

**CITY OF SULTAN  
WASHINGTON**

**ORDINANCE NO. 1255-16**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON,  
AMENDING CHAPTER 14.04, STORMWATER UTILITY; PROVIDING  
FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Council as conducted a one year rate study to balance the Stormwater fund; and  
WHEREAS, the new rate structure is based on service codes and descriptions to simplify the rate structure;

WHEREAS, Ordinance 985-08 established different classes to determine stormwater fees;

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

Section 1. Sultan Municipal Code Chapter 14.04, Stormwater Utility, is hereby amended to read as follows:

**Chapter 14.04  
STORMWATER UTILITY**

Sections:

- 14.04.010 Establishment of utility.
- 14.04.020 Definitions.
- 14.04.030 Rate policy.
- 14.04.040 Property classification for stormwater utility fee.
- 14.04.050 Real property in an undeveloped condition.
- 14.04.060 Initial stormwater utility fee.
- 14.04.070 Property exempt from the stormwater utility fee.
- 14.04.080 Billing.
- 14.04.090 Rate/charge adjustment and appeals.

**14.04.010 Establishment of utility.**

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

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

Nothing in this chapter will be construed as a duty owed by the city to any particular property owner. (Ord. 985-08 § 2)

#### **14.04.020 Definitions.**

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

A. "Adjustment request" means a request by a rate payer for review and adjustment of the rate or fee levied upon the property.

B. "Base rate" means the gross charge per ERU needed to satisfy all of the projected costs associated with the stormwater utility for an established period of time.

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

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

E. "Equivalent residential unit (ERU)" shall mean the measure of impervious square feet to be used by the utility in assessing stormwater utility fees against each parcel of property.

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

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

For the purposes of this definition, open retention/detention facilities and wetlands, appropriately drained grass playfields and grass sports fields as defined by the public works director or designee shall not be considered as impervious surfaces.

G. "Nonprofit organization" as defined by RCW [24.03.490](#) and [35.92.020\(2\)\(g\)](#) or as may be amended.

H. "Stormwater utility fee" means the monthly fee levied by the utility upon all developed real property within the boundary of the utility as authorized herein.

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

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

K. "Utility" means the Sultan stormwater utility, created by the ordinance codified in this chapter, a utility which operates and maintains the storm or surface water drains, channels and facilities, outfalls for storm drainage and the rights and interests in property relating to the system the boundaries of which shall be the city limits of the city of Sultan and future additions thereto. (Ord. 985-08 § 2)

#### **14.04.030 Rate policy.**

It shall be the policy of the city that the rate structure be based upon the equivalent residential unit (ERU), which will be adopted by separate ordinance by the city.

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

B. The public works department shall determine the stormwater utility fee for each parcel within the utility based on percentage of impervious surface. Aerial photographic mapping, orthorectified aerial photographs (orthophotos), as-built drawings, and parcel boundaries obtained from the Snohomish County assessor (or other appropriate data) will be used to determine each parcel's percentage of impervious surface coverage. (Ord. 985-08 § 2)

#### **14.04.040 Property classification for stormwater utility fee.**

A. Property Classification. For purposes of determining the stormwater utility fee, all properties in the city are classified into one of the following classes:

1. Single-family detached residential property;
2. Commercial and other developed property including multifamily).

B. Single-Family Residential Fee. The city council finds that the intensity of development of most parcels of real property in the city classified as single-family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structures, and other impervious areas) on each such parcel. Therefore, all single-family residential properties in the city shall be charged a flat

stormwater management fee equal to one ERU regardless of the size of the parcel or the improvements.

CD. Commercial and Other Developed Property Fee. The fee for commercial and all other developed property in the city shall be based on the numerical factor obtained by dividing the total impervious surface area (square feet) of the property by one ERU. The minimum stormwater utility fees for other developed property shall be equal to one ERU. (Ord. 985-08 § 2)

**14.04.050 Real property in an undeveloped condition.**

In accordance with the policy established in SMC 14.04.030, the stormwater utility fee shall be determined by the amount of impervious area contained on each parcel of real property. Therefore, no stormwater utility fee shall be imposed upon those parcels of real property within the boundaries of the utility that are in an entirely undeveloped state and are determined by the public works director or his/her designee to not make use of the services of the utility. (Ord. 985-08 § 2)

**14.04.060 Initial stormwater utility fee.**

In accordance with the rate structure established herein, there is hereby levied upon all developed real property within the boundaries of the utility the following stormwater utility fee:

A. For all single-family residences and detached single-family condominiums, the monthly stormwater utility fee shall be the fee established and approved by separate ordinance for one equivalent residential unit (ERU).

