

**ORDINANCE NO. 2019- \_\_\_\_\_**

**AUTHORIZING A CHARGE FOR THE FURNISHING OF SERVICE TO THOSE WHO ARE RECEIVING OR WILL RECEIVE BENEFITS FROM STORMWATER CONTROL FACILITIES OR PROGRAMS AND WHO ARE CONTRIBUTING TO AN INCREASE IN SURFACE WATER RUNOFF IN THE LAKE WHATCOM STORMWATER UTILITY SERVICE AREA**

**WHEREAS**, RCW 36.89.080 authorizes a charge for the furnishing of service to both those who are receiving or will receive benefits from stormwater control facilities and programs and to those who are contributing to an increase in surface water runoff; and,

**WHEREAS**, the Lake Whatcom Stormwater Utility Service Area was adopted with Ordinance 2017-076 to include the entire unincorporated Lake Whatcom watershed; and,

**WHEREAS**, implementation of the Lake Whatcom Stormwater Utility is needed to solve many of the current stormwater management problems in the Lake Whatcom Watershed including the removal of phosphorus; and,

**WHEREAS**, annual revenue is needed to implement the Lake Whatcom Stormwater Utility; and,

**WHEREAS**, on May 8, 2018 the Whatcom County Council selected a citizen advisory committee consisting of Lake Whatcom Utility Service Area rate payers to advise Whatcom County Public Works and the Whatcom County Council on a recommended stormwater rate structure; and,

**WHEREAS**, beginning in June 2018, Whatcom County Public Works conducted a funding study to evaluate stormwater rate structure options for the Lake Whatcom Stormwater Utility Service Area and to determine the unit rates, equivalent service unit value, and capital facility charge needed to provide revenue sufficient to support the implementation of the Lake Whatcom Stormwater Utility; and,

**WHEREAS**, the citizen advisory committee considered and provided stakeholder input and recommendations during the funding study; interested members of the public attended advisory committee meetings and provided comments to the committee for their deliberation; and,

**WHEREAS**, that a Public Hearing to consider the authorization of unit rates, the equivalent service unit value, and the capital facility charge (CFC) for the

1 Lake Whatcom Stormwater Utility was held July 23, 2019, at the regular County Council  
2 meeting.

3  
4 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council  
5 that:

6  
7 Section 1. A new article entitled “Lake Whatcom Stormwater Utility Funding  
8 Mechanism” shall be added to the Whatcom County Code Chapter 16.30. Complete  
9 text of this section is included in **Exhibit A** of this ordinance.

10  
11 Section 2. Challenges to the validity of any of the sections, clauses, or provisions of  
12 this ordinance shall not affect or impair the validity of the ordinance as a whole or any  
13 part thereof other than the part so declared to be invalid.

14  
15 Section 3. This ordinance shall become effective January 1, 2020.

16  
17 **BE IT FURTHER ORDAINED** that a new fund is hereby established effective January 1,  
18 2020 titled “Lake Whatcom Stormwater Utility Fund”. This fund shall be used to account  
19 for the revenues and expenditures related to operation of Lake Whatcom Stormwater  
20 Utility.

21  
22 **BE IT FURTHER ORDAINED** that the value of one equivalent service unit for the Lake  
23 Whatcom Stormwater Utility is hereby established to be 4,200 square feet of impervious  
24 surface area.

25  
26 **BE IT FURTHER ORDAINED** that the following annual unit rates are hereby established  
27 for the Lake Whatcom Stormwater Utility:  
28

Customer Type	Fee for 2020
Single Family – Small Footprint	\$55.32
Single Family – Medium Footprint	\$73.76
Single Family – Large Footprint	\$147.52
Other Developed Parcels	\$73.76 per ESU

29

Customer Type	Fee Beginning in 2021
Single Family – Small Footprint	\$110.64
Single Family – Medium Footprint	\$147.52
Single Family – Large Footprint	\$295.04
Other Developed Parcels	\$147.52 per ESU

30  
31 **BE IT FURTHER ORDAINED** that the following capital facilities charge (CFC) is hereby  
32 established for the Lake Whatcom Stormwater Utility, for new development or  
33 expansion or densification of existing development:  
34

Customer Type	CFC
Single Family Parcels	\$1,730 per Parcel
Other Developed Parcels	\$1,730 per ESU

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Rud Browne, Council Chair

WHATCOM COUNTY EXECUTIVE  
APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Christopher Quinn, Civil Deputy  
Prosecutor

\_\_\_\_\_  
Jack Louws, County Executive

( ) Approved      ( ) Denied

Date Signed: \_\_\_\_\_

1 **EXHIBIT A**

2  
3 **Section 1.0 Title**

4  
5 This ordinance shall be titled "Lake Whatcom Stormwater Utility Funding Mechanism".

