

RESOLUTION NO. 635

A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF BIRCH BAY WATER & SEWER DISTRICT, WHATCOM COUNTY,
WASHINGTON, AMENDING DISTRICT CODE
SECTIONS ON LOCAL FACILITY CHARGES AND SECTIONS OF TITLE 9 ON
DEVELOPER EXTENSION AGREEMENTS

WHEREAS, the District has determined that further clarification is desirable regarding the application of local facilities charges for water and sewer extensions; and

WHEREAS, the amendments to the District Code set forth herein are intended to promote clarity and consistency in application and calculation of such local facilities charges; and

WHEREAS, the District has also determined to refer to required developer extension agreements in the District Code by reference instead of including the entire agreements in the Code itself; and

WHEREAS, the foregoing recitals and findings 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Section 1: District Code Section 7.04.090 is hereby repealed in its entirety and replaced with a new Section 7.04.090 which shall read as follows:

7.04.090 Front Footage Connection Fee For Existing Water Main

A. Description and Rate. In any application for water service, if the owner or former owners have not paid a proportionate share of the construction cost of the main fronting the premises, a front footage connection fee shall be charged. A front footage connection fee is in addition to a connection fee for general facilities and other applicable District fees or charges for items such as permits, inspections, or meters. The front footage connection charge shall be paid in full before water service is supplied to the premises. The front footage connection charge shall be calculated at a rate established by District Resolution. In cases of tracts larger than one acre, a lot of one hundred front feet or more may be segregated for computing the front footage connection fee.

B. Computation of Footage. The total front footage involved shall be determined by calculating the total number of lineal feet of the lot fronting the pipeline extension to which connection is being made; provided that, under no circumstances shall a front footage charge be for less than fifty (50) lineal feet. Prior payments of less than a proportionate share of the construction cost of main fronting a lot shall be credited on a dollar for dollar basis.

Section 2: District Code Section 8.04.040 is hereby repealed in its entirety and replaced with a new Section 8.04.040 which shall read as follows:

8.04.040 Front Footage Connection Fee For Existing Sewer Main

A. Description and Rate. In any application for sewer service, if the owner or former owners have not paid a proportionate share of the construction cost of the main fronting the premises, a front footage connection fee shall be charged. A front footage connection fee is in addition to a connection fee for general facilities and other applicable District fees or charges for items such as permits, inspections, or meters. The front footage connection charge shall be paid in full before sewer service is provided to the premises. The front footage connection charge shall be calculated at a rate established by District Resolution. In cases of tracts larger than one acre, a lot of one hundred front feet or more may be segregated for computing the front footage connection fee.

B. Computation of Footage. The total front footage involved shall be determined by calculating the total number of lineal feet of the lot fronting the pipeline extension to which connection is being made; provided that, under no circumstances shall a front footage charge be for less than fifty (50) lineal feet. Prior payments of less than a proportionate share of the construction cost of main fronting a lot shall be credited on a dollar for dollar basis.

Section 3. A new Chapter 9.02 on local facilities charges shall be added to the District Code and shall read as follows:

Chapter 9.02 Local Facilities Charges

9.02.010 Local Facilities Charge - Generally.

A local facilities charge, where applicable, is a component of the connection charge for water and/or sewer service and is in addition to the general facilities charge. A local facilities charge is generally intended to recover an equitable share of the cost of the locally proximate facilities necessary to serve premises.

9.02.020 Local Facilities Charge – Types.

Local facilities charges may be assessed and collected from a developer pursuant to a developer's extension agreement under District Code Chapters 9.04 and 9.08. In addition, local facilities charges may be collected from a developer or individual property owners in the following contexts:

- A. Assessment as part of a Utility Local Improvement District ("ULID").
- B. Charges as part of a District Initiated Sewer Facilities Extension pursuant to District Resolution No. 627.

- C. Front Footage Reimbursement Connection Fee established pursuant to District Code Chapters 9.04, 9.08 and 9.12.
- D. Front Footage Connection Fee. A Front Footage Connection Fee is assessed outside the context of a developer's extension agreement and where none of the methods listed in subparagraphs A through C above is employed to fully recover local facilities costs. A front footage connection fee is to be charged where premises to be served have not been assessed or paid an equitable share of the cost of construction of the local facilities serving said premises. A Front Footage Connection Fee is applied at a District wide rate established by Resolution and calculated pursuant to District Code sections 7.04.090 (water) and 8.04.040 (sewer).

