

## **Proposed Amendments to Whatcom County Ordinance and Code Chapter 10.34, Ferry Rates**

The Whatcom County Council at its April 25th meeting voted to delay adoption of the Ordinance Amending Whatcom County Code (WCC) section 10.34 that addresses Ferry Rates, and to keep the public hearing open until the June 20th council meeting. Following this decision several members of the public gathered together as the Lummi Island Work Group (LIWG) and met with representatives of LIFAC to discuss ordinance and code amendments.

During this process the LIWG reviewed the proposed changes from Public Works and developed additional amendments shown and explained in the attached document. The attached document uses the standard code amendment format of strike throughs and underlining for identifying the language proposed to be eliminated and added for the proffered amendments from Public Works. Highlighted sections are the proposed edits and reasons by the LIWG.

The LIFAC members we met with support the Public Works proposals. Three of the proposals have issues of significant impact to the island.

- Public Works proposed code change will allow excess fares to be applied solely to future operations cost and for fares to be increased to cover any future deficit. The result being that fares will cover more than 55% of the adjusted operating cost as is done currently.
- Public Works proposed code change fails to clarify the policy they are already following of calculating both revenue streams as part of adjusted operating costs since 2007 by leaving in a reference to starting that calculation in 2023. That could lead to confusion and different interpretations in the future.
- Public Works proposed code change for the definitions of Operating & Maintenance costs and Capital are so vague that virtually anything could be included as maintenance in the future, resulting in much larger costs required to be covered by fares. Those extra costs have the potential to cause more deficits and necessary fare increases. There is specific language from state sources which would provide better definitions.

**Full code changes including all that have been proposed.**

**ORDINANCE NO. \_\_\_\_\_**  
**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

Proposed Edit: Insert the highlighted language.

Reason: The code references the United Fee Schedule, this clarifies the intent to include that schedule as part of legislative action.

**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

Proposed Edit: Insert the highlighted language.

Reason: For legislative clarification of recommended code changes.

**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

Proposed Edit: Insert the word “also” and delete the “=” sign.

Reason: Correct the phrasing and the typographical error.

**WHEREAS**, section 10.34.020 paragraph M has been updated and amended to clarify how multitude 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.

Proposed Edit: Insert the highlighted language.

Reason: Excess fares above the Fare Box Recovery Goal can only be applied to Fare Box Recovery Goal deficits so that user fees average 55 percent of operating costs. Multiple years with excess fares are an indication that user fees are higher than necessary and should be reduced.

**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.

Exhibit A

Chapter 10.34  
FERRY RATES

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. "Operating Cost" means all actual sailing 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.~~

~~C. "Capital Cost" means all capital expenditures, including financing and depreciation expenses applied to the replacement, expansion, or creation of ferry system physical elements.~~

~~D. "Fare Box Recovery rate" means the calculated percentage of total revenue generated through ferry user fees in comparison to total actual operating costs for the same period of time minus any revenue from the motor vehicle fuel tax meant for ferry operations, or from interest.~~

E.B. "Ferry user fees" means the rates and charges required of and collected from all non exempt any and all 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).

C. “Fare Box Considered Revenue” means the revenue from Ferry User Fees. Revenue from other funding sources will be only be included as Fare Box Considered Revenue if designated by resolution of the Whatcom County Council.

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

Proposed Edit: Insert “as defined in WAC 136.400.030

Reason: Whatcom County receives funds from CRAB. The governing authority and regulations for CRAB are found in WAC 136. Including a section applicable to County Ferry Capital Improvements wherein the definition of Capital is found that is different than the current professional accounting definition. In order to be eligible and maintain eligibility for CRAB grants the County must comply with the language in the Administrative Code.

~~B. E. “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 all physical elements of the Ferry System expenses that are not Capital Costs actual daily running expenses and all actual regular and routine maintenance and administrative expenses associated with the use and operation of all physical elements of the ferry system. Any repair or maintenance task with a cost greater of \$100,000 and at least 1 percent of replacement value of the asset shall not be included in the calculation of TOE, or in the calculation of the average of repair and maintenance for the following years. As further defined by the Interagency Agreement between Washington State Department of Local Programs and Whatcom County currently numbered GCB 3514 or its replacement.~~

Proposed Edit: In the first highlighted section retain the current code language. In the second highlighted section insert the highlighted language.

Reason: The existing code language is consistent with the legislative intent to limit maintenance expenses used in establishing fares. The term “capital” in currently accepted accounting definitions would force many expenses that were excluded by the prior

accounting definition to be added to the base for fare calculation. The inserted language is based on Washington State Administrative and Auditing Manual 30.20.20.c and .d. This language is guidance for replacement of items. However, it may be used to provide a framework for determining the meaning of “regular and routine”. Additionally Whatcom County must comply, at minimum, with the terms of the Interagency Agreement, although the County can be more restrictive. An alternative method of calculating what should be operations and maintenance as opposed to capital would be to set a target cost of repair spent on one item averaged over a 3 year period and if the total cost exceeded that amount then it would be considered capital.

F. “Adjusted Total Operating Expenses” (ATOE) is the amount of Total Operating Expenses minus any shared revenue received, resulting in a lower basis for the calculation of the Fare Box Recovery Goal. Beginning January 1st 2023, 2007 the AOTE amount shall be set be subtracting the following amounts from the TOE:

Proposed Edit: Change the date 2023 to 2007.

