



Director's Rule

Title Latecomer Agreements for Construction of Utility Improvements	Number ENG-450.1	Rev. no. 0
Responsibility Engineering & Technical Services Division	Supersedes N/A	Pages TBD
SPU Director's Approval	Effective Date TBD	

1. PURPOSE

Utility Latecomer Agreements allow a property owner who has been required by code to construct and pay for water, drainage, or sewer facilities as a condition of their development to recover a portion of the costs of those improvements from property owners of designated benefitting parcels that subsequently develop and connect to these facilities. This Rule establishes the procedures for a property owner to enter into a utility Latecomer Agreement with SPU as required by RCW Chapter 35.91 and SMC Chapter 21.80.

The intent of RCW Chapter 35.91 is to provide some alleviation to the first-in developer, described above, who funds utility improvements that benefit more than their project. While the first-in developer will still pay more than just the pro-rata share of their parcel, a utility Latecomer Agreement provides an opportunity for them to recover some of the costs they incurred of building the code required utility facility. Taking this into account, the rules and procedures developed here attempt to fairly allocate costs between the first-in developer and subsequent connections by benefitting parcels.

2. DEFINITIONS

Assessment Reimbursement Area. The region representing all parcels that are used to calculate the pro-rata share. These parcels include the originating parcel, benefitting parcels (which are encumbered), and parcels which are exempt from encumbrance.

Benefitting Parcels. Those parcels that benefit from but whose owners did not contribute to the construction or improvement of the water, drainage, or sewer facilities subject to a latecomer agreement.

City. Means the City of Seattle.

Director. The Director of Seattle Public Utilities and their designees, who may be employees of Seattle Public Utilities or another City department.

Frontage. The part of a parcel that abuts the public Right of Way.

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New Service Connection. A new connection to a main and not the replacement of an existing connection to the main of the same size or smaller.

Originating Developer. The property owner who pays for the new water, drainage, or sewer facility and who initiates and enters into the utility Latecomer Agreement.

Pro-rata share. The apportioned amount of the total cost of the construction of the new water, drainage, or sewer facility, plus the collection processing fee, attributed and assigned to a benefitting parcel which must be paid if/when the parcel connects to the new infrastructure.

Reimbursement Payment. The charge, in the amount of the pro-rata share, collected by the City from benefitting parcel owners who connect to or use the water, drainage, or sewer facilities that were constructed or improved under the terms of a utility Latecomer Agreement and who did not contribute to the costs of the facilities.

Water, drainage, or sewer facility. Storm, sanitary, or combined sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs or appurtenances.

3. RULE

A. Eligible work for utility Latecomer Agreements

Only water, drainage, or sewer facilities that are required by City code as a condition of property development, and which a parcel owner elects to install solely at the owner's expense, are eligible to apply for a utility Latecomer Agreement. Utility improvements that are required as a result of street improvements are not eligible for a utility Latecomer Agreement. These improvements include, but are not limited to; infrastructure triggered by Stormwater Code for work in the Right of Way, and drainage conveyance infrastructure (e.g. inlets, catch basins, etc.) triggered by other street improvements.

A utility Latecomer Agreement will only apply to one type of utility; water, drainage, or sewer. If a single project is required to install multiple types of utilities (e.g. a drainage main extension and a water main upside), multiple utility Latecomer Agreements will be required.

B. Fees

Application Fee. An application fee will be due at the time of application. This fee will cover administrative expenses incurred by SPU in setting up the utility Latecomer Agreement, as well as documenting and tracking information and the cost to record the contract with King County. The application fee will be \$1,090.

Recording Fee. King County recording fees apply to each document that is recorded associated with the utility Latecomer Agreement. These documents include the encumbrance of the pro-rata share on each benefitting parcel and removal of the encumbrance after reimbursement payment. The cost to record the encumbrance on each benefitting parcel will be paid by the originating developer. The cost to record the removal of the encumbrance is the responsibility of the benefitting parcel. The recording fee for each letter encumbering or relieving a benefitting parcel will be \$80.

