

SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET

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Agenda Item #: Action A 1

Date: November 18, 2010

SUBJECT: Ordinance 1098-10 Sewer Rates

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

**Issue:**

The issue before the council is the introduction of Ordinance 1098-10 to increase the monthly sewer utility rates for 2011 and 2012.

**Staff Recommendation:**

Attachment A provides the proposed sewer rate increase. Staff recommends the following:

1. Introduction of Ordinance 1098-10 to increase the monthly sewer utility rates from \$64.83 to \$71.47 on 12/1/2010 and from \$71.47 to \$74.47 on 12/1/2011.
2. Do not increase the stormwater utility rate from \$6.75 to \$8.00 until 12/1/2010.

**Summary:**

The Sewer Debt Service fund has payments of \$465,959 due for 2011 and \$461,403 due in 2012. There are insufficient revenues to cover the debt service payments in 2011 and 2012. At the Budget Retreat, the Council discussed the sewer debt service requirements for the next two years and considered alternatives that included increasing monthly sewer rates; reducing reserve funds; postponing capital improvements at the Wastewater Plant; and reducing operating expenses.

Council discussed the following alternatives at the October 28, 2010:

1. Increasing sewer rates only.  
Staff has prepared an ordinance to increase the sewer rate \$6.64 per month for current customers.
2. Postponing increases to stormwater utility rates  
The stormwater utility rate will not increase until September 2011 to mitigate the impact of the sewer rate increases to all utility rates.
3. Reducing sewer operating expenses  
Proposed reductions are addressed in this report.
4. Spreading the increase across all benefitted properties, including properties that do not currently have sewer services.  
Based on the legal determination provided by the City Attorney, the city cannot spread the cost of the sewer improvements across all the benefitted properties (Attachment B). Property owners cannot be billed for a service they are not receiving.

All alternatives discussed by the Council on October 28, 2010 are included in Attachment C.

The following chart shows the current monthly billing and the rate increase for all utilities 2011 under the existing ordinances and the staff recommended rate changes to all utilities in 2011.

<b>Based on Current Ordinances for each Utility</b>	<b>Water</b>	<b>Sewer</b>	<b>Garbage</b>	<b>Recycle</b>	<b>Storm water</b>	<b>Total Monthly Base</b>	<b>Total All Utilities Monthly Increase</b>
2010 Adopted Monthly base rate	28.09	64.83	20.08	9.25	6.75	129.00	
2011 Adopted Monthly base rate	31.25	64.83	20.46	9.35	8.00	133.89	4.89
2011 Monthly Increase	3.16	0	0.38	0.10	1.25		4.89
<b>Proposed Rate Alternatives</b>							
Alternative 2	31.25	71.47	20.46	9.35	6.75	139.28	10.28
2011 Proposed Monthly Increase	3.16	6.64	0.38	0.10	0.00		10.28

**Discussion:**

**Problem:** The major issue for 2011 and 2012 is the requirement to pay the balance on the PWTF loan for the Waste Water Treatment Plant (WWTP) design. The loan was restructured in 2010 to add one year to the payment schedule. This reduced the annual payment by \$100,000. The city has two years left on the loan with payments of \$210,000 per year.

The proposed Sewer Operating fund budget presented to the Council on October 28, 2010 had a deficit balance of \$162,000. The issue with the operating fund is the need to cover the PWTF loan payments for 2011-2012.

The City has added new debt for the centrifuge of \$400,000. The payment is \$40,000 per year plus interest at 5.15% (\$58,025 for 2011).

The Public Works Trust Board noted the city's existing rates will not be adequate to pay the debt service in 2011 and 2012 (Attachment E). A rate increase is needed.

Table 1 – Debt Service 2011-2015

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Sewer</b>					
<b>PW 596-790-056 Sewer Plant Upgrade</b>	114,136.26	113,059.51	111,982.75	110,905.99	109,829.24
<b>PW 04-691-064 Sewer I &amp; I Project</b>	74,749.53	74,400.23	74,050.95	73,701.63	73,352.35
<b>DEOLO 10034 Sewer Stormwater Report</b>	8,631.24	8,631.24	8,631.24	8,631.24	8,631.24
<b>LTGO Sewer Revenue Bonds</b>	58,025.00	55,965.00	53,905.00	51,845.00	49,785.00
<b>PW 06-962-PRE-131 Sewer Plant Design</b>	210,416.67	209,375.00	0.00	0.00	0.00
<b>Total Sewer Service Debt</b>	<b>465,958.70</b>	<b>461,430.98</b>	<b>248,569.94</b>	<b>245,083.86</b>	<b>241,597.83</b>

Proposed Solutions:

The consensus of the Council on October 28, 2010 was to use Alternative 2 to the rate structure and the council elected to use Alternative 2 to increase the monthly rates by \$6.64 to increase revenues by \$107,066 and to reduce expenses in the Sewer operating fund by \$55,000.

The Sewer Operating fund reduced proposed capital outlay for equipment from \$44,200 to \$6,700 and reduced transfer to the equipment reserve fund by \$15,000. The capital equipment removed from the budget included the incubator, sludge pumps and mixer. The \$30,000 for the roof replacement is included in the 2011 budget because the roof is leaking and must be repaired.

The Council also directed staff to consider the cost if all benefitted properties were bill. The City Attorney determined that based on case law, the city cannot charge property owners that are not receiving the service.

The budgetary concerns will extend to the 2012 budget. The 2012 proposed budget assumes there will be no new connections. This will leave an additional shortfall of \$42,731 to cover debt service. The Council may have to consider an additional \$3.00 per month increase in 2012. This would increase the rate to \$74.47

The following table shows the debt service requirements for the Sewer Utility for 2011 to 2015.

The following chart provides a proposed 2012 budget including the 2011 rate increase:

Table 2 – Proposed 2011-2012 Budget

<b>413 Sewer Debt Service</b>		<b>2011</b>	<b>2012</b>
<b>Account</b>	<b>Description</b>		
413-000-308-10-000	Beginning Fund Balance	0	0
413-000-367-10-000	Sewer Connection Fees	56,000	0
413-000-397-10-000	Operating Transfer In	448,700	418,700
	<b>Total Resources</b>	<b>504,700</b>	<b>418,700</b>
413-413-582-35-700	PWTF Principal Payment	385,868	385,868
413-413-582-35-710	State Revolving Fund Principal	6,976	6,976
413-413-535-80-800	Bond Principal	40,000	40,000
413-413-582-35-800	PWTF Interest Payment	13,434	10,966
413-413-582-35-810	State Revolving Fund Interest	1,655	1,655
413-413-591-80-800	Bond Interest	18,025	15,965
	<b>Total Expense</b>	<b>465,959</b>	<b>461,431</b>
413-900-508-00-000	Ending Fund Balance	38,741	-42,731

Fiscal Analysis

At the end of 2010 the Sewer Debt Service Fund is not anticipated to have an ending fund balance of and Sewer Reserve fund is anticipated to have \$54,000. The 2011

budget provides for a \$30,000 transfer from the sewer reserves (Fund 404) to the sewer debt service fund (Fund 413).

The Sewer Reserve funds are used for unanticipated emergencies such as pump failure at the Waste Water Treatment Plant or major service line breaks. The source of funding for the reserve funds is service connection fees. Over the past two years \$330,000 has been transferred from the fund to cover debt service payments and the cost of completing LID 97-1 (mitigation required by Corp of Engineers). This has left a balance of \$50,000 in the fund to cover emergencies. The City repaired lines behind City Hall at a cost of \$32,000.

The City has struggled to make required loan payments over the past two years and have taken steps to divert all connection fees to debt service, restructured the PWFT loan, used sewer reserve funds and reduced expenditures in the operating fund to provide funds for debt service. There is a need for reserves in the debt service fund to cover debt service on the chance that no new service connections are made.

The monthly utility billing would breakout the payment for sewer debt payment with a notation that at the end of 2012, the rates would be reduced.

**Alternatives:**

1. Approve the ordinance as recommended by staff.
2. Review alternatives discussed on October 28, 2010 (Attachment C). Select a preferred alternative. Direct staff to prepare a revised ordinance for first reading on December 2, 2011.  
The Council should note that a final decision must be made on December 2, 2010 to ensure a balanced budget is adopted. First reading on the 2011 Budget is scheduled for December 2, 2010.
3. Refer the matter to a special sub-committee meeting before Wednesday November 24, 2010. The December 2, 2010 council packet will be distributed on November 23, 2010.
4. Do nothing. Cut \$107,000 out of the sewer operating fund to balance the budget.

**Staff Recommendation:**

Staff recommends the following introduce Ordinance 1098-10 for a first reading and pass it on to a second reading on December 2, 2010.

- Attachments:
- A. Ordinance 1098-10
  - B. Legal determinations from City Attorney
  - C. Staff report on Sewer Rates from October 28,2010
  - D. Growth Management Board direction on sewer
  - E. Public Works Trust Board Recommendation

**CITY OF SULTAN  
WASHINGTON**

**ORDINANCE NO. 1098-10**

**AN ORDINANCE OF THE CITY OF SULTAN,  
WASHINGTON, ADOPTING SEWER RATES FOR 2011  
AND 2012; PROVIDING FOR SEVERABILITY; AND  
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the sewer utility is an enterprise fund and all enterprise funds are required to collect sufficient revenues to cover expenses; and

WHEREAS, the Sewer Debt Service fund has payments of \$465,959 due for 2011 and \$461,403 due in 2012; and

WHEREAS, on October 9, 2010 at the Budget Retreat, the Council discussed the sewer debt service requirements for the next two years and considered alternatives that included increasing monthly sewer rates; and

WHEREAS, based on the discussion at the October 28, 2010, the Council has proposed and increase to the sewer rate of \$6.64 per month and to hold on the increase to the stormwater utility rate until September 2011; and

WHEREAS, the City Council will not complete the update to the General Sewer Plan and conduct a rate study based upon the revised Plan until after the system of annual increases in monthly sewer rates adopted in 1033-10 will expire; and

WHEREAS, the City Council wants to ensure the sewer utility collects sufficient revenues to cover expenses in 2011 and 2012 until a rate study can be conducted based on the updated General Sewer Plan; and

WHEREAS, the City Council wants to minimize the impact on sewer rate payers of delaying rate adjustments until after the required updates to the Comprehensive Plan and General Sewer Plan are adopted; and

WHEREAS, the City Council held public hearings on the sewer utility rate increase as part of the 2011 budget;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Establishment of fees and charges for sewer service as follows:

A. Sewer Rates. Sewer rates are hereby established for the following categories of service beginning on the effective dates as indicated as follows:

**SEWER RATE SCHEDULE**

Effective Date	12/1/2009	12/1/2010	12/1/2011
<b>RESIDENTIAL (flat rate)</b>			
Single Family	\$64.83	\$71.47	\$74.47
Low-income Senior	\$32.41	\$35.73	\$37.24
Multi-family	\$64.83	\$71.47	\$74.47
Mobile Home Parks	\$64.83	\$71.47	\$74.47
<b>COMMERCIAL (base rate by meter + volume)</b>			
¾" meter	\$64.83	\$71.47	\$74.47
1" meter	\$90.76	\$100.06	\$103.06
1.5" meter	\$116.69	\$128.65	\$131.65
2" meter	\$187.28	\$206.47	\$209.47
3" meter	\$713.10	\$786.20	\$798.20
4" meter	\$907.59	\$1,000.62	\$1,003.62
6" meter	\$1,361.38	\$1,500.92	\$1,503.92
8" meter	\$1,880.00	\$2,072.70	\$2,075.70
Volume Rate/100 cf	\$2.54	\$3.15	\$3.15
600 cf Volume included in Base			

Rate equals monthly base rate plus for commercial - a volume rate for each additional 100 cubic feet.

"Monthly base rate" is the rate tabulated in the sewer rate schedule.

"Volume rate for each additional 100 cubic feet" refers to the rate for each additional 100 cubic feet or fraction thereof of water usage over the first 600 cubic feet for the customer's unit.

All rates are per dwelling or commercial unit. An accessory dwelling unit is considered a dwelling unit.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force on December 1, 2010

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE <sup>d</sup> DAY OF 2010.**

CITY OF SULTAN

\_\_\_\_\_  
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney

Date of Publication:  
Effective Date:

Westlaw.

23 P.3d 477  
 143 Wash.2d 798, 23 P.3d 477  
 (Cite as: 143 Wash.2d 798, 23 P.3d 477)

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Supreme Court of Washington,  
 En Banc.  
 SAMIS LAND CO., The Estate of Samuel Israel, and  
 the Samuel Israel Living Trust, Respondents,  
 v.  
 CITY OF SOAP LAKE, Petitioner.  
 No. 68520-7.

