

RESOLUTION NO. 636

A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF BIRCH BAY WATER & SEWER DISTRICT, WHATCOM COUNTY,  
WASHINGTON, REPEALING RESOLUTION NO. 627 AND REPLACING SAME WITH A  
NEW RESOLUTION ESTABLISHING LOCAL FACILITIES CHARGE AS AN  
ALTERNATIVE MECHANISM FOR SEWER EXTENSIONS AND POLICIES AND  
PROCEDURES FOR BILLING AND COLLECTION OF CHARGES, INCLUDING  
COMPELLING CONNECTION AND IMPOSITION OF PENALTIES

WHEREAS, the District has the authority to construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district and its inhabitants with an adequate system of sewers for all uses and purposes (RCW 57.08.005(5)); and

WHEREAS, the District has the authority to compel property owners within the District located within an area served by the District's system of sewers to connect their private drain and sewer systems with the District's sewer system (RCW 57.08.005(8)); and

WHEREAS, the District has the authority to fix charges for the cost of connection and a reasonable connection charge for sewer services supplied to property owners and to collect installments on such charges over a period of time not to exceed fifteen (15) years (RCW 57.08.005(10)); and

WHEREAS, the District's long-term financing plans must be identified for projects included within the District's Comprehensive Sewer System Plan (RCW 57.16.010(2)); and

WHEREAS, Resolution No. 627 was adopted by the Board of Commissioners on November 13, 2003, to establish a process whereby the Birch Bay Water & Sewer District ("District") could consider the construction of sewers and repayment thereof via collection of local facilities charges, as an alternative to the U.L.I.D. process; and

WHEREAS, Resolution No. 627 established specific policies and procedures to guide the District's process and decision-making on financing sewer projects through collection of local facilities charges from property owners served; and

WHEREAS, to promote clarification it is desirable that Resolution No. 627 be replaced with a revised resolution; and

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

NOW, THEREFORE, be it resolved by the Board of Commissioners ("Board") of Birch Bay Water and Sewer District, Whatcom County, Washington as follows:

Section 1: Resolution No. 627 is hereby repealed in its entirety and is replaced with the following.

Section 2: Initiation of Process. The Board may consider constructing sewers and financing construction of sewers by collection of local facilities charges among the properties to be served, without creating a local improvement district or utility local improvement district. The Board may initiate such consideration on its own motion or in response to a request from area property owners. Initiation of the process of consideration shall be at the sole discretion of the Board following preliminary consideration of the factors identified in Section 5 herein.

Section 3: Project Service Area.

- A. Connection Required. Developed properties within the area to be served by the project ("Project Service Area") shall be required to connect to the District sewer system in accordance with the terms of this Resolution and by agreement.
- B. Establishment of Project Service Area. The proposed Project Service Area and the supporting rationale shall be set forth in a report prepared under the direction of the District General Manager ("Project Service Area Report"). The Project Service Area Report will identify those properties or portions of properties within the proposed Project Service Area and estimate the number of Equivalent Living Units ("ELUs") therein. The Project Service Area may be established only by resolution of the Board following the public hearing described in Section 4 herein.
- C. Guidelines for Establishment of Project Service Area. The Project Service Area should generally include those properties within 150 feet of a public sewer main constructed as part of the project; except that, the Project Service Area should not generally include properties or portions of properties outside the District's current service area. Properties should generally be considered to be within 150 feet of a public sewer main if any part of the property lies within that distance. The Project Service Area should also include those properties benefited by the project by taking into consideration various factors including without limitation, service area boundaries, proximity to sewer main, known development plans, topography, and potential availability of alternative means of public sewer service.
- D. Revision(s) to Project Service Area. By resolution of the Board, the District may revise an established Project Service Area at any time before or after completion of project construction so long as notice to the affected property owners and a public hearing on the proposed revisions is afforded in accordance with Section 4; provided that, after the establishment of local facilities charges by Board resolution as described in Section 8.A., revisions to the Project Service Area may only be made as a result of a significant change in circumstances or assumptions about the area served by the project. A property owner shall be deemed "affected" and entitled to notice of a



proposed revision if his property is in the established Project Service Area or an area proposed for inclusion in the Project Service Area.

- E. Estimated Cost for Properties in Project Service Area. The District may develop estimated project costs and local facilities charges for consideration at the initial public hearing on the project, but it is not required to do so.

