



LATECOMER CONTRACTS

Under the authority of the Bellingham Municipal Code (Ch. 14.02) property owners who construct public improvements may be partially reimbursed by benefiting owners if a contract, facilitated by the City of Bellingham, with other property owners is implemented. Public improvements include streets, water mains, sanitary sewer mains, and storm water facilities. Entering into a "Latecomer Contract" requires a timely request by the project proponent and procedures that must be followed by both the proponent and the City as described below.

PROCEDURES TO BE FOLLOWED BY THE PROPONENT:

- A. Prior to the time the project is accepted by the City, the proponent must notify the City of the intent to seek a Latecomer Contract. Notification consists of a letter stating the intention along with a list and map of the property owners who the proponent believes will benefit from the improvement(s). Signature of the "Acknowledgement of Understanding" letter provided to developers with the deed of conveyance information can satisfy this requirement.
- B. Once the City receives the request, a pre-application meeting will be scheduled and the proponent will have the opportunity to present the proposal to City staff. This meeting will consist of discussion of the proposal, comments and suggestions from the City, and general preparation for submittal of the formal application.
- C. Within 30 days of street and/or utility system improvements being deeded to the city (Deed of Conveyance), the proponent may request a Latecomer Contract by making a formal application. Application shall be made on forms prepared by the Public Works Department and shall be accompanied by the base fee portion of the City Administrative Fees as set forth in BMC 14.02.130. The application shall be prepared and/or approved by a professional licensed engineer and shall contain the following information:

1. A legal description of the applicant's property.
2. A legal description of the properties within the applicant's proposed assessment reimbursement area together with the names and addresses of the owners of each property as shown in the records of the Assessor's Office of Whatcom County.
3. Vicinity map of applicant's property, proposed reimbursement area, and location of all improvements.
4. Itemized cost data for cost of construction certified by a Professional Engineer.

Cost of construction = direct construction costs + developer administrative costs + construction interest + city latecomer administrative fee. (See Bellingham Municipal Code 14.02 for eligible costs and calculation details.)
5. The applicant's proposed allocation of cost of construction to the individual properties within the applicant's proposed assessment reimbursement area and the method of such allocation.
6. Payment of the base fee portion of the City Administrative Fee, which shall be non-refundable. Fee shall be calculated as follows:

Base Fee (\$400 for utility project and \$590 for street project) + 1% of direct construction cost + \$200 for every separate parcel of property within the applicant's proposed assessment reimbursement area. Fees are adjusted annually in accordance with BMC 14.02.130(C) and should be confirmed prior to submitting a latecomers application.

- D. Within 30 days of the Public Works Department receiving the application for a Developer Reimbursement Agreement, the Public Works Department will provide the applicant written notice of whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The applicant will have no more than 30 days from the date of the written notice to respond and provide the information required to complete the application or, if the applicant can not submit the required information within the 30 day period, the applicant shall provide the City with a written explanation of why they can not provide the information within the designated time period and a date that the requested information will be submitted. In its discretion, the Public Works Department may grant the applicant an extension of not more than 60 days to submit the required information.
- E. Sign and return the Application Summary (to be prepared by City Staff) for recording by Staff with the County Auditor's Office.
- F. In the event a hearing is requested by a person owning property within the proposed reimbursement area, the proponent must attend or send a representative to attend the hearing.
- G. Sign and return Latecomer Contract to the City.

PROCEDURES TO BE FOLLOWED BY THE CITY:

- A. Schedule and conduct pre-application meeting. Make recommendations to applicant for determination of assessment method and area for property benefited by the improvement(s).
- B. Review application costs and confirm the potential benefit to properties within the proposed assessment area. Confirm that the method used to calculate the allocation of assessment is equitable and reasonable. If agreement between the developer and City staff cannot be reached, the issue will be addressed by the Public Works Advisory Board and/or the Bellingham Hearing Examiner.
- C. Prepare and record the Application Summary with the County Auditor's office.
- D. Send notices by certified mail to all property owners of record within the preliminary assessment reimbursement area. Each property owner will be given the opportunity to protest and to request a public hearing before the Bellingham Hearing Examiner.
- E. Prepare Latecomer Contract for applicant's signature.
- F. Record signed agreement at the County Auditor's Office together with a map of affected properties.
- G. Upon issuance of new connections, the City will collect specified latecomers assessments and reimburse the proponent.
- H. City will file a release with the Auditor's Office upon satisfaction of the latecomer's assessment.