Argued June 27, 2000.  
 Decided May 24, 2001.

Landowner sued city, challenging validity of "standby charge" imposed by municipal ordinance on vacant, unimproved land that abutted city water and sewer lines. The Superior Court, Grant County, Kenneth Jorgensen, J., denied landowner's motion for summary judgment. Landowner petitioned for discretionary review. The Court of Appeals reversed and remanded, 96 Wash.App. 819, 980 P.2d 805. Upon granting review, the Supreme Court, Bridge, J., held that standby charge was invalid nonuniform property tax, rather than valid regulatory fee.

Court of Appeals' decision affirmed and remanded.

Johnson, J., issued dissenting opinion.

#### West Headnotes

#### [1] Appeal and Error 30 ↪ 893(1)

30 Appeal and Error  
 30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In General. Most Cited

Cases

#### Appeal and Error 30 ↪ 895(2)

30 Appeal and Error  
 30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k895 Scope of Inquiry

30k895(2) k. Effect of Findings Be-

low. Most Cited Cases

The Supreme Court reviews summary judgment rulings de novo, viewing all facts and reasonable inferences in a light most favorable to the nonmoving party. CR 56(c).

#### [2] Judgment 228 ↪ 181(2)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(2) k. Absence of Issue of Fact.

Most Cited Cases

For summary judgment purposes, a material fact is one upon which the outcome of the litigation depends in whole or in part. CR 56(c).

#### [3] Municipal Corporations 268 ↪ 122.1(2)

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k122.1 Evidence

268k122.1(2) k. Presumptions and

Burden of Proof. Most Cited Cases

Municipal ordinances, like state statutes, are presumed constitutional, except where a suspect class or fundamental right is implicated; to rebut that presumption, it must be clear that the legislation cannot reasonably be construed in a manner that comports with constitutional imperatives.

#### [4] Municipal Corporations 268 ↪ 956(1)

268 Municipal Corporations

268XIII Fiscal Matters

268XIII(D) Taxes and Other Revenue, and Application Thereof

268k956 Power and Duty to Tax in General

268k956(1) k. In General. Most Cited

Cases

Local governments have authority under their consti-

- Use of fee connected to Septic use specifically
- distinction btwn tax and fee

B:2

tutional police powers to require payment of fees that are akin to charges for services rendered, in that they are deposited into a segregated fund directly related either to the provision of a service received by the entities paying the fees or to the alleviation of a burden to which they contribute; such charges, which are collectively referred to as "regulatory fees," include a wide assortment of utility customer fees, utility connection fees, garbage collection fees, local storm water facility fees, user fees, permit fees, parking fees, registration fees, filing fees, and license fees. West's RCWA Const. Art. 11, § 11.

**[5] Municipal Corporations 268 ↪956(1)**

**268 Municipal Corporations**  
**268XIII Fiscal Matters**  
**268XIII(D) Taxes and Other Revenue, and Application Thereof**  
**268k956 Power and Duty to Tax in General**  
**268k956(1) k. In General. Most Cited**

**Cases**

While municipal police powers include the authority to enact laws promoting the health and welfare of its citizens, they do not include the power to tax. West's RCWA Const. Art. 11, § 11.

**[6] Municipal Corporations 268 ↪956(1)**

**268 Municipal Corporations**  
**268XIII Fiscal Matters**  
**268XIII(D) Taxes and Other Revenue, and Application Thereof**  
**268k956 Power and Duty to Tax in General**  
**268k956(1) k. In General. Most Cited**

**Cases**

Because fees assessed by local governments under their constitutional police powers are not considered taxes, they are exempt from fundamental constitutional constraints on governmental taxation authority. West's RCWA Const. Art. 11, § 11.

**[7] Taxation 371 ↪2002**

**371 Taxation**  
**371I In General**  
**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)  
In determining whether a charge imposed by a local

government is a tax or a regulatory fee, courts must look beyond the charge's official designation and analyze its core nature by focusing on its purpose, design, and function in the real world. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[8] Taxation 371 ↪2121**

**371 Taxation**  
**371III Property Taxes**  
**371III(B) Laws and Regulation**  
**371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity**  
**371k2121 k. Constitutional Requirements and Operation Thereof. Most Cited Cases**  
(Formerly 371k40(1))  
Tax uniformity is the highest and most important of all requirements applicable to taxation under Washington's tax system. West's RCWA Const. Art. 7, § 1.

**[9] Taxation 371 ↪2002**

**371 Taxation**  
**371I In General**  
**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)  
It is critical that valid regulatory fees imposed by a local government be carefully differentiated from unconstitutional taxes. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[10] Taxation 371 ↪2002**

**371 Taxation**  
**371I In General**  
**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)  
In determining whether a charge imposed by a local government is a valid regulatory fee or an unconstitutional tax, courts apply the three-part test set forth in *Covell*; first, the courts consider whether the primary purpose of the legislation in question is to "regulate" the fee payers or to collect revenue to finance broad-based public improvements that cost money, second, the courts determine whether the money collected from the fees is segregated and allocated exclusively to regulating the entity or activity being assessed, and third, the courts ascertain whether a

direct relationship exists between the rate charged and either a service received by the fee payers or a burden to which they contribute. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[11] Municipal Corporations 268 ↪956(1)**

268 Municipal Corporations  
268XIII Fiscal Matters  
268XIII(D) Taxes and Other Revenue, and Application Thereof  
268k956 Power and Duty to Tax in General  
268k956(1) k. In General. Most Cited Cases

**Taxation 371 ↪2002**

371 Taxation  
371I In General  
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases  
(Formerly 371k1)

**Taxation 371 ↪2060**

371 Taxation  
371III Property Taxes  
371III(A) In General  
371k2060 k. In General. Most Cited Cases  
(Formerly 371k1)  
Primary purpose of "standby charge" imposed by city ordinance on vacant, unimproved land that abutted city water and sewer lines was to generate additional revenues to finance broad-based public improvements, not to "regulate" those entities paying standby charge, for purposes of determining whether such charge was invalid nonuniform property tax or valid regulatory fee; all provisions of ordinance dealt exclusively with revenue collection, and nowhere in city's alleged "overall plan" to improve regulation of its city-wide water-sewer system was there reference to any utility service or burden applicable to properties being charged here. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[12] Taxation 371 ↪2002**

371 Taxation  
371I In General  
371k2002 k. Distinguishing "Tax" and "Li-

cense" or "Fee". Most Cited Cases  
(Formerly 371k1)  
If the fundamental legislative impetus of a charge imposed by a local government was to "regulate" the fee payers-by providing them with a targeted service or alleviating a burden to which they contribute-that would suggest that the charge was an incidental "tool of regulation," rather than a tax in disguise. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[13] Taxation 371 ↪2002**

371 Taxation  
371I In General  
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases  
(Formerly 371k1)  
In determining whether a charge imposed by a local government is a tax or a regulatory fee, a court can look to the "overall plan" of regulation in construing the purpose of the challenged fee. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[14] Municipal Corporations 268 ↪956(1)**

268 Municipal Corporations  
268XIII Fiscal Matters  
268XIII(D) Taxes and Other Revenue, and Application Thereof  
268k956 Power and Duty to Tax in General  
268k956(1) k. In General. Most Cited Cases

**Taxation 371 ↪2002**

371 Taxation  
371I In General  
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases  
(Formerly 371k1)

**Taxation 371 ↪2060**

371 Taxation  
371III Property Taxes  
371III(A) In General  
371k2060 k. In General. Most Cited Cases  
(Formerly 371k1)  
Money collected through "standby charge" imposed by city ordinance on vacant, unimproved land that

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abutted city water and sewer lines was not allocated solely to "authorized regulatory purpose," for purposes of determining whether such charge was invalid nonuniform property tax or valid regulatory fee; money was allocated to maintaining and improving city-wide utility system, thus "regulating" entirely distinct group to which standby charge did not apply, namely, entities connected to city utility system. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[15] Taxation 371 ↪2002**

**371 Taxation**

**371I In General**

**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)

Simply because charges imposed by local governments are allocated to some "broad category" of important public services does not necessarily mean they are "regulatory fees," as opposed to taxes. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[16] Municipal Corporations 268 ↪956(1)**

**268 Municipal Corporations**

**268XIII Fiscal Matters**

**268XIII(D) Taxes and Other Revenue, and Application Thereof**

**268k956 Power and Duty to Tax in General**

**268k956(1) k. In General. Most Cited Cases**

**Taxation 371 ↪2002**

**371 Taxation**

**371I In General**

**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)

**Taxation 371 ↪2060**

**371 Taxation**

**371III Property Taxes**

**371III(A) In General**

**371k2060 k. In General. Most Cited Cases**  
(Formerly 371k1)

There was no "direct relationship" between "standby charge" imposed by city ordinance on vacant, unim-

proved land that abutted city water and sewer lines, on one hand, and either service received by fee payers or burden to which they contributed, on other hand, for purposes of determining whether such charge was invalid nonuniform property tax or valid regulatory fee; properties at issue by definition had no relationship to city's water service, they were uninhabited properties that generated no sewage of any kind, and they did not otherwise burden city's sewer or water systems. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[17] Taxation 371 ↪2002**

**371 Taxation**

**371I In General**

**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)

If there is no "direct relationship" between a charge imposed by a local government and either a service received by the charge payers or a burden to which they contribute, then the charge is probably a tax in fee's clothing; if, however, a direct relationship exists, then the charge may be deemed a regulatory fee even though the charge is not individualized according to the benefit accruing to each fee payer or the burden produced by the fee payer. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[18] Taxation 371 ↪2002**

**371 Taxation**

**371I In General**

**371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases**  
(Formerly 371k1)

A charge imposed by a local government may be deemed a regulatory fee, rather than a tax, even though the charge is not individualized according to the benefit accruing to each fee payer or the burden produced by the fee payer. West's RCWA Const. Art. 7, § 1; Art. 11, § 11.

**[19] Municipal Corporations 268 ↪956(1)**

**268 Municipal Corporations**

**268XIII Fiscal Matters**

**268XIII(D) Taxes and Other Revenue, and Application Thereof**

268k956 Power and Duty to Tax in General  
268k956(1) k. In General. Most Cited  
Cases

**Taxation 371 ↪ 2002**

371 Taxation  
371I In General  
371k2002 k. Distinguishing "Tax" and "Li-  
cense" or "Fee". Most Cited Cases  
(Formerly 371k1)

**Taxation 371 ↪ 2060**

371 Taxation  
371III Property Taxes  
371III(A) In General  
371k2060 k. In General. Most Cited Cases  
(Formerly 371k1)

**Taxation 371 ↪ 2127**

371 Taxation  
371III Property Taxes  
371III(B) Laws and Regulation  
371III(B)4 Constitutional Regulation and  
Restrictions Concerning Equality and Uniformity  
371k2127 k. Discrimination as to Rate  
or Amount. Most Cited Cases  
(Formerly 371k40(7))

"Standby charge" imposed by city ordinance on vacant, unimproved land that abutted city water and sewer lines was not regulatory fee, but rather, was tax that violated tax uniformity requirement of state constitution; ordinance did not levy charge against discretionary exercise of any particular right of ownership, but rather, it imposed unavoidable demand upon ownership itself, and because tax was set at "sixty dollars per year per platted lot or unplatted area" without regard to each land's worth, it was not levied uniformly upon entire class of real estate as constitutionally required. West's RCWA Const. Art. 7, § 1.  
\*\*480 \*801 City of Soap Lake, Soap Lake, Moe & Allan, Wallace Edward Allan, Ephrata, for Petitioner.

Perkins, Coie, Scott M. Edwards, Seattle, for Respondent.

Foster, Pepper & Shefelman, Peter Stephen DiJulio, Grover E. Cleveland, Hugh Davidson Spitzer, Seattle,

amicus curiae on behalf of Association of Wash. Cities and City of Ocean Shores.

Greg Overstreet, Olympia, amicus curiae on behalf of Building Industry Association.

Garvey, Schubert & Barer, William Colwell Severson, Seattle, amicus curiae on behalf of Ocean Shores Property Owners.

BRIDGE, J.

The issue here is whether a "standby charge" imposed by the City of Soap Lake upon vacant, unimproved, uninhabited lots that abut but are unconnected to its water and sewer lines is a regulatory fee or a property tax. We find that the charge is a property tax and that, because it is not assessed uniformly according to the respective values of the properties within the class, it violates article VII, section 1 of the Washington Constitution. We therefore affirm.

**\*802 FACTS**

Over the past three decades, respondents Samis Land Company, The Samuel Israel Living Trust, and the Estate of Samuel Israel (hereinafter, collectively, "Samis") have acquired approximately 200 platted, vacant lots in the City of Soap Lake ("City") and held the lots without significant development. In 1989, the City enacted Soap Lake Municipal Code (SLMC) 13.08.175, imposing a flat-rate \$60 annual charge on any "vacant, unimproved land which shall abut a line providing water service or sewer service but have no connection thereto." Since 1990, Samis has paid the City more than \$46,000 in standby charges.

