



ISLAND COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA BILL

MEETING DATE: 8/27/24

Agenda Item No 3

☐ CONSENT AGENDA

☐ REGULAR AGENDA

☒ PUBLIC HEARING/MTG

Resolution/Ordinance No:

C-23-24/R-19-24

DEPARTMENT: PUBLIC WORKS

DIVISION: COUNTY ROADS

STAFF CONTACT: Ed Sewester, County Engineer

DEPT. HEAD: Fred Snoderly, Director

AGENDA SUBJECT: Public Hearing Resolution C-23-24(R-19-24) In the Matter of Amending Island County Code 15.02 Storm & Surface Water – and Marshall Drainage Assessment

BACKGROUND/SUMMARY: WORK SESSION DATE: : 1/3/24, 4/17/2024 & 6/12/24

Request to Amend Island County Code 15.02 Storm and Surface Water Sections 15.02.010 B and E; 15.02.070 A, and Section 15.02.080 B. Also, implementation of a \$55 per year annual assessment for all parcels within the Marshall Drainage Basin commencing in 2025 to pay for future operations & maintenance and infrastructure repairs & upgrade projects. The Code amendment also allows for future re-visit of the annual assessment per parcel if the fund balance does not maintain pace with system requirements.

FISCAL IMPACT/FUNDING SOURCE:

RECOMMENDED ACTION:

☒ Approve/Adopt

☐ Schedule Public Hearing/Meeting

☐ Continue Public Hearing/Meeting

☐ Information/Discussion

☐ Other (describe) _____

SUGGESTED MOTION:

[BELOW TO BE COMPLETED BY CLERK OF BOARD]

BOCC ACTION:

☐
☐
☐
☐
☒

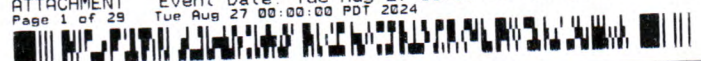
APPROVED

DENIED

TABLED/DEFERRED/NO ACTION TAKEN

CONTINUED TO DATE: ____/____/____ TIME: _____

OTHER original to Cecilia



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON**

**IN THE MATTER OF AMENDING ISLAND
COUNTY CODE 15.02, STORM AND
SURFACE WATER UTILITY**

**ORDINANCE NO. C-23-24
R-19-24**

WHEREAS, Island County previously adopted Ordinance R-55-95 establishing the Marshall Storm and Surface Water Utility (Utility) on December 19th, 1995; and

WHEREAS, Infrastructure was installed in 1996; and

WHEREAS, Island County previously adopted Ordinance R-07-17 on February 21st, 2017, providing a \$20,000 interfund loan from the Real Estate and Excise Tax Fund to the Utility to repair an unanticipated pump failure; and

WHEREAS, the County did not previously apply an assessment to property owners within the Utility district to repay the 2017 loan; and

WHEREAS, Island County previously adopted Ordinance R-41-22 reissuing the 2017 loan on December 13th, 2022; and

WHEREAS, Island County previously adopted Ordinance R-27-23 issuing a loan for immediate repairs on August 1, 2023; and

WHEREAS, the need for additional infrastructure upgrades is necessary to replace aging infrastructure identified during system failures and inspections by Public Works,

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Island County Commissioners, in consideration of the above findings of fact: Island County Code Chapter 15.02, Sections 15.02.010 B and E, 15.02.070 A, and Section 15.02.080 B are amended to read as contained on the attached "Exhibit A" is hereby adopted. Material interlineated is deleted and material underlined is added.

ADOPTED this 27th day of August, 2024 following public hearing.



ATTEST:

Jennifer Roll,
Clerk of the Board

APPROVED AS TO FORM:

Joseph B. McPherson
Civil Deputy Prosecuting Attorney
and Island County Code Reviser

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY WASHINGTON

Jill Johnson, Chair

Melanie Bacon, Member

Janet St. Clair, Member

EXHIBIT A
TITLE XV – UTILITIES

TITLE XV – UTILITIES

Chapter 15.01 – Stormwater Management Program

15.01.010 - Purpose.