6  
7 **Section 2.0 Purpose**

8  
9 The purpose of this chapter is to provide revenue for the Lake Whatcom Stormwater Utility  
10 (LWSU) to plan, manage, design, construct, establish, acquire, develop, maintain, use, finance, operate,  
11 control or improve storm and surface water control facilities, and to carry out activities related thereto.  
12 This chapter provides these revenues by fixing rates and charges pursuant to RCW 36.89 for the  
13 furnishing of service to those served or receiving benefits or those to be served or to receive benefits from  
14 any stormwater control facility, or those contributing to an increase of surface water runoff in the LWSU  
15 Service Area. This authority is invoked in order to minimize property damage; promote and protect public  
16 health, safety and welfare; minimize water quality degradation by preventing siltation, contamination and  
17 erosion of the waterways; protect aquifers; ensure the safety of County roads and rights-of-way; increase  
18 educational and recreational opportunities; encourage the retention of open space; and foster other  
19 beneficial public uses within the LWSU Service Area.

20  
21 **Section 3.0 Applicability**

22  
23 The requirements of this ordinance shall apply to all parcels of real property in the LWSU Service  
24 Area, including public and private property.

25  
26 **Section 4.0 Definitions**

27  
28 For the purposes of this Chapter, the words or phrases below shall have the following meanings:

- 29  
30 (1) "County" means Whatcom County, or as indicated by the context, may mean the  
31 Department of Public Works, Public Works Director, County Engineer, or other employee  
32 or agent representing the County in the discharge of his or her duties.
- 33 (2) "County Council" means the Whatcom County Council, which is the legislative branch of  
34 Whatcom County government.
- 35 (3) "County roads" means public rights-of-way, excluding State roads, in the unincorporated  
36 areas served by the LWSU.
- 37 (4) "Developed parcel" means a parcel of real property which has been altered by impervious  
38 surface coverage.
- 39 (5) "Enterprise fund" means a fund established to account for operations that are financed  
40 and operated in a manner similar to private business enterprises where the intent of the  
41 governing body is that the costs (expenses, including depreciation) of providing goods or  
42 services to the general public on a continuing basis be financed or recovered primarily  
43 through user charges. As such, enterprise funds must report actual financial position and  
44 results of operations, such as actual assets, liabilities, fund equity balances, revenues,  
45 expenditures, and expenses.
- 46 (6) "Equivalent service unit" (ESU) means a configuration of impervious surface estimated to  
47 contribute an amount of runoff to the County's stormwater management system which is  
48 approximately equal to that created by the average single-family residential developed  
49 parcel in the service area.
- 50 (7) "Forestland" or "Timberland" means forestland or timberland parcels on lands taxed as  
51 forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW

1 (including forest roads and or any roads on lands taxed as forestland under chapter  
2 84.33 RCW or as timberland under chapter 84.34 RCW).

3 (8) "Impervious surface" means hard surfaced areas which prevent or retard the entry of  
4 water into the soil mantle and/or cause water to run off the surface in greater quantities or  
5 at an increased rate of flow than under natural conditions. Common impervious surfaces  
6 include, but are not limited to: rooftops, concrete or asphalt roads, sidewalks and paving,  
7 walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed  
8 dirt, oiled or other surfaces which similarly impede the natural infiltration of surface water  
9 or runoff patterns existent prior to development.

10 (9) "Manager" means the Public Works Director or his/her designee.

11 (10) "Other Developed Parcel" means a parcel that contains impervious surface area and is  
12 not a single-family residence, including but not limited to, commercial, industrial, multi-  
13 family apartment, and public property.

14 (11) "Parcel" means the smallest separately segregated unit or plot of land having an  
15 identified owner, boundaries and surface area which is documented for real property  
16 purposes and a tax account number assigned by the Whatcom County Assessor-  
17 Treasurer.

18 (12) "Private roads" means a road which is on private property and is maintained with private  
19 funds and requires a name per WCC 12.60.050.

20 (13) "Service charge" means the fee in an amount to be determined by applying the  
21 appropriate rate to a particular parcel of real property based upon factors established by  
22 this Chapter.

23 (14) "Single-family residence" means a residential structure designed exclusively for  
24 occupancy by one family, including but not limited to mobile homes, cabins and duplex  
25 units, as defined by the Whatcom County Land Use and Development Code.

26 i. "Small single-family residential footprint" means a parcel containing a single-  
27 family residence that has less than or equal to 2,500 impervious square feet.

