

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. AB2008-260

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Kraig Olason	KO	6/24/08	RECEIVED JUL 01 2008 WHATCOM COUNTY COUNCIL	7/8/08	Natural Resource Committee /Council
Division Head: K. Christensen	AKC	6/27/08		7/22/08	Hearing
Dept. Head: F. Abart	FA	6/22/08			
Prosecutor: D. Gibson	DG	06/27/08			
Purchasing/Budget: B. Bennett	BB	6/27/08			
Executive: P. Kremen	PK	7-1-08			

TITLE OF DOCUMENT:

AN RESOLUTION AUTHORIZING A CHARGE FOR THE FURNISHING OF SERVICE TO THOSE WHO ARE RECEIVING OR WILL RECEIVE BENEFITS FROM STORM WATER CONTROL FACILITIES OR PROGRAMS AND WHO ARE CONTRIBUTING TO AN INCREASE IN SURFACE WATER RUNOFF IN THE BIRCH BAY WATERSHED AND AQUATIC RESOURCES MANAGEMENT DISTRICT.

ATTACHMENTS:

- Memo
- Proposed Resolution
- Draft Funding Plan
- Final Report

SEPA review required? () Yes (X) NO
 SEPA review completed? () Yes () NO
 Should Clerk schedule a hearing? (X) Yes () NO
 Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an resolution or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This proposed resolution establishes a funding mechanism to provide service to those who are receiving service or will receive benefits from stormwater control facilities or programs and for those who are contributing to an increase in surface water runoff in the Birch Bay Watershed and Aquatic Resources Management District as designated by Resolution Number 2007-019.

COMMITTEE ACTION:

7/8/2008: Substitute submitted during committee. Substitute amended and approved.

COUNCIL ACTION:

7/08/2008: Introduced substitute version
 7/22/2008: Council Approved 6-1 Brenner opposed Res. 2008-049

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:
 2007-019 & 200

Res. 2008-049

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

SPONSORED BY: Consent

PROPOSED BY: PUBLIC WORKS

INTRODUCTION DATE: 7/8/2008

RESOLUTION NO. 2008-049

AUTHORIZING A CHARGE FOR THE FURNISHING OF SERVICE TO THOSE WHO ARE RECEIVING OR WILL RECEIVE BENEFITS FROM STORMWATER CONTROL FACILITIES OR PROGRAMS AND THOSE WHO ARE CONTRIBUTING TO AN INCREASE IN SURFACE WATER RUNOFF IN THE BIRCH BAY WATERSHED AND AQUATIC RESOURCES MANAGEMENT DISTRICT

WHEREAS, RCW 86.15.160 (4) authorizes a charge for the furnishing of service to those who are receiving or will receive benefits from stormwater control facilities and programs and who are contributing to an increase in surface water runoff; and,

WHEREAS, the Birch Bay Comprehensive Stormwater Plan was adopted in 2006 and provides guidance on addressing or preventing current and future problems related to increasing flooding and erosion, declining water quality and loss of aquatic habitat as a result of increasing growth and development in the region; and,

WHEREAS, in accordance with RCW 86.15.025, on March 13, 2007, a subzone of the Whatcom County Flood Control Zone District was established as the Birch Bay Watershed and Aquatic Resources Management District (Ordinance 2007-019); and,

WHEREAS, an extensive public involvement process was included in the development of a funding proposal to implement the Birch Bay Comprehensive Stormwater Plan; and

WHEREAS, implementation of the Birch Bay Comprehensive Stormwater Plan will require additional and ongoing funding; and

WHEREAS, the stormwater program as proposed in the Birch Bay Comprehensive Stormwater Plan will require procedures for consistent implementation and administration,

NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS THAT:

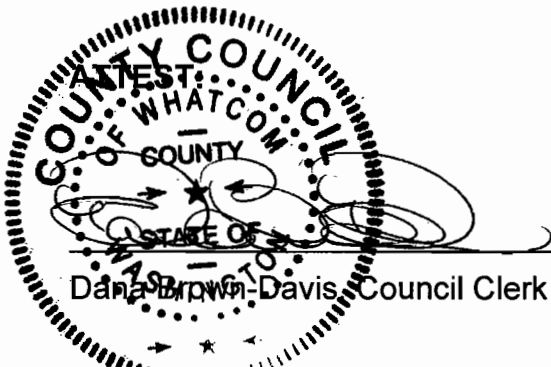
Section 1. A new sub-chapter be added to Whatcom County Code entitled "Birch Bay Watershed and Aquatic Resources Management District." Complete text is included in Exhibit A of this resolution.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this resolution shall not affect or impair the validity of the resolution as a whole or any part thereof other than the part so declared to be invalid.