FUTURE SEGREGATION OF PROPERTIES WITHIN ASSESSMENT AREA:

- A. A property owner who wishes to segregate a latecomers assessment must hire a professional engineer to prepare the request. The request shall include a map showing the proposed subdivision of property including legal descriptions and proposed cost segregation based on the original method of assessment.
- B. The segregation fee is \$150 per parcel created by the segregation. The fee shall be submitted with the segregation request.
- C. The City will record new parcel assessments together with a map of affected properties at the County's Auditor's Office.



Bellingham Municipal Code – Section 14.02

Street, Drainage, Water and Sewer Improvements – Assessment Reimbursement Contracts

Excerpted: 02/02/2004, CAB

14.02.010 - Purpose

To establish a uniform methodology and process for the administration of reimbursement contracts applied for after January 1, 1998, for developers in circumstances where a developer uses private funds to construct a public utility and/or street system improvement(s) and desires to be compensated by property owners benefited by the improvements.

The provisions of this chapter are in addition to and intended to supplement any other requirements contained elsewhere in the Bellingham Municipal Code.

14.02.020 - Definitions

- (1) **Adjacent** means abutting on public roads, streets, right-of-way or easements in which street system improvements are installed or directly connecting to street system improvements through an interest in real property such as an easement or license.
- (2) **Assessment** means an equitable pro rata charge to be paid by an owner of property within the assessment reimbursement area for the cost of private construction of public street and/or utility system improvements made pursuant to a public facilities agreement.
- (3) **Assessment reimbursement area** means that area which includes all parcels of real property adjacent to street system improvements or likely to require connection to or service by utility system improvements constructed by a developer.
- (4) **Construction interest** means the sum of money to be added to the direct construction cost and reimbursed to the developer for the use of the developer's monies during the construction term. The interest rate shall be 1% above the Federal Reserve Bank prime loan rate published most recently before the date of the Public Facilities Agreement. Interest accrual begins on the date of execution of the Public Facilities Agreement and will continue throughout the construction term.

Construction interest shall be computed utilizing the two-thirds rule; i.e., direct cost of construction x construction interest rate divided by 365 x the construction term expressed in days x 0.67 = construction interest.

(5) **Construction term** means that period of time between the date of execution of the Public Facilities Agreement and the date of acceptance of the project by the City or the construction completion date as set forth in the Public Facilities Agreement, whichever occurs first.

(6) **Cost of construction** is the sum of the direct construction costs incurred to construct the street and/or utility system improvements plus indirect costs which are limited to the city latecomer administrative fee (section .140), construction interest (subsection (9) below), and developer administrative costs (subsection (4) below). "**Direct construction costs**" include but are not limited to all related design services, engineering, surveying, legal services, bonding costs, environment mitigation, relocation and/or new construction of private utilities as required by the City, (i.e., power, telephone, cable and gas), relocation and/or installation of street lights, relocation and/or installation of signage, acquisition of right of way and/or easements, government agency fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges.

(7) **Developer:** The individual or entity that contracts with the City for the construction of street and/or utility system improvements, where such improvements are a requirement for development of real property owned by such entity or individual.

(8) **Developer administrative costs** means all indirect costs incurred by the developer in the creation and execution of a Public Facilities Agreement and managing the project; such as office supplies, mailings, clerical services, telephone expenses, accounting expenses, project oversight, and the like. Administrative costs shall not exceed 3% of all direct construction costs.

(9) **Developer reimbursement agreement** means a written contract between the City and one or more developers providing partial reimbursement for cost of construction of street system improvements and/or utility system improvements to the developer by owners of property who are likely to utilize the improvements and who did not contribute to the original cost of construction.

(10) **Direct Connection** means a service connection, to be owned and maintained by the property owner and not the City, from existing or new utility improvements based on the following criteria:

A. Water system direct connections are single and dual water service taps as defined in "Water Distribution System, Bellingham Development Guidelines and Improvement Standards, as currently enacted or as may be hereafter modified;

B. Sewer system direct connections include side sewer (service) connections as defined in "Sanitary Sewer System," Section 5, Bellingham Development Guidelines and Improvement Standards, as currently enacted or as may be hereafter modified;

C. Storm sewer system direct connections are hereby defined as, but not limited to, tight line, down spout, and roof leader service connections to storm sewer mains for the conveyance of site specific storm sewer.