In February 1996, Samis stopped paying such charges in the wake of our decision in *Covell v. City of Seattle*,<sup>ENL</sup> and in July 1996, Samis filed suit for a full refund of all charges previously paid as well as equitable relief permanently enjoining the City from collecting any more standby charges. Samis then moved for a partial summary judgment that the charge was a property tax that violated the tax uniformity requirement of Wash. Const. art. VII, § 1. The Grant County Superior Court denied the motion, ruling that the charge was not a tax, but rather simply a fee for benefits received, and thus, article VII, section 1 did not apply. The Court of Appeals accepted discretio-

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nary review and reversed, concluding that the charge was in fact an unconstitutional property tax under the tests articulated in *Covell*.<sup>FN2</sup> We granted review.

FN1. 127 Wash.2d 874, 905 P.2d 324 (1995).

FN2. *Samis Land Co. v. City of Soap Lake*, 96 Wash.App. 819, 980 P.2d 805 (1999).

#### ANALYSIS

[1][2] The parties agree that the sole issue before us is whether the trial court erred in rejecting Samis' motion for a partial summary judgment that SLMC 13.08.175 levies \*803 an unconstitutional property tax.<sup>FN3</sup> We review \*\*481 summary judgment rulings de novo, viewing all facts and reasonable inferences in a light most favorable to the nonmoving party.<sup>FN4</sup> Summary judgment is authorized under CR 56(c) only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. "A material fact is one upon which the outcome of the litigation depends in whole or in part."<sup>FN5</sup>

FN3. In its amicus curiae brief, the Ocean Shores Property Owners (OSPO) urge this court to "avoid the constitutional issue and affirm the Court of Appeals on statutory grounds." Br. of Amicus OSPO at 2. Although the original complaint in this case includes a statutory as well as a constitutional cause of action, Samis' partial summary judgment motion contended only that SLMC 13.08.175 levies an unconstitutional property tax. Moreover, Samis made a single assignment of error in its motion for discretionary review before the Court of Appeals: "The Trial Court erred in concluding that the 'standby charge' ... is not a property tax." Br. of Petitioner at 1. The City then presented this court with a single issue for review, namely, whether the standby charge is a valid "regulatory fee," not an unconstitutional tax. Pet. for Review at 1. Samis agreed: "The sole issue in this case is whether the Court of Appeals correctly held that the assessment levied by Soap Lake Ordinance No. 737 is a tax." Suppl. Br. of Resp'ts at 1. RAP 13.7(b) provides, "If the Supreme Court accepts review of a Court of Appeals decision, the Supreme Court will review only the ques-

tions raised in the motion for discretionary review, if review is sought of an interlocutory decision, or the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of the motion or petition." While Amicus OSPO's statutory inquiry is an interesting one, the only question before us is whether the trial court erred in denying Samis' constitutional challenge.

FN4. *Reid v. Pierce County*, 136 Wash.2d 195, 201, 961 P.2d 333 (1998).

FN5. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wash.2d 506, 516, 799 P.2d 250 (1990) (citing *Morris v. McNicol*, 83 Wash.2d 491, 494, 519 P.2d 7 (1974)).

[3] The Soap Lake ordinances at issue here are codified at SLMC 13.08.175:

*13.08.175 Standby charge for property abutting water or sewer line.*

A. Any person, firm or corporation owning or purchasing vacant, unimproved land which shall abut a line providing water service or sewer service but have no connection thereto shall pay a standby charge of sixty dollars per year per platted lot or unplatted area.

B. The assessment as stated further in subsection A of this section shall be assessed quarterly by the clerk-treasurer of the city on the fifteenth days of January, April, July and October of each year.

\*804 C. The assessment shall be in addition to all other assessments or charges made in relationship to the usage of water or sewer.

D. This charge may be enforced at the option of the city by filing a lien as against said property. The clerk-treasurer shall file the lien against said property thirty days after the payment is due. (Ord. 744, 1990; Ord. 737 §§ 1-4, 1989).

Municipal ordinances, like state statutes, are presumed constitutional, except where a suspect class or fundamental right is implicated.<sup>FN6</sup> To rebut that pre-

sumption, it must be clear that the legislation cannot reasonably be construed in a manner that comports with constitutional imperatives.<sup>FN7</sup>

FN6. *Weden v. San Juan County*, 135 Wash.2d 678, 690, 958 P.2d 273 (1998); *High Tide Seafoods v. State*, 106 Wash.2d 695, 698, 725 P.2d 411 (1986).

FN7. *City of Tacoma v. Luvene*, 118 Wash.2d 826, 841, 827 P.2d 1374 (1992) (citing *State v. Dixon*, 78 Wash.2d 796, 804, 479 P.2d 931 (1971)); *Belas v. Kiga*, 135 Wash.2d 913, 920, 959 P.2d 1037 (1998).

[4][5] Soap Lake argues that its standby charge is merely a fee collected in exchange for public benefits conferred upon Samis, namely, the nearby installation of city water and sewer lines.<sup>FN8</sup> Local governments have authority under their general article XI, section 11 police powers to require payment of fees that are “akin to charges for services rendered”<sup>FN9</sup> in that they are deposited into a segregated fund directly related either to the provision of a service<sup>\*805</sup> received by the entities paying the fees or to the alleviation of a **\*\*482** burden to which they contribute.<sup>FN10</sup> Such charges, which this court has collectively referred to as “regulatory fees,”<sup>FN11</sup> include a wide assortment of utility customer fees, utility connection fees, garbage collection fees, local storm water facility fees, user fees, permit fees, parking fees, registration fees, filing fees, and license fees.

FN8. The City argues that it is constitutionally authorized to impose the standby charge under its general police power authority to enact ordinances that are reasonably necessary to protect public health, safety, and welfare. Local governments derive their police powers from Wash. Const. art. XI, § 11. See *Brown v. City of Yakima*, 116 Wash.2d 556, 559, 807 P.2d 353 (1991) (citing *Hass v. City of Kirkland*, 78 Wash.2d 929, 932, 481 P.2d 9 (1971)). However, it is well established that while police powers include the authority to enact laws promoting the health and welfare of its citizens, they do not include the power to tax. *Covell*, 127 Wash.2d at 879, 905 P.2d 324 (citing *Margola Assocs. v. City of Seattle*, 121 Wash.2d 625, 634, 854 P.2d 23 (1993); *Hillis Homes, Inc. v. Sno-*

*homish County*, 97 Wash.2d 804, 809, 650 P.2d 193 (1982) (Hillis Homes I)); see also Wash. Const. art. VII, § 5. While tax collection is an indispensable *middle step* toward accomplishment of vital public objectives, it cannot be characterized as an activity of government that *itself* promotes taxpayers' health or welfare. Thus, if the standby charge is a tax, it is not authorized under the City's police powers.

FN9. *Covell*, 127 Wash.2d at 884, 905 P.2d 324 (quoting *King County Fire Prot. Dist. No. 16 v. Housing Auth. of King County*, 123 Wash.2d 819, 834, 872 P.2d 516 (1994)).

FN10. See *Covell*, 127 Wash.2d at 878, 905 P.2d 324 (“Governments may impose regulatory fees under their general police powers.”) (citing *Margola*, 121 Wash.2d at 634-35, 854 P.2d 23; Wash. Const. art. XI, § 11).

FN11. “For the sake of clarity,” we have collectively referred to fees and related charges as “regulatory fees” since they receive similar treatment in law. *Covell*, 127 Wash.2d at 878 n. 1, 905 P.2d 324.

[6][7][8][9] Because such fees are not considered taxes, they are exempt from fundamental constitutional constraints on governmental taxation authority.<sup>FN12</sup> There is thus an inherent danger that legislative bodies might circumvent constitutional constraints, such as the all-important tax uniformity requirement<sup>FN13</sup> or the one percent ceiling,<sup>FN14</sup> by levying charges that, while officially labeled “regulatory fees,” in fact possess all the basic attributes of a tax. As we noted in *Covell*, unless sharp distinctions between fees and taxes are **\*806** maintained in the law, “virtually all of what now are considered “taxes” could be transmuted into “user fees” by the simple expedient of dividing what are generally accepted as taxes into constituent parts, e.g., a “police fee”.”<sup>FN15</sup> Courts must therefore look beyond a charge's official designation and analyze its core nature by focusing on its purpose, design and function in the real world.<sup>FN16</sup>

FN12. See, e.g., *Frach v. Schoettler*, 46 Wash.2d 281, 289, 280 P.2d 1038 (1955) (“Regulatory fees paid are not subject to the

constitutional restrictions on the power to tax.”). One example is what charges the United States government may be subjected to. While state and local governments may collect from federal entities any charges akin to fees for services provided, article VI, clause 2 of the United States Constitution prevents them from collecting any taxes from them. *See, e.g., United States v. City of Huntington*, 999 F.2d 71, 74 (4th Cir.1993), *cert denied*, 510 U.S. 1109, 114 S.Ct. 1048, 127 L.Ed.2d 371 (1994).

FN13. “All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.... All real estate shall constitute one class....” Wash. Const. art. VII, § 1. We have noted that tax uniformity is “ ‘the highest and most important of all requirements applicable to taxation under our system.’ ” *Inter Island Tel. Co. v. San Juan County*, 125 Wash.2d 332, 334, 883 P.2d 1380 (1994) (quoting *Savage v. Pierce County*, 68 Wash. 623, 625, 123 P. 1088 (1912)). It is therefore critical that valid fees be carefully differentiated from unconstitutional taxes. *See Belas*, 135 Wash.2d at 920-22, 959 P.2d 1037 (reviewing history of article VII).

FN14. “Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percent of the true and fair value of such property in money....” Wash. Const. art. VII, § 2.

FN15. *Covell*, 127 Wash.2d at 888, 905 P.2d 324 (quoting *Huntington*, 999 F.2d at 74).

FN16. *King County Fire Prot. Dist. No. 16 v. Housing Auth. of King County*, 123 Wash.2d at 833, 872 P.2d 516 (citing *Margola*, 121 Wash.2d at 635, 854 P.2d 23); *see also Covell*, 127 Wash.2d at 886, 905 P.2d 324 (citing *Hillis Homes I*, 97 Wash.2d at 809, 650 P.2d 193).

[10] Over the years, our caselaw has identified several attributes that distinguish fees from taxes. These attributes were consolidated into a three-part test in *Covell*, where we held that Seattle’s residential street utility charge was in fact an unconstitutionally imposed property tax. First, one must consider whether the primary purpose of the legislation in question is to “regulate” the fee payers or to collect revenue to finance broad-based public improvements that cost money.<sup>FN17</sup> Second, one must determine whether or not the money collected from the fees is segregated and allocated exclusively to “regulat[ing] the entity or activity being assessed.”<sup>FN18</sup> Third, one must ascertain **\*\*483** whether a direct relationship exists between the rate charged and either a service received by the fee payers or a burden to which they contribute.<sup>FN19</sup>

FN17. *Covell* 127 Wash.2d at 879, 905 P.2d 324 (citing *Hillis Homes I*, 97 Wash.2d at 809, 650 P.2d 193 (quoting *Haugen v. Gleason*, 226 Or. 99, 104, 359 P.2d 108 (1961))).

FN18. *Covell*, 127 Wash.2d at 886, 905 P.2d 324 (citing *San Telmo Assocs. v. City of Seattle*, 108 Wash.2d 20, 735 P.2d 673 (1987)) (“Because the fees were not used to regulate the entity or activity being assessed, the court held the fees were taxes.”); *see also Covell*, 127 Wash.2d at 879, 905 P.2d 324 (citing *Hillis Homes, Inc. v. Public Util. Dist. No. 1*, 105 Wash.2d 288, 300, 714 P.2d 1163 (1986) (*Hillis Homes II*), and *Teter v. Clark County*, 104 Wash.2d 227, 233-34, 704 P.2d 1171 (1985)).

FN19. *Covell*, 127 Wash.2d at 879, 905 P.2d 324 (citing *Teter*, 104 Wash.2d at 232, 704 P.2d 1171; *Hillis Homes II*, 105 Wash.2d at 301, 714 P.2d 1163). Notably, while the dissenters in *Covell* disputed the majority’s interpretation and application of these factors, none disagreed “that whether a charge is a tax or a regulatory fee depends upon [these] three factors.” 127 Wash.2d at 892, 905 P.2d 324. (Utter, J., dissenting).