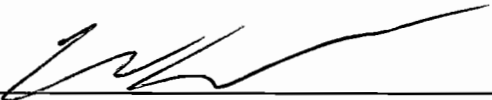
Section 3. This resolution shall become effective January 1, 2009.

APPROVED this 22nd day of July, 2008.

WHATCOM COUNTY FLOOD CONTROL
ZONE DISTRICT BOARD OF SUPERVISORS,
WHATCOM COUNTY, WASHINGTON

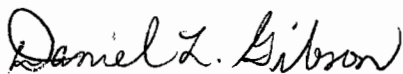


Dana Brown-Davis Council Clerk



Carl Weimer, Chair

APPROVED AS TO FORM:



Daniel L. Gibson, Assistant Chief
Civil Deputy Prosecutor

EXHIBIT A

100.07.010 Title

This resolution shall be titled "Birch Bay Watershed and Aquatic Resources Management District Funding Mechanism."

100.07.020 Purpose

The purpose of this chapter is to provide for revenue for the Birch Bay Watershed and Aquatic Resource Management District, to plan, manage, design, construct, establish, acquire, develop, maintain, use, finance, operate, control, or improve storm and surface water control facilities, and to carry out activities related thereto. This chapter provides these revenues by fixing rates and charges pursuant to RCW 86.15.160 for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any stormwater control facility or contributing to an increase of surface water runoff in the Birch Bay Watershed and Aquatic Resource Management District. This authority is being invoked in order to minimize property damage, promote and protect the public health, safety and welfare, minimize water quality degradation by preventing siltation, contamination and erosion of the waterways, protect aquifers, insure the safety of county roads and rights-of-way, increase educational and recreational opportunities, encourage the retention of open space, and foster other beneficial public uses within the Birch Bay Watershed and Aquatic Resource Management District.

100.07.030 Applicability

The requirements of this chapter shall apply to all parcels of real property in the Birch Bay Watershed and Aquatic Resource Management District, including public and private property.

100.07.040 Definitions

For the purposes of this Chapter, the words or phrases below shall have the following meanings:

- (1) "Agricultural parcel" means a developed parcel participating in the Whatcom County Agricultural Open Space Program.
- (2) "Biofiltration" means the use of vegetation, including grasses and wetland plants, to filter and treat stormwater runoff as it is conveyed through an open channel or swale.
- (3) "Board" means the Whatcom County Flood Control Zone District Board of Supervisors.

- (4) "County" means Whatcom County, or as indicated by the context, may mean the Department of Public Works, Public Works Director, County Engineer, or other employee or agent representing the County in the discharge of his or her duties.
- (5) "County roads" means public rights-of-way, excluding State roads, in the unincorporated and incorporated areas served by the Subzone.
- (6) "Density" shall mean the percentage of the parcel that is covered by impervious surface area. For single family residences, the density shall be determined by dividing the value of one equivalent service unit by the parcel size. For the purposes of this chapter, the low density designation shall mean one to ten percent; the medium density designation shall mean eleven to fifty percent; and the high density designation shall mean greater than fifty percent.
- (7) "Developed parcel" means a parcel of real property which has been altered by impervious surface coverage.
- (8) "Enterprise fund" means a fund established to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. As such, enterprise funds must report actual financial position and results of operations such as actual assets, liabilities, fund equity balances, revenues, expenditures, and expenses.
- (9) "Equivalent service unit" (ESU) means a configuration of impervious surface estimated to contribute an amount of runoff to the County's stormwater management system which is approximately equal to that created by the average single-family residential developed parcel in the service area.
- (10) "Impervious surfaces" means hard-surfaced areas which prevent or retard the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions. Common impervious surfaces include but are not limited to rooftops, concrete or asphalt roads, sidewalks and paving, walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed dirt, oiled or other surfaces which similarly impede the natural infiltration of surface water or runoff patterns existent prior to development.
- (11) "Manager" means the County engineer or his/her designee.
- (12) "Other developed parcel" means a parcel that contains impervious surface area and is not a single family residence including at a minimum commercial, industrial, multi-family apartment, and public property.
- (13) "Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which is

documented for real property purposes, and a tax account number assigned by the Whatcom County Assessor-Treasurer.