(11) **Public facilities agreement** means any agreement entered into by an individual or entity with the City for the purpose of constructing public improvements that are required to be constructed by the City as a prerequisite to the development of real property.

(12) Street system improvements mean public street and alley improvements made in existing or subsequently dedicated or granted rights of way or easements and any improvements associated therewith including but not limited to such things as acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters, pedestrian facilities, street lighting, bike lanes, and traffic control devices, relocation and/or construction of private utilities as required by the City, (i.e., power, telephone, cable and gas), relocation and/or construction of street lights, traffic control devices, signage, and other similar improvements.

(13) Utility system improvements mean public water, sewer and storm drainage system improvements including but not limited to the acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, testing, connection fees, and installation of improvements as required by the City and includes but is not limited to the following:

- A.** Water system improvements including but not limited to such things as treatment facilities, reservoirs, wells, mains, valves, fire hydrants, telemetry systems, pumping stations, and pressure reducing stations;
- B.** Sewer system improvements including but not limited to such things as treatment plants, gravity mains, lift stations, force mains, and telemetry systems;
- C.** Storm sewer system improvements including but not limited to such things as water quality structures and systems, detention and retention facilities, and storm water collection and conveyance facilities.

14.02.030 - Applicability

This chapter is intended to apply to all street system improvements and all utility system improvements (subject to the limitation that as to street system improvements this chapter's applicability is limited to those improvements defined in RCW 35.72) where the construction of such improvements are the result of a City of Bellingham ordinance or ordinances that require such improvements as a prerequisite to property development. Street system improvements constructed in order to comply with the City of Bellingham Subdivision Code, Zoning Code, Comprehensive Plan and Bellingham City Code Chapter 13.08, are hereby declared to be prerequisites to further property development for the purpose of RCW 35.72.010.

14.02.040 - Application For Developer Reimbursement Agreement

A. Any developer using private funds to construct street system improvements and/or utility system improvements in the city or within the city's utility service area, may apply to the city for a Developer Reimbursement Agreement in order to recover a pro rata share of the costs of construction from other property owners that will later derive a benefit from the street and/or utility system improvements made by developer.

B. The application for a Developer Reimbursement Agreement shall be made within 30 days after the date street and/or utility system improvements have been accepted by the city. Acceptance by the City shall mean, for purposes of this section, the date the public facilities are conveyed to the

City by a Deed of Conveyance or other equivalent written document. Application shall be made on forms prepared by the Public Works Department and shall be accompanied by the city base fee set forth in Section .140. The application shall contain the following information which shall be approved by a State of Washington licensed engineer:

1. A legal description of the developer's property.
2. A legal description of the properties within the developer's proposed Assessment Reimbursement Area together with the name and address of the owners of each property as shown in the records of the Assessor's Office of Whatcom County.
3. Vicinity maps of developer's property.
4. The developer's proposed Assessment Reimbursement Area and general location of the street and/or utility system improvements.
5. Itemized cost data approved by a State of Washington licensed engineer for the cost of construction.
6. The developer's proposed allocation of the cost of construction to the individual properties within the proposed Assessment Reimbursement Area and the method used for such allocation.

C. Within 30 days of the Public Works Department receiving the application for a Developer Reimbursement Agreement, the Public Works Department will provide the applicant written notice of whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The applicant will have no more than 30 days from the date of the written notice to respond and provide the information required to complete the application or, if the applicant cannot submit the required information within the 30 day period, the applicant shall provide the City a written explanation of why they cannot provide the information within the designated time period and a date that the requested information will be submitted. In its discretion, the Public Works Department may grant the applicant an extension of not more than 60 days to submit the required information. If the applicant fails to meet the foregoing time frame, the Public Works Department may, in its discretion, reject the application as untimely.

D. Within 30 days of receiving the complete application, the City will prepare and record with the County Auditor's Office an application summary. The application summary shall contain at least the following: project description, name of developer, legal descriptions for each of the properties within the Assessment Reimbursement Area together with a statement of intent to collect the proposed allocation of costs of construction to each property. The application summary shall include the following language:

"This application summary shall have no further force or effect nor shall it constitute an enforceable obligation against any of the properties described herein upon the recording of a Developer Reimbursement Agreement made as to the property herein described.