**\*807 The Covell Tests**

[11][12] We begin by examining the primary purpose behind the enactment of SLMC 13.08.175. If the fundamental legislative impetus was to “regulate” the fee payers-by providing them with a targeted service or alleviating a burden to which they contribute-that would suggest that the charge was an incidental “tool of regulation” <sup>FN20</sup> rather than a tax in disguise. <sup>FN21</sup>

FN20. *Covell*, 127 Wash.2d at 879, 905 P.2d 324; see also *Teter*, 104 Wash.2d at 239, 704 P.2d 1171.

FN21. *Covell*, 127 Wash.2d at 879, 905 P.2d 324; *Hillis Homes I*, 97 Wash.2d at 809-10, 650 P.2d 193.

In *Covell*, we first sought to ascertain the central rationale for enactment of Seattle’s street utility charges by focusing on the legislative language found in the ordinances themselves:

Although there is language in the ordinances requiring the adoption of a transportation plan along with a funding plan, most of the regulatory language is devoted to fiscal planning rather than toward the type of service or benefit for those who pay fees....

The ordinance language with regard to street improvement and maintenance is of an extremely general nature, and the thrust of the legislation is clearly on funding. <sup>FN22</sup>

FN22. *Covell*, 127 Wash.2d at 880-81, 905 P.2d 324.

We concluded, “The primary concern of these enactments is with collecting money to pay for [public] improvements rather than with public health, safety, or welfare.” <sup>FN23</sup> Here, as Samis has shown, the “thrust” of the ordinances in question is even more “clearly on funding” than Seattle’s ordinances in *Covell* since, not most, but *all* its provisions deal *exclusively* with revenue collection. As the City readily admitted, the “legislation, i.e., the municipal ordinance, imposing the standby charge makes no attempt to regulate ~~\*808~~ the use of water or sewer services.” <sup>FN24</sup> Indeed, as the City unequivocally conceded early on in this litigation: “The primary purpose of the Soap Lake standby charge is to generate revenues.” <sup>FN25</sup>

FN23. *Id.* at 883, 905 P.2d 324.

FN24. Complaint ¶ 23, Clerk’s Papers (CP) at 3-4. The City responded to this statement, “In answer to Paragraphs 23., and 24., Defendant admits the same.” Answer ¶ 9, CP at 12. Samis reiterated the statement in its Request for Admission No. 24, eliciting this response: “Defendant City of Soap Lake admits that Ordinance No. 737[ ] does not, in and of itself, regulate the use of water and/or sewer services, but states that it is only part of the entire water/sewer ordinances of the City, which do regulate the use of water and or services.” CP at 122.

FN25. Complaint ¶ 21, CP at 3. The City responded to this statement, “In answer to Paragraph 21., Defendant admits the same.” Answer ¶ 7, CP at 12. Samis reiterated the statement in its Request for Admission No. 22, eliciting this response: “Defendant City of Soap Lake admits that the primary purpose of the standby charge is to generate revenues, which, like all other Water/Sewer rates and charges, must, by law, be paid into the Water/Sewer Enterprise Fund, and which must, by law, be used to regulate and provide for water/sewer services in the City, which includes the extension of lines to plaintiff’s properties.” CP at 120.

[13] However, the fact that the ordinances *themselves* deal exclusively with fiscal matters does not necessarily conclude our inquiry. In *Margola Assocs. v. City of Seattle*, <sup>FN26</sup> we wrote:

FN26. 121 Wash.2d 625, 854 P.2d 23 (1993).

Under *Hillis II*, a court can look to the “overall plan” of regulation in construing ~~\*\*484~~ the purpose of the challenged fee. Likewise, in *Teter*, this court looked beyond the legislation implementing the fee in order to determine the legislation’s purpose. Even though the registration and fee ordinances themselves do not specifically refer to any “overall plan” of regulation or limit the use of revenues, the ordinances should not be viewed in isolation. <sup>FN27</sup>

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FN27. Margola, 121 Wash.2d at 637, 854 P.2d 23.

The City argues that SLMC 13.08.175 was enacted as a small part of its overall effort to improve the *regulation* of its city-wide water-sewer system for the general protection of its citizens' health, welfare, and safety,<sup>FN28</sup> as authorized \*809 under Wash. Const. art. XI, § 11 and various statutes.<sup>FN22</sup> The City thus urges us to read SLMC 13.08.175 in its broader legislative context, namely, SLMC Title 13, which establishes an overall regulatory design for "Public Services."

FN28. The City stresses the vital role that community water and sewer systems play in protecting drinking water and preventing human diseases such as typhoid. Its supporting amici invoke Turkey's August 1999 earthquake disaster to illustrate "the hazards communities face if water and sewage are not regulated." Br. of Amici Ass'n of Washington Cities and the City of Ocean Shores at 6 & n. 3; see also Dissent at 1. Such remarks miss the point. Water and sewer systems are unquestionably important to public health and safety—as are city streets, traffic signals, and local law enforcement. The issue here, though, is whether legally requiring owners of vacant, uninhabited lots to pay for public utility services that they have *no* connection to and that alleviate no burden to which they contribute is a "regulatory fee" or a tax.

FN29. Br. of Resp'ts at 6-7. The City cites various statutes authorizing cities of second class like Soap Lake, inter alia, (a) to establish and regulate city utility systems, such as RCW 35.21.210 and RCW 35.23.440(22) and (35); and (b) to charge "customers" who "use" such systems, such as RCW 35.67.020 and RCW 35.92.010.

However, as Samis contended and as counsel for Soap Lake was forced to concede at oral argument, *nowhere* in that "overall plan" is there a reference to *any* utility service or burden applicable to the properties being charged here. Indeed, the *only* provision in all of Title 13 relevant to the vacant, unimproved lots at issue is evidently SLMC 13.08.175, which deals strictly with revenue collection.<sup>FN30</sup> It is therefore manifest that the City's *primary* legislative motivation here was to

generate additional revenues to finance broad-based public improvements, not to "regulate" those entities paying the standby charge. The City's standby charge thus more closely resembles a tax than a fee under the first part of the *Covell* test.

FN30. See SLMC Title 13, reproduced in Pet. for Review, App. D. By contrast, in *State v. Miller*, 149 Wash. 545, 271 P. 826 (1928), we found that a game farming license fee was "not in the nature of a tax, but a fee for the purpose of regulation, and not for revenue," that the fee structure was clearly "designed [to pay] for costs of inspection necessary for regulation," and that the legislation in question "breathe[d] the spirit of regulation and protection." *Id.* at 551, 271 P. 826.

## II

[14] Second, for a charge to be considered a fee under *Covell*, we have found it "essential" that the money collected be segregated<sup>FN31</sup> and "allocated *only* to the authorized regulatory \*810 purpose."<sup>FN32</sup> Initially, the City appeared to concede that its legislation failed this exclusive allocation test by unequivocally admitting, "The money collected through the standby charge is not allocated exclusively to a regulatory purpose."<sup>FN33</sup> Later, though, the City argued differently, insisting that it "deposits its availability charges in a separate Water Capital Improvement Fund, and that those funds are use[d] solely for Combined Utility purposes," \*\*485 all of which are "regulatory, involving facilities to regulate water and sewage to protect public health."<sup>FN34</sup>

FN31. Covell, 127 Wash.2d at 885, 905 P.2d 324 (emphasis added).

FN32. Id. at 879, 905 P.2d 324 (emphasis added); *id.* at 886, 905 P.2d 324 (citing *San Telmo Assocs. v. City of Seattle*, 108 Wash.2d 20, 24, 735 P.2d 673 (1987)) ("Because the fees were not used to regulate the entity or activity being assessed, the court held the fees were taxes.").

FN33. Complaint ¶ 24, CP at 4. The City responded to this statement, "In answer to Paragraphs 23., and 24., Defendant admits the same." Answer ¶ 9, CP at 12. Samis rei-

terated the statement in its Request for Admission No. 25, eliciting this response: "Defendant City of Soap Lake admits that the money collected through the standby charge is not allocated exclusively to a regulatory purpose, but states that part of it is used to regulate the use of water and/or sewer services in the City of Soap Lake." CP at 123.

FN34. Suppl. Br. of Petitioner at 6.

[15] Still, simply because charges are allocated to some "broad category" <sup>FN35</sup> of important public services does not necessarily mean they are "regulatory fees." The second *Covell* factor requires that "regulatory fees" be "used to regulate the entity or activity being assessed." <sup>FN36</sup> Here, the only entities being assessed the charge in question are properties subject to no identifiable utility-related "regulatory" activity. <sup>FN37</sup> The more than \$46,000 that the City has collected from Samis since 1990 under SLMC 13.08.175 has been allocated to maintaining and improving the city-wide utility system, "regulating" an entirely *distinct* group to \*811 which the standby charge does not apply, namely, entities connected to the city utility system. <sup>FN38</sup> Samis has thus shown that, under the exclusive allocation test, the standby charge more closely resembles a tax than a fee.

FN35. 127 Wash.2d at 888, 905 P.2d 324 ("Given the absence of a regulatory purpose, it is insignificant that the funds collected are to be expended 'for transportation purposes only' (a broad category indeed).").

FN36. *Id.* at 885-86, 905 P.2d 324 (citing *San Telmo*, 108 Wash.2d at 24, 735 P.2d 673) (emphasis added).

FN37. This court has recognized that if "the revenues to be generated by [a charge] greatly exceed the proper regulatory costs associated with those ordinances ..., " then "the ordinances would have to be classified under the *Hillis* [*Homes* ] I test as being primarily fiscal rather than regulatory." *Margola*, 121 Wash.2d at 638, 854 P.2d 23.

FN38. Utility "connection fees" such as those at issue in *Hillis Homes II* are good examples of valid *regulatory* fees, because

unlike Soap Lake's standby charges, which are imposed exclusively upon vacant lots, connection fees "pay for only those improvements to the water system necessitated by the [fee payers], and hence will benefit them alone." *Hillis Homes II*, 105 Wash.2d at 300, 714 P.2d 1163. Soap Lake currently collects sewer connection fees under SLMC 13.08.050 and water connection fees under SLMC 13.08.100, as authorized by RCW 35.92.025.

III

[16][17] The final test for differentiating fees from taxes is whether there is a "direct relationship" between the fee charged and *either* a service received by the fee payers *or* a burden to which they contribute. <sup>FN39</sup> If no such relationship exists, then the charge is probably a tax in fee's clothing. If, however, a direct relationship exists, then "the charge may be deemed a regulatory fee even though the charge is not individualized according to the benefit accruing to each fee payer or the burden produced by the fee payer." <sup>FN40</sup> In other words, as long as a "direct relationship" is present, "only a *practical* basis for the rates is required, not mathematical precision." <sup>FN41</sup>

FN39. *Covell*, 127 Wash.2d at 879, 905 P.2d 324 (citing *Teter*, 104 Wash.2d at 232, 704 P.2d 1171; *Hillis Homes II*, 105 Wash.2d at 301, 714 P.2d 1163).

FN40. *Covell*, 127 Wash.2d at 879, 905 P.2d 324 (citing *Hillis Homes II*, 105 Wash.2d at 301, 714 P.2d 1163).

FN41. *Teter*, 104 Wash.2d at 238, 704 P.2d 1171.

This latter point has been a decisive consideration in most of the cases relied upon by the City and its supporting amici. For instance, in *Morse v. Wise*, <sup>FN42</sup> we held that the City of Chelan had police power authority to force *current* sewer customers to pay for improvements to its sewer system, even though *new* customers were the primary beneficiaries of the improvements. In *Teter v. Clark County*, we ruled that charges collected from lands shown to be contributing to an increase in surface water runoff were \*812 "tools of regulation" rather than taxes because, even though

no *service* was being provided to every fee payer, “the rate schedule bears a reasonable [albeit imprecise] relation to the contribution of each lot” to the *shared burden* being alleviated by the storm and surface water control facilities.<sup>FN43</sup> In *Thurston \*\*486 County Rental Owners Association v. Thurston County*,<sup>FN44</sup> the court deemed a septic system permit fee charged to finance efforts to reduce ground and surface water contamination in the area to be a valid “regulatory fee” since it was reasonably related to the pollution burden created by new septic systems. In *Smith v. Spokane County*,<sup>FN45</sup> additional fees were imposed on “water and sewer customers”<sup>FN46</sup> in an Aquifer Protection Area to pay for the protection, preservation and rehabilitation of their subterranean water source. While the rates in *Smith* were fixed and unrelated to the “amount of water used, or whether the household is served by a septic system or a municipal sewer line,”<sup>FN47</sup> the court held that “[e]nsuring a clean source of drinking water provides a direct benefit to *everyone who receives water from the aquifer*.”<sup>FN48</sup> In each of these cases, it was clear that the charge was “akin to charges for services rendered”<sup>FN49</sup> in that a direct relationship existed between the charge and *either* a service received \*\$13 or a burden to which the payers were contributing.