Section 4: Public Hearing. Following its decision to consider financing sewer construction as described in Section 2 and preparation of a Project Service Area Report as described in Section 3.B, the District shall schedule and hold a public hearing before the Board on the proposed project. Notice of the date, time, and location of the public hearing shall be mailed to the owners of record according to the County Assessor's Office ("record owners") of all property within the proposed Project Service Area at least ten (10) days prior to the public hearing.<sup>1</sup> The Board may include estimated project costs and local facilities charges in the mailed notice for the public hearing. The Board may continue the hearing to such date, time, and place as is announced at the hearing, or may hold such additional hearings as it deems necessary by providing notice by mail as described herein.

Section 5: Factors Considered in Decision to Proceed. In deciding whether or not to proceed with construction in the identified proposed Project Service Area, the Board shall consider the factors affecting the proposed project, including without limitation the following:

- A. The relative feasibility of serving the proposed Project Service Area by a developer's extension agreement;
- B. The degree of risk to public health and/or the environment without project construction;
- C. Public support/opposition;
- D. Financial projections evaluating risks to the District;
- E. Availability of outside funding;
- F. Extent of current development in and adjacent to the project service area;
- G. Estimated cost of the project;
- H. Proximity of the proposed Project Service Area to existing District sewer system;
- I. Zoning and land use designation(s) of the project service area;
- J. Density of existing development likely to produce revenue from local facilities charges and general facilities charges after project construction;
- K. Other factors deemed appropriate by the Board.

Section 6: Decision. Following the public hearing(s), the Board may decide, in its sole discretion, to proceed with the project, not to proceed with the project, or to postpone its decision.

---

<sup>1</sup> The term "property owner(s)" as used throughout this resolution means "record owner(s)."

- A. Decision to Proceed. In the event the Board decides to proceed it shall by resolution establish the Project Service Area and order design and construction of the project in accordance with state and District requirements; provided that, the project and potential financing mechanism must be identified in the District's adopted comprehensive sewer system plan prior to awarding project construction bids or entering into contractual commitments for project financing.
- B. Decision Not to Proceed. In the event the Board decides not to proceed, the process of consideration shall terminate. A decision not to proceed is without prejudice and shall not preclude the Board from considering the same project again at a later time.
- C. Postponement. The District may postpone the decision for a specific or indefinite length of time; provided that, should the postponement of a decision exceed one hundred eighty (180) days from the date of the last public hearing on the project, a new public hearing must be held in conformance with Section 3 prior to entry of a decision on the project.

Section 7. Determination of Final Project Construction Costs and Public Hearing.

- A. Final Project Construction Costs. Following completion of project construction the District shall determine final project costs, and the methodology for final cost allocation (e.g., project cost [less grants] divided by the number of assumed connections, equals local facilities charge). Grant or donated funding shall be deducted from final project costs. The cost basis shall also be reduced by the cost (if any) of any District over sizing. Costs expended in previous considerations of the project may be included in the final project costs upon completion of construction. Final project costs shall include without limitation all costs related to design services, engineering, surveying, construction, legal services, sales taxes, bonding and financing, environmental review, permitting and mitigation, restoration, relocation and/or new construction of roads and utilities, relocation and institution of signage, acquisition of right-of-way and/or easements, government agency and permit fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges. Final project construction costs shall also include administrative costs incurred by the District in managing the project, including without limitation District employee time, office supplies, mailings, telephone expenses, accounting expenses, project oversight, and the like.
- B. Public Hearing. Based upon its determination of final project cost, the District shall determine a proposed local facilities charge for each property in the Project Service Area. The District shall provide notice and hold a public hearing on the proposed local facilities charge in conformance with the requirements of Section 4. The notice of this hearing sent to each property owner shall include the proposed local facilities charge for the property.

Section 8. Resolution Establishing Local Facilities Charges, Billing and Collection of Local Facilities, General Facilities, and Sewer Base Charges.



- A. Establishment of Local Facilities Charges - Resolution. Following conclusion of the public hearing on the proposed local facilities charges, the Board shall establish by resolution the local facilities charge to be assessed by ELU for each property in the Project Service Area. In connection with said resolution, a document similar to an assessment roll may be produced.
- B. Revision of Local Facilities Charges: Determination of Local Facilities and General Facilities Charges. The Board may adjust local facilities charges for affected properties upon adoption of a resolution revising the Project Service Area as described in Section 3.D. The local facilities charges (and general facilities charges) due for any given property shall be the amount established by the governing resolutions at the time of connection. Property owners that have connected to the District sewer system as of the effective date of a resolution revising local facilities charges shall be unaffected; they shall not be obligated for additional charges in the event of an increase in local facilities charges (or general facilities charges) and shall not be eligible for a refund in the event of a decrease in such charges.
- C. Notice, Billing and Collection of Local Facilities, General Facilities and Base Charges – Resolution and Policies. In the same resolution establishing the local facilities charge for each property in the Project Service Area, the Board shall establish a process for billing and collection of local facilities, general facilities, and sewer base charges.