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Chapter 15.02 - Storm and Surface Water Utility

15.02.010 - Purpose and intent.

- A. The county finds that real property in the Marshall Drainage Basin contributes to a common drainage problem resulting from storm and surface water run-off; that all real property in the Marshall Drainage Basin will benefit from mitigation of the destructive forces and/or general nuisance, as well as the correction of health and safety hazards created by excessive stormwater runoff; and that improvements in the Marshall Drainage Basin are necessary to promote public health, safety and welfare.
- B. The county has adopted a stormwater management program pursuant to Ordinance R-12-95 to address stormwater management issues in the Marshall Drainage Basin and has completed the capital improvements outlined in ~~developed~~ the Marshall Drainage Basin Plan, ~~which recommends capital improvements needed~~ to mitigate the effects of stormwater runoff, including but not limited to flooding, in the Marshall Drainage Basin. Additional capital improvements were identified in 2022.
- C. Based on the Marshall Drainage Basin Plan, which is on file with the County Department of Public Works and is hereby incorporated herein by this reference, the county has determined that property, businesses and residents within the Marshall Drainage Basin will benefit from and/or will receive service from the improvements described in the Marshall Drainage Basin Plan.
- D. The county finds that each owner of a parcel of real property within the Marshall Drainage Basin should pay for a pro rata share of the cost of constructing, operating, maintaining, repairing, improving and replacing drainage facilities described in the Marshall Drainage Basin Plan in accordance with that plan.
- E. The county finds that maintenance and operation ("M & O") charges are necessary for the ongoing administration of the utility created by this chapter, as well as for the inspection and maintenance of surface water facilities. ~~The Marshall Drainage Basin Plan recommended specific maintenance frequencies and an initial annual maintenance cost, as one component of the M & O charge.~~ The M&O charge includes an amount applied towards funding for regular replacement of the pumps, pump controller, and surface water facilities. In addition to those maintenance costs, administrative costs for managing utility operations include

activities such as billing, accounting and periodic review and adjustment of the utility rate, which costs are included in the M & O charges.

- F. The county finds that the intensity of development on all parcels of real property, including the square footage of impervious surface area, is an appropriate and reasonable basis for determining a particular parcel's contribution to the problem of storm and surface water run-off.
- G. The utility created in this chapter shall include only such systems or programs created by the county and does not provide for a county-wide system of rates and charges.

15.02.020 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Impervious surface means surface area that prevents or impedes infiltration of water into the soil mantle; or retards the infiltration of water into the soil mantle such that it causes water to run off the surface in greater quantities or at a greater rate of flow than under natural conditions. Common impervious surfaces include roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled surfaces. Open, uncovered retention/detention facilities are not considered impervious surfaces.

Parcel shall mean the smallest separately segregated unit or plot of land having an identified owner, identified boundaries, and surface area documented for tax purposes and given a tax account (lot) number by the Island County Assessor. The term "parcel" shall not include tracts of land that are no more than twenty-five (25) feet wide at their widest point and are also too narrow to be developed under applicable laws.

Storm and surface water facility shall mean any component of the ~~county~~ storm and surface water system within the Marshall Drainage Basin.

Utility or system shall mean the Marshall Drainage Basin Program created pursuant to Ordinance No. R-12-95 and the Marshall Drainage Basin Plan developed to implement the program, and such other systems and plans as may be added from time to time.

15.02.030 - Potential hazard declared; utility created.

The Board of County Commissioners finds and declares that absent effective regulation and control, existing storm and surface water drainage conditions in the county constitute a potential hazard to health, safety and property of county inhabitants. Therefore, the county hereby creates a storm and surface water utility to mitigate these potential hazards. The utility hereby created shall not be a county-wide utility, and this chapter does not provide for a county-wide system of rates and charges. The utility created pursuant to this chapter shall only include such systems and programs as the county may create from time to time.

15.02.040 - Marshall Drainage Basin storm and surface water system.