This application summary shall have no further force or effect nor shall it constitute an enforceable obligation against any of the properties described herein after one year from

the date of recording; provided, the effective term of the application summary may be extended by filing an extension executed by the developer and approved in writing by the Public Works Department."

E. The Public Works Director shall establish policies and procedures for processing applications and complying with the requirements of this ordinance.

14.02.050 - Preliminary Determinations

The Public Works Department shall formulate a preliminary assessment reimbursement area and preliminary assessment for real property benefited by the street and/or utility system improvements based on the following and provide the same to the developer:

A. The likelihood that benefited property will be developed within 15 years from the date of recording of the Developer Reimbursement Agreement.

B. The likelihood that at the time of development of the benefited property such property will not be required to install similar street and/or utility system improvements because they were already installed by the developer.

C. For street system improvements, that benefited parcels are adjacent to such street system improvements.

D. For utility system improvements, the likelihood (1) that such improvements will be tapped into or used (including not only direct connections but also connections to laterals or branches connecting thereto) by properties within the assessment reimbursement area, and that such improvements do not constitute mainline extensions to be owned and maintained by the city, as such extensions are not defined as Direct Connections or (2) that such properties will receive a special benefit from the utility system improvements such as, but not limited to pump stations, sewer lift stations, and additional utility pipe depth to accommodate future utility expansion.

E. An equitable allocation of the cost of construction among the properties within the assessment reimbursement area, so that each pays for benefits attributable to those improvements. The method or methods used to calculate the allocation of the assessment may be either front footage, number of units, square footage, or may be the zone and termini method or other recognized methods reasonably calculated to equitably allocate the assessment.

14.02.060 - Preliminary Determination Notice

A. The preliminary assessment reimbursement area and the preliminary assessment formulated by the Public Works Department shall be sent by certified mail to the property owners of record within the preliminary assessment reimbursement area in accordance with RCW 35.72, as from time to time amended.

B. The applicant or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the Hearing Examiner pursuant to BMC 2.56.060 to contest the preliminary assessment reimbursement area and preliminary assessment. Notice of such hearing shall be given to all property owners within the preliminary assessment reimbursement area and the hearing before the Hearing Examiner shall be conducted as soon as is reasonably practical. The procedure contained in BMC Chapter 2.56 shall govern the hearing. After the hearing, the Hearing Examiner shall develop a report with findings of fact, conclusions of law and recommendations to the City Council regarding establishing the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The City Council shall consider the record developed before the Hearing Examiner and the Hearing Examiner's report. City Council may allow public comment on the Hearing Examiner's report and, if a majority of the Council finds the record insufficient, may add to the record. After considering the record, the Hearing Examiner's report and public comment thereon, if any, City Council may adopt or reject the Hearing Examiner's recommendations in whole or in part or it may render its own findings and conclusions. City Council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The City Council's determination of the assessment reimbursement area and the assessment shall be as provided by BMC 1.26.010 and shall be determinative and final.

C. In the event no written request for a hearing is received as required, the determination of the Public Works Department shall be final.

14.02.070 - Developer Reimbursement Agreement

Based upon the preliminary assessment reimbursement area and the preliminary assessment, if no hearing is requested, or based upon the City Council's determination of the assessment reimbursement area and assessment if a hearing is requested, the public works department shall prepare and give to the applicant a Developer Reimbursement Agreement.

14.02.080 - Recording/Effective Date/Payment Of Assessment/Lien For Non-Payment

A. The developer's right to assessments shall relate back to the date the developer records an application summary pursuant to section 14.02.040(D).

B. Any property described in the recorded application summary shall be subject to the assessment after it has been approved by the city pursuant to this chapter.

C. The Developer Reimbursement Agreement shall be recorded by the city with the Whatcom County Auditor within 30 days of the agreement's final execution.

D. The city shall not issue a building permit or similar development permit or approval nor grant permission to use water or sewer service unless the city has received full payment of the assessment, including interest, applicable to the property connecting to or using the street and/or utility system improvements constructed by developer; provided, if the Developer Reimbursement Agreement's validity is being challenged, the City reserves the right to issue a permit, approval or

permission without liability or prejudice to the City and without prejudicing the developer's rights or remedies under this Chapter or otherwise at law or in equity.

E. If improvements are made to a property adjacent to a street improvement or if a property connects to a utility system improvement without payment of an assessment otherwise due, the amount of such assessment shall be a binding obligation upon the owner of record (and successors) of the affected property.

