

ORDINANCE BILL NO. 8 FOR 2007

ORDINANCE NO 1196

AN ORDINANCE ADDING CHAPTER 13.09 TO THE SWEET HOME MUNICIPAL CODE ESTABLISHING A STORMWATER DRAINAGE UTILITY AND STORMWATER DRAINAGE UTILITY FEES

WHEREAS, Sweet Home Municipal Code 13.08.100 states that “Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the Director”; and

WHEREAS, continuous efforts provided by City staff to deal with stormwater drainage issues are reactive in nature and typically dealt with during heavy rainfall periods; and

WHEREAS, past winter storms and resultant rainfall have raised the concern about developing a “Stormwater Drainage Utility” to fund citywide operation & maintenance (O&M) and/or improvements to our existing system within the public right-of-way; and

WHEREAS, Sweet Home City Council has directed that information be gathered on how the City could go about developing an actual “Stormwater Drainage Utility” that would provide funding for ongoing maintenance as well as capital improvements necessary to manage our Stormwater; and

WHEREAS, the City Council finds it necessary to establish an Ordinance establishing an official “Stormwater Drainage Utility”;

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

Section 1 - Sweet Home Municipal Code Chapter 13.09 is established in the Sweet Home Municipal Code and shall read as follows:

Chapter 13.09

STORMWATER DRAINAGE UTILITY

Sections:

- 13.09.010 Findings - Purpose
- 13.09.020 Definitions
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13.09.010 – Findings - Purpose

The City provides a valuable public service by providing stormwater drainage facilities for the collection and disposal of Stormwater discharged from properties and public right-of-ways within the City. The stormwater drainage facilities constitute a public utility owned and operated by the City. The utility exists for the benefit of any person within the City who wants to have the public stormwater drainage facilities available for the diversion, collection and/or disposal of stormwater drainage and other runoff water from the person's private property and represents a municipal service in a developed urban environment which is essential to the public health, safety and welfare.

Persons who use the public stormwater drainage facilities need to be charged fees that reflect the cost of the management, maintenance, extension and construction of the public stormwater drainage facility as a public utility in the City. Persons should not be compelled to use this utility, nor to pay monthly utility fees, if the utility is not to be used by the person responsible. Persons who undertake the installation of runoff control facilities on their property that reduce or eliminate the discharge of Stormwater into public stormwater drainage facilities ought to be given an exemption, in proportion to the degree of reduction, against stormwater drainage utility fees that would otherwise be due. Certain stormwater drainage facilities and costs are incurred by the utility to provide the overall Stormwater program and benefit those persons who may otherwise eliminate the discharge of Stormwater into public stormwater drainage facilities.

Accordingly, the structure of the stormwater drainage utility is intended to be a fee for service and not a charge against property. Although this structure is intended to constitute a service fee, even if it is viewed as a fee against property or against the person responsible, as a direct consequence of ownership of that property, the utility's fee structure should allow the person responsible to have the ability to control the amount of the fee. Similarly, the utility fee structure should reflect the actual cost of providing the service and not impose fees on persons not receiving a service. The actual costs may include all costs the utility might incur were it in private ownership.

Persons using water from the City potable water facilities use substantial amounts of water for irrigating lawns and gardens, washing structures, sidewalks, driveways and parking lots, and for other activities which result in the discharge of runoff into the public stormwater drainage facilities. These uses of water demonstrate a substantial relationship between persons' use of these water facilities and their use of the public stormwater drainage facilities.

13.09.020 – Definitions

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter.

“City” means the City of Sweet Home, Oregon, and the area within its boundaries including its boundaries as extended in the future and all property owned by the City, outside the City limits. It means all officers, employees, and representatives of the City of Sweet Home.

“City Engineer” means the City Engineer of the City of Sweet Home, or such person as may be designated by the Public Works Director for the administration of this Ordinance. Designated person includes Public Works Director and any qualified engineer.

“City Manager” or “Manager” means the City Manager of the City of Sweet Home, or such person as may be designated by the Manager for the administration of this Ordinance.

“Commercial Unit” or “Industrial Unit” shall be defined in SHMC 13.08.050 as “Commercial, or commercial use; and “Industrial, or industrial use”.

“Commodity Charge” shall be the charge per each EDU of impervious surface that drains directly or indirectly to public infrastructure. Commodity Charge shall be set by Rule.

“Council” shall refer to Sweet Home City Council.