The utility created pursuant to this chapter includes the Marshall Drainage Basin program. The boundaries of the Marshall Drainage Basin are described in the Marshall Drainage Basin plan on file in the Department of Public Works. The boundaries and features of the Marshall Drainage Basin are also reflected on maps included in the Marshall Drainage Basin plan. The Marshall Drainage Basin system shall include all property, property interests, physical and intangible rights of every kind or nature owned or held by the county, however acquired, insofar as they relate to or concern storm or surface water affecting the Marshall Drainage Basin, further including without limitation all such property, interests and rights the county has acquired by adverse possession or by prescription, directly or through another, in and to the drainage or storage facilities, or both, of storm or surface waters, or both, through, under or over land, landforms, watercourses, sloughs, streams, ponds, rivers, lakes, or swamps, all beginning, in each case or instance at a point where storm or surface waters first enter the Marshall Drainage Basin system and ending in each case or instance at a point where such storm or surface waters exit from the Marshall Drainage Basin system, and in area to the full extent of inundation caused by any storm or flood conditions affecting the Marshall Drainage Basin.

15.02.050 - Property transferred to stormwater program.

The Director of Public Works may specify and value certain facilities that serve the Marshall Drainage Basin. In addition, for purposes of RCW 43.09.210, any such facilities are hereby transferred to the system and are subject to the administration of the Department of Public Works in accordance with this chapter and the Marshall Drainage Basin Stormwater Program adopted under Ordinance R-12-95.

15.02.060 - Utility administered by Department of Public Works.

The utility shall be administered by the Department of Public Works in such a manner as the Board of County Commissioners shall provide by ordinance or by resolution. The failure to pass or adopt such a resolution shall not affect the validity of this chapter.

15.02.070 - System of charges.

- A. The county hereby imposes the following system of charges on parcels of real property within the county located within the Marshall Drainage Basin and that benefit from or are served by the ~~county~~ storm and surface water system within the Marshall Drainage Basin. The charges are found to be reasonable and necessary to fund administration, planning, design, construction, operation, maintenance, repair, improvement, ~~and replacement of all existing and future storm and surface water facilities, including the accumulation of reserves and the retirement of any associated debt.~~ The charges below are ~~in accordance with the Marshall Drainage Basin Plan and are~~ based on an annual M & O assessment, and if determined necessary by the Board of Island County Commissioners in the future a capital

charge ~~parcel size and~~ will be assessed as calculated by the amount of impervious surface area per parcel.

~~1A. Parcels of less than one-half (1/2) acre with a dwelling unit shall pay a one-time, capital charge of one thousand nine hundred fifteen dollars and fifty-nine cents (\$1,915.59) in accordance with section 15.02.070.A.7.~~

~~1B. As an alternative to subsection 1A., above, parcels of less than one-half (1/2) acre with a dwelling unit shall pay an annual capital charge of one hundred sixty-two dollars and eighty-three cents (\$162.83) per year beginning in 1997, as such charge may be adjusted from time to time.~~

~~2A. Parcels of less than one-half (1/2) acre without a dwelling unit shall pay a one-time capital charge of one thousand one hundred twenty-nine dollars and forty-one cents (\$1,129.41) in accordance with section 15.02.070.A.7.~~

~~2B. As an alternative to subsection 2A., above, parcels of less than one-half (1/2) acre without a dwelling unit shall pay an annual capital charge of ninety-six dollars (\$96.00) per year beginning in 1997, as such charge may be adjusted from time to time.~~

~~3.1. Capital Assessments. All other parcels shall pay one-time capital charges an amount determined in accordance with the Marshall Drainage Basin plan based on an area capital charge of one hundred ninety-nine dollars and sixty-six cents (\$199.66) per acre plus an impervious surface area capital charge of twenty-three thousand twenty-eight dollars and one cent (\$23,028.01) per acre, total dollar amount of Basin improvements divided by total Basin impervious area and multiplied by individual parcel's impervious area, which charges shall be due and paid in accordance with section 15.02.070.A.7. However, in lieu of the one-time capital charges described in this section, owners of such parcels shall make made in annual capital charge payments beginning in 2025, in accordance with the Marshall Drainage Basin plan, as such charges may be adjusted from time to time.~~

