

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: D-3

DATE: October 9, 2008

SUBJECT: Amending Ordinance No. 985-08 establishing a Stormwater Utility

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to consider postponing amendments to the Stormwater Utility until the fee structure generates sufficient revenues to provide for staff and equipment resources to manage privately owned stormwater facilities.

STAFF RECOMMENDATION:

1. Postpone amending Ordinance 985-08 to incorporate a city responsibility to maintain private stormwater facilities until such time as the utility generates sufficient revenues to support this level of service.
2. Direct staff to assist homeowners associations with developing plans to maintain their stormwater retention and detention facilities in accordance with state and local requirements.
3. Direct staff to monitor stormwater revenues and meet with the business and homeowners association representatives in 2009 to reevaluate the stormwater utility.

SUMMARY:

The City Council adopted Ordinance 985-08 without the Credit Section. The credit section was removed as a result direction from Council to adopt a "flat-fee" alternative which was not adjusted annually for inflation. The concern was the City would be offering credits and thereby not collecting sufficient revenues to meet the proposed levels-of-service.

Staff recommended reevaluating the credit section when there were sufficient revenues available to maintain private stormwater facilities.

During the legislative process to adopt the stormwater utility fees (Ordinance No. 986-08), the City Council amended its previous direction and adopted a fee which included a small annual increase through the year 2012.

The staff had originally proposed a five step increase, but the utility fees will not be effective until 2009, so only a four step increase was adopted. The year 2012 is significant because the National Pollution Discharge Elimination System Permits will be reevaluated and the City of Sultan may need to comply with the permit requirements.

After reviewing the stormwater utility and the fees generated by the utility through 2012, it does not appear the utility will general revenues need to maintain private stormwater systems during the 4 year period in which the fees will be in affect.

City staff are concerned amending the utility will obligate the City to provide a level of service that is not supported by the utility fees. At the same time, City staff are sensitive to the fact that private retention/detention ponds need maintenance. Several homeowners associations supported adoption of the higher fee based on the understanding the City would sometime in the future take responsibility for maintenance of these facilities.

Staff is seeking direction from the City Council on how to weigh the need to support the homeowners associations while ensuring adequate funding to meeting the basic needs of the City's stormwater systems.

ALTERNATIVES:

1. Do not accept the staff recommendation and provide direction to staff on how to proceed. This alternative indicates the City Council is interested in amending the stormwater utility to address concerns raised by the homeowner associations regarding their retention/detention facilities.
2. Accept the staff recommendation to postpone amending the utility and direct staff to assist homeowners associations with plans maintaining their systems in accordance with state and local requirements.

FISCAL IMPACT:

Since the City will not be obligating itself to maintain privately owned retention and detention systems there is no fiscal impact anticipated.

RECOMMENDED ACTION:

1. Postpone amending Ordinance 985-08 to incorporate a city responsibility to maintain private stormwater facilities until such time as the utility generates sufficient revenues to support this level of service.
2. Direct staff to assist homeowners associations with developing plans to maintain their stormwater retention and detention facilities in accordance with state and local requirements.

3. Direct staff to monitor stormwater revenues and meet with the business and homeowners association representatives in 2009 to reevaluate the stormwater utility.

ATTACHMENT

A - Ordinance 985-08

B – Ordinance 986-08

**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 an 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.~~080090~~ Billing
- 14.04.~~090100~~ 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.

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 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 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:

- 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.

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%.~~

14.04.080090. 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.

14.04.090100. Rate/Charge Adjustment and Appeals:

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.
 - 5) 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.
 - 6) 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.
 - 7) 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.
 - 8) 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

**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 an 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;

Whereas, the City Council held a public hearing on June 12, 2008 to take comment on establishing a stormwater utility and rate structure.

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:

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

13) “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.

14) “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 data, 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.

15) “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.

16) “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.

17) “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.

18) “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:

5) For all single-family residences and detached single-family condominiums, the monthly Stormwater Utility Fee shall be the fee established and approved for 1.00 ERU.

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

7) 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 (1) 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

STORMWATER MONTHLY RATE SCHEDULE PER TAX PARCEL				
	2009	2010	2011	2012
RESIDENTIAL PARCELS				
Single Family	\$5.75/MO	\$6.75/MO	\$8.00	\$9.25
Low-Income Senior (50% SFR rate)	\$2.88/MO	\$3.38/MO	\$4.00/MO	\$4.63/MO
Two-, three-, and four-family residential	\$5.90/MO	\$6.85/MO	\$8.10/MO	\$9.35/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	\$6.75/MO	\$8.00/MO	\$9.25/MO
1.01-5.00 ERU	\$5.90/MO	\$6.85/MO	\$8.10/MO	\$9.35/MO
5.01-10.00 ERU	\$6.00/MO	\$6.95/MO	\$8.20/MO	\$9.45/MO
10.01-15.00 ERU	\$6.10/MO	\$7.05/MO	\$8.30/MO	\$9.55/MO
15.01 – 20.00 ERU	\$6.20/MO	\$7.15/MO	\$8.40/MO	\$9.65/MO
20.01 – 25.00 ERU	\$6.30/MO	\$7.25/MO	\$8.50/MO	\$9.75/MO
25.01 – 50.00 ERU	\$6.40/MO	\$7.35/MO	\$8.60/MO	\$9.85/MO
50.01-100.00 ERU	\$6.50/MO	\$7.45/MO	\$8.70/MO	\$9.95/MO
> 100.00 ERU	\$6.60/MO	\$7.55/MO	\$8.80/MO	\$10.05/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: _____, 2008.

PASSED by the City Council and APPROVED by the Mayor this 25th day of September 2008.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

ATTEST:

By _____
LAURA KOENIG, City Clerk

Approved as to form:

By _____
Kathy Hardy, City Attorney