“Customer Charge” also referred as “Monthly Base Charge” is a charge per EDU as defined within this Chapter for each property within the legal City boundary for the cost of draining rights-of-way and providing other common surface water programs. Customer Charge shall be set by Rule.

“Delinquent Account” means any billing and/or associated fee for service that is not paid by the fifteenth (15th) of the month following the month in which the service was provided and/or charges incurred.

“Development” shall mean any constructed change to improved or unimproved property including, but not limited to, building or other structures, private stormwater drainage facilities, mining, dredging, filling, grading, paving, excavation or drilling operations.

“Director” shall mean the Public Works Director for the City of Sweet Home or his/her authorized designee.

“Easement” shall mean a written and recorded legal document describing legal interest in land owned by another that entitles easement holder to a specific limited use.

“Equivalent Dwelling Unit (EDU)” also referred as “Single Family Unit (SFU)” shall, for purposes of this Chapter, mean an area which is estimated to place approximately equal demand on the public stormwater drainage facilities. The term EDU shall be inclusive of those units identified as detached single-family residences, unit ownerships, condominiums, etc. Each EDU shall be based on an amount of impervious surface in square feet as set by Rule.

“Impervious Surfaces” are those surface areas which either prevent or retard saturation of water into the land surface and cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions pre-existent to development. Examples of impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and gravel, oil, macadam or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.

“Improved Property” shall mean any area which has been altered such that the runoff from the site is greater than which could historically have been expected under conditions pre-existent to development. Such a condition shall be determined by the Director.

“Master Plan” shall mean the “1997 City of Sweet Home Storm Drainage Master Plan Update”, including such amendments to such plan, and adopted January 26, 1999.

“Normal Working Hours” for administrative purposes means any normal workday Monday through Friday (except holidays) between the hours of 8:00 a.m. and 5:00 p.m.

“Open Drainage Way” shall mean a natural or constructed path, ditch or channel which has the specific function of conveying natural stream water or stormwater from a point of higher elevation to a point of lower elevation.

“Person Responsible” shall mean the owner, agent, occupant, lessee, tenant, contract purchaser or other person having possession or control of property or the supervision of an improvement on the property.

“Public” shall generally mean for the purposes of this Ordinance that within the public right-of-way.

“Private” shall generally mean for the purposes of this Ordinance that that is on private property.

“Residence” or “Residences” means a building used primarily as a home.

“Rule” shall mean any written standard, directive, interpretation, policy, regulation, procedure or other provision, adopted by the Council as a Resolution to carry out the provisions of this ordinance.

“Runoff Control” shall mean any measure approved by the Director that reduces Stormwater runoff from land surfaces on which development exists.

“Stormwater Drainage Facilities” shall mean any structure(s) or configuration of the ground that is used or by its location becomes a place where Stormwater flows or is accumulated including, but not limited to, pipes, sewers, gutters, manholes, catch basins, ponds, open drainage-ways and their appurtenances,

neighboring creeks and/or streams not otherwise excluded by action of the Council as not being stormwater drainage facilities.

“Stormwater” shall mean water from precipitation, surface or subterranean water from any source, drainage and non-septic waste water.

13.09.030 - Stormwater Drainage Policy

- A) Council declares its intention to acquire, own, manage, construct, equip, operate and maintain within the City open drainage ways, underground storm drains, equipment and appurtenances necessary, useful, or convenient for public stormwater drainage facilities. The Council also declares its intention to manage, maintain and extend existing public stormwater drainage facilities.
- B) The improvement of both public and private stormwater drainage facilities through or adjacent to a new development shall be the responsibility of the person responsible as defined within this Ordinance. The improvements shall comply with all applicable City ordinances, policies, standards and Master Plan.
- C) No portion of this ordinance or statement or subsequent Council interpretation or policies shall relieve the person responsible of assessments levied against their property for public facility improvement projects.
- D) It is the policy of the City to participate in improvements to stormwater drainage facilities when authorized by the Director. To be considered for approval by the Director, a stormwater drainage facility must:
 - 1) Be public; and
 - 2) Provide a benefit to the community; and
 - 3) Be located in or on a City property, City right-of-way or City easement; and
 - 4) If a piped system, be a design equivalent to equal or larger than a 12-inch diameter pipe; and
 - 5) Be identified as a project in the Master Plan; or
 - 6) Be a rehabilitation and/or replacement of existing public stormwater drainage facilities.
- E) The City shall maintain public stormwater drainage facilities located on City property, City right-of-way or City easements. Public stormwater drainage facilities to be managed by the City include, but are not limited to;
 - 1) Open drainage ways which service a drainage basin of at least 100 acres, when on City property, City right-of-way or City easement; and/or
 - 2) A piped drainage system and related appurtenances which has been designed and constructed expressly for use by the general public and accepted by the Director; and/or
 - 3) Roadside drainage ditches along unimproved City streets; and/or
 - 4) Flood control facilities (levees, dikes, overflow channels, detention basins, retention basins, dams, pump stations, groundwater recharging basins, etc.) that have been designed and constructed expressly for use by the general public and accepted by the City.
- F) Stormwater drainage facilities NOT maintained by the City include, but are not limited to:
 - 1) Stormwater drainage facilities not located on City property, City right-of-way, or City easement;
 - 2) Private parking lot stormwater drainages;
 - 3) Roof, footing, and area drainages;
 - 4) Drainages not designed and constructed for use by the general public;
 - 5) Drainage swales which collect Stormwater from a basin less than 100 acres that is not located on City property, right-of-way or easement;
 - 6) Access driveway culverts;
 - 7) Those portions of streams or drainage ways located on privately owned land;