FN42. 37 Wash.2d 806, 226 P.2d 214 (1951).

FN43. 104 Wash.2d at 237-38, 704 P.2d 1171 (emphasis added). In other words, while the property owners in *Teter* did not receive a *service*, “the court found the county had a reasonable basis to conclude there was a contribution to increased surface water runoff in the basin *from the fee payer's property*.” *Covell*, 127 Wash.2d at 882, 905 P.2d 324 (emphasis added). By contrast, *Samis*' vacant, uninhabited lots were *neither* receiving a *service* nor contributing to any shared burden that the City's standby charges were being used to alleviate. As we made clear in *Covell*, “regulatory fees” must have a “direct relationship” with *either one or the other*. *Covell*, 127 Wash.2d at 879, 905 P.2d 324.

FN44. 85 Wash.App. 171, 931 P.2d 208, rev. denied, 132 Wash.2d 1010, 940 P.2d 655 (1997).

FN45. 89 Wash.App. 340, 948 P.2d 1301 (1997).

FN46. *Id.* at 345, 948 P.2d 1301 (emphasis added). Unoccupied lands were not subject to the fee in *Smith*. *Id.* at 346-47, 948 P.2d 1301.

FN47. *Id.* at 346, 948 P.2d 1301.

FN48. *Id.* at 351, 948 P.2d 1301 (emphasis added).

FN49. *Covell*, 127 Wash.2d at 884, 905 P.2d 324 (quoting *King County Fire Prot. Dist. No. 16*, 123 Wash.2d at 834, 872 P.2d 516).

As *Samis* has demonstrated, no such direct relationship exists here.<sup>FN50</sup> First, the properties at issue here by definition have no relationship to the City's water service. The City admits that “[l]iability for the standby charge does not arise from [*Samis*] use of a city service.”<sup>FN51</sup> Secondly, the lands at issue are uninhabited properties that generate no sewage of any kind and, as established in the record, do not otherwise *burden* the City's sewer or water systems.

FN50. The City's citation to *Otis Orchards Co. v. Otis Orchards Irrigation District No. 1*, 124 Wash. 510, 215 P. 23 (1923) is inapposite. That case involved special assessments in a “duly organized irrigation district under the laws of this state.” *Id.* at 511, 215 P. 23; see, generally, Wash. Const. art. VII, § 9; RCW 35.23.440(47); RCW 35.23.570; RCW 35.43.040; RCW 35.43.042. There was no showing that a specifically authorized special assessment was at issue here. See *Covell*, 127 Wash.2d at 889, 905 P.2d 324 (rejecting characterization of charges as special assessments); *Teter*, 104 Wash.2d at 230, 704 P.2d 1171 (same); *Morse*, 37 Wash.2d at 810-11, 226 P.2d 214 (same).

FN51. Complaint ¶ 33, CP at 5. The City responded to this statement, “In answer to Paragraph 33., Defendant admits the same.” Answer ¶ 14, CP at 12. *Samis* reiterated the statement in its Request for Admission No. 34, eliciting this response: “Defendant City of Soap Lake admits that the liability for the

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standby charge does not arise from the use of a service, but from the City making water and/or sewer services available to Plaintiffs' properties." CP at 132.

[18] Soap Lake argues that the standby charge is justified as payment for the general benefit of living in a community with "a financially viable, efficient and operable water/sewer system" as well as the enhancement of the value and marketability of properties where connection to city water and sewer lines is readily "available."<sup>FN52</sup> We find such arguments untenable under *Covell*. While the Seattle properties at issue in *Covell*\*487 also stood to benefit from public spending of residential street utility charges on the construction, operation, preservation, and expansion of abutting streets, nearby transportation infrastructure, and city-wide \*814 public transit systems,<sup>FN53</sup> we held that "the direct relationship between the charges and the benefits received [or burden imposed] by those who pay them is missing."<sup>FN54</sup> Indeed, most public expenditures have the effect of enhancing the value and marketability of nearby real estate. However, stretching the "direct relationship" test to include such indirect enhancements would render the third *Covell* test meaningless as a guide for distinguishing fees from taxes. While our case law is clear that a "charge may be deemed a regulatory fee even though the charge is not individualized according to the benefit accruing to each fee payer or the burden produced by the fee payer,"<sup>FN55</sup> here there is neither an identifiable service being received by the fee payers nor a burden to which they contribute to which the City's annual \$60 charge has any direct relationship.

<sup>FN52</sup> Br. of Resp'ts at 19. Under *Covell*'s analysis of services, it is not enough to identify one that could *potentially* be received someday. See 127 Wash.2d at 879, 905 P.2d 324 ("service received by those who pay the fee") (emphasis added). The City cites *Ronald Sewer Dist. v. Brill*, 28 Wash.App. 176, 622 P.2d 393 (1980), where the Court of Appeals found "availability fees" to be authorized under chapter 56.16 RCW as "an exercise of [a legislature's] power to protect health and welfare." *Id.* at 178, 622 P.2d 393 (citing *Morse*, 37 Wash.2d at 806, 226 P.2d 214). The *Brill* court, however, was asked only to *construe* an availability fee statute, not to determine whether it levied an un-

constitutional property tax. Moreover, *Brill* predates not only *Covell* (1995) but also most of the case law upon which *Covell* was based.

<sup>FN53</sup> *Covell*, 127 Wash.2d at 877, 905 P.2d 324.

<sup>FN54</sup> *Id.* at 888, 905 P.2d 324.

<sup>FN55</sup> *Id.* at 879, 905 P.2d 324 (citing *Hillis Homes II*, 105 Wash.2d at 301, 714 P.2d 1163).

In short, all three *Covell* criteria support the conclusion that the standby charge at issue here is not actually a "regulatory fee" but rather a thinly disguised tax designed to raise funds to finance broad-based public purposes.

#### *Determining Tax's Constitutionality*

[19] Lastly, we must determine whether this tax is unconstitutional, as Samis contends. In *Covell*, we defined property taxes as "an absolute and unavoidable demand against property or the ownership of property."<sup>FN56</sup> We wrote:

<sup>FN56</sup> *Covell*, 127 Wash.2d at 890, 905 P.2d 324 (citing *Black v. State*, 67 Wash.2d 97, 99, 406 P.2d 761 (1965)) ("Seattle's street utility charge best fits the definition of a property tax, which is an absolute and unavoidable demand against property or the ownership of property.").

In this case, the street utility charge is not levied against the exercise of any particular right of ownership. Rather, the charge is imposed for the "use or availability of the streets." SMC § 21.100.030. The amount of the charge, however, is levied \*815 against property owners to accomplish the public benefit of improving streets.

Consequently, the street utility charge, as assessed, must be declared unconstitutional.<sup>FN57</sup>

<sup>FN57</sup> *Covell*, 127 Wash.2d at 891, 905 P.2d 324.

Because liability for the street utility charge in *Covell*

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resulted unavoidably from real estate ownership, we found it to be a property tax, which had to be “imposed in a uniform manner based on the value of property” under Wash. Const. art. VII, § 1.<sup>FN58</sup>

FN58. *Covell*, 127 Wash.2d at 878, 905 P.2d 324 (citing Wash. Const. art. VII, § 1, and *Boeing Co. v. King County*, 75 Wash.2d 160, 165, 449 P.2d 404 (1969)).

Here also, SLMC 13.08.175 does not levy a charge against the discretionary exercise of any particular right of ownership. Rather, it imposes an unavoidable demand upon ownership itself. The mere act of owning property located near, but unconnected to, the City's water and sewer lines makes one liable. The standby charge matches our definition of a property tax.<sup>FN59</sup> Because the tax is set at “sixty dollars per year per platted lot or unplatted area” without regard to each land's worth, it is clearly not levied uniformly upon the entire class of real estate as constitutionally required.<sup>FN60</sup> The factual record in this case makes it clear that SLMC 13.08.175 cannot reasonably be construed in a manner that comports with constitutional imperatives.

FN59. See *Harbour Village Apartments v. City of Mukilteo*, 139 Wash.2d 604, 607, 989 P.2d 542 (1999); see also *id.* at 611-12, 989 P.2d 542 (Talmadge, J., dissenting) (“We have repeatedly recognized a property tax is imposed on the mere ownership of tangible and intangible property while an excise tax is levied against the exercise of particular aspects of ownership.”) (citing, e.g., *Covell*, 127 Wash.2d at 890-91, 905 P.2d 324).

FN60. We therefore need not decide whether Soap Lake was statutorily authorized to impose this tax. See, e.g., *Hillis Homes I*, 97 Wash.2d 804, 650 P.2d 193.

#### **\*\*488 CONCLUSION**

We conclude that the trial court erred in denying Samis' motion for partial summary judgment. Under *Covell's* three-part test, Soap Lake's “standby charge” is more akin to a tax than to a fee. Since SLMC 13.08.175 imposes this tax on the mere ownership of select parcels of real estate \*816 within the City's jurisdiction, without regard to property value, it vi-

olates Wash. Const. art. VII, § 1. We therefore affirm the Court of Appeals and remand for further proceedings consistent with this opinion.

ALEXANDER, C.J., SMITH, MADSEN, SANDERS, IRELAND, JJ., and GUY, J.P.T., concur. JOHNSON, J. (dissenting).

This case involves the authority to regulate water and sewage as a means of minimizing environmental harm and ensuring safe drinking water. No question exists that Wash. Const. art. XI, § 11 authorizes, if not requires, the government to regulate. Our cases have consistently recognized the validity of this type of regulatory planning. While the majority recognizes our prior cases, it distorts and fundamentally changes the focus and analytical approach of those cases. A proper reading and adherence to the approach we have adopted requires upholding the validity of the regulatory fees involved in this case.

While the majority correctly recognizes *Covell v. City of Seattle*<sup>FN1</sup> as the appropriate analytical approach to resolve this case, it turns that analysis on its head and reaches the wrong result. *Covell* does not support the majority's conclusion. *Covell* cannot be read in isolation from the cases it relied upon. Those cases recognize local governments must be able to protect the environment and public welfare. Those governments must have the “regulatory tools” with which to do so—including the authority to collect fees necessary to fund the construction, operation, and expansion of required infrastructure. The majority's approach undermines the government's ability to regulate for the protection of the environment. At its core, this case involves a city's attempt to provide clean water and expand sewer and storm water service through the assessment of a fee to those landowners who directly benefit from these services. We certainly cannot call this an abuse of the police power. \*817 These standby fees are not imposed against all property within the political unit—they are imposed only on City of Soap Lake (Soap Lake) property where hook-ups are available. I see nothing wrong or unconstitutional about these fees.

FN1. 127 Wash.2d 874, 905 P.2d 324 (1995).

Municipal ordinances carry a strong presumption of constitutionality. *Brown v. City of Yakima*, 116 Wash.2d 556, 559, 807 P.2d 353 (1991). This means the party challenging the ordinance bears the burden

of establishing its invalidity. *Letterman v. City of Tacoma*, 53 Wash.2d 294, 299, 333 P.2d 650 (1958). Recognizing this presumption, *Covell* did not override the traditional deference we give to local governments when acting within their police powers. Yet, under the majority's approach, this is the unavoidable result. While the majority recognizes this presumption in theory, a careful reading of the opinion reveals its failure to apply this presumption in fact. No matter how the majority words its analysis, it is the Samis Land Company and the estate (Samis) that must prove the standby charge is a tax.

The majority's subtle shifting of the burden from Samis to Soap Lake is a fatal flaw. Not only is this flaw determinative to the outcome in this case but, perhaps more importantly, this defect also fundamentally alters *Covell*. The correct application of *Covell* must begin with the presumption that Soap Lake's ordinance authorizing standby fees for sewage and water systems is constitutional. Once the burden of persuasion is properly placed on Samis, the record shows Samis has failed to provide the necessary evidence.

*Covell* tells us we must first consider whether the primary purpose of a charge is to raise revenue or to regulate. We examine the overall regulatory scheme to discover the purpose of the charge, not just the language of the text as the majority suggests. As we \*\*489 stated in *Margola Associates v. City of Seattle*, 121 Wash.2d 625, 854 P.2d 23 (1993):

[A] court can look to the "overall plan" of regulation in construing the purpose of the challenged fee....[T]his court look[s] \*818 beyond the legislation implementing the fee in order to determine the legislation's purpose. Even though ... fee ordinances themselves do not specifically refer to any "overall plan" of regulation or limit the use of revenues, the ordinances should not be viewed in isolation.