Collection Processing Fee. When benefitting parcels connect to the new water, drainage, or sewer facility, SPU will collect a fee for each reimbursement payment received to cover the City's administrative costs of collecting, documenting, and other tasks associated with processing reimbursement payments. The collection processing fee will be \$220.

C. Application Requirements

The deadline for application is prior to approval of infrastructure design.

The application form and application fee are required to initiate a request for a utility Latecomer Agreement. Subsequent information will be required at appropriate times in the design process.

- a. *Application Form*. This form, provided by the City and completed by the applicant, includes all pertinent project and contact information, and is required to initiate a request for a utility Latecomer Agreement.
- b. *Cost Estimate*. This form, provided by the City and completed by the applicant contains an itemized estimate of the total projected cost of the system improvements.
 - i. *Allowable Activities which may be included in the cost estimate*. All costs solely associated with the design and construction of the water, drainage or sewer facility. This includes elements that the City requires as part of installing the water, drainage, or sewer facility, such as concrete panel replacements in the roadway or ADA ramps and their companion ramps. These elements may only be included in the total cost if they would not otherwise be required but for the installation of the water, drainage, or sewer facility.
- c. *Design drawings*. Drawings for the water, drainage, or sewer facility that meet the 60% complete Street Improvement Plan checklist, and which show all project elements in the vicinity of the water, drainage, or sewer facility.
- d. *Identification of benefitting parcels*. Using forms provided by the City, a complete list of all parcels within the Assessment Reimbursement Area. Information required for each parcel includes, but is not limited to:
 - A copy of the most recent vesting deed of record;
 - Name of the recorded owner(s);
 - Tax parcel number;
 - Parcel address;
 - Square-foot area of the parcel; and
 - Legal description from the most recent vesting deed of record
 - Pro-rata share of the parcel.

D. Assessment Reimbursement Area

The assessment reimbursement area will consist of parcels fronting the utility improvement and parcels which, upon redevelopment, would likely be required to connect, or re-connect with a larger service connection size, to the water, drainage, or sewer facility covered in the utility Latecomer Agreement based on City codes and standards. The parcel associated with the originating developer's project that triggered the requirement of the utility improvement is included in the assessment reimbursement area. The Director will have final determination of what properties are included in the assessment reimbursement area.

Due to unpredictable development choices, any parcel with frontage on the water, drainage, or sewer facility or that could be required to connect to the utility improvement in the future will be included in the assessment reimbursement area, including corner lots.

Parcels in the assessment reimbursement area may choose to contribute to the construction of the water, drainage, or sewer facilities. If agreed on by the originating developer, these parcels will be identified as exempt from owing the reimbursement payment, and will not be considered benefitting parcels.

In the event that, after a utility Latecomer Agreement has been finalized and recorded, any benefitting parcel subdivides, consolidates, or otherwise adjusts its lot boundary, the pro-rata share encumbrance will still apply to the entire parent parcel. The first connection from the

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parent parcel that triggers the reimbursement payment will be required to pay the full pro-rata share.

A notice will be sent to all owners of identified benefitting parcels prior to finalization of a utility Latecomer Agreement. This notice will contain an explanation of the utility Latecomer Agreement process, identification of the Latecomer Agreement affecting the property, and explanation of the pro-rata share assigned to the property. This notice will be forwarded by certified mail, return receipt requested.

E. Pro-Rata share for each benefitting parcel

Rationale. The intent of the pro-rata share assigned to each benefitting parcel is to approximate that parcel's equivalent frontage. In this way each benefitting parcel will be assigned its share of construction costs to build the water, drainage or sewer facility across its frontage.

Allocation Methodology. Based on frontage. The square root of each benefitting parcel's area is used as a proxy or equivalent for a parcel's frontage.

Calculation. The pro-rata share for each benefitting parcel will be determined by the ratio of the square root of the benefitting parcel's area to the sum of the square roots of the effective area of all parcels in the assessment reimbursement area identified in the utility Latecomer Agreement, multiplied by the total cost of the water, drainage, or sewer facility.