~~4.2.-All capital charges and M & O charges imposed by this chapter shall be due and payable in accordance with instructions included in billings. Charges due in a given year are due and payable in two (2) installments in accordance with those instructions. If one-half (1/2) of the total amount due is not paid by the due date indicated on the billing statement, interest shall be charged on the entire balance from the date of delinquency. All capital charges and M & O charges due in a given year, plus accrued interest, if applicable, must be paid by the date indicated on the billing for the second-half payment. Any charges that have not been paid by the applicable due date are delinquent.~~

~~5. The minimum total annual capital charge or the minimum one-time capital charge for any parcel in the Marshall Drainage Basin shall be ninety-six dollars (\$96.00) per year or one thousand one hundred twenty-nine dollars and forty-one cents (\$1,129.41) respectively. The maximum annual capital charge or the maximum one-time capital charge shall be four hundred dollars (\$400.00) per year or four thousand seven hundred~~

~~five dollars and eighty-eight cents (\$4,705.88) respectively. Such charges may be adjusted from time to time.~~

~~6. To the extent the impervious surface area on any parcel increases in a particular year, as determined by the Director of Public Works or the director's designee, the charges applicable to such parcel shall be increased as follows. In no event shall charges be reduced under this subsection. If the parcel owner has paid a one-time capital charge for the parcel, the parcel owner shall also pay the one-time capital charge in effect at the time of the determination that the impervious surface area of the parcel increased minus the amount of the one-time capital charge already paid with respect to the parcel. If the parcel owner pays annual capital charges with respect to the parcel, the parcel owner shall pay the increased annual capital charges applicable to the parcel at the time of the determination that the impervious surface area of the parcel increased.~~

~~Increases imposed pursuant to this subsection shall be due and payable in accordance with this chapter and instructions included with bills.~~

~~7. If a property owner has not paid one-time capital charges in full by the due dates for the second half payment in 1997, such owner shall be deemed to have elected to pay annual capital charges in lieu of one-time capital charges. With respect to parcels for which capital charges have not been paid in full in 1997, owners of such parcels may request in writing that the Department of Public Works determine the amount required to pay capital charges owed on a parcel in full. Upon payment of the full amount of the capital charges (plus related charges such as taxes and interest, if any), the parcel owner shall no longer owe capital charges under section 15.02.070, subsections A.1A. through 5, but shall continue to be responsible for M & O charges and other applicable charges.~~

~~8.3. County roads shall be charged in accordance with the Marshall Drainage Basin plan. State roads shall be charged in accordance with the plan and applicable statutes.~~

~~9.4. M & O Assessments. In addition to the rates above, all parcels, all or a portion of which are located in the Marshall Drainage Basin, shall be charged and shall pay annually, beginning in ~~1996~~ 2025, a ~~thirty~~ fifty-five-dollar (\$~~30~~ 55.00) M & O charge as well as any taxes applicable to the utility or its services. Based on system condition and Marshall Drainage Basin account balance, the annual M & O assessment per parcel will be reassessed no less than every five (5) years.~~

~~10.5. Any tract of land for which the Island County Assessor has assigned two (2) tax identification numbers as a result of a property owner's eligibility for a property tax exemption under RCW 84.36.381 shall be charged as a single parcel under this chapter.~~

- B. In addition to the charges set forth above, the county may establish water quality charges for the purpose of financing, monitoring, testing, treatment and control of pollutant discharges into the Marshall Drainage Basin system. The Director of Public Works is authorized to develop a plan for such charges.

- C. The county may consider establishing a system of rate reductions and/or credits, and the Director of Public Works is authorized to review the feasibility of and make recommendations regarding such system of rate reductions and/or credits.

15.02.075 - Program of credits established—Purpose—Qualifications—Amount.

