

Existing Code

Public Works version 3 DRAFT

WCFAC ad hoc code committee comments

Test 1: Does the proposed code amendment increase consistency, replace outdated or ineffective regulations, improve clarity, or make implementation easier? (housekeeping amendment)

Test 2: Does the proposed code amendment implement a change in policy that increases community well-being and/or the long term viability of the enterprise or system?

**Chapter 10.34  
FERRY RATES<sup>1</sup>**

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

B. "Operating cost" 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.

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**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.

F. "Total Operating Expenses" (TOE) means all Ferry System expenses that are not Capital Costs. TOE includes the vessel rental rate, all daily running expenses ~~and~~, all actual regular and routine maintenance, all NCER expenses, and all administrative expenses associated with the use and operation of ~~all physical elements of the~~ ferry system.

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**10.34.005 Definitions.**

When a code is being amended, improving past wording is a good thing to do.

The change in term is needed in order to differentiate between the total operating costs and the costs that are included in fare calculations (Adjusted Total Operating Expenses).

The proposal retains the existing wording of "regular and routine maintenance" but inserts two additional - and new - expenses to those that fares pay: "all costs that are not capital costs" and "all NCER costs" (the new third category of extraordinary maintenance and repair expenses). Whether or not Public Works wants to now add these new expenses into the TOTAL operating costs of the ferry, it is important that the ADJUSTED total operating costs **exclude** them; or it will represent a major policy change by the County in what Ferry user fees are expected to cover.

Also, there is a question about what new "non-physical elements of the ferry system" are being included with this change in wording.

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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. "Capital Cost" means all capital expenditures, including financing and depreciation expenses, applied to replacing, expanding, or creating the physical elements of the ferry system. Consistent with past practice, the monthly Tidelands lease or its replacement will continue to be considered part of the Total Operating cost" means all actual Expenses calculation regardless of implementing the Governmental Accounting Standards Board's Statement No. 87 requiring lease accounting changes for financial reporting.

It is incorrect drafting to show this as new text. The first sentence makes no changes to existing code other than revising the nouns used.

The new sentences about the Tidelands lease are intended to make something that has been illegal now legal. However, the lease has not met the requirements in the Whatcom County Charter, and if Public Works wishes to disregard accounting rules in order to call something maintenance that is capital, then they must also disregard them in regards to calling something capital that is non-regular and non-routine maintenance.

Do not adopt the new language. Also ask Council to fix the inconsistency with the Charter. Even if this was to be adopted, the question would remain of refunding the amounts that fares have been charged since 2010.

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.

H. "Fare Box Recovery Rate" means the percentage of ATOE to be recovered by Fare Box Considered Revenue as set by WCC 10.34.030.

I. "Fare Box Recovery Goal" means the amount to be recovered by Fare Box Considered Revenue. The Fare Box Recovery Goal shall be calculated by multiplying ATOE by the Fare Box Recovery Rate.

J. "Annual Fare Box Contribution" shall be calculated by subtracting the annual Fare Box Recovery Goal from the annual Fare Box Considered Revenue. A positive amount indicates a surplus in fare collection for the year, and a negative amount indicates a deficit in fare collection for the year.

"H" is needed as the existing code uses this phrase to be both the actual percentage rate and the product of the percentage rate applied to operating expenses as modified within this definition - a mess. The new definition correctly limits it to only the percentage itself. However, it would have been better to have shown the phrase itself in black text and not underlined; not in red and underlined as if it is a new term.

The next two definitions are entirely new definitions that are necessary to make the distinction between the percentage rate ("H") and the actual amount that is 55% of the operating expenses that ferry user fees should pay ("I") and then what is the amount that is actually collected ("J") since the actual is not going to be exactly 55%. Awkwardly worded, but makes the code clearer.

Adopt these three definitions.

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

B. "Ferry User Fees" means the charges required of and collected from 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).

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.

The text is clearer if "any and all" are deleted, and "non-exempt" is not added. Then the sentence says that if the Unified Fee Schedule says someone pays, they do. If the Unified Fee Schedule says they don't pay, they don't.

