; 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 fees; 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 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 support the City's efforts to establish the Stormwater Utility

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

Section 1. The City of Sultan finds, determines and declares that the stormwater system, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City limits. Such benefits include, but are not limited to:

1. the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater;
2. the reduction of hazards to property and life resulting from stormwater runoff;
3. improvements in general health and welfare through reduction of undesirable stormwater conditions; and
4. improvements to the water quality in the stormwater and surface water system and its receiving waters.

Section 2. A new Title 14 Sultan Municipal Code, entitled "Stormwater" is hereby enacted to read as follows:

TITLE 14 – STORMWATER

Chapter 14.04
STORMWATER UTILITY

Sections:

14.04.010 Establishment of Utility
14.04.020 Definitions
14.04.030 Rate Policy and establishment
14.04.040 Property Classification for Stormwater Utility fee
14.04.050 Real Property in an Undeveloped Condition
14.04.060 Initial Stormwater Fee
14.04.070 Property Exempt from Stormwater Fees
~~14.04.080 Credits available against Stormwater Fees~~
14.04.080~~090~~ Billing
14.04.090~~100~~ Rate/Charge Adjustment and Appeals

14.04.010 Establishment of Utility. For those purposes of the Federal Clean Water Act and pursuant to authority set forth in RCW Chapters 35A.11, 35.67, and 35.92, there is created a Stormwater Utility ("Utility"), which shall consist of a separate fund account and such staff necessary to implement and manage the Utility as the City Council shall authorize.

The City shall exercise throughout the Utility all lawful powers necessary and appropriate to implement the policies of the City pertaining to the collection, treatment, storage, and disposal of stormwater within the incorporated City limits.

Nothing in this chapter will be construed as a duty owed by the City to any particular property owner.
~~It is not the purpose of this Chapter to create a duty to individual persons or property.~~

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

1) "Adjustment Request" means a request by a rate payer for review and adjustment of the rate or fee levied upon the property.
2) "Base Rate" means the gross charge per ERU needed to satisfy all of the projected costs associated with the stormwater utility for an established period of time.
3) "City" means the City of Sultan, Washington or another city with whom Sultan has an interlocal agreement for stormwater rate collection.
4) "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.
5) "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.
6) "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.

   An area may be impervious whether or not the same is occupied or inhabited.

   For the purposes of this definition, open retention/detention facilities and wetlands, appropriately drained grass playfields and grass sports fields as defined by the Public Works Director or designee shall not be considered as impervious surfaces.
7) "Non-Profit Organization" as defined by RCW 24.03.490 and RCW 35.92.020(g) or as may be amended.

8) "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.

9) "System" shall mean the entire system of storm drainage facilities owned by the Utility or within the public rights of way for the movement and control of storm and surface waters, including both naturally occurring and manmade facilities.

10) "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.

11) "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.

14.04.030 Rate Policy. It shall be the policy of the City that the rate structure be based upon the Equivalent Residential Unit (ERU), which will be adopted by separate ordinance by the City.

1). The Base Rate shall be based on the relative contribution of increased surface and stormwater runoff from a given parcel to the stormwater system. The percentage of impervious surfaces on the parcel and the total parcel acreage will be used to indicate the relative contribution of increased surface and stormwater runoff from the parcel to the stormwater system. The relative contribution of increased stormwater runoff from each parcel will determine that parcel's share of the Stormwater Utility Fee revenue needs. The Stormwater Utility Fee revenue needs of the Utility are based upon all or any part, as determined by the Council, of the cost of stormwater services or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

2). The Public Works Department shall determine the stormwater utility fee for each parcel within the Utility based on percentage of impervious surface. Aerial photographic mapping, ortho-rectified aerial photographs (orthophotos), as-built drawings, and parcel boundaries obtained from the Snohomish County Assessor (or other appropriate data) will be used to determine each parcel's percentage of impervious surface coverage.

14.04.040 Property Classification for Stormwater Utility Fee.

1) 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;

Two-, three- and four-family residential property; or

Commercial and Other developed property including multi-family (5~~-99~~ or more units).

2) Single-family residential fee: The City Council finds that the intensity of development of most parcels of real property in the City classified as single-family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as building, structures, and other impervious areas) on each such parcel. Therefore, all single-family residential properties in the City shall be charged a flat stormwater management fee equal to 1 ERU regardless of the size of the parcel or the improvements.