28 ii. "Medium single-family residential footprint" means a parcel containing a single-  
29 family residence with [more than 2,500 impervious square feet and less than or](#)  
30 [equal](#) to 8,400 impervious square feet.

31 iii. "Large single-family residential footprint" means a parcel containing a single-  
32 family residence with more than 8,400 impervious square feet.

33 (15) "Undeveloped parcel" means any parcel of real property which has not been altered by  
34 construction of any structure or other impervious surface area.

35 (16) "Unit rate" means the dollar amount charged per ESU.

36 (17) "WSDOE" means the Washington State Department of Ecology.

37  
38 **Section 5.0 Rate Structure**

39  
40 A. Service charges for the LWSU are hereby authorized and imposed, in amounts and on  
41 terms consistent with this Chapter.

42  
43 B. The rates and service charges shall be based on the service provided and the relative  
44 contribution of stormwater runoff from a given parcel. The estimated or measured impervious surface  
45 area will be used to determine the relative contribution of stormwater runoff from the parcel.

46  
47 C. The County Council shall establish from time to time, by resolution, the value of one ESU  
48 in impervious surface area, as measured in square feet.  
49

1 D. The County Council shall establish from time to time, by resolution, the unit rate per ESU.

2  
3 Service charges shall be determined as follows:

- 4  
5 1. Small Single-Family Residential Footprint – The service charge for each small  
6 single-family parcel shall be the unit rate times 0.75 ESU.  
7  
8 2. Medium Single-Family Residential Footprint – The service charge for each  
9 medium single-family parcel shall be the unit rate times 1.00 ESU.  
10  
11 3. Large Single-Family Residential Footprint – The service charge for each large  
12 single-family parcel shall be the unit rate times 2.00 ESUs.  
13  
14 4. Other Developed Parcels – The service charge for all other developed parcels,  
15 including publicly-owned properties, shall be computed by multiplying the unit  
16 rate times the number of ESUs on the parcel minus any approved rate  
17 adjustment for the parcel as determined under Section 7.0. There shall be a  
18 minimum service charge for all other developed parcels equal to the unit rate.  
19

20 For the purpose of computation of service charges for Other Developed Parcels,  
21 the number of equivalent service units shall be rounded to the nearest whole  
22 number.  
23

24 The minimum service charge per individual timeshare owner shall be \$5.00 in  
25 order to help cover processing fees.  
26

27 The following shall be exempt from service charges:

- 28  
29 1. Undeveloped Parcels – Undeveloped parcels shall not be charged.  
30  
31 2. County and Private Roads – County and Private roads shall not be charged.  
32  
33 3. Forestland and Timberland – Forestland or timberland parcels (lands taxed as  
34 forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW)  
35 shall not be charged.  
36

37 **Section 6.0 Billing**

38  
39 A. Property Tax Statements. Rates and charges as authorized by this Chapter shall be  
40 added to and included in Whatcom County's annual tax statements.  
41

42 B. Payment Date. The total amount of the stormwater charge shall be due and payable on  
43 or before the 30th day of April and shall be delinquent after that date; however, if one-half of such rate  
44 and charge is paid on or before the said 30th day of April, the remainder shall be due and payable on or  
45 before the 31st day of October and shall be delinquent after that date.  
46

47  
48 **Section 7.0 Service Charge Adjustments and Appeals**

49  
50 A. Any person billed for service charges may file a written "Request for Service Charge  
51 Adjustment" with the Manager within thirty (30) days of the date of the bill. However, submittal of such a  
52 request does not extend the period of payment for the charge.  
53

54 B. A request for service charge adjustment may be granted or approved by the Manager  
55 only when one or more of the following conditions exist:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

1. The single-family residential footprint designation (small, medium, large) is in error, based on the measured impervious footprint, as demonstrated to the satisfaction of County staff; or
2. The amount charged to Other Developed Parcels is in error; however, no adjustment will be made unless the calculation of the impervious surface area on the parcel is shown to be in error by at least ten percent (10%), as demonstrated to the satisfaction of County staff; or
3. The parcel contains no impervious surfaces as defined in section 4.8 and no County or private roads as defined in section 4.3 and 4.12; or
4. Upon application by the owner to the Manager, entire properties developed in compliance with WCC 20.51.420 as demonstrated by an approved building permit which for single family residences includes final inspection signoff, or for commercial structures, a certificate of completion, or in the event that structures were constructed prior to adoption of WCC 20.51.420, as evidenced by a report written by a licensed civil engineer confirming the project is conforming to or exceeding WCC 20.51.420 shall be eligible for a reduction of 35 percent of the service charge established in Section 5.0.
5. 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
  - (i) For qualifying permissive rainwater harvesting systems as provided for under RCW 36.89.080 and eligible under section 7.0(B)(4) of this chapter the formula is expressed mathematically as follows:

$$A = F \times 10\%$$

1 Where:

2 A = The credit amount to be subtracted from  
3 the annual fee; and

4 F = The total fee without credit.  
5

6 6. The parcels are determined by the Manager to be contiguous. For  
7 contiguous lots to qualify for a rate adjustment, the appellant must  
8 demonstrate that parcels:

