



Director's Rule

Title Latecomer Agreements & Municipal Assessment Reimbursement Areas for Construction of Utility System Improvements		Number ENG-420	Rev. no. 0
Responsibility Development Services Office		Supersedes ENG-450	Pages 12
General Manager/CEO signature	Approval date	Effective date	

1. PURPOSE

Latecomer Agreements allow a developing property owner, who has been required by the City to construct and pay for water, drainage, and/or wastewater facilities as a condition of their development, to recover a portion of the construction cost of those improvements from property owners of benefiting parcels that subsequently develop and connect to or use these facilities. The Latecomer Agreement may be initiated by the developing property owner via a Developing Property Owner Latecomer Agreement, or jointly between the developing property owner and Seattle Public Utilities (SPU) when the developing property owner chooses to enter into a Participatory Latecomer Agreement with SPU.

As an alternative for developing property owner financing of the construction or improvement of water, drainage, and/or wastewater facilities, SPU may create a Municipal Assessment Reimbursement Area (MARA) on its own initiative, without the participation of a private property owner. The City shall finance all the costs associated with the construction or improvement of the water, drainage, and/or wastewater facilities and become the sole beneficiary of reimbursement payments.

This Director's Rule establishes the procedures for Latecomer Agreements and MARAs, as established by the Revised Code of Washington (RCW) Chapter 35.91 and the Seattle Municipal Code (SMC) Chapter 21.63.

2. DEFINITIONS

Assessment reimbursement area. The geographic area representing all parcels that are used to calculate the pro-rata share of the construction cost of the water, drainage, and/or wastewater facility. These parcels include the developing parcel(s), benefiting parcel(s) which are encumbered, and parcel(s) which are exempt from encumbrance.

Benefiting parcels. Those parcels that benefit from, but whose owners did not contribute to the construction cost or improvement of the water, drainage, and/or wastewater facilities, and are subject to a Latecomer Agreement or a MARA.

City. The City of Seattle.

Developing property owner. The property owner who pays for the construction or improvement of water, drainage, and/or wastewater facilities.

Frontage. The part of a parcel that abuts the public right-of-way.

Latecomer Agreement. A contract between the City and an owner of real property for the construction or improvement of water, drainage, and/or wastewater facilities as required by the SMC as a prerequisite to further property development. Such Latecomer Agreements provide for the transfer of the water, drainage, and/or wastewater facilities to the City and for the later pro-rata share reimbursement of costs to the developing property owner as benefiting parcels subsequently connect to or use the facilities (SMC 21.63.020). Latecomer Agreements include Developing Property Owner and Participatory Latecomer Agreements.

Developing Property Owner Latecomer Agreement. A Latecomer Agreement where the cost of the construction or improvement of the water, drainage, and/or wastewater facilities is borne solely by the developing property owner, as outlined in Appendix 1: Requirements for Developing Property Owner Latecomer Agreements.

Participatory Latecomer Agreement. A Latecomer Agreement where the cost of the water, drainage, and/or wastewater main extension is shared between SPU and the developing property owner as outlined in Appendix 2: Requirements for Participatory Latecomer Agreements.

Municipal Assessment Reimbursement Area (MARA). Those parcels that benefit from, but whose owners did not contribute to, the municipally funded construction or improvement of the water, drainage, and/or wastewater facilities that the City otherwise requires be constructed or improved as a prerequisite to further property development (SMC 21.63.020), as outlined in Appendix 3: Requirements for Municipal Assessment Reimbursement Areas.

New service connection. A new water, drainage, or wastewater connection or change to an existing connection to a utility main and not the replacement or transfer of an existing connection to a utility main.

Pro-rata share. The apportioned amount of the total cost of construction or improvement of the water, drainage, and/or wastewater facilities, attributed and assigned to a benefiting parcel.

Reimbursement payment. The charge, in the amount of the pro-rata share, collected by the City from property owners of benefiting parcels who connect to or use the water, drainage, and/or wastewater facilities that were constructed or improved under the terms of a Latecomer Agreement or a MARA.

Water, drainage, or wastewater facility. Storm drains, sanitary sewer pipes, combined sewer and drainage pipes, pumping stations, disposal plants, water mains, hydrants, reservoirs, valves, and/or appurtenances.

3. RULE

A. Eligible Work for Latecomer Agreements

Only the construction or improvement of water, drainage, and/or wastewater facilities that are required by City code as a condition of property development, and which a developing property owner elects to install at their own expense, are eligible to apply for a Latecomer Agreement.

