

To: Whatcom County Council; Lummi Island Ferry Advisory Committee
From: Lummi Island Work Group (LIWG)*
Date: June 8, 2023
Subject: Markup of proposed ordinance AB2023-258 AMENDING WHATCOM COUNTY CODE CHAPTER 10.34, FERRY RATES

The Whatcom County Council at its April 25th meeting voted that the ordinance amending WCC 10.34 Ferry Rates be held in Council and the public hearing be kept open until its June 20th meeting. As members of the public, the Lummi Island Work Group (LIWG) reviewed the proposed code from Public Works and recommend adoption of the amendments to the existing code contained in the attached document.

The LIWG is a group of interested islanders comprising accountants, economists, educators, lawyers, and people who have been engaged in ferry policy issues for decades, including former members of LIFAC and a representative from the Council appointed Lummi Island Ferry Task Force of 2011. Our recommendations are based on analysis of Public Work's ferry financial data and an array of other public documents, including records of prior Council meetings that indicated the legislative intent underlying the current ordinance.

Among our proposed amendments three have significant impact.

- Clarify that fare box surpluses are used solely to fund fare box deficits.
- Continue the legislative intent of the original ordinance to limit the maintenance expenses included in operating costs to provide predictability in fares.
- Confirm that the MVFT Attributable Revenue and Ferry Deficit Reimbursement are both used in the calculation of ATOE starting from January 1, 2007.

Thank you for your consideration.

***Work Group Members** – Bob Anderson, Charles Bailey, Rhayma Blake, Peter Earle, Pam Gould, Diane Harper, Janice Holmes, Myra Ramos, Mary Ross, Catherine Shornick, Ralph Steele, and Steven Thomas

The attached document shows amendments to proposed ordinance AB2023-258 and amendments to the existing WCC Chapter 10.34 text, using the standard amendment format of strike-through and underline for identifying the language proposed to be eliminated or added. It contains many of the changes proposed by Public Works, but also modifies or omits some of their proposed rewritten code. 6-8-2023

PROPOSED BY: _____

INTRODUCTION DATE: _____

ORDINANCE NO. AB2023-258

AMENDING WHATCOM COUNTY CODE CHAPTER 10.34, FERRY RATES

WHEREAS, Chapter 10.34 of the Whatcom County code addresses administration of the ferry rates that are adopted as user fees in the Uniform Fee Schedule; and

WHEREAS, chapter 10.34.005 has been replaced with updated definitions to provide clear direction for the calculations used to set fares since 2007 while still maintaining the original legislative intent of fares being responsible for ordinary operating expenses; and

WHEREAS, it is also necessary to make housekeeping changes to section 10.34.020 such as requiring valid photo ID when purchasing needs-based multi-ride punch cards and clarifying where those punch cards may be purchased (paragraphs K & L) and removing the language regarding a child traveling under the age of 12 without an escort waiver provision from section N to be consistent with our procedures; and

WHEREAS, section 10.34.020 paragraph M has been updated and amended to clarify how multi-ride punch cards are to be handled during fare changes from this point forward; and

WHEREAS, it is necessary to update and amend section 10.34.030 "Use of ferry user fee revenues" to provide clarification and clear direction on the handling of fare box revenue going forward including the limitation on use of excess fare revenues solely to fund fare box recovery goal deficits and the prevention of excess revenues growing in perpetuity.

NOW THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 10.34 is hereby amended as indicated in Exhibit "A" to this ordinance.

Whatcom County Code Chapter 10.34 FERRY RATES¹

Sections:

10.34.005 Definitions

10.34.010 Effective date for ferry user fees.

10.34.020 Interpretation of rate schedule.

10.34.030 Use of ferry user fee revenues.

10.34.005 Definitions.

A. "Ferry system" means all physical elements of the Lummi Island ferry operations, including both the Gooseberry Point and Lummi Island vehicle and pedestrian staging areas, vehicle parking areas, and ferry docks, and any and all boats utilized for transport purposes.

B. "Total operating cost expenses" (TOE) means all actual daily running expenses and all actual regular and routine maintenance and administrative expenses associated with the use and operation of the all physical elements of the ferry system. Any repair or maintenance task with a cost greater of \$100,000 and at least 10 percent of replacement value of the asset shall not be included in the calculation of TOE, and only those expenses shall be included as further defined by the Interagency Agreement between Washington State Department of Local Programs and Whatcom County currently numbered GCB 3514 or its replacement.

C. "Capital cost" means all capital expenditures, including financing and depreciation expenses applied to the replacement, expansion, or creation of ferry system physical elements, and as further defined in WAC 136.400.030.