Except as otherwise provided, the process established for billing and collection of general facilities, local facilities and sewer base charges should be guided by the following policies, which policies reflect the intent of the Board on billing and collection for all sewer projects constructed and financed as described herein:

- 1. Sewer base charges for all developed properties in the Project Service Area will begin upon the first full two month billing cycle which is at least one month after establishment of the local facilities charges. Sewer base charges pay for operation and maintenance expenses of District sewer system and refer to the minimum monthly charge applied to all developed properties which are either connected to the District's sewer system or for which such connection is available.
- 2. For property within the Project Service Area, local facilities charges and general facilities charges will be due on connection to the District sewer system.
- 3. Within ninety (90) days of the date on the statement of charges and billing notice described in subsection C.7 developed property within the Project Service Area shall (a) connect to the District sewer system and the property owner shall pay the local facilities charge and general facilities charge due on connection, plus any other fees or charges required to connect; or (b) connect to the District sewer system and the property owner shall agree at the time of connection to pay local facilities and

general facilities charges by installment (pursuant to a recordable agreement substantially in conformance with Exhibit B), plus the property owner shall pay any other fees or charges required to connect; or (c) defer connection to the District sewer system and defer payment of local and general facilities charges in accordance with the deferral option outlined in subsection C.5.

4. For purposes of this resolution, "developed property" means any lot, tract, or parcel with a use, development or improvement thereon requiring disposal, treatment, or storage of sanitary waste, and shall specifically include properties served by any type of on-site sewage system, e.g., drainfield or septic system.
5. Owners of developed property with working on-site sewage systems may defer connection to the District sewer system if the property owner executes a recordable agreement with the District as generally described herein. This opportunity shall only be available to those record owners of property which qualifies as developed property as of the date of mailing of the statement of charges described in subsection C.7. In said agreement the property owner will acknowledge the obligation to pay the local facilities and general facilities charges in place at the time of connection to the District sewer system or upon being required by the District to connect to the District sewer system, whichever occurs first. Said agreement shall also provide that the property owner will pay interest on the local facilities charges from the date of project acceptance until the date of connection (at a rate commensurate with the rate of interest applicable to the District at the time of project construction); provided that, such interest shall cease to accrue ten (10) years after the date of project acceptance. The agreement shall further provide that the property owner's obligation to pay general facilities charges, local facilities charges with interest, and sewer base charges, will be a lien upon the property until paid in full. Finally, the agreement shall state that the property owner will agree to promptly connect to the District system (a) upon failure of any on-site sewage system on the property, or (b) when the property is sold or otherwise transferred. Said agreement will be prepared by the District and will be substantially as set forth in Exhibit A, hereto.
6. For purposes of the connection requirement in subsection C.5. above, a property shall be considered sold or transferred upon (a) conveyance by deed; (b) execution of a real estate contract; (c) gift, devise, or trust; or (d) execution of a lease for a term, including potential renewal periods, in excess of ten (10) years.
7. For every property within the Project Service Area, the District will mail to the record owner(s) thereof a statement of the local facilities charges established for said property, the general facilities charges currently required for connection to the sewer system, and the current sewer base charge ("statement of charges"). Included in the mailing for all record owners of property in the Project Service Area shall be a statement of the



District's billing and collection policies. For record owners of developed property, the statement of charges shall contain or be accompanied by a billing notice. Each owner of developed property will be given ninety (90) days from the date on the statement of charges and billing notice to (a) connect to the District system and at the time of connection pay in full all charges set forth in the statement of charges, plus any other fees or charges required to connect; or (b) connect to the District system and at the time of connection sign and return an agreement to pay local and general facilities charges by installment as described in subsection C.3.b, plus pay any other fees or charges required to connect; or (c) to sign and return the deferral agreement described in subsection C.5. No extensions from this ninety (90) day time period will be granted except by approval of the Board, in exercising its sole discretion.

