

CHAPTER 5.60
LATECOMERS REIMBURSEMENT AGREEMENTS

SECTION:

- 5.60.010: Applicability
- 5.60.020: Definitions
- 5.60.030: Application Authorized – Purpose – Term
- 5.60.040: Eligibility of Applicants
- 5.60.050: Guidelines Establishment Authority
- 5.60.060: Application Requirements – Fee
- 5.60.070: Latecomers Agreement – General Improvement Procedures
- 5.60.080: Payment of Latecomers’ Assessment
- 5.60.090: Removal of Unauthorized Connection or Taps
- 5.60.100: Appeal
- 5.60.110: Rights and Non-Liability of City of Kennewick

5.60.010: Applicability: The latecomers reimbursement agreement covered herein 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 Kennewick 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 Kennewick Subdivision Code, Zoning Code, Comprehensive Plan and Kennewick Municipal Code are hereby declared to be prerequisite to further property development for the purpose of RCW 35.72.010, except that Chapter 5.64 provides an optional process for a latecomers agreement for sanitary sewer projects serving existing residential lots, where the lots were established prior to 1995. (Ord. 5273 Sec. 1, 2009; Ord. 5209, Sec. 1, 2007)

5.60.020: Definitions: The following definitions control for purposes of this Chapter:

(1) “Street system improvements include the acquisition of right-of-way and/or easements, design, permits, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls and other similar improvements as required by the street standards of the City. A latecomers reimbursement agreement shall not be approved for the improvement of a developer’s abutting rights-of-way and transitions as required by City ordinance and City, or AASHTO design guidelines.

- (a) A latecomers reimbursement agreement for street system improvements shall only be allowed for designated arterial or collector streets.
- (b) No latecomers reimbursement agreement shall be approved for street improvements that are within the developer’s property limits or abut the developer’s property.
- (c) No latecomers reimbursement agreement shall be approved for local street or alley improvements.

(2) “Utility system improvements” shall include the acquisition of right-of-way and/or easements, design, permits and installation of the system to City design standards and latest approved system comprehensive plan, including:

- (a) “Water” includes such improvements as mains and appurtenances including service lines, valves, fire hydrants, pumping or pressure reducing stations, reservoirs, permits, and similar improvements.
- (b) “Sewer” includes such improvements as mains and related appurtenances, including side sewers, lift stations, telemetering facilities, permits, surveying and similar improvements and construction support.
- (c) “Storm drainage” includes such improvements as mains and related appurtenances, including public detention or retention facilities.
- (3) “Director” means the Public Works Director for the City of Kennewick or his/her designee. (Ord. 5273 Sec. 2, 2009: Ord. 5209 Sec. 1, 2007)

5.60.030: Application Authorized – Purpose – Term:

(1) For purposes of determining eligibility to apply for a latecomers reimbursement agreement, the estimated cost of the improvement shall be determined by the Director, based upon a construction contract for the project, bids, engineering or architectural estimate, or other information deemed by the Director to be a reliable basis for estimating costs. The determination of the Director shall be final.

(2) No latecomers reimbursement agreement shall extend for a period longer than twenty (20) years from the date of final acceptance of the project, by the City.

(3) Streets System Improvements: Any developer or property owner utilizing private funds to install arterial or collector street improvements and appurtenances that are outside of the developer’s property boundary, with the estimated future benefit to other properties costing more than one hundred thousand dollars (\$100,000.00). Qualifying developers may apply to the City to establish a latecomers reimbursement agreement for recovery of a pro rata share of the cost of constructing said public improvements from other parties, that will later derive a benefit from said improvements. Temporary improvements, constructed to benefit the developer’s schedule, where the temporary improvement will be replaced by future development, will not be eligible for a latecomers reimbursement agreement.