D. "Fare box recovery rate" means the ~~calculated~~ percentage of total revenue generated through ferry user fees in comparison to adjusted total actual operating expenses costs for the same period of time ~~minus any revenue from the motor vehicle fuel tax meant for ferry operations, or from interest~~ as defined in WCC 10.34.005(G).

E. "Ferry user fees" means the rates and charges required of and collected from ~~any and all~~ non exempt users of the ferry system, as established and periodically amended in the Unified Fee

Schedule. Ferry user fees do not include 1) any consideration or credits earned under WCC 10.34.020(I) or 2) any surcharges collected pursuant to WCC 10.34.020(O).

F. "Adjusted total operating expenses" (ATOE) is the amount calculated by subtracting the following income from the total operating expenses beginning January 1, 2007:

- 1) Motor Vehicle Fuel Tax Attributable to ferry operations;
- 2) Ferry Deficit Reimbursement funds (RCW 47.56.725(2));
- 3) Investment income or loss;
- 4) County employee trips as defined in 10.34.010(I)
- 5) Other miscellaneous Income - such as immaterial amounts due to NSF checks

G. "Fare box recovery goal" means the amount to be recovered by ferry user fees and the county employee trip credits as defined in 10.34.010(I). The fare box recovery goal shall be calculated by multiplying ATOE by the fare box recovery rate.

H. "Annual fare box contribution" is the amount calculated by subtracting the fare box recovery goal from the combined total of ferry user fees and the county employee trip credits as defined in 10.34.010(I). Other revenue will only be included if designated by resolution of the Whatcom County Council.

I. "Cumulative fare box contribution" is the sum of the annual fare box contributions.

FJ. "Rate schedule" means the combination of ferry user fees and operational policies affecting the use of the ferry system. (Ord. 2021-012 Exh. A; Ord. 2015-034 Exh. A; Ord. 2013-042 Exh. A; Ord. 2012-016 Exh. A; Ord. 2010-054 Exh. A; Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001 Exh. A; Ord. 2005-090 Exh. A).

10.34.010 Effective date for ferry user fees.

Ferry user fees are set forth in the Whatcom County Unified Fee Schedule and become effective as set forth in the ordinance adopting or amending such schedule. (Ord. 2021-012 Exh. A; Ord. 2015-034 Exh. A; Ord. 2013-042 Exh. A; Ord. 2012-016 Exh. A; Ord. 2010-054 Exh. A; Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001 Exh. A; Ord. 2005-090 Exh. A; Ord. 2002-012; Ord. 2001-064; Ord. 93-080 Exh. Q).

10.34.020 Interpretation of rate schedule.

The following provisions should be observed in application of the ferry rate schedule:

A. Buses, mobile homes, motor homes, fifth wheels in bed of pickup, and trailers including goosenecks are charged by total length. Length includes tongue, hitch, and projections to the rear.

B. Tow vehicles with trailers shall be charged a combined rate based on total length of the trailer, as defined in subsection A of this section, and weight of the tow vehicle based on the gross vehicle weight of the designation of the vehicle. Heavy machinery that is self-propelled onto the ferry shall be charged at the corresponding vehicle weight.

C. Special trips are a surcharge in addition to the applicable fare.

D. A weekly run limited to fuel trucks, charged at the regular rate, shall be scheduled by the public works department and published appropriately.

E. All trucks shall be charged regular round-trip rates based on gross vehicle weight.

F. Over-width vehicles or trailers occupying more than one lane shall be charged a 50 percent surcharge. In addition, vehicles towing over-width trailers shall also be charged a 50 percent surcharge.

G. Student multi-ride cards shall be sold to full-time post-high school students only. Proof of post-high school enrollment shall be required at time of purchase. No special student discount is available for drivers of vehicles.

H. Children 12 to under 19 years of age will receive free passenger and pedestrian passage all year round. No special child discount is available for drivers of vehicles.

I. County employees on official county business shall be exempt from fares. All county employee trips exempt from fares will be tracked, and ~~\$10.00 per trip~~ the amount specified in the United Fee Schedule will be credited toward the fare box recovery rate goal each year.

J. During the term of the tidelands lease agreement dated October 24, 2011, lessee (Whatcom County) shall grant free foot and noncommercial passenger vehicle passage upon and across the ferry operated by lessee between Gooseberry Point and Lummi Island to those persons going to Lummi Island for legitimate tribal business who are either enrolled members of the Lummi Nation or employees thereof, and who also present appropriate identification issued by the nation, including Lummi Indian Business Council identification cards or current fishing cards/licenses as issued by the Lummi Nation.

