

ORDINANCE NO. 806

**AN ORDINANCE RELATING TO UTILITIES AND STORMWATER MANAGEMENT;
AMENDING THE SCAPPOOSE MUNICIPAL CODE TO ADD A NEW CHAPTER
ESTABLISHING A STORMWATER MANAGEMENT UTILITY; AND SETTING A
SYSTEM AND STRUCTURE FOR STORMWATER FEES**

WHEREAS, the City Council has determined that the City's physical growth and urban development has and will continue to increase the volume of stormwater runoff collected in and routed through the City's man-made and natural stormwater facilities and system ("stormwater system"); and

WHEREAS, the City Council finds that stormwater runoff causes property damage and erosion; carries concentrations of nutrients, heavy metals, oil and toxic materials into receiving waters and ground water; degrades the integrity of City streets and the transportation system; and reduces citizen access to emergency services and poses hazards to both lives and property; and

WHEREAS, state and federal regulations mandate the control of pollution contained within stormwater runoff and require comprehensive stormwater plans including long term regulation of nonpoint source pollution management measures; and

WHEREAS, the City Council has determined that stormwater runoff must be managed in a manner that protects the public health, safety and welfare; and

WHEREAS, the City Council finds that stormwater quality and quantity problems cannot be allowed to escalate as a result of inadequate design criteria, regulation, maintenance, improvement, public awareness or code enforcement; and

WHEREAS, the City Council finds that the City's stormwater system must be funded in a manner enabling comprehensive maintenance, operation, regulation and improvement of the system; and

WHEREAS, the City Council finds that all impervious surface within the City's boundaries contributes runoff to the City's stormwater system; that all water utility customers having impervious surface areas make use of or benefit from the City's maintenance, operation and improvement of the stormwater system; and that all such customers should contribute to the funding of the City's program for maintenance, operation and improvement of the stormwater system; and

WHEREAS, in 1999 the City Council passed Ordinance 694 adopting the November 1998 "Storm Drain System Master Plan" prepared by KCM, Inc., which recommended a funding structure for the City's Stormwater Management Utility; and

WHEREAS, City staff and engineering consultants have evaluated methods for stormwater management and options for funding the program; and

WHEREAS, future rates and charges may be fixed with consideration for the difference in cost of service to the various customers based on such factors as: the location of the various

customers within the City; the intensity of development of an area; the types of surfaces; the difference in cost of maintenance, operation, repair, and improvement of the various parts of the stormwater system; the different character of the service furnished various customers; the quantity and quality of the runoff generated; and other matters which present a reasonable basis for distinction; and

WHEREAS, the City Council finds that all water utility customers and other persons having responsibility for impervious surface area cause, by virtue of their impervious area, a change in the quantity, quality, and timing of the stormwater leaving such area and reaching the stormwater system to be owned, operated and maintained by the Stormwater Management Utility; now therefore,

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Purpose. Absent effective maintenance, operation, regulation and control, existing stormwater drainage conditions in all drainage basins and sub-basins within the City constitute a potential hazard to the health, safety and general welfare of the City. Natural and man-made stormwater facilities and conveyances together constitute a stormwater system and effective regulation and control of stormwater requires formation, by the City, of a Stormwater Management Utility.

Section 2. Definitions. The following terms used in this Ordinance shall be defined as follows:

- a. "City" means the City of Scappoose.
- b. "City Council" means the City Council of the City.
- c. "Customer" means the person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer or water service or, in the absence of a signed instrument, by the receipt of such services and payment of bills for such service regularly issued in his/her/its name.
- d. "Equivalent Service Unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system which is approximately equal to that created by the average developed single family residence within the City. One ESU is equal to 2,750 square feet of impervious surface area.
- e. "Impervious Surface" means that hard surface area which either prevents or retards the entry of water into the soil mantle on real property and/or causes water to run off the property surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.
- f. "Developed" means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.
- g. "Single Family Residential" means property which is improved with a dwelling unit for occupancy by a single family or a similar group of people. A single family residence also may be an individual dwelling, manufactured home, flat or unit in a multi-family building or portion thereof for occupancy as the home, residence or sleeping place for one or more

persons, provided each such dwelling, manufactured home, flat or unit has a separate billing identified within the City's utility billing system.

- h. "Undeveloped" means any area which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

Section 3. Stormwater Management Utility created. There is hereby established in the City a Stormwater Management Utility and incurred charge rate structure to fund such Utility. All references to "the Utility" in this chapter refer to the Stormwater Management Utility. The Utility will have regulatory authority and responsibility for planning, design, construction, maintenance, administration and operation of all City stormwater conveyances and facilities.

Section 4. Incurred Charge Imposed. All customers of the City's water utility and those persons otherwise responsible for impervious surfaces within the City which contribute runoff into the stormwater system or who otherwise use or benefit from the stormwater system of the City shall pay to the City a Stormwater Utility charge as provided herein. Charge amounts shall be set and amended from time to time by resolution of the City Council.