- (14) "Service charge" means the subzone fee in an amount to be determined by applying the appropriate rate to a particular parcel of real property based upon factors established by this Chapter.
- (15) "Single-family residence" means a residential structure designed exclusively for occupancy by one family, including mobile homes and duplex units, as defined by the Whatcom County Land Use and Development Code.
- (16) "Small single-family residence" means a parcel containing a single family residence that has been determined to be covered by an amount of impervious surface area equal to or less than one-half the value of one equivalent service unit.
- (17) "State roads" means State Highway rights-of-way as defined in RCW 90.03.520.
- (18) "Stormwater control facilities" means any facility, improvement, development, property or interest thereon, made, constructed or acquired for the purpose of controlling, or protecting life or property from any runoff, storm, waste, flood or surplus waters wherever located within the County, and shall include but not be limited to the improvements and authority described in RCW Chapters 86.13 and 86.15.
- (19) "Subzone" means the Birch Bay Watershed and Aquatic Resource Management District.
- (20) "Undeveloped parcel" means any parcel of real property which has not been altered by construction of any impervious surface area
- (21) "Unit rate" means the dollar amount charged per ESU by the density designation.

100.07.050 Rate Structure

A. Service charges for the subzone are hereby authorized and imposed in amounts and on terms consistent with this Chapter.

B. The rates and service charges shall be based on the service provided and the relative contribution of stormwater runoff from a given parcel to the stormwater management facilities. The estimated or measured impervious surface area will be used to determine the relative contribution of stormwater runoff from the parcel.

C. The Board shall establish from time to time, by resolution, the value of one ESU in impervious surface area as measured in square feet.

D. The Board shall establish from time to time, by resolution, the unit rate per ESU by the density designation.

Service charges shall be determined as follows:

1. Undeveloped Parcels – Undeveloped parcels shall not be charged.
2. Roads – State, county or city roads shall not be charged.
3. Single-Family Residences – The service charge for each single-family residence shall be the unit rate for the applicable density times one ESU.
4. Small Single-Family Residences – The service charge for each small single family residence shall be the unit rate for the applicable density times one-half (.5) ESU.
5. Agricultural Parcels with less than one acre of impervious surface area, excluding driveways - The service charge for each agricultural parcel with less than one acre of impervious surface area excluding driveways shall be the unit rate for the applicable density times one ESU.
6. Other Developed Parcels – The service charge for all other developed parcels, including publicly-owned properties, shall be computed by multiplying the unit rate for the applicable density times the number of ESUs on the parcel minus any approved rate adjustment for the parcel as determined under Section 7.0. There shall be a minimum service charge for all developed properties equal to the unit rate

100.07.060 Billing

A. Property Tax Statements. Rates and charges as authorized by this Chapter shall be added to and included in Whatcom County's annual tax statements. Properties which do not receive a property tax statement will receive a separate billing statement for these rates and charges.

B. Payment Date. The total amount of the stormwater rate and charge shall be due and payable on or before the 30th day of April and shall be delinquent after that date; however, if one-half of such rate and charge is paid on or before the said 30th day of April, the remainder shall be due and payable on or before the 31st day of October and shall be delinquent after that date.

C. Payment Application. If a payment is received in conjunction with a combined property tax and subzone service charge, and the payment is less than the amount due, the payment shall be applied first to the annual property tax of the parcel and any remaining amount to the subzone service charge.

100.07.070 Service Charge Adjustments and Appeals

A. Any person billed for service charges may file a "Request for Service Charge Adjustment" with the Manager within thirty (30) days of the date of the bill. However, submittal of such a request does not extend the period of payment for the charge.

B. A request for service charge adjustment may be granted or approved by the Manager only when one or more of the following conditions exist:

1. The amount charged is in error; however, no adjustment will be made unless the parcel density designation is in error and/or if the parcel is non-residential and the calculation of the impervious surface area on the parcel is shown to be in error by at least ten percent (10%), as demonstrated by a licensed surveyor or engineer; or
2. The parcel exists in its natural unimproved condition and will remain in its natural unimproved condition with no allowable human activities or manmade improvements that adversely affect water quantity or quality; or
3. The parcel contains a new or remodeled commercial building that utilizes a permissive rainwater harvesting system that is properly sized to utilize the available roof surface of the building; or
4. The parcel contains a properly maintained stormwater quality and quantity mitigation facility that meets the design requirements of the 1992 Department of Ecology Stormwater Technical Manual; or
5. The parcel includes a constructed or natural on-site stormwater mitigation facility that meets all of the following conditions:
 - a. The constructed or natural facility provides ~~storm~~ or stormwater detention, retention, water quality treatment, and/or conveyance; and,
 - b. The Manager has determined that the property owner is capable of maintaining and operating the facility; and,

- c. The facility is maintained by the property owner to the County's design specifications; and,
- d. The facility is available for inspection by the County; and,
- e. Excess facility capacity is accessible and available for other related public purposes; and,
- f. The credit is revocable under conditions where the facility no longer operates at the design level established during the stormwater plan review/ approval process.

