



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2023-258

File ID:	AB2023-258	Version:	1	Status:	Vetoed
File Created:	03/30/2023	Entered by:	CRussell@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	07/25/2023		
Agenda Date:	07/25/2023	Enactment #:	ORD 2023-045		
Related Files:					

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 10.34, Ferry Rates

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Memo

See AB2023-563 for discussion about the Whatcom County Executive's veto of this ordinance.

9/5/2023: The Veto was sustained (see AB2023-563)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
04/11/2023	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	
04/25/2023	Council	HEARD PUBLIC TESTIMONY AND HELD IN COUNCIL	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner	
		Nay: 0	

Agenda Bill Master Report Continued (AB2023-258)

06/20/2023 Council

HEARD PUBLIC Council
TESTIMONY AND HELD IN
COUNCIL

Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner
Nay: 0

07/25/2023 Council

ADOPTED

Aye: 5 Byrd, Elenbaas, Frazey, Galloway, and Kershner
Nay: 2 Buchanan, and Donovan

08/09/2023 Council

VETOED BY THE
EXECUTIVE

Attachments: Adopted Ordinance 2023-045, Adopted Ordinance 2023-045strike, Memo, Proposed Ordinance Ferry Rates-Markup, Minutes Excerpt 4.25.2023, Draft Minutes 6.20.2023 Council, Notice of Hearing after 4.11.2023, Notice of Action Taken on 7.25.2023, Agenda Bill Master Report, Agenda Bill Master Report

ORDINANCE NO. 2023 - 045

Vetoed 8-9-2023

AMENDING WHATCOM COUNTY CODE CHAPTER 10.34, FERRY RATES

WHEREAS, chapter 10.34 of the Whatcom County code addresses administration of the ferry rates and; and

WHEREAS, chapter 10.34.005 has been replaced with updated definitions to provide clear direction for the calculations used to set fares; 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 multiride 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.

1 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that
2 Whatcom County Code 10.34 is hereby amended as indicated in Exhibit "A" to this
3 ordinance.
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5

6 **ADOPTED** this 25th day of July, 2023.

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10
11 ATTEST:

12 _____
13 Dana Brown-Davis, Clerk of the Council
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15

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Barry A. Buchanan
Barry Buchanan, Council Chair

16
17 WHATCOM COUNTY EXECUTIVE
18 APPROVED AS TO FORM:

19 Approved by email / C Quinn /
20 C Russell
21 Christopher Quinn, Civil Deputy Prosecutor
22
23

WHATCOM COUNTY, WASHINGTON

Satpal Sidhu
Satpal Sidhu, County Executive

() Approved (X) Denied

Date Signed: Aug 9, 2023

**See veto message in attached letter
from Executive Sidhu **

Vetoed

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. "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.~~ "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.~~

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

~~E. "Total Operating Expenses" (TOE) means all Ferry System expenses that are not Capital Costs.~~

~~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, the ATOE amount shall be set be subtracting the following amounts from the TOE:~~

- ~~(1) Motor Vehicle Fuel Tax Attributable to Ferry Operations;~~

Exhibit A

(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 Rate" means the percentage of ATOE as set by WCC 10.34.030.

H. "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.

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 Fare Box Recovery Goal from the Fare Box Considered Revenue.

J. "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.

~~KD. "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. "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.~~

~~F. "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).

| Exhibit A

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 will be credited toward the fare box recovery rate 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.

Exhibit A

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 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 by~~ Whatcom County ~~public-works administration building in Bellingham~~Public Works Administration 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 the by~~ Whatcom County ~~public-works administration building in Bellingham~~Public Works Administration and will require valid photo ID.

M. ~~Multi~~One punch on the multi-ride punch cards purchased card equals one round trip. Rate changes shall take place~~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~~for three~~ months after the ~~effective date of the ordinance codified in this chapter. rate change takes effect.~~ Multi-ride punch cards purchased at the previous rate, rather higher or lower than the new rate, will~~shall~~can be accepted for use~~used~~ as one punch equals one round trip. No a credit towards the purchase of the~~current~~newly adopted fare multi-ride punch card. No refunds or refund 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 a new 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.

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

Exhibit A

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~~ 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 that the 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 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 55% Fare Box Recovery Rate shall be applied to the actual fare box recovery rate exceeds 55 percent,~~ 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 funding sources, which include but are not limited to county road taxes.

The Cumulative Fare Box Reserve 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. A surplus is the result of excess revenue collection over time and shall be retained in the ferry system fund and to be applied only solely to future operating TOE eligible costs. A Cumulative Fare Box Reserve deficit indicates that additional revenue is needed for the system. Cumulative Fare Box Reserve deficit shall be recovered through future ferry user fee increase or a decrease in TOE.

~~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.~~ (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.



MEMORANDUM

TO: Whatcom County Council

FROM: Satpal Sidhu, Whatcom County Executive *Satpal Sidhu*

RE: Veto of Ordinance 2023-045 amending Chapter 10.34 Ferry Rates

DATE: August 9, 2023

I am writing to inform you that I am exercising my power of veto per Whatcom County Charter 3.22(f) on Ordinance 2023-045 Amending Chapter 10.34 Ferry Rates. My written objections are provided in this memorandum.

1. The County's designated advisory body, the Lummi Island Ferry Advisory Committee (LIFAC), was unable to convene to provide its recommendations on the code changes proposed in the Ordinance. The adoption of code changes without any formal recommendation from LIFAC shows disregard for the County's longstanding tradition of soliciting public input through our advisory boards and commissions.
2. Statements by Councilmembers and the Executive's Office created a community expectation that there would be a pause in consideration until the advisory body was reconstituted and a policy discussion was held in the Public Works and Health Committee. The vote to approve the Ordinance at the July 25 meeting upended those expectations.

As I mentioned in [my memo from July 31](#), the Lummi Island community has been on a roller-coaster ride. This veto is meant to put the brakes on that roller-coaster and restore public trust.

I appreciate that County Council has the authority to override my objections. My veto is an expression of my dissatisfaction with the process of consideration. I also acknowledge that the responsibility for this process is shared by the executive branch and legislative branch of County Government.

I hope that Council, as our policy and legislative body, will work with LIFAC to ensure that County code related to ferry rates reflects the interests of our constituents, both on the island and across the County.

RECEIVED

AUG 09 2023

**WHATCOM COUNTY
COUNCIL**