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PROPOSED BY: _____
INTRODUCTION DATE: __6/4/19__

ORDINANCE NO. 2019-

AN ORDINANCE 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 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; 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, the Lake Whatcom Stormwater Utility’s purpose is to recover applicable costs of compliance with state-mandated reductions in phosphorus and meet federal Clean Water Act requirements; and,

WHEREAS, A citizen advisory committee was selected by Whatcom County Council on May 8, 2018. The purpose of the committee was to represent rate payers in the Lake Whatcom Stormwater Utility Service Area and advise Whatcom County Public Works staff and the Whatcom County Council on a recommended stormwater rate structure; and,

WHEREAS a citizen advisory committee was selected by Whatcom County Council on May 8, 2018 to represent rate payers in the Lake Whatcom Stormwater Utility Service Area and advise Whatcom County Public Works and the Whatcom County Council on a recommended stormwater rate structure; and,

1 **WHEREAS**, Whatcom County Public Works conducted a funding study to
2 evaluate stormwater rate structure options for the Lake Whatcom Stormwater Utility
3 Service Area beginning in June 2018, and,
4

5 **WHEREAS**, stakeholder input and recommendations during the funding
6 study were provided through the citizen advisory committee and interested public
7 attended advisory committee meetings and provided comments to the committee for
8 their consideration.
9

10 **NOW, THEREFORE, BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL THAT:**
11
12

13
14 Section 1. A new sub-chapter be added to Whatcom County Code entitled "Lake
15 Whatcom Stormwater Utility." Complete text is included in **Exhibit A** of this ordinance.
16

17 Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of
18 this ordinance shall not affect or impair the validity of the ordinance as a whole or any
19 part thereof other than the part so declared to be invalid.
20

21
22 Section 3. This ordinance shall become effective January 1, 2020.
23

24 **ADOPTED** this ____ day of _____, 20____.
25
26

27
28
29 ATTEST:
30

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

31
32 _____
33 Dana Brown-Davis, Clerk of the Council
34

Rud Browne, Council Chair

35 WHATCOM COUNTY EXECUTIVE
36 APPROVED AS TO FORM:
37

WHATCOM COUNTY, WASHINGTON
38
39 _____

40 Christopher Quinn, Civil Deputy
41 Prosecutor
42

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____
44
45

1 EXHIBIT A

2
3 **Section 1.0 Title**

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

5
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 to be served or to receive benefits from any
14 stormwater control facility or contributing to an increase of surface water runoff in the LWSU Service
15 Area. This authority is being 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 For the purposes of this Chapter, the words or phrases below shall have the following meanings:

- 28
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

1 approximately equal to that created by the average single-family residential developed
2 parcel in the service area.

- 3 (7) "Forestland or Timberland" means forestland or timberland parcels on lands taxed as
4 forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.
- 5 (8) "Impervious surface" means hard surfaced areas which prevent or retard the entry of
6 water into the soil mantle and/or cause water to run off the surface in greater quantities or
7 at an increased rate of flow than under natural conditions. Common impervious surfaces
8 include, but are not limited to: rooftops, concrete or asphalt roads, sidewalks and paving,
9 walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed
10 dirt, oiled or other surfaces which similarly impede the natural infiltration of surface water
11 or runoff patterns existent prior to development.
- 12 (9) "Manager" means the County Engineer or his/her designee.
- 13 (10) "Other Developed Parcel" means a parcel that contains impervious surface area and is
14 not a single family residence, including but not limited to, commercial, industrial, multi-
15 family apartment, and public property.
- 16 (11) "Parcel" means the smallest separately segregated unit or plot of land having an
17 identified owner, boundaries and surface area which is documented for real property
18 purposes and a tax account number assigned by the Whatcom County Assessor-
19 Treasurer.
- 20 (12) "Private roads" means a road which is on private property and is maintained with private
21 funds and requires a name per W.C.C. 12.60.050. .
- 22 (13) "Service charge" means the fee in an amount to be determined by applying the
23 appropriate rate to a particular parcel of real property based upon factors established by
24 this Chapter.
- 25 (14) "Single-family residence" means a residential structure designed exclusively for
26 occupancy by one family, including but not limited to mobile homes, cabins and duplex
27 units, as defined by the Whatcom County Land Use and Development Code.
 - 28 i. "Small single-family residential footprint" means a parcel containing a single
29 family residence that has less than or equal to 2,500 impervious square feet.
 - 30 ii. "Medium single-family residential footprint" means a parcel containing a single
31 family residence with 2,500 to 8,400 impervious square feet.
 - 32 iii. "Large single-family residential footprint" means a parcel containing a single
33 family residence with more than 8,400 impervious square feet.
- 34 (15) "Undeveloped parcel" means any parcel of real property which has not been altered by
35 construction of any structure or other impervious surface area. Private roads providing
36 access between or among undeveloped sites shall be defined as undeveloped property.
- 37 (16) "Unit rate" means the dollar amount charged per ESU.