- A. A program of credits to partially offset the charges imposed under section 15.02.070 for parcel owners who meet the qualifications of this section is established in order to provide necessary support for the poor and infirm. The Department of Public Works is authorized and directed to administer the program in accordance with this chapter.
- B. Any person receiving a billing statement for capital charges and making a timely payment therefore may apply to the Public Works Department for a rate adjustment for qualified on-site mitigation that exceeds county standards and/or parcel-specific characteristics that significantly affect run-off.
1. The burden of proof shall be on the applicant to show that the rate adjustment sought should be granted. Requirements of admissible documentation shall be determined by the Public Works Department.
 2. Applications for rate adjustment must include a deposit sufficient to cover the utility's cost of review. The deposit shall be refunded in full if the adjustment is granted. If the adjustment is not granted, only the unused portion of the deposit, if any, shall be refunded.
 3. To be effective for the current billing year, applications for rate adjustment must be made by July 15. Applications received after July 15 shall only be effective for subsequent years. If the Public Works Department grants an adjustment which reduces the charge for the current year, the applicant shall be refunded the amount overpaid.
 4. Decisions of the Public Works Department on requests for rate adjustments may be appealed to the hearing examiner within twenty (20) days of the decision date. Provisions for appeals are provided for in section 15.02.130.
- C. To implement the program provided for in section 15.02.075.A., credits as set forth in section 15.02.075.E. shall be issued to each person who shows satisfactory proof that he or she is the owner of a parcel subject to the charges under section 15.02.070 and:
1. Receives supplemental security income pursuant to 42 USC Sections 1381 through 1383; or
 2. Resides in a household whose annual income together with all household members does not exceed 125 percent of the poverty level for the number of individuals in the household as computed annually by the U.S. government or the county; or

3. Resides in a household whose annual income together with all household members does not exceed seventy (70) percent of the Washington State median income for the number of individuals in the household as computed annually by the state or the county and is the parcel owner and is:
 - a. Blind;
 - b. Sixty-five (65) years of age or older;
 - c. Disabled and receives funds from a disability program as a result of a disability that prevents him or her from working, consistent with the requirements of 42 USC Section 401 et seq.; or
 - d. Requires medical life-support equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function.
- D. Applicants shall verify such information and shall provide such other data as is deemed appropriate upon forms and in the manner determined by the Department of Public Works.
- E. Individuals meeting one (1) or more of the qualifications in section 15.02.075.C. from and after the effective date of this section shall receive a credit equal to fifty (50) percent of ~~the~~ any applicable annual capital charge under section 15.02.070 as well as a credit equal to one hundred (100) percent of the applicable M & O charges under section 15.02.070.A.9. Credits shall be applied to reduce annual capital charges and to cover the M & O charges due with respect to a particular parcel.
- F. The Department of Public Works is further authorized to enter into a payment plan with individuals who are eligible for credits under section 15.02.075.C. evidenced by a note or notes and secured by a deed of trust on the parcel for which charges are owed. The deed of trust shall provide for non-judicial foreclosure in the event that the owner of the parcel defaults under the payment plan. The note shall include administrative costs related to executing the note and deed of trust.
- G. Credits are not transferable. If a parcel is sold to an entity or to an individual who does not qualify for a credit under section 15.02.075, the individual or entity shall pay the full annual capital charge from and after the date of the transfer. In addition, the non-qualifying owner shall pay all M & O charges and all other charges imposed under this chapter from and after the date of transfer.

15.02.080 - Measurement of impervious surface area.

- A. The Director of Public Works or designee shall determine the number of square feet of impervious surface on all parcels larger than one-half (½) acre and the total surface area of each parcel of real property, through the records of the island County Assessor and through aerial photographs and such other methods as the Director of Public Works may determine.

- B. The Director of Public Works or designee shall update such impervious surface area determinations ~~at least every twelve (12) months~~ as necessary. The Director of Public Works or the director's designee shall reclassify property for purposes of the charges imposed pursuant to this chapter based on relevant changes in the characteristics of the property. For purposes of carrying out the requirements of this chapter, the Director of Public Works or the director's designee is hereby granted a right of entry to private property, provided that the owner of such property consents to the entry.