(4) Utility Systems Improvements: Any developer or property owner utilizing private funds to install public water, sanitary sewer, or storm sewer improvements and appurtenances, or to oversize the utility, with the estimated future benefit to other properties costing more than seven thousand dollars (\$7,000.00), or five percent (5%) of the developer’s similar utility cost, whichever is greater, said limit to be adjusted annually from the date of this ordinance, or the latest amendment thereto, in accordance with the ENR (Engineering News-Record) Seattle Construction Cost Index. Qualifying developers may apply to the City to establish a latecomers reimbursement agreement for recovery of a pro rata share of the cost of constructing said public improvements from other parties that will later derive a benefit from said improvements. (Ord. 5273 Sec. 3, 2009: Ord. 5209 Sec. 1, 2007)

5.60.040: Eligibility of Applicants: Applicants for a latecomers reimbursement agreement shall be in compliance with all City ordinances, rules, and regulations to be eligible for processing of a latecomers reimbursement agreement. (Ord. 5209 Sec. 1, 2007)

5.60.050: Guidelines Establishment Authority: The Director shall establish guidelines and rules, regulations, policies and procedures for all applications for a latecomers reimbursement agreement. (Ord. 5209 Sec. 1, 2007)

5.60.060: Application Requirements – Fee:

(1) All applications for a latecomers reimbursement agreement shall be on forms approved and established by the Director and shall be accompanied by a nonrefundable processing fee.

(2) Property owners or developers requesting a latecomers reimbursement agreement shall submit, along with the application, a nonrefundable payment processing fee in the amount of five hundred dollars (\$500.00) for each separate utility system (water, sewer, storm) improvement and one thousand dollars (\$1,000.00) for a street system improvement project. Further, for every separate parcel of property within the applicant's proposed assessment reimbursement area, two hundred dollars (\$200.00) shall be added to the base fee in the proposed benefited area. These fees are the minimum processing fee, to be applied to the City's legal, engineering, and administrative costs (including but not limited to staff time, and costs for title reports, appraisers, or other costs) associated with preparing the latecomers agreement, which costs shall be included as reimbursable costs in the latecomers agreement; provided, that whenever city engineering, legal, and administrative costs exceed the minimum payment required herein, the City shall not process the application until such costs have been paid in full.

(3) The latecomer processing and parcel fee shall be paid to the City upon application for a latecomers reimbursement agreement with any remaining fees paid prior to mailing the preliminary determination notices.

(4) The minimum processing fee and the parcel fee shall be adjusted annually from the date of this ordinance, to reflect inflationary cost increases. The adjusted fees shall be calculated by adjusting the fee in accordance with the change in the ENR Construction Cost Index for Seattle, Washington. The fees established by this formula shall be rounded up to the next ten dollars (\$10.00). (Ord. 5209 Sec. 1, 2007)

5.60.070: Latecomers Agreement – General Improvement Procedures:

(1) If a latecomers reimbursement agreement is requested, the property owner or developer shall submit project plans and site plan, map or diagram of the proposed project location and proposed assessment reimbursement area, prepared by a licensed professional engineer. The submittal shall include ownership reports on properties within the proposed benefited areas, legal descriptions, and map of the contributing properties and properties in the proposed reimbursement areas, a cost estimate for the total project and a cost estimate for the portion of the project estimated to benefit the other properties and exceeding the requirements for development of the developer's property. Cost estimates to be in conformance to city standards and ordinances based upon plans prepared by a civil engineer from which reimbursable costs shall be estimated, and such other information as the City may require.

(2) The Director will formulate an assessment reimbursement area (benefit area) based upon a determination of which parcels did not contribute to the original cost of such utility system or street improvement and who may subsequently benefit from the over developed street, tap only, drain to, or use the same including users connected to laterals or branches connecting thereto.

(3) The Director, based on information submitted by the owner, will estimate a preliminary pro rata share of costs. The Director may require additional justification of the estimates, engineering cost or copies of actual construction bids to be provided.

(4) Hold a meeting with the developer to review the initial findings, receive additional information, or be made aware of information that may be available or forthcoming.

(5) The Director at his/her discretion may utilize the application fee to pay the costs of an appraiser to be retained by the City to assist the Director in formulating an assessment reimbursement area.