The second and new sentence fixes two problems: the existing code is contradictory on how the employee trip credit should be applied; also when the Council adopted the \$1.00 surcharge in 2021 it was not clear that a surcharge is not included in "Ferry user Fees."

The Council requested that explicit permission be included in the code that they have the authority to allocate ARPA funds to the Annual Fare Box Contribution. This proposal does that by adding a new term and definition. This makes the code less clear in the six places where this phrase is used. Instead of adding new item "C" as proposed, instead insert this phrase into item "B": "plus all other funds designated by resolution of the Whatcom County Council." That way, the existing understandable phrase, "Ferry user fees," can continue to be used in other sections of the code, avoiding having to resort to looking up a new term's not self-evident definition multiple times.

F. "Rate schedule" ....

F. "Rate schedule" ....

No change.

E. "Non-Capital Emergency Repairs" (NCER) means emergency maintenance and repair activities to the terminal structures included in operating expenditures.

The existing code has only two categories: operating expenses that include "regular and routine maintenance and repair," and capital expenses. So this new term and definition would separate out a third category. "Non-capital emergency expenses" would accommodate the fact that an aging infrastructure is difficult to keep operational without some very "non-regular and non-routine" and expensive repairs/replacements. A much better name than "emergency" would be "extraordinary" as there are expenses that could be planned ahead. And what about vessel expenses like engine replacement?

Fare revenue is expected to cover a portion of the "regular and routine maintenance and repair." So an important question is what defines it: a dollar limit (like \$50,000) or a time limit (like done every 10 yrs) or some other limit that separates "extraordinary" from "regular and routine." Another question would be should expenses be included that are paid by grants or other funds (not Road Fund and not Ferry Fund)

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No definition. Contents from:  
 In 10.34.030  
 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.  
 in 10.34.005  
 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.  
 in 10.34.020  
 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 will be credited toward the fare box recovery rate each year.

G. "Adjusted Total Operating Expenses" (ATOE) is the amount of Total Operating Expenses (TOE) minus adjustments defined in 10.34.05 (G)(1-6) and then used in the calculation of the Fare Box Recovery Goal.

Beginning January 1st 2024, the ATOE amount shall be determined by subtracting the following amounts from the TOE:

- (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.
- (6) Actual NCER expenditures, up to \$150,000 in a calendar year.

*Note: See items "H" and "I" and "J" from the Public Works proposal discussed with existing code item "B"above*

Extremely important new definition that brings together bits and pieces of the existing code whose scattered nature and imprecise wording led to accounting entries totalling over \$2 million of excess fare revenue collected last decade.  
 Use the date 2007, not 2024, since the existing code said these were to be deducted beginning in 2007; and a misunderstanding could occur in the future about the accounting changes that were made 2023 if 2024 is used.

**Item (6)** is the only new item, and refers to a new term and definition (NCER) discussed above. The item itself can state "beginning Jan. 1, 2024." NEW item (6) must be inverted and the amount discussed.  
 The maximum amount to be included in the fare calculation must be stated; **not** the amount to be deducted before fares must pay 55% of the remainder in order to keep fares from ping-ponging when extraordinary expenses occur. The recent dolphin expense controversy presents a good example: the costs represent about a 28% increase in fares collected in 2022; while the same amount would be an unexpected 2% increase in the 2022 unincorporated area Road Fund .

The exact amount of extraordinary expenses that it is appropriate to include in the ferry rates needs discussion; there is no discussion that sudden and large changes in fares discourages regular users (the backbone of revenue for any public transportation system). To support the ferry operation, the fare structure must be stable enough to entice frequent users, rather than one that depends upon occasional users and vacation rentals. At a certain point, fare revenue goes down even though fares themselves are increased.

This is a new definition sorely needed. The existing code makes no distinction between the Ferry Fund and the excess fare revenue collected. That's how we got into the mess of thinking for years that the positive balance in the Ferry Fund meant we had a lot of fare surplus .  
 It is important that we now have two names instead of one - the Ferry Fund is different than the Cumulative Fare Box Reserve, defined in this new item.