- 8) Ditches swales, culverts and similar facilities owned and operated by the U.S. Bureau of Reclamation or other local, county, or state governments.

13.09.040 Establishment of a Stormwater Drainage Utility

A Stormwater Drainage Utility is created for the purpose of providing funds for the management, maintenance, extension and construction of public stormwater drainage facilities within the City. Council finds, determines and declares the necessity of providing for the management, maintenance, extension and construction of City stormwater drainage facilities for its inhabitants.

13.09.050 Establishment of a Stormwater Drainage Utility Fee - Responsibility

- A) The person(s) who owns the property served by the public stormwater drainage facility shall be ultimately responsible for payment of all fees/charges prescribed in this ordinance for that property notwithstanding the fact that the property may be occupied by a tenant or other occupant who may be required by the owner to pay said charges.
- B) Water and/or sanitary sewer service may be denied to any person who has left an unpaid stormwater drainage bill at another address within the City limits of Sweet Home, until such bill is paid.
- C) Each property shall be billed a stormwater drainage utility fee for services in accordance with the rate schedule set by resolution as authorized by this ordinance. Fee shall include a "Customer Charge", if applicable, and a "Commodity Charge" each of which shall be based per EDU and each subsequent 100 square foot measurement of impervious surface. Such fee shall:
- 1) Be established in amounts which will provide sufficient funds to properly manage and maintain public stormwater drainage facilities; and
 - 2) Be used for the construction of new stormwater drainage facilities or for the extension of existing stormwater drainage facilities.
- D) The City Manager shall cause a review of stormwater drainage fees to be made each February of the year to determine what fee changes, if any, are to be considered by the City Council. Based on this annual review, City Council may, by resolution, change the fees based upon revised estimates of the cost of properly managing, maintaining, extending and/or constructing public stormwater drainage facilities.
- E) Credit will be allowed for runoff control measures. When approved by the Director, stormwater drainage utility fees may be reduced for a property where approved runoff control measures have been taken. A fee reduction shall be on a straight line basis with conditions existing on the date of the passage of this ordinance, being considered as starting or initial conditions. If the person responsible establishes, to the satisfaction of the Director, that all runoff from a property is disposed of without utilizing public stormwater drainage facilities either directly or indirectly, there will be no fees charged under the provisions of this chapter except those fees imposed to fund Stormwater programs common to all property owners, including the cost of draining the public rights of way.
- F) Property not used for single family dwelling purposes (i.e. multi family properties such as duplex and/or tri-plex, commercial properties, industrial properties, schools, churches, government, etc.) shall be considered to be furnished service in proportion to the amount of the property's impervious surface, and that for each EDU (or increment of 100 square feet) of impervious surface, the property is furnished service equivalent to that furnished a single family unit and that the minimum service charge shall be that established for a single family unit.

13.09.060 Stormwater Drainage Utility Fee—Dedicated

All fees collected for the purposes specified in this Chapter shall be paid into the stormwater drainage accounts and accounted for by dedicated line items including, but not limited to, Stormwater Drainage Maintenance and Stormwater Drainage Construction. Such revenues shall be used for the purposes of the management, maintenance, extension and construction of public stormwater drainage facilities.

13.09.070 Billing For Fee, Payment Delinquencies and Penalties

The stormwater drainage fee shall be billed and collected with the monthly water and/or sewer utility bill. All such bills shall be rendered monthly by the City and shall become due and payable in accordance with the rules and regulations of the Utility Billing Department pertaining to the collection of utility fees. All fees collected will be placed in the stormwater drainage accounts as required by this chapter.

