



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Report

File Number: AB2024-350

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Assigned to:	Council Finance and Administrative Services Committee	Final Action:	06/18/2024		
Agenda Date:	06/18/2024	Enactment #:	RES 2024-030		
Related Files:					

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TITLE FOR AGENDA ITEM:

Resolution adopting changes to WCC 100.07 Birch Bay Watershed and Aquatic Resources Management district funding mechanism, by revising the rate structure, service charge adjustments and exemptions (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/04/2024	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremler Nay: 0	
06/04/2024	Council	INTRODUCED FOR PUBLIC HEARING	Council Finance and Administrative Services Committee
06/18/2024	Council Finance and Administrative Services Committee	DISCUSSED	
06/18/2024	Council	APPROVED	
		Aye: 6 Buchanan, Byrd, Donovan, Galloway, Scanlon, and Stremler Nay: 1 Elenbaas	

Attachments: Memo, Proposed Resolution, Proposed Exhibit A-Track Changes, Proposed Exhibit A-Clean,
Public Comment - Scott Hulse

RESOLUTION NO. 2024-030

ADOPTING CHANGES TO WCC 100.07 BIRCH BAY WATERSHED AND AQUATIC RESOURCES MANAGEMENT DISTRICT FUNDING MECHANISM, BY REVISING THE RATE STRUCTURE, SERVICE CHARGE ADJUSTMENTS AND EXEMPTIONS

(Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

WHEREAS, on March 13, 2007, the Whatcom County Flood Control Zone District Board of Supervisors adopted Ordinance 2007-019, which created the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District pursuant to RCW 86.15; and,

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 (Res 2008-049 & Res 2008-050); and,

WHEREAS, implementation of the Birch Bay Comprehensive Stormwater Plan is needed to solve many of the current stormwater management problems in the Birch Bay Watershed; and,

WHEREAS, there exists an extensive list of capital improvement projects needing construction in Birch Bay, with more added every year due to aging infrastructure, unprecedented storm events, climate change and other factors; and,

WHEREAS, the BBWARM District service fee has remained unchanged since its inception in 2009, but cumulative operating and capital cost inflation since 2009 is approximately 50-62%; and

WHEREAS, the community demand for projects has increased over the years, but the amount of revenue to complete the projects has not; and

WHEREAS, the BBWARM Advisory Committee recommended and County Council authorized staff to hire a financial consultant in August 2023 to conduct a rate study and funding analysis; and

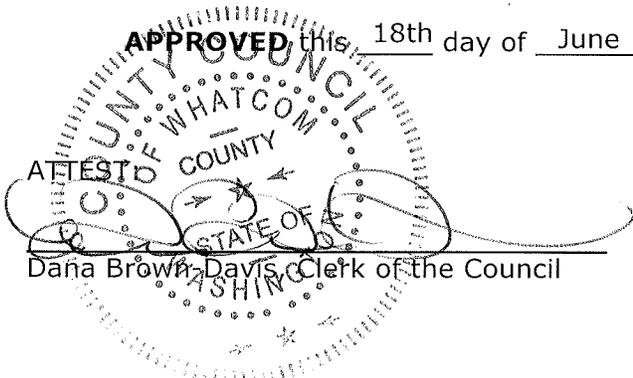
WHEREAS, three public meetings were held in January, April and May 2024, with opportunities for comments and feedback from the community on the rate study presentations; and

WHEREAS, the BBWARM Advisory Committee has studied the rate structure options and has submitted a final recommendation to the Whatcom County Flood Control Zone District Board of Supervisors; and

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that Chapter 100.07 of the Whatcom County Code entitled

1 "Birch Bay Watershed and Aquatic Resources Management District Funding Mechanism" is
2 hereby amended as outlined in Exhibit A of this resolution. The new proposed language is
3 underlined and deleted language is stricken.

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5 APPROVED this 18th day of June, 2024.



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12 Dana Brown-Davis, Clerk of the Council

8 WHATCOM COUNTY COUNCIL
9 WHATCOM COUNTY, WASHINGTON

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13 Barry Buchanan, Council Chair

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15 APPROVED AS TO FORM:

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17 Christopher Quinn - approved via email 5/16/24
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19 Chief Civil Deputy Prosecuting Attorney

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EXHIBIT A

Track Changes Version: Proposed language is underlined, deleted language is ~~stricken~~

Chapter 100.07 BIRCH BAY WATERSHED AND AQUATIC RESOURCES MANAGEMENT DISTRICT FUNDING MECHANISM

Sections:

Article I. Funding Mechanism

100.07.010	Title.
100.07.020	Purpose.
100.07.030	Applicability.
100.07.040	Definitions.
100.07.050	Rate structure.
100.07.060	Billing.
100.07.070	Service charge adjustments and appeals.
100.07.080	Exemptions.
100.07.090	Use of funds.
100.07.100	Lien for delinquent charges.
100.07.110	Severability.
100.07.120	<u>Appeal of manager's final decision fee.</u>

Article II. Service Units and Rates

100.07.200	Monthly <u>Annual</u> unit rates.
100.07.205	Appeal of manager's final decision fee.

Article I. Funding Mechanism

100.07.010 Title.

This chapter shall be titled "Birch Bay watershed and aquatic resources management (BBWARM) district funding mechanism." (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 1)).