F. Failure by a property owner to pay the assessment due within 180 days of notice to this effect shall entitle the developer to foreclose against the property in the same manner as a mortgage, and shall entitle the developer to recover reasonable costs and attorney fees.

14.02.090 - Segregation

The Public Works Department shall, upon the request of any property owner within the assessment reimbursement area, segregate the assessment. The segregation shall be based upon the same factors applied when the assessments were originally established. The property owner seeking segregation of the assessment shall pay an administrative fee to the City of Bellingham based upon a segregation fee schedule to be established by the Public Works Department.

14.02.100 - Term Of Developer Reimbursement Agreements

Each developer reimbursement agreement shall be valid for a period not to exceed 15 years from the date of its recording.

14.02.110 - Removal Of Unauthorized Connections Or Taps

Whenever any tap or connection is made into any utility improvement without payment of the assessment being made as required by this Chapter, the Public Works Department is authorized to remove and disconnect, or cause to be removed and disconnected, such unauthorized tap or connection including all connecting tile or pipe located in the right of way and to dispose of such unauthorized material without liability. The owner of the property where the unauthorized connection is located shall be liable for all costs and expenses of any type incurred to remove, disconnect, and dispose of the unauthorized tap or connection.

14.02.120 - Interest On Assessment

Each assessment established in the Developer Reimbursement Agreement shall bear interest from the date of recording of the Developer Reimbursement Agreement at an interest rate fixed at the Federal Reserve rate for a two-year Treasury Note, as determined on the date of recording the Development Reimbursement Agreement.

14.02.130 - City Administrative Fees

- A.** The city shall charge for processing Developer Reimbursement Agreements the base fee of \$300 for utility system improvements and \$450 for street system improvements. To the base fee shall be added 1% of the cost of construction.
- B.** Further, for every separate parcel of property within the applicant's proposed assessment reimbursement area, \$150 shall be added to the base fee established pursuant to the above schedule.
- C.** The base fee and the parcel fee shall be adjusted annually to reflect inflationary costs, increase or decrease. The adjusted fee shall be calculated by adjusting upwards or downwards in accordance with the change in the ENR Construction Cost Index for Seattle, WA in January, 1997 = 6,021.81. The fee established by this formula shall be rounded up or down to the next \$10.
- D.** The city latecomer base fee shall be paid upon application for a Developer Reimbursement Agreement with all remaining fees paid prior to mailing the preliminary determination notices pursuant to BMC 14.02.060(A).

14.02.140 - Payment Of Developer Reimbursement Charge

Each assessment shall be due in its entirety upon connection to or use of a street and/or utility system improvement by a property subject to an assessment, and shall be paid to the city in one lump sum including interest until date of payment. The city will pay over to developer the amounts due within 60 days of receipt.

When the assessment for any property has been paid in full, the Public Works Director shall record a certification of payment that will release such property from the Developer Reimbursement Agreement.

14.02.150 - Appeal

With the exception of determination of the preliminary assessment reimbursement area and preliminary assessment as provided by BMC 14.02.060 B., a developer may appeal the interpretation and/or decisions of the Public Works Department concerning any aspect of this chapter to the Hearing Examiner as provided by BMC Chapter 2.56.050 A.7.

14.02.160 - Enforcement Of Latecomer Obligations

A. In processing and imposing obligations in this chapter for reimbursement of developers, the city in no way guarantees payment of assessments by latecomers, or enforceability of assessments, or enforceability of the Developer Reimbursement Agreement, or the amount(s) thereof against such persons or property. Nor will the offices or finances of the City be used for enforcement or collection of latecomer obligations beyond those duties specifically undertaken by the City herein. It shall be the obligations of a developer to take whatever authorized means are available to enforce payment of latecomer assessments; and, developers are hereby authorized to take such actions. The

City shall not be responsible for locating any beneficiary or survivor entitled to any benefits by or through a Developer Reimbursement Agreement.

B. Any funds collected under this Chapter that are unclaimed by developers after three (3) years from the expiration of the Developer Reimbursement Agreement shall be returned to the parties making payment to the City, if they may be reasonably found and minus any reasonable administrative processing costs. Any undeliverable funds shall inure to the benefit of the City.

14.02.170 - City Participation In Assessment Reimbursement

The City may participate in financing street improvement projects pursuant to BMC 13.10.050.

[Ord. 2004-01-003 §10; Ord. 10906 §2, 1997]