*Margola*, 121 Wash.2d at 637, 854 P.2d 23 (citing *Teter v. Clark County*, 104 Wash.2d 227, 704 P.2d 1171 (1985); *Hillis Homes, Inc. v. Public Util. Dist. No. 1*, 105 Wash.2d 288, 714 P.2d 1163 (1986)). While we focused closely on the text of the ordinance at issue in *Covell*, we never suggested that a strict textual analysis was the only method of deciphering the purpose of a municipal charge. In fact, *Covell* suggests that a strict textual analysis is not always appropriate, explaining in some cases the type of ac-

tivity is so well recognized as a police power that a regulatory purpose is "self-evident." *Covell*, 127 Wash.2d at 883, 905 P.2d 324.

The regulatory nature of water and sewage management is self-evident. The importance of municipal regulation of water and waste removal is well established in this state. Article XI, section 11 of the Washington Constitution provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." "The scope of police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." *Covell*, 127 Wash.2d at 878, 905 P.2d 324 (quoting *Hillis Homes, Inc. v. Snohomish County*, 97 Wash.2d 804, 808, 650 P.2d 193 (1982)).

We must look to the overall legislative plan when applying *Covell*.<sup>FN2</sup> Keeping in mind the party challenging a fee has the burden of persuasion, we begin our textual analysis with a broad approach. However, under the majority's approach, we are required to read the text narrowly, hunting \*819 for some magic words that artificially segregate a genuine regulatory purpose from the financial realities that accompany local regulatory actions. This dogmatic approach undermines the thoughtful analysis we applied in *Covell*.

FN2. Title 13 of the Soap Lake Municipal Code (SLMC) represents Soap Lake's comprehensive approach to water quality control and waste disposal and is replete with provisions designed to meet Soap Lake's obligation to protect the welfare of its citizens.

*Covell* and the cases before it require we apply a broader approach. Every financial imposition produces revenue. It is impossible to distinguish between the plainly regulatory purpose of a sewer system or water system and the need for revenue to build, operate, and maintain such a system. That is not the issue. The issue is whether the principal purpose underlying the imposition is fiscal or regulatory. In this case, Soap Lake's overall plan had the plain regulatory purpose of maintaining a sewer/water system for the safety and health of all its citizens and for the protection of its environment. The standby fees are necessary to the revenue stream for the system's operation. Given these facts, I would hold Samis has failed to prove the

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purpose behind the standby fees is anything but regulatory.

In this case, a narrow reading of the legislative text leads to an unfortunate result. The protection of Washington citizens from disease and the harmful effects of unsanitary conditions is one of the few powers expressly specified in article XI, § 11 of our state constitution. The harms caused by unsafe drinking water, contamination of groundwater, and lack of a properly functioning sewer system are well recognized. The legitimacy of the State's purpose in protecting its waters from contamination and its environment from the harmful effects of unmanaged waste requires little discussion. It is reasonable, if not essential, that the State act to prevent the pollution of its waters by human wastes, disease, and environmental degradation caused by such conditions. The regulatory nature of water and sewage management in this state is axiomatic. Therefore, it is not surprising that Soap Lake did not include a specific section detailing the regulatory purpose of its water and sewer system ordinances.\*\*490 Such language is superfluous, or so one would have thought before the majority's decision in this \*820 case.<sup>FN3</sup>

<sup>FN3</sup>. Presumably, if Soap Lake had drafted the relevant ordinances more specifically to spell out the regulatory purpose, the ordinances would survive even under the majority's approach.

We have consistently showed deference to the attempts of local governments to provide sewage systems and clean drinking water. *Covell* supports this approach. A cogent review of prior cases comes from the Court of Appeals in *Smith v. Spokane County*, 89 Wash.App. 340, 948 P.2d 1301 (1997). In *Smith*, a class of citizens challenged fees imposed on water and sewer customers within a certain aquifer protection area. Discussing *Covell* and other cases dealing with the regulation of water and sewage, the Court of Appeals explained:

Additionally, when one compares the facts of this case to the facts of other cases which determined whether fees imposed by governmental entities were regulatory fees or taxes, it is clear that the charges at hand are regulatory fees. In *Covell*, the court determined that a city ordinance imposing a street utility charge was a tax. The City of Seattle

imposed a fee to residents in order to construct, maintain, operate and preserve streets. The court determined that the charges were for the purpose of funding and did not directly relate to any service.

In *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wash.App. 171, 178-79, 931 P.2d 208 (1997), Division Two held that the County's imposition of permit fees for the construction of septic systems was a regulatory fee. The County required permits for construction of septic systems in order to protect the groundwater. In that case the court determined that the fees were part of a plan to regulate septic systems.

In *Hillis* [105 Wash.2d 288, 714 P.2d 1163], the court held that a connection charge to the city's water system was a regulatory fee. The court determined in that case that the charge was part of an overall plan to regulate the use of water.

In *Teter*, a fee was imposed on property owners to finance flood control operations. In that case the court determined that the charges related to regulation and control of storm and surface waters. As a result, the court determined that the charges were regulatory fees.

\*821 In *Hillis Homes, Inc. v. Snohomish County*, 97 Wash.2d 804, 805-06, 650 P.2d 193 (1982), a fee was imposed on new residential subdivisions for parks, schools, road, and fire protection. In that case, the court determined that the charges were unconstitutional taxes. The court found that the charges were not imposed for any regulatory purpose.

The case at hand is much analogous to *Thurston, Hillis*, [105 Wash.2d 288, 714 P.2d 1163], and *Teter*. *The charge at issue in all of these cases dealt with water or septic system regulation. Thurston and Teter did not impose charges which were based upon water or septic usage. All the charges benefited the public by furnishing clean drinking water.*

*Smith*, 89 Wash.App. at 351-52, 948 P.2d 1301 (citations omitted) (emphasis added). The Court of Appeals in *Smith* properly found the charges were part of an overall plan to regulate water quality. The same is true in this case.

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 143 Wash.2d 798, 23 P.3d 477  
 (Cite as: 143 Wash.2d 798, 23 P.3d 477)

What *Covell* tells us to consider next is whether those funds collected by a local government are allocated only to the authorized regulatory purpose (in this case, the purpose of providing sanitary conditions) or are used for general governmental expenditures. This factor alone is not dispositive. *Covell*, 127 Wash.2d 874, 905 P.2d 324. In order for Soap Lake's ordinance to survive, *Covell* requires that the standby fees be segregated and allocated exclusively to the management and improvement of Soap Lake's water and sewage system.

The record in this case demonstrates all standby charges collected by Soap Lake are segregated and used exclusively for water and sewage purposes as required by chapter 43.09 RCW. The funds collected via the standby charge are used solely to facilitate water and sewage regulation. Samis has made no showing to the contrary. Since \*\*491 Samis has not proved a misallocation of funds, the ordinance survives.

Finally, *Covell* instructs us to look for a direct relationship between the charge and the service received by the person paying the charge, or the burden to which they contribute. Samis must prove the lack of a sufficient relationship. Samis has proved nothing. Samis merely argues, and the majority agrees, that its properties are not being \*822 serviced by the system because they are not currently hooked up. However, there is no question the standby fee provides a special benefit to those paying it. Those who pay the fee benefit from ready access to a water and sewer system they otherwise would not have. Samis argues that a benefit or a burden *specific to its individual property* must be established to meet the "direct relationship" requirement in *Covell*. Again, however, that is not what is required.

Not all fees calibrate precisely to a benefit or detriment, particularly if the fees relate to public health where hazards are prevented. It is often not possible to precisely establish the benefit to an individual property owner from uncontaminated drinking water or the prevention of sewage-induced disease. Yet, common sense tells us that a water and sewer system obviously provides special benefits to all property owners, whether they are hooked up to the system or not.

For example, *Teter*, on which *Covell* relies, involved a

group of property owners who challenged city charges that were allocated to providing flood control services. *Teter*, 104 Wash.2d 227, 704 P.2d 1171. We upheld the charges even though the property owners challenging the charges received no *specific* benefit or service. *Teter*, 104 Wash.2d at 230-31, 704 P.2d 1171. We explained the special benefit idea does not apply when a "city acts pursuant to the police power granted to it to provide sewer service to protect the health of its inhabitants and to defray the expense by making service charges." *Teter*, 104 Wash.2d at 231, 704 P.2d 1171 (quoting *Morse v. Wise*, 37 Wash.2d 806, 810-11, 226 P.2d 214 (1951)). The same result applies here.

Incorporating our reasoning in *Teter*, *Covell* does not require a specific service or benefit be shown when a city is working directly within the scope of its police power. Rather, *Covell* requires only a showing of a more generalized individual benefit, but one that is directly related to the police power under which the city is making the charges. Such is the case here.

Soap Lake provides to Samis the benefit of clean water sources and an environment with less pollutants and waste. \*823 The disease and pollution that result from ineffective sewage and water systems do not stop at the property lines of those currently hooked up to the system. Additionally, Samis benefits from the accessibility to waterlines in the case of fire on its property. Presumably, if there were a brush fire on Samis' property, Samis would want the Soap Lake Fire Department to access some water system to put out the fire before it affected nearby inhabited structures and destroyed the environment on its property. As in *Teter*, the system-wide facilities at issue here provide protection to all property owners regardless of whether they are currently hooked up to the system or not. The Soap Lake water and sewage system requires planning and development throughout the city and "affect[s] the prosperity, interests and welfare of all the residents." *Teter*, 104 Wash.2d at 232, 704 P.2d 1171 (quoting RCW 36.89.020). Samis benefits from the overall water and sewage infrastructure in Soap Lake. While the benefit may not be as specific as Samis would like, nonetheless, the service of a functioning sewage and water system is directly related to protecting Samis and other Soap Lake residents from disease and waste.

I would reverse the Court of Appeals and find Samis

23 P.3d 477  
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(Cite as: 143 Wash.2d 798, 23 P.3d 477)

has failed to show Soap Lake's standby fee is a tax rather than a regulatory fee. *Covell* is a cogent synthesis of our previous case law. It never supplanted our extensive jurisprudence distinguishing between regulatory fees and unconstitutional taxes. Yet, under the majority's approach, this is the inevitable result. The majority applies *Covell* too narrowly. The majority's application of *Covell* is contrary to what the case stands for and seriously undermines our prior cases.

**\*\*492** The regulatory purpose of these fees is apparent in Soap Lake's overall plan to regulate water and sewage and provide for a sanitary environment. The funds received through this charge are allocated to the maintenance and improvement of these systems. Samis directly benefits from the sanitary conditions and environmental preservation facilitated by the infrastructure these funds go to support.

Wash.,2001.  
Samis Land Co. v. City of Soap Lake  
143 Wash.2d 798, 23 P.3d 477

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SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET

Date: October 28, 2010

Agenda Item #: Discussion D 3

SUBJECT: Sewer Rates - Debt Service

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

**Issue:**

The issue before the council is how to fund debt service payments for the Sewer System for 2011 and 2012 and to consider alternatives for sewer rates.

**Staff Recommendation:**

Staff recommends the following:

1. Alternative 3 base increase of \$4.97 per month with no increase to stormwater until January 2013.
2. Two year ordinance for sewer rate increase
3. All additional revenues will be used to pay off sewer debt to retire other outstanding loans.

**Summary:**

The Sewer Debt Service fund has payments of \$465,959 due for 2011 and \$461,403 due in 2012. At the Budget Retreat, the Council discussed the sewer debt service requirements for the next two years and considered alternatives that included increasing monthly sewer rates. The alternatives presented are included as Attachment A. The City bills for five different utilities – water, sewer, garbage, recycle and stormwater. The following chart shows the current monthly billing and the rate increase for 2011 under the existing ordinances:

Based on Current Ordinances for each Utility	Water	Sewer - Alternative 1	Garbage	Recycle	Storm water	Total Monthly Base	Total All Utilities Monthly Increase
2010 Monthly base rate	28.09	64.83	20.08	9.25	6.75	129.00	
2011 Monthly base rate	31.25	64.83	20.46	9.35	8.00	133.89	4.89
2011 Monthly Increase	3.16	0.00	0.38	0.10	1.25	4.89	
<b>Proposed Rate Alternatives</b>							
Alternative 2	31.25	68.07	20.46	9.35	8.00	137.13	8.13
Alternative 3 **	31.25	69.80	20.46	9.35	6.75	137.61	8.61
Alternative 4 **	31.25	71.47	20.46	9.35	6.75	139.28	10.28

\*\* includes charges for excess sewer usage.

Based on the discussions at the retreat, staff has prepared alternatives for the council to consider. Alternative 3 and 4 include a charge for excess sewer similar to the charge for excess water. This would generate approximately \$75,000 in additional revenues.