Construction or improvement of water, drainage, and/or wastewater facilities that are required as a result of street improvements are not eligible for a Latecomer Agreement. Construction or improvements required as a result of street 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 Latecomer Agreement will apply to only one type of utility: water, drainage, or wastewater. If a single project is required to install multiple types of utilities (e.g., a storm main extension *and* a water main extension), separate Latecomer Agreements will be required for each utility type, if requested.

B. Requirements for Latecomer Agreement Applications

An application form and fee are required to initiate a Latecomer Agreement. **The application must be submitted to the City prior to the execution of the Construction Contract or System Improvement Contract.** The following documents are required as part of the application:

- 1) *Application form*. This form, provided by the City and completed by the developing property owner, includes all pertinent project and contact information, and is required to initiate a request for a Latecomer Agreement.
- 2) *Cost Estimating Worksheet*. This form, provided by the City and completed by the developing property owner, 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, and/or wastewater facilities. This includes elements that the City requires as part of installing the water, drainage, and/or wastewater facilities, 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 construction of the water, drainage, and/or wastewater facilities.
- 3) *Exhibit B – Benefiting Parcels – Pro-rata Shares*. This form, provided by the City and completed by the developing property owner, provides a complete list of all parcels within the assessment reimbursement area. Information for each parcel must include, at minimum, the following:

- Name of the recorded property owner(s)
- Parcel number
- Parcel address
- Area of the parcel in square feet
- Legal description from the most recent vesting deed of record

This information is available at

<https://blue.kingcounty.com/Assessor/eRealProperty/default.aspx>.

- 4) *Vesting deeds*. Copies of the most recent vesting deed of record for all parcels in the assessment reimbursement area. Visit <https://kingcounty.gov/depts/records-licensing/recorders-office/records-search.aspx> to locate these records.
- 5) *Design drawings*. Drawings for the water, drainage, and/or wastewater facilities that meet the engineering, surveying, and drafting requirements of the Seattle Department of Transportation (SDOT) 60% Complete Street Improvement Plan (SIP) Checklist, or other jurisdictions' requirements if outside the Seattle City limits, and that show all project elements in the vicinity of the water, drainage, and/or wastewater facilities.

C. Approval of Latecomer Agreement Applications

The General Manager/CEO will review all applications and approve those that meet all the following criteria:

- The application has been submitted prior to the execution of the Construction Contract or System Improvement Contract.
- The proposed water, drainage, and/or wastewater facilities are:
 - In compliance with City standard specifications, design and construction standards, and all applicable federal, state, and local laws, rules, and regulations.
 - Within the definition of water, drainage, and/or wastewater facilities and are eligible for a Latecomer Agreement.
 - Not already permitted, constructed, or currently under construction.
 - Consistent with the City's plans.
- Other requirements as the General Manager/CEO determines necessary to properly review the application.

In the event any of the above criteria are not satisfied, the General Manager/CEO will either condition approval on eventual conformance or deny the application. The final determination of the General Manager/CEO will be in writing.

D. Assessment Reimbursement Area

The assessment reimbursement area consists of parcels with frontage to the water, drainage, and/or wastewater facilities being constructed or improved, including parcels with multiple frontages, such as corner lots. The assessment reimbursement area applies to:

- Parcels that, if developed, may be required or choose to connect to or use the water, drainage, and/or wastewater facilities covered in the Latecomer Agreement based on City codes and standards. These parcels will be identified as benefiting parcels and encumbered with their pro-rata share.
- Parcel(s) included in the developing property owner's project triggering the requirement to construct or improve the water, drainage, and/or wastewater facilities. These parcels will be exempt from owing the reimbursement payment and will not be considered benefiting parcels.

Property owners in the assessment reimbursement area of a Latecomer Agreement may choose to contribute to the construction cost of the water, drainage, or wastewater facility if agreed to by the developing property owner. These contributing parcels will be identified as exempt from owing the reimbursement payment and will not be considered benefiting parcels.

The General Manager/CEO will have final determination of which parcels are included in the assessment reimbursement area.

After a Latecomer Agreement has been executed and recorded, if a benefiting parcel subdivides, consolidates, or otherwise adjusts its lot boundary, the pro-rata share encumbrance will still apply to the entire parent parcel. The first new service connection from any of the parcels that were included in the parent parcel triggering the reimbursement payment will be required to pay the full pro-rata share of the parent parcel.