Section 5. Property Subject to Utility Control. The following assets of the City shall hereafter be the responsibility of the Utility: all properties, interests and physical and intangible rights of every nature owned or held by the City, however acquired, insofar as they relate to or concern stormwater; further including, without limitation, all properties, interests, and rights acquired by adverse possession or by prescription, directly or through another, in and to the drainage or storage, or both, of stormwater, through, under, into or over lands, watercourses, drywells, pipes, channels, detention/retention facilities, sloughs, streams, ponds, lakes, and swamps, all beginning in each instance at a point where stormwater first enters the stormwater system and ending in each instance at a point where the stormwater exits from the system, and in width to the full extent of inundation caused by storm or flood conditions.

Section 6. Utility Administrator. The Stormwater Management Utility shall be managed by a Utility Administrator designated by the City Manager.

Section 7. System of Charges. There is hereby imposed a system of fees on customers within the City served by, or to which is available for service, the Utility established by this ordinance.

Such fees are to be reasonable and necessary as a means for funding stormwater management within the City, and shall be sufficient to fund the administration, planning, design, construction, water quality programming, operation, maintenance and repair of the stormwater system, facilities, underground injection controls (UICs), conveyances and program. The following rate structure is hereby established for all Utility customers in the City:

- a. Single Family Residential: A monthly single family residential customer fee shall be set by resolution of the City Council for each residential dwelling. This uniform rate is based on each single family residence being equal to one equivalent service unit (ESU).
- b. Undeveloped: Undeveloped areas shall not be charged under this structure of charges.
- c. Other Customers: The monthly charge for all other customers shall be based upon the total amount of measured impervious surface on the property divided by one ESU, and rounded to the nearest whole number. The actual total monthly service charge shall be

computed by multiplying the measured ESU's for the area by the monthly rate per ESU. The monthly rate shall be set by resolution of the City Council.

- d. On-site Mitigation Reduction Factor: The Utility Administrator shall determine an appropriate on-site mitigation credit factor for those eligible utility system customers who apply for such credit consideration, provided that such mitigation is consistent with the design criteria adopted by the City and administrative procedures adopted by the Utility.
- e. Certain Areas Exempted: The Utility shall apply its charge to all publicly owned impervious surfaces except streets and public rights of way.
- f. Special Programs: Rate adjustments for special programs may be determined by the Utility Administrator on a case by case basis through individual contracts that delineate in-kind contribution by the customer to management of the City's stormwater management system.

Section 8. Billing and Collection. Stormwater Utility charges for each Utility customer within the City shall be computed on a monthly basis. The amount to be billed shall be included on existing utilities billed as a separate line item. A "stormwater only" billing shall be sent to those customers who are not currently receiving a Utility bill upon receipt of written request for stormwater service. The City shall bill the occupier of the location being served by the Utility consistent with the City's water utility billing system.

Section 9. Penalties for Nonpayment of Charges. In the event that any Utility account shall become delinquent, water service may be terminated by the City and discontinued until all delinquent fees for the use of the stormwater system, sanitary sewer service, and water service shall have been paid in full. The provisions for collection provided herein shall be in addition to any rights or remedies which the City may have under the laws of the State of Oregon. The Stormwater Management Utility fee shall not become a lien against a customer's property.

Section 10. Stormwater Utility Account. All money collected as Stormwater Utility charges shall be deposited in the Stormwater Utility Account.

Section 11. Appeal of Charges. Any customer making a timely payment of the City's total utilities bill who considers the City's stormwater charge incorrect as applied to their impervious surface area or who otherwise disagrees with the Utility's rate determination, may apply to the Utility Administrator for a service charge adjustment, stating in writing the grounds for such an adjustment. The Utility Administrator will determine whether an adjustment to the charge is necessary to provide for reasonable and equitable application of the Utility service charge. Appeals of decisions made by the Utility Administrator may be brought before the City Manager who may evaluate the determination of the Utility Administrator. Any appeal under this chapter shall be filed with the Utility Administrator no later than twenty (20) days after initial billing. Any subsequent appeal to the City Manager shall be filed with the City within twenty (20) days of the decision of the Utility Administrator.

Section 12. Classification. The City Council determines that the fees imposed by this Chapter are not taxes subject to the property tax limitations of Article XI, Section 11b of the Oregon Constitution.

Section 13. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 14. Effective date. This Chapter shall take effect July 1, 2009.

Section 15. The provisions of this ordinance shall be added to the Scappoose Municipal Code as chapter 13.22, Stormwater Management.

PASSED AND ADOPTED by the City Council this 1st day of June, 2009, and signed by the Mayor and City Recorder in authentication of its passage.


CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

First Reading: May 18, 2009
Second Reading: June 1, 2009

Attest:



Susan M. Reeves, CMC
City Recorder