

Title Latecomer Agreements for Construction of Utility Improvements	Number ENG-450.1	Rev. no. 0
Responsibility Engineering and Technical Services Division	Supersedes N/A	Pages 6
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1. PURPOSE

Utility Latecomer Agreements allow a property owner, who has been required by Seattle Municipal 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 Director's 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 first-in developers, described above, who fund utility facility improvements that benefit more than their project. While first-in developers ultimately pay more than just the pro-rata share of their parcel, a utility Latecomer Agreement provides an opportunity to recover some of the costs first-in developers incur in building code-required utility facility improvements. Taking this into account, the following rule attempts to fairly allocate costs between first-in developers 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. The City of Seattle.

Director. The Director of Seattle Public Utilities and the Director's 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.

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. Also called first-in developer.

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 before 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. The utility infrastructure asset, such as storm, sanitary, or combined sewers, pumping stations, 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 the 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 apply to only 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 upsized), separate utility Latecomer Agreements will be needed for each utility type.

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, documenting and tracking information, and paying the cost to record the contract with King County. The application fee is \$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 the 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 owner of the benefitting parcel. The recording fee for each letter encumbering or relieving a benefitting parcel is \$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 is \$220.

C. Application Requirements

The application form and fee are required to initiate a request for a utility Latecomer Agreement. **The deadline for application is prior to approval of infrastructure design.** Additional information must be submitted after the initial application at appropriate times during the design process. This additional information includes, but is not limited to, the following:

- 1) *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.
- 2) *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.
 - *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-compliant 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.
- 3) *Design drawings.* Drawings for the water, drainage, or sewer facility that meet the 60-percent-complete Street Improvement Plan checklist, and that show all project elements in the vicinity of the water, drainage, or sewer facility.
- 4) *Identification of benefitting parcels.* Using forms provided by the City, a complete list of all parcels within the assessment reimbursement area. Information for each parcel must include, at minimum, the following:
 - Copy of the most recent vesting deed of record
 - Name of the recorded owner(s)
 - Tax parcel number
 - Parcel address
 - Area of the parcel in square feet
 - 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 reconnect 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.

Parcel owners 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.

After a utility Latecomer Agreement has been finalized and recorded, in the event that a 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 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 delivered by certified mail with a return-receipt request.

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. The allocation method for the pro-rata share is based on parcel 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 fronting public main approved for connection, other 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.

The calculation of the pro-rata share is as follows:

$$\text{Pro Rata Share of Parcel } x = \text{Collection Processing Fee} + \left\{ \frac{\sqrt{(\text{Area of Parcel } x)}}{\sum \left(\sqrt{(\text{Area of Parcel } X)} + \sqrt{(\text{Area of Parcel } A)} + \sqrt{(\text{Area of Parcel } B)} + \dots \right)} * \text{Total cost of the water, drainage, or sewer facility} \right\}$$

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 approve those that meet all of the following criteria:

- The application has been submitted prior to approval of infrastructure design.
- The project complies with City standard specifications, design and construction standards, and all applicable federal, state, and local laws, rules, and regulations.
- 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.
- The proposed improvements are not permitted, constructed, or currently under construction.
- The proposed improvements are consistent with the City's plans.
- 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 on eventual conformance 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 20 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 water, drainage, or sewer facility 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

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

4. AUTHORITY/REFERENCES

- ROW 35.91.020, Contracts with owners of real estate for water or sewer facilities—Requirements—Financing—Reimbursement of costs
- ROW 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
- SMC 3.32.020, Adoption of Rules