Section 4: District Code Chapter 9.04 shall be repealed in its entirety and replaced with the following:

Chapter 9.04 Water System Extensions

The Developer Extension Agreement for Water System Extensions shall be as adopted by Resolution No. 631, which by this reference shall be incorporated herein in its entirety. The required Developer Extension Agreement for Water System Extensions may be found in the Developer Project Manual adopted pursuant to said resolution.

Section 5: District Code Chapter 9.08 shall be repealed in its entirety and replaced with the following:

Chapter 9.08 Sewer System Extensions

The Developer Extension Agreement for Sewer System Extensions shall be as adopted by Resolution No. 631, which by this reference shall be incorporated herein in its entirety. The required Developer Extension Agreement for Sewer System Extensions may be found in the Developer Project Manual adopted pursuant to said resolution.

Section 6: District Code Chapter 9.12 shall be repealed in its entirety and replaced with the following:

Chapter 9.12 Developer Reimbursement

9.12.010 District Authority to Require Reimbursement

The District has the authority to require reimbursement to be paid to an extending developer by property owners desiring to connect to the District water or sewer

system. Any such reimbursement should be made by agreement substantially in conformance with the reimbursement agreement included within the Developer Extension Agreement for Water and/or Sewer System Extensions referred to in District Code Chapters 9.04 and 9.08 respectively. The reimbursement process and agreement shall be in compliance with Chapter 57.22 RCW and shall be recorded with the county auditor following final execution. The reimbursement payment shall be in addition to other connection fees and charges required by the District.

9.12.020 Establishment of Benefit Reimbursement Area

Prior to execution of any reimbursement agreement the District shall identify those properties benefited by the subject water and/or sewer extension project and calculate the preliminary reimbursement liability for each such property; provided that, only properties adjacent to the project shall be deemed benefited by construction of local facilities. The benefited properties shall be included within a preliminary benefit reimbursement area which shall be delineated by map. The preliminary benefit reimbursement area and the preliminary reimbursement liability for each property therein shall be approved by resolution of the Board.

9.12.030 Notice and Public Hearing

A. Notice to Property Owners in Benefit Area. Upon approval of a preliminary benefit reimbursement area by the Board, the District shall mail notice of the amount of the preliminary reimbursement liability against each property therein to the developer and all property owners of record within said area. The notice shall advise notice recipients of their right, within twenty (20) days of the date of mailing of said notice, to make written request for a hearing before the Board. In the event no timely written request for public hearing is received as required, the preliminary benefit reimbursement area and the preliminary reimbursement liability for each property therein shall become final.

B. Public Hearing. If the developer or any property owner within the preliminary benefit reimbursement area requests a hearing in writing within twenty (20) days of the mailing described in subparagraph (A), a hearing shall be held before the Board as soon as practicable. Written notice of such hearing shall be mailed to the developer and the property owners of record within the preliminary benefit reimbursement area. After the public hearing, the Board may approve, reject, or modify the preliminary benefit reimbursement area and the preliminary reimbursement liability for any or all property within said area or may remand the matter to the General Manager for further work and review. Following completion of any work directed by remand, a new notice and public hearing shall be scheduled in accordance with this section.

C. Final Decision of Board. The Board's final decision on the benefit reimbursement area and on the reimbursement liability for each property therein shall be adopted by resolution and any reimbursement agreement with the developer shall conform therewith.

9.12.040 Front Footage Connection Fee Required Following Expiration of Reimbursement Agreement

Following expiration of any reimbursement agreement authorized herein to which the District is a party, any property in the benefit reimbursement area which has not yet connected to the District system and paid charges under said agreement shall be charged a front footage connection fee at the time of connection in accordance with Sections 7.04.090 (water) and 8.04.040 (sewer). This fee shall be in addition to a connection fee for general facilities and other applicable District fees or charges.

Section 7: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 8: 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 of Commissioners hereby declare 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, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 9: This Resolution shall be effective immediately.

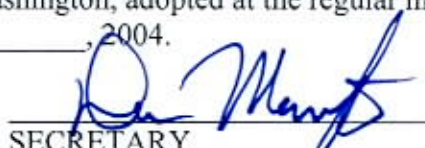
ADOPTED by the Board of Commissioners of Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 9th day of September, 2004.


COMMISSIONER


COMMISSIONER


COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 635 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on 9/9, 2004.


SECRETARY