	Current Rate - No change due to CPI	Alternate 1 - 2010 Max Rate	Alternate 2 - 2011 Max Rate	Alternate 3 2011 rate plus charge for excess usage plus reduced expense	Alternate 4 - Max 2011 rate plus excess usage
Monthly Base Rate	64.83	68.07	71.47	69.80	71.47
Annual Revenues	\$1,137,486.00	\$1,137,486.00	\$1,137,486.00	\$1,137,486.00	\$1,137,486.00
Additional Revenues with rate increase	\$0.00	\$52,332.48	\$107,249.28	\$182,249.28	\$182,249.28
Reduction in operating expense required.	\$162,000.00	\$109,667.52	\$54,750.72	\$27,000.00	\$0.00
Base Monthly increase to customer	\$0.00	3.24	6.64	\$4.97	\$6.64
Charge for excess (2.83/per 100 cf over 600)	\$0.00	0	0	4.64	\$4.64

**Discussion:**

The Sewer Operating fund has a deficit balance of \$162,000 (rounded). The issue with the operating fund is the need to cover the PWTF loan payments for 2011-2012. The rate alternatives presented to the Council have an impact on the operating budget for 2011.

Current rate structure will require the Sewer Department to reduce expenses by \$162,000. This would require all capital expenses to be eliminated, the facility plan update to be continued into 2012, no transfers for equipment replacement (Attachment B) and operating expenses to be reduced by \$10,000. This does not provide any surplus for emergencies.

1. Alternative 1 would still require the operating budget to be reduced by \$109,667. This would leave the facility plan update in the budget. (\$67,000)
2. Alternative 2 would require a \$54,750 reduction in expenses. This would eliminate capital budget items and equipment replacement transfers.
3. Alternative 3 would still require a reduction in the operating budget. The most likely decrease would be the capital line item for buildings (\$30,000 for roof replacement). This is the preferred alternative as it will lower the amount needed for the monthly rate increase and will also reduce expenditures.
4. Alternative 4 would not reduce any expenditures and would provide the maximum increase in rates.



Attachment D -1  
**Growth Management Hearings Board**  
**Fallgatter IX**

**CENTRAL PUGET SOUND  
 GROWTH MANAGEMENT HEARINGS BOARD**  
 State of Washington

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JOCELYNNE FALLGATTER, )  
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 Petitioner )  
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 v. )  
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 CITY OF SULTAN, )  
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 Respondent )

CPSGMHB Case No. 07-3-0017  
 (Fallgatter IX)  
**FINAL DECISION and ORDER**

**SYNOPSIS**

*In December 2006, the City of Sultan adopted Ordinance No. 942-06, which put in place the updated Capital Facilities Element of the City's Comprehensive Plan, concurrently with the adoption of the City's Budget for Fiscal year 2007. Petitioner's challenge alleges that the ordinance did not satisfy the Growth Management Act's (GMA) requirements for the Capital Facility Elements (CFE) - RCW 36.70A.070(3), and several Goals of the GMA, specifically RCW 36.70A.020(1), (3), (7), and (12).*

*The Board found that the Petitioner had carried the burden of proof in demonstrating that the City of Sultan's CFE did not comply with GMA requirements since it did not include LOS standards to support the needs assessment; it did not demonstrate that there would be adequate public facilities and services, most notably sanitary sewer, available to serve the urban growth area during the planning period; and that the City, admitting a funding shortfall, did not reassess its land use element or take other measures to maintain consistency. The Board found that the City's action was clearly erroneous and that Ordinance 942-06 substantially interfered with the fulfillment of Goal 12; thus the Board invalidated Ordinance 942-06. The Ordinance was remanded to the City, and a compliance schedule was established within which the City was directed to achieve compliance with the Act.*

Growth Management Hearings Board

Fallgatter IX

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Board Discussion

While the City has made considerable progress in its work on various elements in the Comprehensive Plan in response to repeated challenges brought by the Petitioner and others over the past few years, the City's effort still falls short of the GMA's expectation in regard to its Capital Facilities Plan. Failure to identify necessary facilities and services and their estimated costs makes clear some of the challenges and shortcomings the City still must face.

As noted *supra*, the GMA requires that a CFP provide an inventory of existing capital facilities owned by public entities, a forecast of future needs, and a plan to finance needed facilities. RCW 36.70A.070(3)(a), .070(3)(d). The question for the Board on this portion of this Legal Issue is whether the City's CFP satisfies these requirements. Using the issues identified above, the Board makes the following findings:

Sewer – As the Board sees it, the City has provided an inventory of existing sewer facilities within its CFP (*see* CFP, Figure CF-2, at VIII-5; CFP, Sewer Facilities, at VIII-4 to VIII-8). It is the City's ability to address future needs that is at question. The Board finds that solely relying on future development to provide for major infrastructure, such as sewer, and not planning to have the capacity to provide service to existing development, fails to meet the requirements of the GMA. As the Board stated in *KCRP VI*, Order of Non-Compliance [Re: Kingston Sub-Area Plan], CPSGMHB Case No. 06-03-0007:

*Kitsap's comprehensive plan requires developers to pay for the construction of local sewer connections as new projects are built. However, as Petitioners contend, this does not address the currently un-sewered residential areas within*

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Central Puget Sound  
Growth Management Hearings Board  
800 Fifth Avenue, Suite 2356, Seattle, WA 98104  
Tel. (206) 389-2625 Fax (206) 389-2588

Attachment D  
Growth Management Hearings Board  
Fallgatter IX

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the Kingston UGA. Kitsap's Capital Facilities Plan Population Allocation indicates that the Kingston Sewer Service Area in 2003 had 1,530 sewered and 1,105 unsewered . . . . In reviewing the record, the Board finds that the County *has no strategy to ensure that population of the existing UGA is brought up to an urban level of sanitary service.*

Order, at 11 (Emphasis added). The Board recently affirmed the conclusion that a jurisdiction must ensure that within urban areas there will be adequate and available sewer capacity to serve the existing, un-sewered urban population within the 20-year planning period. *See Suquamish Tribe, et al v. Kitsap County, CPSGMHB Case No. 07-3-0019c, at 26 (Final Decision and Order, Aug. 15, 2007).*

The similarities here with the City of Sultan are evident. Although the Board recognizes the fact that developers are responsible for infrastructure to serve individual units within their proposed development, the City is responsible to provide facilities which adequately serve those units (i.e. treatment plants, trunk lines, pump stations). It is unclear from the language of the CFP that the City has planned for these types of facilities. The CFP notes that sanitary sewer service within the UGA currently serves approximately 1,600 customers with approximately 27 percent of properties located within the city limits on septic systems. Core Document, Comprehensive Plan – CFP, at VIII-4-6. Except for a requirement that all buildings within 120 feet of a city sewer system connect *new* plumbing fixtures to the system (SMC 13.08.020), the City has made no provision for service to the un-sewered population. Nor has the City identified the un-sewered areas or the extent of the needs to make sure capacity will be available and adequate to serve the existing population.

Therefore, the Board finds that, in regard to sanitary sewers, the City has not complied with RCW 36.70A.020(12) and 36.70A.070(3)'s mandate to provide adequate and necessary facilities to support *existing and new* development within the UGAs within the 20-year planning period. The CFP fails to provide an adequate needs assessment (i.e. current needs, future needs, and expected level of service) so as to properly document the needed funding to supply these services, both in regard to the funds required as well as the source of the needed funds.



Washington State  
Public Works Board

June 3, 2010  
Board meeting

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DATE: May 18, 2010

TO: Public Works Board

FROM: Myra Baldini, Application and Loan Specialist  
Terry Dale, Client Services Representative

SUBJECT: City of Sultan Request for Loan Term Change

### RECOMMENDATION

Based on the findings and analysis described below, Public Works Board (the Board) staff recommends extending the City of Sultan's Public Works Trust Fund (PWTF) pre-construction loan PW-06-962-PRE-131 repayment term from five (5) years to six (6) years, at the current interest rate of half of a percent (0.5%) per annum.

Board staff believe that in order for the City to achieve a long term solution to repay the loan and rebuild its financial reserves, the Board must encourage the City to do the following:

1. The City adopts the maximum sewer rate on 12/1/2010 effective date. This may require an amendment to the City's current policy on adjusting sewer rates (see attached email from Sultan's City Administrator).
2. The City adopts a sewer rate on 12/1/2011 effective date that is based on the Seattle-Tacoma-Bremerton CPI-U, as long as it is sufficient to provide funds, which along with other revenues of the system will pay all operating expenses and debt repayments. This may require an amendment to the City's current policy on adjusting sewer rates (see attached email from Sultan's City Administrator).
3. The City must complete a rate study in 2012 and implement the study's sewer rate recommendations thereafter (see attached email from Sultan's City Administrator).

### BACKGROUND

City of Sultan was awarded a \$1 million PWTF pre-construction loan in 2006 to design a new membrane bio-reactor treatment system. This loan funded design and bid documents and the pre-construction project was closed out in May 2009. The City has made one payment of \$375,000.00 and has a remaining balance of \$625,000 plus accrued interest. Unfortunately, the City was unable to acquire construction funding for this project, so was not able to use the Board's term extension policy to convert the PWTF pre-construction loan term from five to 20 years.

The City was proactive in its recognition of the potential problem and submitted a request for the Board to consider extending their PWTF pre-construction loan repayment term from five years to six years and increase their interest rate to one percent. The effect of this request would be to increase the remaining payment schedule from two years to three years. This action would add an extra payment and thus reduce annual payments from approximately \$315,000 in July 2010 and July 2011 to approximately \$208,000.00 for the three remaining payments.

The Board directed the staff to proceed as if this were a loan default circumstance, and to undertake a review of the City's ability to repay the loan.

**FINDINGS**

The lack of additional connections have reduced the City's anticipated revenue stream and forced the use of the City reserve funds to make loan payments, as well as to fund routine maintenance and operation activities. Although the City has used reserve funds to pay loan obligations, their financial status for FY 2010 does not show substantial risk for PWTF loan default. However, Board staff is concerned with the City's fiscal capacity in FY 2011. The current operating revenue does not support the current debt repayments schedule. The City does not appear to have enough reserves to meet their loan obligations and at the same time meet maintenance and operations and any unanticipated repair costs.

**ANALYSIS**

Board staff's analysis on the City's financial situation focused on the review of four of the City's five funds: sewer operating, revenue bond, reserve, and debt service funds. Loan and bond proceeds go to the construction fund. For the sake of looking at the debt repayment capacity, Board staff combined the sewer revenue bond fund and debt service fund into one source of funds currently used for debt services.

Operating resources come from sewer service rates and sewer inspection fees. Basically, monies move from the operating to the reserve, to the bond, to the construction, and to the debt service fund. Additionally, the debt service fund receives a dedicated income that is coming from sewer connection fees.

In 2004 the City adopted Ordinance 865-04 setting out a five-year rate schedule for residential and commercial connections. This provided an annual increase to the rates, a portion of which is dedicated to loan repayments. Additionally, Ordinance 1033-09 increased residential and commercial user fees for the period of 2009 to 2011. Rate schedules 12/1/2004 through 12/1/2006 were not included in our analysis. The rate schedule shown on Table 1 begins on 12/1/2007 and ends on 11/30/2012.

The City has indicated that it is currently updating their General Sewer Plan. The plan will be completed in 2011. After the plan is adopted, the City Council will conduct another rate study based on the financial analysis and capital needs expressed in the plan.

**Table 1: City of Sultan Sewer Rate Schedule**

Effective Date:	12/1/2007	12/1/2008	12/1/2009	12/1/2010*		12/1/2011*	
<b>RESIDENTIAL (flat rate)</b>				<b>Minimum</b>	<b>Maximum</b>	<b>Minimum</b>	<b>Maximum</b>
Single Family	\$54.00	\$56.00	\$64.83	\$64.83	\$68.07	\$64.83	\$71.47
Low-Income senior	\$27.00	\$28.00	\$32.41	\$32.41	\$34.03	\$32.41	\$35.73
Multi-Family	\$54.00	\$56.00	\$64.83	\$64.83	\$68.07	\$64.83	\$71.47
Mobile Home Parks	\$54.00	\$56.00	\$64.83	\$64.83	\$68.07	\$64.83	\$71.47
<b>COMMERCIAL (base rate by meter + volume)</b>							
3" meter	\$54.00	\$56.00	\$64.83	\$64.83	\$68.07	\$64.83	\$71.47
1" meter	\$75.60	\$74.40	\$90.76	\$90.76	\$95.30	\$90.76	\$100.06
1.5" meter	\$97.20	\$100.80	\$116.69	\$116.69	\$122.52	\$116.69	\$128.65
2" meter	\$156.60	\$162.40	\$187.28	\$187.28	\$196.64	\$187.28	\$206.47
3" meter	\$594.00	\$616.00	\$713.10	\$713.10	\$748.76	\$713.10	\$786.20
4" meter	\$756.00	\$784.00	\$907.59	\$907.59	\$952.97	\$907.59	\$1,000.62
6" meter	\$1,134.00	\$1,176.00	\$1,361.38	\$1,361.38	\$1,429.45	\$1,361.38	\$1,500.92
8" meter	\$1,566.00	\$1,624.00	\$1,880.00	\$1,880.00	\$1,974.00	\$1,880.00	\$2,072.70
Volume Rate/100 CF	\$2.20	\$2.28	\$4.61	\$4.61	\$4.84	\$4.61	\$5.08
600 CF Volume Included in Base							
*If the Seattle-Tacoma-Bremerton CPI-U June to June is: - less than zero percent, sewer rates effective as of 12/1/2009 are the minimum base rates; - greater than five percent, sewer rates effective as of 12/1/2009 are the maximum base rates.							
System Connection Fee: \$7,983 per Equivalent Residential Units (ERU). Note: The City has 1,485 existing ERU, as of 2006. Their total customer base is 2,388. Total population of the City is 4,555 based on data updated yearly by Washington State Office of Financial Management.							