3) Two-, three- and four-family residential fee: The City Council finds that the intensity of development of most two-, three- and four-family residential properties is approximately 1.75 times that of the average single-family residential properties. Therefore, all two-, three- and four-family residential properties will be 1.75 ERUs.

4) Commercial and Other developed property fee: The fee for commercial and all other developed property in the City shall be based on the numerical factor obtained by dividing the total impervious surface area (square feet) of the property by one (1) ERU. The minimum stormwater utility fees for other developed property shall be equal to one (1) ERU.

14.04.050 Real Property in an Undeveloped Condition. In accordance with the policy established in Section 14.04.030, the stormwater utility fee shall be determined by the amount of impervious area contained on each parcel of real property. Therefore, no stormwater utility fee shall be imposed upon those parcels of real property within the boundaries of the Utility that are in an entirely undeveloped state and are determined by the Public Works Director or his/her designee to not make use of the services of the Utility.

14.04.060. Initial 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 the fee established and approved by separate ordinance for one Equivalent Residential Unit (ERU).

2) For two-, three- and four-family residential property, the monthly Stormwater Utility Fee shall be the fee established and approved by separate ordinance 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 specified under Section 14.04.070, the monthly Stormwater Utility Fee is determined by separate ordinance based on the number of ERUs calculated by dividing the total square feet of impervious surface on the subject property by one (1) ERU.

4) Low income senior citizens may apply for a 50% discount to their stormwater utility fee. "Low income senior citizen" means persons 62 years of age or older, on or before January 31st of the year of the filing for the discount. Low income is based on 125 percent of the federal poverty guidelines.

14.04.070. 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.

~~**14.04.080**. Credits Available against Stormwater Utility Fees.~~

~~1)The Utility may grant a credit of twenty-five (25) percent for private, on-site control facilities that benefit the overall stormwater system.~~

~~To be eligible for the credit, the property owner or homeowners association (for common area) must demonstrate that the on-site control system exists, was installed per the City and Department of Ecology's standards at the time of development, and the system has been maintained by the property owner or homeowner's association in accordance with City and Department of Ecology standards at the time of development.~~

~~A Technical Information Report prepared by a licensed professional engineer shall be provided to document the engineering design of the facility. Infiltration facilities that serve portions of a site, such as rooftops only, may receive a pro rata discount based on the drainage area being infiltrated.~~
~~The eligibility of the credit shall be reviewed and the facility inspected by the City on an annual basis to ensure proper maintenance of said private facilities. The Public Works Director shall determine the forms, requirements and process for determining eligibility. If a homeowners association is granted the discount it will be applied to all residential properties listed by the homeowners association as participating properties.~~

~~2)The Utility may grant a credit of seventy (70) percent for condition and performance that is compliant with the most recent City and Department of Ecology Best Management Practices (BMP) standards for on-site control facilities that have the capacity to fully contain and infiltrate on the parcel the runoff from the 100-year, 7-day storm event. The facility must be properly maintained to achieve performance standards by the property owner or homeowner's association. The eligibility of the credit shall be reviewed and the facility inspected on an annual basis to ensure proper maintenance of said private facilities. The Public Works Director shall determine the forms, requirements and process for determining eligibility.~~

~~3)The Utility may grant public schools twenty-five (25) percent additional credit upon receipt of an acceptable curriculum showing how the school district provides education~~

~~regarding stormwater issues. Each site owned and operated by the school district in support of education shall be eligible for this credit in addition to any site-specific credits also available for individual sites. The Public Works Director shall determine the forms, requirements and process for determining eligibility.~~

~~4)Low income senior citizens may apply for a 50% discount to their stormwater utility fee. "Low income senior citizen" means persons 62 years of age or older, on or before January 31st of the year of the filing for the discount. Low income is based on 125 percent of the federal poverty guidelines.~~

~~5)Credits shall not be added together. The maximum total credit is 70%.~~

14.04.080~~090~~. Billing.

1) The charges imposed by this chapter shall 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.

14.04.090~~100~~. Rate/Charge Adjustment and Appeals:

6) Any person billed a stormwater fee under this chapter may file an "Adjustment Request" with the Public Works Director within sixty (60) days of the date of the billing statement. Submittal of an Adjustment Request shall be made on forms provided by the Director and shall not extend the period of payment for the stormwater fee.

7) Upon timely receipt of an Adjustment Request, the Public Works Director or his/her designee will review the request and make a preliminary determination after a review of Utility records or a site visit.