A notice will be sent by the City to all property owners of identified benefiting parcels prior to execution of a Latecomer Agreement. This notice will contain an explanation of the process, identification of the Latecomer Agreement affecting the parcel(s), and explanation of the pro-rata share assigned to the parcel(s). This notice will be delivered by certified mail with a return-receipt request.

E. Pro-Rata Share for Each Benefiting Parcel

Rationale. The pro-rata share assigned to each benefiting parcel approximates that parcel's equivalent area. In this way, each benefiting parcel is assigned its share of the cost to construct or improve the water, drainage, and/or wastewater facilities as required by the City.

Allocation methodology. The allocation method for the pro-rata share is based on the parcel area. The square root of each benefiting parcel's area is used as a proxy or equivalent for a parcel's area.

Calculation. The pro-rata share for each benefiting parcel will be determined by the ratio of the square root of the benefiting parcel's area to the sum of the square roots of the effective area of all parcels in the assessment reimbursement area, multiplied by the total cost of the water, drainage, and/or wastewater facilities.

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

$$\text{Pro-rata Share of Parcel X} = \frac{\sqrt{(\text{Area of Parcel X})}}{\sqrt{(\text{Area of Parcel X})} + \sqrt{(\text{Area of Parcel A})} + \sqrt{(\text{Area of Parcel B})} + \dots}$$

For Participatory Latecomer Agreements, additional calculations are included in Appendix 2.

If a benefiting parcel has access to its utility service from an alternative fronting public main approved for new service connection, other than the water, drainage, or wastewater facility being constructed, then the benefiting 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.

Assignment to benefiting parcel. The pro-rata share, as calculated above for each benefiting parcel, will be placed as an encumbrance on each benefiting parcel. The City will record each encumbrance against its associated parcel with the King County Recorder's Office.

F. Requirements for Latecomer Agreements

The final construction cost of the water, drainage, and/or wastewater facilities must be submitted to SPU within 120 days of completion of the construction or improvement, including final street restoration. The final costs will be submitted on a form provided by SPU and stamped by an engineer licensed in the State of Washington. If the final stamped costs are not submitted within 120 days of completion of the construction of the water, drainage, and/or wastewater facilities, the Latecomer Agreement and reimbursement from SPU, if applicable, are void. All fees paid to SPU are nonrefundable. SPU reserves the right to audit the final stamped engineer costs.

G. Reimbursement Period

The Latecomer Agreement will be active for a period of 20 years from the date the Latecomer Agreement is recorded with King County

H. Requirement to Update the Developing Property Owner Contact Information

The developing property owner has the responsibility to provide and maintain their current contact information with SPU. The contact information must be submitted to SPU, on forms provided by SPU, every two years from the date the Latecomer Agreement is executed. SPU is not responsible for obtaining the contact information of developing property owners entitled to benefits under the Latecomer Agreement.

If the developing property owner fails to notify SPU of current contact information within 60 days of the due date for notification, the developing property owner will no longer be entitled to reimbursement under the Latecomer Agreement until such time as they deliver notification to SPU of their current contact information on forms provided by SPU. The developing property owner will not be entitled to receive reimbursement fees collected while out of compliance with this section.

Written notice, on forms provided by SPU, must also be provided by the developing property owner for the assignment of rights to a new contact. Absent such notice, any assignment of rights under the Latecomer Agreement will have no effect on the obligations of SPU.

I. Reimbursement Payment

Reimbursement payments are collected by the City from property owners of benefiting parcels who connect to or use the water, drainage, and/or wastewater facilities that were constructed or improved under the terms of a Latecomer Agreement. Connection to, or use, of the water, drainage, and/or wastewater facilities by benefiting parcels will not be permitted unless SPU has received the reimbursement payment.

A property owner of a benefiting parcel will not have to pay the reimbursement payment if the parcel is later developed unless a new service connection is required or requested.

When a reimbursement payment is collected, SPU will notify the developing property owner prior to remitting the funds and reimburse the developing property owner within sixty days of receipt. If the developing property owner or the owner's assignees fail to comply with the notification requirements of the Latecomer Agreement, then SPU will deposit the reimbursement payment in the appropriate utility capital fund.