100.07.020 Purpose.

The purpose of this chapter is to provide for revenue for the ~~Birch Bay watershed and aquatic resource management~~ BBWARM 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~~ BBWARM 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; ensure 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~~ BBWARM district. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 2)).

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~~ BBWARM district, including public and private property. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 3)).

100.07.040 Definitions.

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

- A. "Agricultural parcel" means a developed parcel participating in the Whatcom County agricultural ~~open-space program~~ Open Space Program, including open space farm and agricultural land as defined in Chapter 84.34 RCW.
- B. "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.
- C. "Board" means the Whatcom County flood control zone district board of supervisors.
- D. "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.
- E. "County roads" means public rights-of-way, excluding state roads, in the unincorporated and incorporated areas served by the subzone.
- ~~F. "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 10 percent; the "medium-density designation" shall mean 11 to 50 percent; and the "high-density designation" shall mean greater than 50 percent.~~
- G. "Developed parcel" means a parcel of real property which has been altered by impervious surface coverage.
- H. "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.
- I. "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.
- J. "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.
- K. "Manager" means the ~~county engineer~~ Public Works Director or his/her designee.
- L. "Other developed parcel" means a parcel that contains impervious surface area and is not a single-family residence, including at a minimum commercial, industrial, multifamily apartment, and public property.
- M. "Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which are documented for real property purposes, and a tax account number assigned by the Whatcom County assessor-~~treasurer~~.

- N. "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.
- O. "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.
- P. "Small single-family residence" means a parcel containing a single-family residence that ~~has been determined to be~~ is covered by an amount of impervious surface area equal to or less than one-half the value square footage of one equivalent service unit ESU.
- Q. "State roads" mean state highway rights-of-way as defined in RCW 90.03.520.
- R. "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 Chapters 86.13 and 86.15 RCW.
- S. "Subzone" means the ~~Birch Bay watershed and aquatic resource management~~ BBWARM district.
- T. "Undeveloped parcel" means any parcel of real property that has not been altered by construction of any impervious surface area.
- U. "Unit rate" means the dollar amount charged per ESU ~~by the density designation~~. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 4)).

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 times one half 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 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 FCZD

100.07.070. There shall be a minimum service charge for all developed properties equal to one-half the unit rate. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 5)).

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 thirtieth 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 thirtieth day of April, the remainder shall be due and payable on or before the thirty-first 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. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 6)).~~

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 30 days of the date of the bill, on forms provided by the Whatcom County Public Works Stormwater Division. 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 nonresidential and the calculation of the impervious surface area on the parcel is shown to be in error by at least 10 percent, 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.~~
 - a. For qualifying permissive rainwater harvesting systems as provided for under RCW 36.89.080, the adjustment calculation formula is expressed mathematically as follows:
$$A = F \times 10\%$$
Where:
A = The amount to be subtracted from the annual fee; and
F = The total annual charge without adjustment.
 - 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 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; or~~
6. ~~The parcels are determined by the manager to be contiguous, are owned by the same entity, and meet the definition of "other developed parcel" in FCZD 100.07.040(L). Contiguous lots will be treated as a single lot for the purposes of service charge calculations. For contiguous lots to qualify for rate-adjustment parcels, the appellant must demonstrate that parcels:~~
- a. ~~Are contiguous; and~~
 - b. ~~Have a common or planned stormwater system; and~~
 - c. ~~Are owned by the same entity, or, if leased to a third party, the owner has the responsibility under the lease for maintenance of the stormwater system located on that parcel; and~~
 - d. ~~The entity that owns the parcels also controls, owns, operates, and maintains the stormwater system;~~
 - e. ~~Lots determined to be contiguous by the manager will be considered as a single lot for the purposes of fee calculations;~~
 - f. ~~It is the responsibility of the property owner to notify the manager prior to any change in lot ownership, configuration, or use that would result in noncompliance with the criteria in subsection 4 s 6(a) through (d) of this section. Fees will be recalculated to reflect any such change from the date of the change and applied to the individual parcels pursuant to the rate schedule in effect at the time of the change.~~
7. The parcel is a qualifying small single-family residence covered by an amount of impervious surface area equal to or less than one-half the square footage of one ESU. The service charge for each small single-family residence shall be the unit rate times one-half ESU.
8. The parcel participates in the Whatcom County Open Space Program and has less than one acre of impervious surface (excluding driveways). The service charge shall be the unit rate times one ESU.
- C. ~~Credit Calculation. The dollar amount to be credited for items determined eligible under subsection B of this section shall be a fixed percentage reduction not to exceed a cumulative total of 27 percent, 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 subsection (B)(3) of this section and qualifying stormwater quality and quantity mitigation facilities eligible under subsection (B)(4) of this section, 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 subsection (B)(5) of this section, 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 adjustment credit; additional information may also be requested if deemed necessary:
- 1. ~~Approved stormwater plan certified by a licensed and qualified professional;~~
 - 2. Applicable documentation, maps, and calculations that support the basis for the service charge adjustment credit;