8) The Public Works Director may grant a rate adjustment only in accordance with this chapter and only upon a finding that one or more of the following conditions exist:

   a. The parcel charged is not within the Sultan city limits.

   b. The impervious surface area of the parcel would change the number of Equivalent Residential Units used in determining the stormwater fee.

   c. The parcel is in an undeveloped condition and not paved, graveled or covered with any impervious surface.

   d. ~~The parcel is not single-family and contains a constructed or natural on-site surface water control facility that is determined by the stormwater engineer or inspector to be maintained at optimum operating condition and improves water quality at the outlet to meet State standards for stormwater discharge.~~

   e. The rate charged was otherwise not calculated in accordance with the terms of this chapter.

9) If the property owner does not agree with the preliminary determination, the property owner may submit further evidence supporting the calculation prepared by a licensed surveyor, engineer or professional. This may include an approved drainage plan, a detailed site plan or other information required by the Public Works Director.

10) The property owner shall have the burden of proving by a preponderance of the evidence that the desired Adjustment Request meets the requirements of this section.

11) When granted, an Adjustment Request shall only apply to the Stormwater utility fee bills subsequently issued. If an Adjustment Request is granted which reduces the rate charge for the current year, the applicant shall be refunded the amount overpaid in the current calendar year only. If the Public Works Director finds that a rate charge bill has been undercharged, then at the Director's discretion, either an amended bill shall be issued which reflects the increase in the stormwater utility fee, or the undercharged amount shall be added to the next bill. Any amended bill shall be due and payable under the provisions set forth in this chapter.

12) Decisions on Adjustment Requests shall be made by the Public Works Director based on information submitted by the applicant in the Adjustment Request, the utility's records and a site visit. Decisions shall be made within thirty (30) days of the date of the Adjustment Request, except when additional information is requested or needed by the Public Works Director. The applicant shall be notified in writing of the Public Works Director's decision.

13) Decisions of the Public Works Director on Adjustment Requests shall be final unless appealed to the Snohomish County Superior Court within thirty (30) days of the final decision on the Adjustment Request.

Section 3. Effective Date. This ordinance shall become effective from and after its passage and the expiration of five (5) days after publication as provided by law, except the provisions of Section 2 relating to Initial Stormwater Utility Fee Rates, SMC 14.04.060 shall be effective on July 1, 2008.

Section 14. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

ADOPTED by the City Council and APPROVED by the Mayor this ___day of _____, 2007.

CITY OF SULTAN

By: _____
Carolyn Eslick, Mayor

ATTEST:

By: _____
Laura Koenig, City Clerk

APPROVED AS TO FORM:

By _____
Kathy Hardy, City Attorney

Date of Publication: __ day of _____, 2008

Effective Date: __ day of _____, 2008

Attachment B

Storm Water Utility Applicable Law

- The Growth Management Act requires, as part of the mandatory land use element, that city and county comprehensive plans, "where applicable," must "review drainage, flooding and storm water runoff in the area … and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound." RCW 36.70A.070(1).

- RCW 36.70A.070(1) describes the mandatory land use element in city and county comprehensive plans. The statute provides:

  … Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

- Ordinance 913-06, enacted February 25, 2006, adopted the City of Sultan's 2002 Surface Water Quality Management Plan (Stormwater Plan).

  The Stormwater Plan was developed by consultants, reviewed with public hearings, and submitted to the Department of Ecology (DOE) for approval in 2002. DOE approved the Stormwater Plan on August 18, 2003.

  Both DOE and the City's consultants recommended that the City create a stormwater utility to ensure a stable source of funding for ongoing maintenance and improvements. Consequently, creation of a stormwater utility has been on the City's work plan for several years, and, according to information provided by the City at the Hearing on the Merits, is anticipated to be adopted in the near future.

- The Stormwater Utility has not yet been established. The Board notes the City's progress toward creating the Utility and is not persuaded that the City's action in adopting the Stormwater Plan before creation of the Utility was clearly erroneous.

- The Growth Management Hearings Board plainly has jurisdiction with respect to mandatory elements of a city's land use plan. The Board notes that the Stormwater Plan itself describes the GMA requirement to incorporate the stormwater program into the City's comprehensive plan and development regulations.

- DOE, having reviewed and approved Sultan's Stormwater Plan in 2002-2003, recommended that the City create a Stormwater Utility to ensure a stable source of funding for surface water management. The City's consultants made the same recommendation.