No change. Other sections of the code should delete other effective dates.

**10.34.010 Effective date for ferry user fees.**

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K. "Cumulative Fare Box Reserve" 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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**10.34.020 Interpretation of rate schedule.**

A, B, C,D, E, G, J, and O have no changes proposed.

**10.34.020 Interpretation of rate schedule.**

Public Works proposes changes to items I, K, L, M, N, and adds new item P.

**10.34.020 Interpretation of rate schedule.**

The ad hoc code committee also suggests changes to item "F" and "H"

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.

no change proposed

The ad hoc code committee suggests deleting this item and adding a new item about vans. **We would like to have crew feedback on these suggestions before taking them any further.**

- delete the 50% surcharge as impractical for crew to administer since how the ferry is loaded often determines whether more than one lane is used
- add a provision that treats all commercial and RV vans alike as equivalent to trucks weighing 11,000-20,000 pounds. (Question: how is a sprinter van delivering window coverings or containing plumbing repair equipment now charged, since there is no gross vehicle weight posted on the door? )

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 will be credited toward the fare box recovery rate each year.

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 will be **credited toward applied in the fare box recovery rate Adjusted Total Operating Expense calculation each year- as outlined in 10.34.005(G)(4).**

This fixes a contradiction in the existing code.

The \$10 amount was set in 2010 when that was the charge for a passenger vehicle with driver. It is fixed forever when established this way; instead we suggest that the credit should change as the fares change. This could be accomplished by substituting this wording : "an amount equal to the fare user fee category established in the Unifed Fee Schedule ."

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 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 at the

K. A special needs-based discount is provided for Lummi Island residents who meet the ~~very low income~~ **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~~ **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 not~~ be sold ~~at on~~ **at on** the ~~Whatcom County public works administration building in~~

This updates existing code to allow reduced fare punchcards to be sold on the island, also to require photo ID; wording changes also clarify and update other provisions.

The ad hoc code committee suggests that in addition to the Public Works proposed changes that either:

- this sentence in the existing code is deleted: "The number of needs-based applications processed annually, regardless of approval, will depend on the constraints of the ferry operations budget for each year. "

OR

- define who makes this decision, what budget constraints would cause no further applications to be taken, and how an appeal could be made

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needs-based tickets will only be sold at the Whatcom County public works administration building in Bellingham and will require a valid voucher issued from the reviewing authority and valid 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

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~~the whatcom County public works administration building in Bellingham Ferry and will require a valid voucher issued from by the reviewing authority and a 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.~~

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M. Multi-ride cards purchased prior to the most current fare change shall be valid until six months after the effective date of the ordinance codified in this chapter. Multi-ride cards purchased at the previous rate rather higher or lower than the new rate will be accepted for use as one punch equals one round trip. No credit or refund 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.

~~M. MultiOne punch on the multi-ride cards purchased card equals one round trip. Rate changes shall occur within 60 calendar days of the adopted date of the ordinance codified in this chapter. Multi-ride cards purchased prior to the most current fare change shall beare valid until sixfor three months after the effective daterate change takes effect. The remaining value (original value divided by original number of trips times the ordinance codified in this chapter. Multiremaining unpunched trips) of multi-ride cards purchased at the previous rate rather, higher or lower than the new rate will, shall be accepted for useused as one punch equals one round trip. No a credit towards purchasing the current fare multi-ride card. No refunds or refundreplacement 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.~~

This is a change that when proposed last spring resulted in a great deal of positive comment from ferry users. It allows trading in the remaining value on existing punchcards when rates change towards the purchase of new punchcards at the new rate. The existing code does not allow this because of the difficulty for crew when punchcards were sold during trips.

In several places in the proposed version, as well as the existing code, an implementation or effective date is specified. This is contrary to the section 10.34.010 that specifies that the effective date is contained in the adopting ordinance. Also, a change cannot take effect within 60 days of enactment, so this date would not work if the Council did not adopt the changes before Nov. 1.

