

RESOLUTION NO. 763

A TEMPORARY RESOLUTION OF THE BOARD OF COMMISSIONERS
OF BIRCH BAY WATER AND SEWER DISTRICT,
WHATCOM COUNTY, WASHINGTON, REGARDING ACCUMULATED VACATION

WHEREAS, on January 31, 2020, the United States Department of Public Health and Human Services declared a public emergency for the novel coronavirus (“COVID-19”) beginning on January 27, 2020; and

WHEREAS, on February 29, 2020, the Governor of the State of Washington proclaimed that a State of Emergency exists in all counties in the State of Washington due to the outbreak of COVID-19; and

WHEREAS, on March 10, 2020, the Whatcom County Executive, in coordination with the Whatcom County Health Board, declared a Whatcom County public health emergency to reduce the spread of COVID-19 in our community; and

WHEREAS, on March 13, 2020, the President of the United States of America proclaimed that a National Emergency exists due to the outbreak of COVID-19; and

WHEREAS, on March 23, 2020, the Governor of the State of Washington issued a stay-at-home order applicable to the general public except employees deemed essential; and

WHEREAS, on April 2, 2020, the Governor of the State of Washington extended the aforementioned stay-at-home order through May 4, 2020; and

WHEREAS, the Birch Bay Water and Sewer District (“District”) is a special purpose district authorized under Title 57 Revised Code of Washington; and

WHEREAS, in Resolution 760, adopted March 26, 2020, District Board of Commissioners declared that the COVID-19 pandemic constitutes an emergency within the District; and

WHEREAS, on May 1, 2020, the Governor of the State of Washington extended the aforementioned stay-at-home order through May 31, 2020; and

WHEREAS, while the state of Washington is currently in Phase 1 of a four (4) phase re-opening plan, government offices (for non-essential workforce) are scheduled to reopen in Phase 3, with telework strongly encouraged; and

WHEREAS, as recognized in a recent memorandum issued by the Washington State Attorney General’s Office, local governments have broad authority to alleviate the public health emergency resulting from the present COVID-19 pandemic; and

WHEREAS, pursuant to Section 12.03 of the Employee Contract; and Section 13.2 of the Operations Department Manager Employment Agreement (“Operations Manager Contract”) and Section 12.2 of the Finance Director Employment Agreement (“Finance Director Contract”) (together, “Manager Contract”), employees may accumulate excess vacation due to “extenuating circumstance” with the approval of the General Manager and the Board upon written request at least forty-five (45) days prior to the employee’s anniversary date; and

WHEREAS, the District recognizes that due to unprecedented travel restrictions, mandated stay-at-home requirements, work demands, and other factors related to the COVID-19 pandemic, employees may accumulate larger than anticipated vacation balances, through no fault of their own; and

WHEREAS, the District wants to encourage employees to take and not lose their earned vacation hours and recognizes in current stressful times that employee vacation is important to maintaining a healthy and productive work force; and

WHEREAS, the District seeks to facilitate employee requests and enhance the ability for employees to accumulate and not lose excess earned vacation during the time period in which the District’s emergency declaration remains in effect; and

WHEREAS, the District Board of Commissioners hereby finds that due to the District’s emergency declaration arising from the COVID-19 pandemic and public health emergency, an “extenuating circumstance” exists, as required by the Employee Contract and the Manager Contract, to allow for accumulation of excess vacation; and

WHEREAS, the District Board of Commissioners temporarily waives its right under the Employee Contract and the Manager Contract to approve each individual employee request for accumulation of excess vacation; and

WHEREAS, the District Board of Commissioners further temporarily waives its right on behalf of the District to require employee requests for accumulation of excess vacation be made at least forty-five (45) days prior to the employee’s anniversary date; and

WHEREAS, the Board finds the subject of this Resolution to be a “necessary and routine” matter and related to its response to the COVID-19 pandemic and public health emergency; and

WHEREAS, the foregoing recitals are a material part of this Resolution;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington as follows:

Section 1: Accumulation of Excess Vacation. Employees under the Employee Contract and the Manager Contract (together “Contracts”), may be authorized, with the approval of the General Manager only, to accumulate earned vacation in excess of that which would otherwise be allowed by terms of the Contracts. Such written requests need not demonstrate “extenuating circumstance,” need not be made at least forty-five (45) days prior to the employees’

anniversary dates, and need not be approved by the Board of Commissioners. The vacation scheduling provisions in Section 12.04 of the Employees Contract, Section 13.3 of the Operations Manager Contract, and Section 12.3 of the Finance Manager Contract, shall remain unchanged and in effect.

Section 2: Timing and Effect. This resolution shall be effective immediately upon adoption and remain in full force and effect for one (1) year, unless earlier terminated or otherwise extended by a subsequent resolution of the Board. Written approval received for accumulation of excess vacation from the General Manager during the time period this Resolution is in effect shall allow for the taking of such approved excess accumulated vacation after expiration or termination of this Resolution. All other District agreements and policies on vacation which are consistent with this Resolution shall remain in full force and effect.

Section 3: Conflicts. Any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 4: Severability. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional.

PASSED by the Board of Commissioners of Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 14th day of May, 2020.

Don Montfort
DON MONTFORT, COMMISSIONER
(Approved Telephonically)

Jeff Benner
JEFF BENNER, COMMISSIONER
(Approved Telephonically)

Fred Reid
FRED REID, COMMISSIONER
(Approved Telephonically)

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 763 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on 14th of May, 2020.

Fred Reid
SECRETARY

I, Sandi McMillan, as authorized by District resolution and in my capacity as Finance Director of the Birch Bay Water & Sewer District, do hereby attest that the foregoing resolution was approved by the Board of Commissioners by virtual electronic meeting on this 14th date of May, 2020.

Sandi McMillan
Sandi McMillan, Finance Director