BC. For all other developed property including commercial, institutional, manufacturing, multifamily, attached condominiums of greater than four units and mobile home parks within the boundaries of the utility, except as specified under SMC 14.04.070, the monthly stormwater utility fee is determined by separate ordinance based on the number of ERUs calculated by The number of feet determined to be an equivalent residential unit (ERU).D. Low income senior citizens may apply for a 50 percent discount to their stormwater utility fee. "Low income senior citizen" means persons 62 years of age or older, on or before January 31st of the year of the filing for the discount. Low income is based on 125 percent of the federal poverty guidelines. (Ord. 985-08 § 2)

**14.04.070 Property exempt from the stormwater utility fee.**

The following special categories of property are exempt from the stormwater utility fee:

A. City street rights-of-way.

B. State of Washington highway rights-of-way and Snohomish County road rights-of-way so long as the state of Washington and Snohomish County shall agree to maintain, construct and improve all drainage facilities contained within such rights-of-way as required by the utility in

conformance with all utility standards for maintenance, construction and improvement hereafter established by the utility and so far as such maintenance, construction and improvements shall be achieved at no cost to the utility or to the city.

C. Real property within the boundaries of the utility that are in an entirely undeveloped state and are deemed by the public works director or his/her designee not to make use of the services of the utility. (Ord. 985-08 § 2)

**14.04.080 Billing.**

A. The charges imposed by this chapter shall be billed in conjunction with the property owner's or user's customary water and sanitary sewer bill issued by the city and for the purposes of billing only the city shall be deemed to have a consolidated sewer, water and stormwater utility and therefore the city may allocate receipts on billings first to stormwater and sewer to preserve its right to shut off water. For developed properties subject to the stormwater utility fee that do not otherwise receive a water or sanitary sewer bill from the city of Sultan, the stormwater utility fee may be billed at intervals set by the public works director, but not less than annually.

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

C. Billings may be made in the name of tenant or other occupants of the premises that are provided stormwater utility services at the mailing address of the property. Such billings shall not relieve the owner of the property from liability for the payment of the charges for furnishing of such stormwater services nor in any way affect the lien rights of the city against the premises to which said stormwater services are furnished. Failure to receive mail properly addressed to the mailing address provided above shall not be a valid defense for failure to pay the delinquent charges and penalties. Any change in the mailing address provided above must be properly filed in writing with the office of the city clerk before it will become effective.

D. In the event the city must bring legal action to collect stormwater utility fees and/or penalties, the city, in addition to such charges and penalties, shall recover its attorney's fees and other costs incurred in connection with such collection. (Ord. 985-08 § 2)

**14.04.090 Rate/charge adjustment and appeals.**

A. Any person billed a stormwater fee under this chapter may file an adjustment request with the public works director within 60 days of the date of the billing statement. Submittal of an adjustment request shall be made on forms provided by the director and shall not extend the period of payment for the stormwater fee.

B. Upon timely receipt of an adjustment request, the public works director or his/her designee will review the request and make a preliminary determination after a review of utility records or a site visit.

C. The public works director may grant a rate adjustment only in accordance with this chapter and only upon a finding that one or more of the following conditions exist:

1. The parcel charged is not within the Sultan city limits.
2. The impervious surface area of the parcel would change the number of equivalent residential units used in determining the stormwater fee.
3. The parcel is in an undeveloped condition and not paved, graveled or covered with any impervious surface.
4. The rate charged was otherwise not calculated in accordance with the terms of this chapter.

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

E. The property owner shall have the burden of proving by a preponderance of the evidence that the desired adjustment request meets the requirements of this section.

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

G. Decisions on adjustment requests shall be made by the public works director based on information submitted by the applicant in the adjustment request, the utility's records and a site visit. Decisions shall be made within 30 days of the date of the adjustment request, except when additional information is requested or needed by the public works director. The applicant shall be notified in writing of the public works director's decision.

H. Decisions of the public works director on adjustment requests shall be final unless appealed to the Snohomish County superior court within 30 days of the final decision on the adjustment request. (Ord. 985-08 § 2)

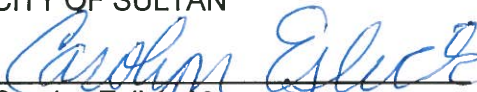
Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or

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 five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 15<sup>th</sup> DAY OF DECEMBER, 2016.**

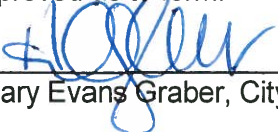
CITY OF SULTAN

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

ATTEST/AUTHENTICATED:

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

Approved as to form:

  
\_\_\_\_\_  
Hillary Evans Graber, City Attorney

Date of Publication: 12-19-16

Effective Date: 12-25-16