The code text in three places needs to be revised to rely on 10.34.010 rather specify other effective dates.

~~P. Entities and individuals legally authorized to transport human remains shall be exempt from fares when using the ferry to pick up and transport the body of a deceased person from Lummi Island. Ferry personnel reserve the right at the time of travel to require riders claiming this exemption to present burial-transit permits required under RCW 70.58A.210 or other legal authority authorizing transport of the deceased person.~~

This is a totally new provision .

The ad hoc code committee would like to point out that no one pays to leave the island (whether dead or alive).

Every other commercial or social entity pays to bring their vehicle onto the island to provide business or social services. If there is some reason to favor one type of business over all others, then an explanation would be appreciated. Otherwise, we recommend that this new code provision not be adopted.

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**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 the 55 percent fare box recovery rate is being achieved.

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.

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 unless there is adequate excess ferry user fee revenue remaining in the ferry system fund collected during prior years.

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.

**10.34.030 Use of ferry user fee revenues.**

Beginning January 1, 2006, a 55 percent ~~fare box recovery rate~~ Fare Box Recovery Rate shall be applied and evaluated continuously, from that time forward, on an annual basis. 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 the 55 percent fare box recovery rate is being achieved~~ to verify that the Fare Box Recovery Rate is being achieved. The annual review shall be presented to the Whatcom County Council during the 2<sup>nd</sup> quarter of each calendar year. The purpose of this review is to use the Cumulative Fare Box Reserve 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.

~~In any given year the actual fare box recovery rate exceeds the 55 percent, the excess revenue Fare Box Recovery Rate shall be retained in the ferry system fund and applied only to future operating costs.~~

~~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 unless there is adequate excess ferry user fee revenue~~ the Adjusted Total Operating Expenses (ATOE) to determine the Fare Box Recovery Goal. The remaining in the ferry system fund collected during prior years 45% of the ATOE shall be funded through other county funding sources, which include but are not limited to road taxes.

~~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.~~ The Cumulative Fare Box Reserve tracks each Annual Fare Box Contribution over time, maintaining a running balance to determine annually if a surplus (positive) or deficit (negative) exists. A Cumulative Fare Box Reserve deficit indicates that insufficient Fare Box Considered Revenue has been collected over the years and shall be corrected by increasing future Fare Box Considered Revenues and/or decreasing TOE. A Cumulative Fare Box Reserve surplus indicates that Fare Box Considered Revenues have exceeded the amount required by the Fare Box Recovery Goal. When a cumulative surplus exists, it shall be evaluated with other available information to determine if a future fare decrease is warranted.

The existing code is sort of a conglomeration of items that leaves some basic policy questions unanswered or possible misinterpretation. This section started out establishing the 55% Fare Box Recovery Rate; then talks about the details of an annual financial review; then specifies what happens when the ferry user fees produce a surplus. It is ambiguous when it says the surplus goes to the Ferry Fund for operating expenses, while in the next sentence saying the surplus should be used to meet fare deficits. It says that a fare increase only happens after a deficit, but not how long or how big a deficit. It does not deal with what happens when the surplus grows for a decade as it did between 2011 and 2020. Then to add to this mixture of items, it has a paragraph listing several funding sources that beginning in January of 2007 would be deducted from operating expenses before the 55% was applied.

It is helpful that the Public Works revised text specifies annual financing reporting in the 2nd quarter instead of leaving it vague.

The PW proposal also thankfully pulls out the last paragraph and puts it into the definitions. But the proposed new text then mixes in additional, sometimes repetitive information about surplus and deficits in fare revenue and does not resolve some of the policy questions.

The ad hoc code committee suggests that this is an opportunity to make the code clearer by separating out the different topics as is done in other sections of the code; also to answer the policy questions about fare surpluses, deficits, and what financial information is available to citizens and County decision-makers on an annual basis about Ferry finances. After more time to study this and get input from others, we hope to be able to make some concrete suggestions for changes.