8. Should an owner of developed property in the Project Service Area fail to timely connect to the District sewer system under the terms outlined in subsections C.3 or C.7 herein and fail to timely return a fully and properly executed deferral agreement on the form provided by the District within ninety (90) days of the date of billing or by the last day of any Board approved extension as described in subsection C.7, the District will compel connection to the District sewer system and impose a penalty in an amount up to One Thousand Dollars (\$1,000.00) for the failure to timely connect. In addition, the District may enter the property, complete the construction necessary, and connect the property to the District sewer system, at property owner's expense, as authorized by RCW 57.08.005(8) and Section 9 herein. The District further reserves the right, in its discretion, to seek any judicial review, authorization, or remedy it deems appropriate.
9. Owners of developed property in the Project Service Area connecting to the District sewer system and electing to pay for local and general facilities charges by installment as described in Section 8.C.3.b. hereof shall make payment within thirty (30) days of the due date for each installment or be considered delinquent. Owners of developed property forcibly connected or required to connect by the District to the District sewer system shall make full payment of local facilities and general facilities charges within thirty (30) days of the date of connection or within thirty (30) days following the fourteenth (14<sup>th</sup>) day after the date of mailing the notice requiring connection as set forth in Section 5 of Exhibit A, whichever occurs first. Thereafter any unpaid amount shall be considered delinquent. In case of such a forced or District required connection, the local facilities and general facilities charges due shall be a lien against the property. Owners of developed property in the Project Service Area shall make payment of all sewer service or sewer base charges within thirty (30) days of the due date for each charge or shall be considered delinquent.



10. Upon a delinquency in payment of general facilities charges, local facilities charges, and/or sewer service or base charges for more than thirty (30) days, the District shall have the authority to lien real property and collect such delinquent charges, together with interest and penalties, pursuant to RCW 57.08.081. In addition, local facilities, general facilities, and sewer service and/or sewer base charges shall immediately and automatically become a lien on real property in the Project Service Area upon entry by the record owner(s) thereof into an agreement in substantial conformance with Exhibit A or Exhibit B hereto.
11. Undeveloped property within the Project Service Area will not be required to connect to the District sewer system and the owner thereof shall not be required to pay general facilities, local facilities, or sewer base charges until said undeveloped property becomes developed property.
12. Upon the conversion of undeveloped property into developed property within the Project Service Area, the owner of such newly developed property shall immediately connect to the District sewer system and upon connection shall pay in full the general facilities charges and local facilities charges in place at the time of connection (including interest accrued on the local facilities charges as described in Section 8.C.5.; and shall also begin payment of sewer monthly service charges. To be eligible to enter into an agreement for payment of local facilities and general facilities charges by installment as provided in Section 8.C.3. and Exhibit B, a property owner must have converted his undeveloped property to developed property and entered into an agreement substantially in conformance with Exhibit B prior to expiration of the ninety (90) day notice or any extension thereof, as described in Section 8.C.7.

Section 9. Failure to Connect to Sewer System - District Authority: Notice/Appeal. The District may impose a penalty in an amount of up to One Thousand Dollars (\$1,000.00) against any owner of developed property within an area served by the system of District sewers for failure to connect to the District sewer system following a notice from the District to compel such connection. The District may also enter upon private property in an area served by the system of District sewers and connect the private drains or sewers with the District system and the cost thereof shall be charged against the property owner and shall be a lien upon the property served. Notice of the penalty and/or cost of connection shall be mailed to the property owner according to the records of the County Assessor's Office. The notice of the penalty and/or cost of connection shall include a brief description of the basis therefor and shall advise the property owner of the right to an informal hearing before the Board. The property owner shall have an opportunity to contest the penalty and/or costs or seek mitigation thereof by requesting an informal hearing with the Board. Said request for an informal hearing before the Board shall be made within twenty-one (21) days of the date of mailing the notice, and said hearing shall take place within thirty (30) days of the District's receipt of a timely request for such a hearing. The decision of the Board shall be noted in writing and mailed to the property owner within ten (10) days following the hearing. Payment of any penalty or cost shall be due within thirty (30) days following the mailing of the first notice herein or following a final decision of the Board on a timely appeal, whichever is later. All past due or delinquent payments shall be charged interest



at a rate of twelve percent (12%) per annum. Following the hearing, the decision of the Board shall be final. Should legal proceedings be necessary to enforce collection of the penalty, through foreclosure of the lien or otherwise, the District shall be entitled to recover its collection costs and attorney's fees.


Section 10: 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 11: 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 18th day of November, 2004.

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 636 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on November 18, 2004.

  
SECRETARY