Reason: After research and legal advice, Public Works has stated that both MVFT Attributable and MVFT Ferry Deficit Reimbursement are to be calculated from January 1, 2007, in accordance with the date in the existing code. Changing the date to January 1, 2023 could cause confusion in the future as to when the ATOE was to be based on this calculation and could be seen as direction to Public Works to only begin using this revenue for calculating ATOE beginning in 2023.

- (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

D. G. “Fare Box Recovery rate” means the percentage of the ATOE as set by WCC 10.34.030 total revenue generated through ferry user fees in comparison to total actual

~~operating costs for the same period of time minus any revenue from the motor vehicle fuel tax meant for ferry operations, or from interest.~~

H. Fare Box Recovery Goal means the amount to be recovered by Fare Box Considered Revenue and by 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.

Proposed Edit: Insert the highlighted language.

Reason: It is stated in 10.34.020(I) that these credits are to be applied to the Fare Box Recovery Goal, so must be included either here or in the definition of Fare Box Considered Revenue.

I. Annual Fare Box Contribution is the Fare Box Considered Revenue annual surplus or deficit from a given year and shall be calculated by subtracting the Fare Box Recover Goal from the Fare Box Considered Revenue.

J. “Cumulative Fare Box Reserve” “Contribution” is the ongoing calculation of fare box surplus or deficit and shall be calculated as the sum of each year’s Annual Fare Box Contribution.

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Proposed Edit: Replace the word “Reserve” with “Contribution”.

Reason: The term “Contribution” is used in a prior paragraph (I). Using the word “Reserve” causes confusion in making the distinction between any surplus/deficit of paid fares and the Ferry System Fund reserve for the ferry system as a whole.

F. K. “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.



Proposed Edit: Remove the reference to the \$10.00 trip amount and insert that it will be specified in the United Fee Schedule. Change the word “rate” to “goal”.

Reason: Omitting the \$10 per trip to be credited and instead placing it in the Unified Fee Schedule allows adjustments to be made to maintain the proportionality to all other fares. Replace “rate” with “Goal” is in accordance with the new definition.

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.

Propose Edit: Clarify “constraints of the ferry operations budgets.” if there is a point where an approved needs-based fare would be denied, include language to that effect

Reason: It is unclear how constraints of the ferry operations budget would cause an impact on denying special needs-based fares. If

there is insufficient fare box revenue looking to deny a special needs-based fare should not be the remedy. .

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. Rate changes shall take effect within 60 calendar days of the adopted date of the ordinance codified in this chapter. Multi-ride punch 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. rate change takes effect. Multi-ride cards purchased at the previous rate rather either higher or lower than the new rate will be accepted for use as one punch equals one round trip. can be used as credit towards the purchase of the newly adopted fare multi-ride punch card. No credit or refunds or replacement cards will be allowed or issued. These rate changes will take place within 60 calendar days of the adopted date of the ordinance codified in this chapter. 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.~~

Proposed Edit: Replace “rather” with “either.” Delete sentence about timing of rate changes.

Reason: Correcting what seems to be a typographical error. And the language of timing of rate changes is duplicative and could be seen as contradictory to the prior Section 10.340.010 “Effective date for ferry user fees.”

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 any 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 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 Reserve 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.

Proposed Edit: Replace “Reserve” with “Contribution”.

Reason: Using the word “Contribution” matches the prior definitional section in 10.34.005 J and reduces confusion with discussions of the reserve necessary for the Ferry System Fund.

The 55% Fare Box Recovery Rate shall be applied to the Adjusted Total Operating Expenses (ATOE) to determine the amount due from Fare Box Considered Revenue. The remaining 45% of the ATOE shall be funded through other county fund sources, which include but are not limited to county road taxes. The cumulative Fare Box Reserve Contribution Shall track each Annual Fare Box Contribution over time and maintain a running balance of surplus (positive) or deficit (negative) in Fare Box Considered Revenue.

Proposed Edit: Remove the reference to the county obligation to fund 45% of the ATOE. Replace “Reserve” with “Contribution.”

Reason: The sentence about county fund sources is unnecessary and should be deleted as Chapter 10.34 Ferry Rates is intended to define user fees rather than the County’s financial obligation.

A surplus is the result of excess revenue collection over time and ~~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~~ solely to cover any deficit in the Annual Fare Box Contribution TOE eligible costs.

Proposed Edit: Delete “solely to cover any deficit in the Annual Fare Box Contribution TOE eligible costs.”

Reason: Deleting this reference provides clarity that accumulated surplus user fees must be used to supplement user fee deficits or the total paid to operating costs will be greater than 55 percent. It is unlikely in any given year that fares paid will equal exactly that of the ATOE. Some years there will be a surplus and some years a deficit. Any excess fares paid are to cover any deficit of fares paid. To use excess user fees for other operational costs would result in a recovery rate higher than the 55% specified.

A Cumulative Fare Box Reserve Contribution ~~deficit indicates that additional revenue is needed for the system. In any given year the actual fare box recovery rate is below 55 percent, the difference~~ A Cumulative Fare Box Reserve Contribution ~~deficit shall be recovered in a through future ferry user fee increase or decrease in TOE. unless there is adequate ferry user fee revenue remaining in the ferry system fund collected during prior years.~~

Proposed Edit: Insert “At anytime the The Cumulative Fare Box Contribution balance exceeds \$1.5 million ferry user fees will be reduced.”

Reason: If excess fees accumulate over multi-years it indicates that ferry user fees should be reduced. The amount of \$1,500,000 would allow a fare reduction of more than 15% for four years, while still retaining enough excess fare revenue to replace the revenue lost in a COVID type year.

~~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).

Prior legislation: Ord. 89-103.