The City's current and proposed minimum and maximum rates were compared to jurisdictions with similar customer base and population. Table 2 below shows the comparison.

**Table 2: Rates Comparison**

City	Ridgefield	Wapato	Sultan		Buckley	Blaine	North Bend
			12/1/2009*	Maximum**			
Population	4,215	4,555	4,555	4,555	4,635	4,740	4,760
Single Family Flat Rate	\$49.79	\$35.00	\$64.83	\$68.07	\$65.55	\$81.31	\$65.37
County	Clark	Yakima	Snohomish		Pierce	Whatcom	King

\*Also the proposed minimum rate on 12/1/2010 effective date

\*\*Proposed maximum rate on 12/1/2010 effective date

To determine the Affordability Index (AI) of the single family residence flat monthly rate of \$64.83, the rate was compared to Snohomish County's Annual Median Household Income (AHMI) projections (see Table 3). AI is defined as percent of monthly household income dedicated to utility services.

Rates are deemed to be affordable if the rates are less than two percent. EPA's guidance on the affordability of investment in wastewater systems uses an average household rate of two percent of MHI as one assessment factor in conjunction with measures of the system's debt, socioeconomic conditions of the area, and financial management conditions. Based on EPA's standard, the City's rates are affordable rates.

**Table 3: City of Sultan Sewer Rate Affordability Index**

Effective Date:	12/1/2007	12/1/2008	12/1/2009	12/1/2010*		12/1/2011*	
RESIDENTIAL (flat rate)				Minimum	Maximum	Minimum	Maximum
Single Family ( X 12)	\$54.00	\$56.00	\$64.83	\$64.83	\$68.07	\$64.83	\$71.47
Snohomish County AMHI	\$65,359	\$62,071	\$60,353	\$60,353	\$60,353	\$60,353	\$60,353
Affordability Index	0.99%	1.08%	1.29%	1.29%	1.35%	1.29%	1.42%

The City's operating ratios for 2007–2010 are illustrated on Table 4. The City's historical and 2010 operating ratios indicate that revenues exceed 150 percent of expenses and indicate good financial condition. In other words, the City has sufficient revenue to meet current operating expenses.

**Table 4: Operating Ratios for 2007 – 2010**

Account Name	2007 Actual	2008 Actual	2009 Actual	2010 Adopted
Operating Revenue (A)*	\$919,165	\$1,028,796	\$1,036,676	\$1,140,486
Operating Expenses (B)**	\$595,018	\$643,150	\$602,492	\$652,691
Net Operating Revenue (A – B)	\$324,144	\$385,646	\$434,184	\$487,795
Operating Ratio (A ÷ B)	1.545	1.600	1.721	1.747

\*Sewer Inspection Fee and Sewer Service Fees

\*\*Operating expenses includes general and administrative expenses

Board staff also looked at the Debt Ratio of the City. Debt ratio indicates what proportion of debt the City has relative to its assets. This is a way to measure how the City leverages its assets along with the potential risks it faces in terms of its debt load. Please refer to Table 5 below. Debt ratios indicate that in 2010 only 23 percent of the City's utility assets are debt financed, while at least 77 percent remain as equity.

**Table 5: Debt Ratios**

Account Name	2007 Actual	2008 Actual	2009 Actual	2010 Adopted
Liabilities (A)	\$5,860,245	\$5,391,038	\$4,828,365	\$4,333,473
Assets (B)	\$18,856,494	\$18,873,615	\$19,180,694	\$19,180,694
<b>Debt Ratio (A ÷ B)</b>	<b>0.311</b>	<b>0.286</b>	<b>0.253</b>	<b>0.226</b>

The City's Debt Service Coverage Ratio (DSCR) shows a different picture (Table 6). DSCR is the ratio of net operating revenue available for annual interest and principal payments on debt. A DSCR of less than one would mean a negative cash flow.

**Table 6: Debt Service Coverage Ratios (DSCR)**

Account Name	2007 Actual	2008 Actual	2009 Actual	2010 Adopted
Net Operating Revenue (A)	\$324,144	\$385,646	\$434,184	\$487,795
Total Debt Service (B)	\$313,079	\$333,726	\$579,865	\$638,190
<b>Debt Service Coverage Ratio (A ÷ B)</b>	<b>1.035</b>	<b>1.156</b>	<b>0.749</b>	<b>0.764</b>

The City's DSCRs for 2007 and 2008 show positive cash flow. However, 2009 and 2010 DSCRs are less than one, which means that in 2009 and 2010 net operating income can only cover 75% and 76% of annual debt payments, respectively. Please refer to Table 7 below. This also means that the City has delved into its other funds to pay for its loan obligations. This is evidenced by the decline in fund balances of both bond and debt service funds and a transfer from the reserve fund to the debt service fund in 2010.

**Table 7: Debt Fund Balances**

Account Name	2007 Actual	2008 Actual	2009 Actual	2010 Adopted
<b>Beginning Balances</b>				
Sewer Revenue Bond Fund (A)	\$53,168	\$42,574	\$30,214	\$17,095
Sewer Debt Service Fund (B)*	\$459	\$48,980	\$39,094	\$12,134
<b>Total Beginning Balances (A + B)</b>	<b>\$53,627</b>	<b>\$91,554</b>	<b>\$69,308</b>	<b>\$29,229</b>
<b>Revenues</b>				
Sewer Connection Fees (C)	\$88,733	\$47,384	\$138,390	\$56,000
Transfer from Reserve Fund (D)	\$0	\$0	\$0	\$173,397
Transfer from Operating Fund (E)*	\$262,273	\$264,096	\$401,396	\$407,882
<b>Total Revenues (C + D + E)</b>	<b>\$351,006</b>	<b>\$311,480</b>	<b>\$539,786</b>	<b>\$637,279</b>
<b>TOTAL RESOURCES (A+B+C+D+E)</b>	<b>\$404,633</b>	<b>\$403,034</b>	<b>\$609,094</b>	<b>\$666,508</b>
<b>Total Debt Service (F)**</b>	<b>\$313,079</b>	<b>\$333,726</b>	<b>\$579,865</b>	<b>\$638,347</b>
<b>Ending Fund Balance (Total Resources-F)</b>	<b>91,554</b>	<b>\$69,308</b>	<b>\$29,229</b>	<b>\$28,161</b>

\*Includes investment interest.

\*\* Includes professional services fee on bonds.

In 2009 the City completed the Centrifuge project. There were no transfers that occurred from the operating fund, nor were sewer reserve funds transferred to the construction fund during this time to ensure that debt services were met. In 2010, the City has adopted a transfer of \$173,397 from its sewer reserve fund to the sewer debt service fund in order to make up the anticipated 2010 debt obligations of \$638,347. In addition, the City has also adopted a transfer of \$50,000 for I&I reduction program from the sewer reserve fund to the construction fund for 2010. After these two transactions, the ending sewer reserve fund balance is \$43,552. Table 8 shows the summary of the four funds, illustrating the City's declining cash balances.

**Table 8: Summary of Four Sewer Funds**

Account Name	2007 Actual	2008 Actual	2009 Actual	2010 Adopted
<b>Beginning Balances</b>				
Sewer Operating Fund	\$113,513	\$38,055	\$25,398	\$30,932
Sewer Reserve Fund	\$380,085	\$380,085	\$384,598	\$241,052
Sewer Revenue Bond Fund*	\$53,168	\$42,574	\$30,214	\$17,095
Sewer Debt Service Fund *	\$459	\$48,980	\$39,094	\$12,134
<b>Total Beginning Fund Balances (A)</b>	<b>\$547,225</b>	<b>\$509,694</b>	<b>\$479,304</b>	<b>\$301,213</b>
<b>Revenues</b>				
Sewer Operating Fund**	\$929,115	\$1,077,330	\$1,050,666	\$1,150,986
Sewer Reserve Fund	\$0.00	\$4,513	\$16,454	\$25,500
Sewer Revenue Bond Fund*	\$52,292	\$50,941	\$50,415	\$64,250
Sewer Debt Service Fund ***	\$298,714	\$260,539	\$489,371	\$573,029
<b>Total Revenues (B)</b>	<b>\$1,280,122</b>	<b>\$1,393,323</b>	<b>\$1,606,906</b>	<b>\$1,813,765</b>
<b>TOTAL RESOURCES (A + B)</b>	<b>\$1,827,347</b>	<b>\$1,903,017</b>	<b>\$2,086,210</b>	<b>\$2,114,978</b>
<b>Expenses</b>				
Sewer Operating Fund**/*****	\$1,004,572	\$1,089,987	\$1,045,132	\$1,150,949
Sewer Reserve Fund *****	\$0.00	\$0.00	\$160,000	\$223,000
Sewer Revenue Bond Fund****	\$62,886	\$63,301	\$63,533	\$63,580
Sewer Debt Service Fund *****	\$250,193	\$270,425	\$516,332	\$574,767
<b>Total Expenses (C)</b>	<b>\$1,317,701</b>	<b>\$1,423,713</b>	<b>\$1,784,997</b>	<b>\$2,201,296</b>
<b>Ending Balances</b>				
Sewer Operating Fund	\$38,055	\$25,398	\$30,932	\$30,969
Sewer Reserve Fund	\$380,085	\$384,598	\$241,052	\$43,552
Sewer Revenue Bond Fund	\$42,574	\$30,214	\$17,096	\$17,765
Sewer Debt Service Fund	\$48,980	\$39,094	\$12,133	\$10,396
<b>TOTAL ENDING FUND BALANCE</b>	<b>\$509,694</b>	<b>\$479,304</b>	<b>\$301,213</b>	<b>\$102,682</b>

\*Includes investment/interest income.

\*\*Includes miscellaneous income.

\*\*\*Includes sewer connections fees and transfers of funds in.

\*\*\*\*includes professional services fees.

\*\*\*\*\*Includes transfer funds out.

Table 8 is the City's projected debt service schedule from 2010 through 2016. PW-06-962-PRE-131 Sewer Plant Design loan is comprised of almost 50% of the debt obligations.

**Table 8: Debt Service Schedule**

Account Name	2010	2011	2012	2013	2014	2015	2016
Water/Sewer Revenue Bonds	\$126,845	\$126,572	\$125,976	\$129,873	\$128,262	\$126,315	\$128,875
<b>Total Revenue Bond Debt</b>	<b>126,845</b>	<b>126,572</b>	<b>125,976</b>	<b>129,873</b>	<b>128,262</b>	<b>126,315</b>	<b>128,875</b>
Professional Services	315	315	315	315	315	315	315
50% is Sewer Debt							
<b>Public Works Loans</b>							
<b>Sewer</b>							
PW 596-790-056 Sewer Plant Upgrade	115,213	114,136	113,059	111,983	110,906	109,829	108,752
PW 04-691-064 Sewer I & I Project	75,099	74,750	74,400	74,051	73,702	73,352	73,003
PW 06-962-PRE-131 Sewer Plant Design	315,625	314,063	0.00	0.00	0.00	0.00	0.00
<b>Total P WTF Debt</b>	<b>505,937</b>	<b>502,948</b>	<b>187,460</b>	<b>186,034</b>	<b>184,608</b>	<b>183,182</b>	<b>181,755</b>
50% of Revenue Bonds	63,580	63,444	63,146	65,094	64,289	63,315	64,595
<b>Other Debt Service</b>							
DEOLO 10034 Sewer Storm Water Report	8,631	8,631	8,631	8,631	8,631	8,631	8,631
LTGO Sewer Revenue Bonds	60,199	58,025	55,965	53,905	51,845	49,785	47,725
<b>TOTAL SEWER SYSTEM DEBT</b>	<b>\$638,347</b>	<b>\$633,048</b>	<b>\$315,202</b>	<b>\$313,664</b>	<b>\$309,373</b>	<b>\$304,913</b>	<b>\$302,707</b>