J. Authorized Agent for Agreement and Responsibility

The SPU General Manager/CEO designates the Director of the Development Services Office as the agent authorized to sign and execute Latecomer Agreements. The Contracts and Procurement Division is responsible for retaining executed Latecomer Agreements. Accounts Receivable is responsible for distributing reimbursement payments to developing property owners.

4. AUTHORITY/REFERENCES

- RCW Chapter 35.91, Municipal Water and Sewer Facilities Act
- RCW Chapter 36.18, Fees of County Officers
- SMC 21.63, Latecomer Agreements and Municipal Assessment Reimbursement Areas
- SMC 3.02, Administrative Code
- SMC 3.32.020, Adoption of Rules
- Director's Rule FIN-220.2 – Development Charges
- Director's Rule WTR-440 – Requirements for Water Service
- Director's Rule DWW-110 – Drainage and Wastewater Availability

5. APPENDICES

Appendix 1: Requirements for Developing Property Owner Latecomer Agreements

Appendix 2: Requirements for Participatory Latecomer Agreements

Appendix 3: Requirements for Municipal Assessment Reimbursement Areas

Appendix 1: Requirements for Developing Property Owner Latecomer Agreements

A developing property owner may elect to enter into a Developing Property Owner Latecomer Agreement. This Latecomer Agreement includes the cost to design and construct the water, drainage, and/or wastewater facilities. In addition to the other requirements outlined in this Director's Rule, the following conditions apply:

- Developing property owners may not enter into a Developing Property Owner Latecomer Agreement and a Participatory Latecomer Agreement with SPU for the same water, drainage, and/or wastewater facility.
- Valves and other appurtenances are eligible for a Developing Property Owner Latecomer Agreement, but a Participatory Latecomer Agreement is not permitted.

Appendix 2: Requirements for Participatory Latecomer Agreements

1. Participatory Latecomer Agreements

When SPU and the developing property owner enter into a joint Participatory Latecomer Agreement, SPU will share in the construction cost of the water, drainage, and/or wastewater main extension(s). In addition to the other requirements outlined in this Director's Rule, the following conditions apply:

- Developing property owners may not enter into a Participatory Latecomer Agreement and a Developing Property Owner Latecomer Agreement with SPU for the same water, drainage, and/or wastewater main extension.
- Valves and other appurtenances are not eligible for a Participatory Latecomer Agreement, but a Developing Property Owner Latecomer Agreement is permitted.

2. Definitions

Maximum reimbursable length. The maximum length that SPU will provide reimbursement for a water, drainage, and/or wastewater main extension.

Maximum reimbursable unit cost. The maximum cost per lineal foot (LF) that SPU will provide reimbursement for a water, drainage, and/or wastewater main extension.

Benefiting parcels' cumulative portion of the water, drainage, and/or wastewater main extension. The amount equal to the sum of all the benefiting parcels' pro-rata shares multiplied by the length of the water, drainage, and/or wastewater main extension.

3. Responsibilities:

A. The developing property owner will:

- 1) Initiate a Participatory Latecomer Agreement with SPU.
- 2) Pay prevailing wage for the construction of the water, drainage, and/or wastewater main extension for which SPU is providing funding, as required by RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended or supplemented and in accordance with Washington State Department of Labor & Industries, in addition to filing intents and affidavits, keeping payroll records, and submitting certified payroll records if requested.
- 3) Submit final costs as described in Section F.
- 4) Enter into a Participatory Latecomer Agreement.

B. SPU will:

- 1) Facilitate the application process and execution of the Participatory Latecomer Agreement(s).
- 2) Reimburse the developing property owner up to \$1,500 per LF for the benefiting parcels' proportion up to a maximum length of 750 LF. The maximum of 750 LF is per utility main extension type, per project. For example:
 - a. If both a water and wastewater main extension are required, each utility main extension may be reimbursed up to 750 LF.
 - b. If multiple water main extensions are required for one project exceeding 750 LF total, the total reimbursement will not exceed 750 LF.
- 3) Reimburse the developing property owner within 120 calendar days of executing and recording the Participatory Latecomer Agreement(s), including construction of the utility main extension, acceptance of the asset by SPU, and street restoration.

4. Pro-rata Shares

A. The benefiting parcels pro-rata cumulative portion of the utility main extension and reimbursement amounts shall be determined as follows:

- 1) When the benefiting parcels' cumulative portion of the utility main extension is less than the maximum reimbursable length, and cost per LF is less than the maximum reimbursable unit cost, SPU reimburses the full benefiting parcels' pro-rata share of total costs. Property owners of benefiting parcels will pay the full benefiting parcel pro-rata share of total costs to SPU upon new service connection.