If a benefitting parcel has access to its utility service from an alternative source than the new utility being constructed with a utility Latecomer Agreement, then the benefitting parcel will be assigned one-half of a share in its pro-rata calculation. This will be done by creating an effective area for the parcel equal to one-half of the parcel's actual area.

Pro Rata Share of Parcel x =

Collection Processing Fee +

$$\left\{ \frac{\text{Sqrt(Effective Area of Parcel x)}}{\text{Sqrt}\left(\frac{\text{Sum of Effective Areas of all parcels}}{\text{in the assessment reimbursement area}}\right)} * \text{Total cost of the water, drainage, or sewer facility} \right\}$$

Assignment to Benefitting Parcel. The pro-rata share, as calculated above for each benefitting parcel, will be placed as an encumbrance on each benefitting parcel. The City will record each encumbrance against its associated parcel with the King County Recorder's Office as required by RCW Chapter 35.91.

F. Approval of Application

The Director will review all applications and will approve the application only if the following requirements are met:

- The project complies with City standard specifications, design and construction standards, and all applicable federal, state, and local laws, rules and regulations; and
- The proposed water, drainage, or sewer facilities to be included in the utility Latecomer Agreement fall within the definition of water, drainage, or sewer facilities and are eligible for a utility Latecomer Agreement; and
- The proposed improvements are not permitted, constructed, or currently under construction; and
- The proposed improvements are consistent with City's Plans; and

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- Such other requirements as the Director determines is necessary to properly review the application.

In the event any of the above criteria are not satisfied, the Director will either condition approval as necessary in order for the application to conform to such criteria or deny the application. The final determination of the Director will be in writing.

G. Finalizing the Agreement

The final construction costs will be submitted within 120 days of completion of the facility to the City summarized by bid item and will include itemized invoices. Any discrepancies between the Cost Estimate and the invoiced amounts will be noted and justified in the submittal. The final construction costs will be approved by the Director.

H. Reimbursement Period

The utility Latecomer Agreement will be active for a period of time of twenty years from the effective date of the Latecomer Agreement.

I. Requirement to update contact information

The originating developer will maintain with the City their current contact information. At a minimum, confirmation of this contact information, on forms provided by the City, must be delivered by the original developer to the City at least every two years from the date of the acceptance of the utility Latecomer Agreement. The City is not responsible for locating any developer entitled to benefits under the utility Latecomer Agreement. If the original developer fails to notify the City of current contact information within 60 days of the due date for notification, the original developer will no longer be entitled to reimbursement under the utility Latecomer Agreement until such time as they deliver notification to the City of their current contact information on forms provided by the City. The original developer will not be entitled to receive reimbursement fees collected while out of compliance with this section.

Written notice, on forms provided by the City, must also be provided by the originating developer for any change in contact information, as well as assignment of rights to a new contact. Absent such notice, any assignment of rights under the utility Latecomer Agreement will have no effect on the obligations of the City.

J. Reimbursement

Reimbursement payment of a latecomer encumbrance is triggered by a new or upsized connection to the utility. Connection to or use of the system(s) by benefitting parcels will not be permitted, and development permission will not be granted, unless the City has received the reimbursement payment.

An owner of a benefitting parcel will not have to pay the latecomer reimbursement if the parcel is later developed but does not subsequently tap into or use the water, drainage, or sewer facility associated with its specific utility Latecomer Agreement, or only replaces an existing service connection with the same size service.

When a reimbursement payment is collected, the City will notify the originating developer prior to remitting the funds. Any monies not claimed by the developer within 60 days from the date collected will become the property of the City.

K. Authorized Agent for Agreement and responsibility

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The Director of Seattle Public Utilities designates the Director of Engineering & Technical Services Division as the agent authorized to sign and execute the agreement. The Grants and Contracts unit within the Finance Division will be responsible to retain signed Latecomer Agreements.

4. AUTHORITY/REFERENCES

- RCW 35.91.020, Contracts with owners of real estate for water or sewer facilities – Requirements – Financing – Reimbursement of costs
- RCW 35.91.040, Contract payment to be made prior to tap, connection, or use – Removal of tap or connection
- SMC 21.80; Latecomer Agreements
- SMC 3.02, Administrative Code