3. Signature of the person responsible for the accuracy of the adjustment credit application material; and
 4. Other information, as required by the manager, if deemed necessary, ~~to determine that the property owner is willing and has the capacity to maintain the facility.~~
- E. It is the responsibility of the property owner to notify the manager prior to any change in lot ownership, configuration, condition, or use that would result in noncompliance with the criteria in subsections B (2) through (6) of this section. Fees will be recalculated to reflect any such change from the date of the change and applied to the individual parcels pursuant to the rate schedule in effect at the time of the change.
- F. 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.
- G. 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 60 days of the adjustment request, except when additional information is needed. The applicant shall be notified in writing of the manager's decision.
- H. Decisions of the manager on requests for service charge adjustments shall be final unless appealed within 30 days of the date of the decision to the Whatcom County hearing examiner. Appeals of the manager's final decision must be filed with and on forms provided by the Whatcom County Public Works Stormwater Division. The hearing examiner shall review appeals to determine if the manager made any errors in the application of the rules, definitions and requirements of this chapter. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 7)).

100.07.080 Exemptions.

- A. Any senior citizen or person with disabilities who qualifies for a property tax exemption by the Whatcom County Assessor's Office under RCW 84.36.381 shall be exempt from this service charge. 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.
- B. Properties owned by BBWSD are exempted from BBWARM stormwater fees provided an interlocal agreement is in effect between BBWSD and WCFCZD. (Res. 2019-044 (Exh. A); Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 8)).
- C. Undeveloped parcels, including designated forestland, as defined in Chapter 84.33 RCW, shall not be charged.
- D. State, county or city roads shall not be charged.

100.07.090 Use of funds.

Service charges collected under this chapter 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~~ BBWARM district. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 9)).

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 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 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 10 percent of the amount due shall be imposed in case of failure to pay the charges at times fixed by resolution, as provided in RCW 36.94.150. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 10)).

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. (Res. 2009-015 § 1 (Exh. A); Res. 2008-049 § 1 (Exh. A § 11)).

100.07.120 Appeal of manager’s final decision fee.

The fee for appeals to the manager’s final decision as provided for in FCZD 100.07.070(G) shall be \$500.00. (Res. 2009-015 § 1 (Exh. A)).

Article II. Service Units and Rates

100.07.200 Monthly Annual unit rates.

- A. For the purpose of calculating unit rates, 4,000 square feet of impervious surface area within the BBWARM district shall constitute one ESU. The board may re-define from time to time, by resolution, the size of one ESU as measured in square feet. The value of one equivalent service unit for the Birch Bay watershed and aquatic resource management district is hereby established to be 4,000 square feet of impervious surface area.
- B. The following monthly annual unit rates per ESU are hereby established for the Birch Bay watershed and aquatic resource management BBWARM district:

<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>
<u>\$107.55</u>	<u>\$136.59</u>	<u>\$163.90</u>	<u>\$190.13</u>

Density Range	Unit Rate
Low	\$5.02
Medium	\$6.26
High	\$8.72

Beginning in 2029, rates shall be increased by the average of the Seattle-Tacoma-Bellevue, WA Consumer Price Index (CPI-U) bimonthly percent changes (August, October and December), not seasonally adjusted over the last six months of the previous year, with a minimum increase of 2.5%. All CPI-U related rate changes shall go into effect in January of the following year.

100.07.205 Appeal of manager’s final decision fee.

The fee for appeals to the manager’s final decision as provided for in FCZD 100.07.070(G) shall be \$500.00. (Res. 2009-015 § 1 (Exh. A)).