38
39 **Section 5.0 Rate Structure**

40
41 A. Service charges for the LWSU are hereby authorized and imposed, in amounts and on
42 terms consistent with this Chapter.
43

1 B. The rates and service charges shall be based on the service provided and the relative
2 contribution of stormwater runoff from a given parcel. The estimated or measured impervious surface
3 area will be used to determine the relative contribution of stormwater runoff from the parcel.
4

5 C. The County Council shall establish from time to time, by resolution, the value of one ESU
6 in impervious surface area, as measured in square feet.
7

8 D. The County Council shall establish from time to time, by resolution, the unit rate per ESU.
9

10 Service charges shall be determined as follows:
11

12 1. Undeveloped Parcels – Undeveloped parcels shall not be charged.
13

14 2. County and Private Roads – County and Private roads shall not be charged.
15

16 3. Forestland and Timberland – Forestland or timberland parcels shall not be charged.
17

18 4. Small Single-Family Residential Footprint – The service charge for each small single
19 family parcel shall be the unit rate times 0.75 ESU.
20

21 5. Medium Single-Family Residential Footprint – The service charge for each medium single
22 family parcel shall be the unit rate times 1.00 ESU.
23

24 6. Large Single-Family Residential Footprint – The service charge for each large single
25 family parcel shall be the unit rate times 2.00 ESUs.
26

27 7. Other Developed Parcels – The service charge for all other developed parcels, including
28 publicly-owned properties, shall be computed by multiplying the unit rate times the
29 number of ESUs on the parcel minus any approved rate adjustment for the parcel as
30 determined under Section 7.0. There shall be a minimum service charge for all other
31 developed parcels equal to the unit rate.
32

33 For the purpose of computation of service charges for Other Developed Parcels, the
34 number of equivalent service units shall be rounded to the nearest whole number.
35

36 **Section 6.0 Billing**
37

38 A. Property Tax Statements. Rates and charges as authorized by this Chapter shall be
39 added to and included in Whatcom County's annual tax statements. Properties which do not receive a
40 property tax statement will receive a separate billing statement for these rates and charges.
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 C. Payment Application. If a payment is received in conjunction with a combined property
48 tax and LWSU service charge, and the payment is less than the amount due, the payment shall be
49 applied first to the annual property tax of the parcel and any remaining amount to the service charge.
50

1 **Section 7.0 Service Charge Adjustments and Appeals**

2
3 A. Any person billed for service charges may file a "Request for Service Charge Adjustment"
4 with the Public Works Department – Stormwater Division within thirty (30) days of the date of the bill.
5 However, submittal of such a request does not extend the period of payment for the charge.

6
7 B. A request for service charge adjustment may be granted or approved by the Manager
8 only when one or more of the following conditions exist:

- 9
10 1. The single family residential footprint designation (small, medium, large) is in
11 error, based on the measured impervious footprint, as demonstrated to the
12 satisfaction of County staff; or
13
14 2. The amount charged to Other Developed Parcels is in error; however, no
15 adjustment will be made unless the calculation of the impervious surface area on
16 the parcel is shown to be in error by at least ten percent (10%), as demonstrated
17 to the satisfaction of County staff; or
18
19 3. The parcel exists in its natural unimproved condition and will remain in its natural
20 unimproved condition with no allowable human activities or manmade
21 improvements that adversely affect water quantity or quality; or
22
23 4. The parcel contains a new or remodeled commercial building that utilizes a
24 permissive rainwater harvesting system that is properly sized to utilize the
25 available roof surface of the building; or
26
27 (i) For qualifying permissive rainwater harvesting systems as provided for
28 under RCW 36.89.080 and eligible under section 7.0(B)(3) of this chapter
29 the formula is expressed mathematically as follows:

30
31
$$A = F \times 10\%$$

32
33 Where:

34 A = The credit amount to be subtracted from the annual
35 fee; and

36 F = The total fee without credit.

- 37
38 5. The parcels are determined by the Manager to be contiguous. For contiguous
39 lots to qualify for a rate adjustment, the appellant must demonstrate that parcels:
40
41 (i) Are contiguous; and
42 (ii) Are owned by the same entity; and
43 (iii) Are single family residential.
44

1 Lots determined to be contiguous by the Manager will be considered as a single
2 lot for the purposes of fee calculations;
3 Fees will be recalculated to reflect any such change from the date of the change
4 and applied to the individual parcels pursuant to the rate schedule in effect at the
5 time of the change.
6

7 C. Service charge adjustments will only apply to the bill then due and payable, and bills
8 subsequently issued. The property owner shall have the burden of proving that the service charge
9 adjustment should be granted.