All bills are due when mailed and shall be considered delinquent if not paid by the fifteenth (15th) of the month following the month in which the charges were incurred and shall be payable at City Hall.

If a bill is not paid by the time it becomes delinquent, a delinquent notice may, by rule, be mailed to the customer and/or property owner(s). If the bill is not paid by the date and time specified in the delinquent notice, or appropriate arrangements made at City Hall – Water Department, the City Manager shall, by rule, have the authority to deprive the property concerned of water service by means of shut off, lockout, meter removal, and/or methods appropriate for discontinuance of water service until all delinquent user charges including interest accrued and the expense of removal, closing, and restoration have been fully paid. The expense of such discontinuance, removal, or closing, as well as the expense of restoring service shall be a debt due to the City and a lien upon the property and may be recovered by civil action in the name of the City against the property owner, the person, or both. Water service shall not be restored until all charges, including interest accrued and the expense of removal, closing, and restoration shall have been paid.

Interest at a rate set by resolution shall accrue on all accounts from the date of delinquency. In addition, a penalty shall be assessed at the rate of \$2.00 per month from the date of delinquency, which shall be added to the account and shall accrue interest in the same manner as all other delinquent charges beginning the following month. A service charge shall be paid to the City whenever service is reinstated after having been discontinued due to nonpayment.

Service may be denied to any person until restitution has been made for any damage or loss of revenue resulting from tampering with or bypassing water meters or locking devices.

The Director shall have authority to adjust or waive fees as appropriate. Changes of ownership or occupancy of premises found delinquent shall not be cause of reducing or eliminating these penalties.

Stormwater drainage charges levied in accordance with this ordinance shall be a debt due to the City and a lien upon the property. If this debt is not paid within 30 days after it shall be due and payable, it shall be deemed delinquent and may be recovered by civil action in the name of the City against the property owner, the person, or both.

13.09.080 Enforcement

Any fee due which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided by this or any other City ordinance and/or State law, failure of any person responsible to pay fees promptly when due shall subject the person responsible to discontinuance of any utility services provided by the City and the City Manager is empowered and directed to enforce this provision against such delinquent users. The employees of the City shall, at all reasonable times, have access to any improved property served by the City for inspection, repair, or the enforcement of the provisions of this chapter.

13.09.090 Administrative Review – Appeals

Any person responsible who disputes the amount of the fee, or disputes any determination made by or on behalf of the City pursuant to and by the authority of this Chapter may petition the City Council for a hearing on a revision or modification of such fee or determination. Such petitions may be filed only once in connection with any fee or determination, except upon the showing of changed circumstances sufficient to justify the filing of an additional petition.

Such petitions, including all facts and figures, shall be submitted in writing and filed with the Director at least 14 days prior to a hearing being scheduled by the Council. The petitioner shall have the burden of proof.

Within 45 days of filing of the petition, the Council shall make finding of fact based on all relevant information, shall make a determination based upon such findings and, if appropriate, extend timeline up to an additional 30 days for further fact gathering and/or modify such fee or determination accordingly. Such determination by the Council shall be considered a final order and petitioner shall be notified according to Chapter 13.09.100.

13.09.100 Notice of Decision

Every determination of Appeal made by the Council shall be in writing, and notice shall be mailed to or served upon the petitioner within a reasonable time from the date of such action. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this chapter.

13.09.110 Exemptions

The Council may, by resolution, exempt any class of user when the Council determines that the public interest deems it necessary or that the contribution to stormwater drainage facility use by the class to be insignificant.

13.09.120 Discounts

The Council may establish, by resolution, stormwater drainage utility fees at discounted rates when the Council determines it to be in the public best interest to do so.

13.09.130 Violations - Penalties

Violations of this Ordinance may be prosecuted under the provisions of Sweet Home Municipal Code Chapter 9.36 and any amendments thereto and Sweet Home Ordinance Number 1128 in addition to any other legal remedies available to the City. Each day that a violation exists is a separate offense.

13.09.140 Severability

The provisions of this ordinance are severable, and if any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the City Council's intent that this ordinance would have been adopted had such an unconstitutional provision not been included herein.

13.09.150 Classification

The City Council determines that any fees, rates or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

PASSED by the Council and approved by the Mayor this 27th day of November, 2007.


Mayor

ATTEST:


City Manager – Ex Officio City Recorder