C. Credit Calculation. The dollar amount to be credited for items determined eligible under section 7.0(B) of this chapter, shall be a fixed percentage reduction not to exceed a cumulative total of 27%, based on the percentage of total program costs directly related to managing surface water volumes and water quality.

- 1. For qualifying permissive rainwater harvesting systems as provided for under RCW 36.89.080 and eligible under section 7.0(B)(3) of this chapter and qualifying stormwater quality and quantity mitigation facilities eligible under section 7.0(B)(4) of this chapter, the formula is expressed mathematically as follows:

$$A = F \times 10\%$$

Where

A = The credit amount to be subtracted from the monthly fee; and
 F = The total monthly charge without credit.

- 2. For water quantity and/or quality mitigation eligible under section 7.0(B)(5) of this chapter, the formula is expressed mathematically as follows:

$$A = F \times 27\%$$

Where

A = the credit amount to be subtracted from the monthly fee;
 F = the total monthly charge without credit;

D. The following information will be required by the Manager to determine eligibility for a service charge credit, additional information may also be requested if deemed necessary:

1. Approved stormwater plan certified by a licensed and qualified professional;
2. Calculations that support the basis for the service charge credit;
3. Signature of the person responsible for the accuracy of the credit application material; and
4. Other information, as required by the Manager, to determine that the property owner is willing and has the capacity to maintain the facility.

E. Service charge adjustments will only apply to the bill then due and payable and bills subsequently issued. The property owner shall have the burden of proving that the service charge adjustment should be granted.

F. Decisions on requests for service charge adjustment shall be made by the Manager based on information submitted by the applicant and by the County within sixty (60) days of the adjustment request, except when additional information is needed. The applicant shall be notified in writing of the Manager's decision.

G. Decisions of the Manager on requests for service charge adjustments shall be final unless appealed within thirty (30) days of the date the decision. The Whatcom County Flood Control Zone District Board of Supervisors shall establish an appeal review body to hear appeals of the Manager's decision.

100.07.080 Exemption

Property that is owned by, and is the personal residence of, a person or persons approved by the county assessor for a senior citizen or disabled persons property tax exemption under RCW 84.36.381 shall be exempt from the service charge. Any person eligible for this low-income, senior citizen, or disabled persons exemption shall be provided a refund of annual service charges for the subject property for the first year the exemption is sought and for up to three prior years, PROVIDED, that eligibility for each year has been approved by the Assessor's Office, and PROVIDED FURTHER, that refunds shall not be approved for any year prior to 2009.

100.07.090 Use of Funds

Service charges collected under this ordinance shall be deposited into a special enterprise fund or funds to be used only for the purpose of paying all or any part of the cost and expense of administration, fee collection, maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing, maintaining, and improving the program and facilities of the Birch Bay Watershed and Aquatic Resource Management District.

100.07.100 Lien for Delinquent Charges

A. Liens. Pursuant to RCW 36.94.150, Whatcom County shall have a lien for delinquent service charges, including interest thereon, against any property against which they were levied, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such liens shall be effective and shall be enforced and foreclosed as provided in RCW 36.94.150. Therefore, the County may commence to foreclose such liens sixty (60) days after the attachment of the lien.

B. Interest. Delinquent service charges shall bear interest as provided in RCW 36.94.150 at the rate of eight percent (8%) per annum, or such rate as may hereafter be authorized by law, computed on a monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the charges regardless of when the charges were first delinquent.

C. Penalties. Penalties of not more than ten percent of the amount due may be imposed in case of failure to pay the charges at times fixed by resolution, as provided in RCW 36.94.150.

100.07.110 Severability.

If any section, clause, or provision of this Chapter be declared by the courts to be invalid, the same shall not affect the validity of the Chapter as a whole or any part thereof other than the part so declared to be invalid.