Pro-rata Share of Benefiting Parcel X * Total Cost of Water, Drainage, or Wastewater Main Extension

- 2) When the benefiting parcels' cumulative portion of the utility main extension is less than the maximum reimbursable length, and the cost per LF exceeds the maximum reimbursable unit cost, for each benefiting parcel, SPU reimburses:

Pro-rata Share of Benefiting Parcel X * Maximum Reimbursable Unit Cost * Length of Main Extension

Upon new service connection, property owners of the benefiting parcels will pay the above amount to SPU and the following amount to the developing property owner:

Pro-rata Share of Benefiting Parcel X * [Total Cost of Water, Drainage, or Wastewater Main Extension – (Maximum Reimbursable Unit Cost * Length of Main Extension)]

- 3) When the benefiting parcels' cumulative portion of the utility main extension exceeds the maximum reimbursable length, and the cost per LF is less than the maximum reimbursable unit cost, for each benefiting parcel, SPU reimburses:

Pro-rata Share of Benefiting Parcel X * (Cost per LF of Main Extension * Maximum Reimbursable Length)

Upon new service connection, property owners of the benefiting parcels will pay the above amount to SPU and the following amount to the developing property owner:

Pro-rata Share of Benefiting Parcel X * $\left[\text{Total Cost of Water, Drainage, or Wastewater Main Extension} * \left(1 - \frac{\text{Maximum Reimbursable Length}}{\text{Length of Main Extension}} \right) \right]$

(Alternatively)

Pro-rata Share of Benefiting Parcel X * [Cost per LF * (Length of Main Extension – Maximum Reimbursable Length)]

- 4) When the benefiting parcels' cumulative portion of the utility main extension exceeds the maximum reimbursable length, and cost per LF exceeds the maximum reimbursable unit cost, for each benefiting parcel, SPU reimburses:

Pro-rata Share of Benefiting Parcel X * (Maximum Reimbursable Unit Cost * Maximum Reimbursable Length)

Upon new service connection, property owners of the benefiting parcels will pay the above amount to SPU and the following amount to the developing property owner:

Pro-rata Share of Benefiting Parcel X * [Total Cost of Water, Drainage, or Wastewater Main Extension – (Maximum Reimbursable Unit Cost * Maximum Reimbursable Length)]

$$\text{Cost per LF of Main Extension} = \frac{\text{Total Cost of Water, Drainage, and Wastewater Main Extension}}{\text{Length of Main Extension}}$$

Appendix 3: Requirements for Municipal Assessment Reimbursement Areas

- 1) As an alternative to developing property owner's financing the construction or improvement of water, drainage, and/or wastewater facilities, the City may create a municipal assessment reimbursement area (MARA) on its own initiative, without the participation of a private property owner. The City shall finance all costs associated with the construction or improvement of the water, drainage, and/or wastewater facilities and become the sole beneficiary of reimbursements.
- 2) The City may only establish a MARA in locations where its ordinances require water, drainage, and/or wastewater facilities to be constructed or improved as a prerequisite for property development.
- 3) Property owners of parcels within the proposed MARA may request a public hearing by submitting a written request to the City within twenty days of the preliminary determination's mailing. If a written request is submitted, the City Council must hold a public hearing on the MARA. Notice of the hearing must be provided to all affected property owners. Any rulings of the City Council are determinative and final, subject to judicial review.
- 4) The City may be reimbursed in accordance with this section only for the costs associated with construction or improvements that benefit parcel that will be connected to, and property owners who will use, the water, drainage, and/or wastewater facilities within the MARA. The City's administrative and legal costs are not subject to reimbursement. The City may not receive reimbursement of costs for the portion of construction or improvements that benefit the general public, which means that portion of the water, drainage, and/or wastewater facilities that only benefit property outside of the MARA. Administrative costs do not include engineering and construction management costs.
- 5) Reimbursement may only occur when a parcel is developed in a manner requiring connection to or use of the water, drainage, and/or wastewater facilities, or when a parcel is requesting connection to or use of the water, drainage, and/or wastewater facilities. The reimbursement assessment may be no greater than a parcel's pro rata share of costs associated with construction of the water, drainage, and/or wastewater facilities required to meet utility service and fire suppression standards.