- 9
- 10 (i) Are contiguous; and
  - 11 (ii) Are owned by the same entity; and
  - 12 (iii) Are single-family residential in use / dwelling and appurtenant  
13 accessory structures.
- 14

15 Lots determined to be contiguous by the Manager will be considered as  
16 a single lot for the purposes of fee calculations;

17 Fees will be recalculated to reflect any such change from the date of the  
18 change and applied to the individual parcels pursuant to the rate  
19 schedule in effect at the time of the change.  
20

21 C. Service charge adjustments will only apply to the bill then due and payable and bills  
22 subsequently issued. The property owner shall have the burden of proving that the service charge  
23 adjustment should be granted. Adjustments shall not be made retroactively.  
24

25 D. Decisions on service charge adjustment requests shall be made by the Manager based  
26 on information submitted by the applicant and by the County within sixty (60) days of receipt by Public  
27 Works of the written adjustment request, except when additional information is needed. The applicant  
28 shall be notified in writing of the Manager's decision.  
29

30 E. Decisions of the Manager on requests for service charge adjustments shall be final  
31 unless appealed within thirty (30) days of the date the decision. The Whatcom County Hearing Examiner  
32 shall review appeals considering the requirement and the intent of this ordinance and any other relevant  
33 facts that further the intent of this ordinance.  
34

### 35 **Section 8.0 Exemption**

36

37 Property that is owned by, and is the personal residence of, a person or persons approved by the  
38 County Assessor for a senior citizen or disabled persons property tax exemption under RCW 84.36.381  
39 shall be exempt from the service charge.  
40

### 41 **Section 9.0 Use of Funds**

42

43 Service charges collected under this ordinance shall be deposited into a special fund or funds to  
44 be used only for the purpose of paying all or any part of the cost and expense of maintaining and  
45 operating stormwater control facilities, all or any part of the cost and expense of administering, planning,  
46 designing, establishing, acquiring, developing, constructing, maintaining and improving the program and  
47 facilities of the Lake Whatcom Stormwater Utility.  
48

### 49 **Section 10.0 Lien for Delinquent Charges**

50



1 A. Liens. Pursuant to RCW 36.94.150, Whatcom County shall have a lien for delinquent service  
2 charges, including interest thereon, against any property against which they were levied, which lien shall  
3 be superior to all other liens and encumbrances except general taxes and local and special assessments.  
4 Such liens shall be effective and shall be enforced and foreclosed as provided in RCW 36.94.150.  
5 Therefore, the County may commence to foreclose such liens sixty (60) days after the attachment of the  
6 lien.

7  
8 B. Interest. Delinquent service charges shall bear interest as provided in RCW 36.94.150 at the rate  
9 of eight percent (8%) per annum, or such rate as may hereafter be authorized by law, computed on a  
10 monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at  
11 the time of payment of the charges regardless of when the charges were first delinquent.

12  
13 C. Penalties. Penalties of not more than ten percent of the amount due may be imposed in case of  
14 failure to pay the charges at times fixed by resolution, as provided in RCW 36.94.150.

15  
16 **Section 11.0 Capital Facilities Charge**

17  
18 The County Council shall establish from time to time, by resolution, the unit rate per ESU for a  
19 one-time, capital facilities charge (CFC) applicable to new development, expansion, or densification of  
20 existing development.

21  
22 Single-family Residential Parcels that are being developed would pay the CFC equal to one ESU when  
23 developing a new single-family residence.

24  
25 Other Developed Parcels would pay the CFC rate times the number of ESUs on the parcel as determined  
26 by County approved site plan (Binding Site Plan) when constructing a new development or when the  
27 expansion or densification of existing development results in additional ESUs being assessed to the  
28 property.

29  
30 **Section 12.0 Future Fee Adjustments**

31  
32 County Council will review fee levels at least every five years to align fee revenue with prevailing  
33 needs.

34  
35 **Section 13.0 Severability.**

36  
37 If any section, clause or provision of this Chapter be declared by the courts to be invalid, the  
38 same shall not affect the validity of the Chapter as a whole or any part thereof, other than the part so  
39 declared to be invalid.