10
11 D. Decisions on service charge adjustment requests shall be made by the Manager based
12 on information submitted by the applicant and by the County within sixty (60) days of the adjustment
13 request, except when additional information is needed. The applicant shall be notified in writing of the
14 Manager's decision.
15

16 E. Decisions of the Manager on requests for service charge adjustments shall be final
17 unless appealed within thirty (30) days of the date the decision. The Whatcom County Hearing Examiner
18 shall establish an appeal review body to hear appeals of the Manager's decision.
19

20 **Section 8.0 Exemption**

21
22 Property that is owned by, and is the personal residence of, a person or persons approved by the
23 County Assessor for a senior citizen or disabled persons property tax exemption under RCW 84.36.381
24 shall be exempt from the service charge.
25

26 **Section 9.0 Use of Funds**

27
28 Service charges collected under this ordinance shall be deposited into a special fund or funds to
29 be used only for the purpose of paying all or any part of the cost and expense of maintaining and
30 operating stormwater control facilities, all or any part of the cost and expense of planning, designing,
31 establishing, acquiring, developing, constructing, maintaining and improving the program and facilities of
32 the Lake Whatcom Stormwater Utility.
33

34 **Section 10.0 Lien for Delinquent Charges**

35
36 A. Liens. Pursuant to RCW 36.94.150, Whatcom County shall have a lien for delinquent service
37 charges, including interest thereon, against any property against which they were levied, which lien shall
38 be superior to all other liens and encumbrances except general taxes and local and special assessments.
39 Such liens shall be effective and shall be enforced and foreclosed as provided in RCW 36.94.150.
40 Therefore, the County may commence to foreclose such liens sixty (60) days after the attachment of the
41 lien.
42

43 B. Interest. Delinquent service charges shall bear interest as provided in RCW 36.94.150 at the rate
44 of eight percent (8%) per annum, or such rate as may hereafter be authorized by law, computed on a
45 monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at
46 the time of payment of the charges regardless of when the charges were first delinquent.
47

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

3
4 **Section 11.0 Capital Facilities Charge**

5
6 The County Council shall establish from time to time, by resolution, the unit rate per ESU for a one-time,
7 capital facilities charge (CFC) applicable to new development, expansion, or densification of existing
8 development.

9
10 Single-family Residential Parcels that are being developed would pay the CFC equal to one ESU.

11
12 Other Developed Parcels would pay the CFC rate times the number of ESUs on the parcel.

13
14 **Section 12.0 Cost-of-Living Adjustment**

15
16 Notwithstanding any fee increase provisions to the contrary or absence thereof, user fees for the LWSU
17 shall be increased annually on January 1st of each year beginning January 1, 2022.

18
19 The cost-of-living increase noted herein shall be based on the U.S. Bureau of Labor and Statistics,
20 Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) publication. The
21 adjustment factor will be based on the August value of the current year divided by the August value of the
22 previous year. That factor is multiplied by the fee(s) in the current year to arrive at the updated fee(s) in
23 the subsequent year.

24
25 The formula is expressed mathematically as follows:

26
27
$$F * A = U$$

28
29 Where

30
31 F = current year fee;
32 A = adjustment factor;
33 U = updated fee;

34
35 For example, if the adjustment were to be calculated for 2019, the August CPI-W value in
36 2018 (267.757) would be divided by the August value in 2017 (259.528), resulting in an
37 adjustment factor of 1.0317. If the LWSU fee was \$100 in 2018, the cost adjusted fee for
38 2019 would be \$103.17.

39
40 If the cost-of-living adjustment results in a decrease, no cost-of-living adjustment shall be made that year.
41 Other changes to the fee(s) may supersede this clause, such as changes to the fee(s) resulting from
42 programmatic changes or regulatory requirements.

43
44 If the CPI-W index is unavailable at the time of the adjustment calculation, a similar index may be used,
45 such as CPI-All Urban Consumers.

1 **Section 13.0 Severability.**

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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.

DRAFT