K. A special needs-based discount is provided for Lummi Island residents who meet the very low income levels set annually by the Department of Housing and Urban Development (HUD). The special needs-based discount shall always be higher than any other discount. The current year's levels will be posted on the Whatcom County public works ferry web page. The reviewing authority will screen all applicants to determine eligibility. ~~The number of needs-based applications processed annually, regardless of approval, will depend on the constraints of the ferry operations budget for each year.~~ These special needs-based tickets will only be sold by at the Whatcom County Public Works Administration building in Bellingham and will require a valid voucher issued from the reviewing authority and valid photo ID. Eligibility will be reviewed at least annually by the reviewing authority. Forms and procedures will be developed by the Whatcom County public works and the reviewing authority.

L. Eligibility for a special "senior/disabled" discount is available to all Lummi Island residents who currently hold property tax exemptions or deferral as defined under RCW [84.36.381](#) and [84.38.030](#) and WAC [458-16-020](#) and [458-18-020](#), and as these may be hereafter amended. These special needs-based tickets will only be sold at by the Whatcom County Public Works Administration building in Bellingham and will require valid photo ID.

M. One punch on the multi-ride punch card equals one round trip. Multi-ride cards purchased prior to the most current fare change shall be valid until ~~six~~ three months after the effective date of the ordinance codified in this chapter. Multi-ride cards purchased at the previous rate ~~rather~~ either higher or lower than the new rate can be used as credit towards the purchase of the newly adopted fare multi-ride punch card. ~~will be accepted for use as one punch equals one round trip.~~ No credit or refunds or replacement cards will be allowed or issued. Only multi-ride punch cards valid during this three-month window are allowed to be presented for credit towards newly adopted fare multi-ride punch cards. These rate changes will take place ~~within 60~~

~~calendar days of the adopted date of the ordinance codified in this chapter as defined by WCC~~
10.34.010.

N. All children under the age of 12 years when traveling on the Whatcom County ferry must be accompanied by an adult. ~~An exception to this policy will be made only if the adult parent or guardian signs a waiver exempting Whatcom County from all liabilities for and all injuries, loss of life, etc., while the child is traveling on the ferry.~~

O. A capital surcharge of \$1.00 shall be collected for all fares except for student multi-ride cards (subsection G of this section), special needs-based fares (subsection K of this section), and special senior/disabled fares (subsection L of this section). The capital surcharge shall be used exclusively for the construction of a new ferry vessel and terminal improvements. (Ord. 2021-012 Exh. A; Ord. 2015-034 Exh. A; Ord. 2013-042 Exh. A; Ord. 2012-016 Exh. A; Ord. 2010-054 Exh. A; Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001 Exh. A; Ord. 2005-090 Exh. A; Ord. 2002-012; Ord. 2001-064; Ord. 93-080 Exh. Q).

10.34.030 Use of ferry user fee revenues.

Beginning January 1, 2006, a 55 percent fare box recovery rate shall be applied and evaluated continuously from that time forward. An annual review of ferry system services, actual and projected operating costs, and actual and projected revenue from ferry user fees shall occur in order to verify that the 55 percent fare box recovery rate is being achieved. The annual review shall be presented to the Whatcom County Council during the 2nd quarter of each calendar year. The purpose of this review is to use the cumulative fare box contribution total and current projections to determine if a fare change is warranted. If determined necessary, all fare changes shall go into effect in January of the following year.

The 55 percent fare box recovery rate shall be applied to the adjusted total operating expenses (ATOE) to determine the amount of the fare box recovery goal.

In any given year the actual fare box recovery rate exceeds 55 percent, the excess revenue shall be retained in the ferry system fund and applied only to future operating costs cover deficits in meeting the fare box recovery goal, or applied to reduce future fares.

In any given year the actual fare box recovery rate is below 55 percent, the difference shall be recovered in a future ferry user fee increase or a decrease in TOE, unless there is adequate excess ferry user fee revenue ~~remaining in the~~ cumulative fare box contribution. ~~ferry system fund collected during prior years.~~

At any time the cumulative fare box contribution exceeds \$1.5 million, ferry user fees shall be reduced.

~~Beginning January 1, 2007, any interest income or income from state motor vehicle fuel tax for ferry operation will be deducted from the actual operating costs before the actual 55 percent fare box recovery rate is calculated, (Ord. 2021-012 Exh. A; Ord. 2015-034 Exh. A; Ord. 2013-042 Exh. A; Ord. 2012-016 Exh. A; Ord. 2010-054 Exh. A; Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001 Exh. A; Ord. 2005-090 Exh. A; Ord. 2002-012; Ord. 2001-064).~~

1 Prior legislation: Ord. 89-103.