(6) A minimum of twenty (20) days in advance of the Council meeting, the preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by certified mail to the property owners of record as shown on the records of the Benton County Assessor within the proposed assessment area. A hearing shall be held before the City Council, notice of which shall be given to all affected property owners at least ten (10) days in advance of the Council meeting. At the hearing, the City Council will determine whether to accept, reject, or modify the proposed latecomers reimbursement agreement. If the City Council accepts the latecomers reimbursement agreement, it shall establish the reimbursement area; provided that the City Council may only modify the reimbursement area upon new notice to the owners of the affected property.

(7) Prior to commencing construction of the project, the owner shall submit, to the Director, a minimum of three competitive construction bids, based upon city-approved plans. Upon completion of the project, a tabulation of final construction costs with documentation, shall be provided to the City. A reasonable pro rata share of project costs shall be established by the City, which shall then notify owners of the benefited properties of the amount of the determination of final reimbursement connection charges against their property and the date the reimbursement agreement shall be presented to the City Council for public hearing. On the date scheduled, the City Council shall hear from affected parties and thereafter set the terms of the latecomers reimbursement agreement and maximum amount and terms of reimbursement from affected properties. The decision of the City Council shall be final and determinative.

(8) The City will record the latecomers reimbursement agreement in the Benton County Auditor's Office within thirty (30) days of the execution of the agreement. The City will provide the developer and each affected property owner with a copy of the recorded latecomers reimbursement agreement within fourteen (14) days after its recording, and once recorded, the latecomers reimbursement agreement shall be binding on owners of record within the assessment area who are not party to the agreement. (Ord. 5209 Sec. 2, 2007)

5.60.080: Payment of Latecomers Assessment:

(1) Each latecomers 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 prior to the City issuing a construction or connection permit. Typically within sixty (60) days of receipt, the City will pay to the participating property owner or developer, the reimbursement amount collected, less a handling, processing and administration fee equal to ten percent (10%) of the reimbursement collected.

(2) When the latecomers assessment for any property has been paid in full or the latecomers agreement has expired, the City shall record a certification of payment or agreement expiration that will release such property from the latecomers reimbursement agreement. (Ord. 5209 Sec. 1, 2007)

5.60.090: Removal of Unauthorized Connections or Taps: Whenever any tap or connection is made into any utility improvement without payment of the latecomers assessment being made as required by this Chapter, the Municipal Services 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. (Ord. 5209 Sec. 1, 2007)

5.60.100: Appeal: Property owners in the preliminary assessment reimbursement area will have twenty (20) days after certified mail delivery of their preliminary assessment to appeal their assessment. The appeal will be considered by Council during the latecomers reimbursement agreement hearing. (Ord. 5209 Sec. 1, 2007)

5.60.110: Rights and Non-Liability of City:

(1) The City reserves the right to refuse to enter into any latecomers reimbursement agreement or to reject any application. All applications for a latecomers reimbursement agreement shall be made on the basis that the applicant releases and waives any claims for any liability of the City in establishment and enforcement of a latecomers reimbursement agreement.

(2) The City in no way guarantees payment of assessments by latecomers, or enforceability of assessments, or enforceability of the latecomers 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 latecomers obligations beyond those duties specifically undertaken by the City herein. It shall be the obligations of the property owners or developers to take whatever authorized means are available to enforce payment of latecomers assessments; and, property owners or developers are hereby authorized to take such actions.

(3) The City shall not be responsible for locating any beneficiary or survivor entitled to benefits by or through a latecomers reimbursement agreement. Every two (2) years from the date the latecomers reimbursement agreement is executed, a property owner entitled to reimbursement under the agreement shall provide the City with information regarding the current contact name, address, and telephone number of the person, company, or partnership that originally entered into the agreement. If the property owner fails to comply with the notification requirements within sixty (60) days of the specified time, then the City may collect any reimbursement funds owed to the property owner; such funds shall be deposited in the appropriate capital fund of the City. (Ord. 5273 Sec. 4, 2009; Ord. 5209 Sec. 1, 2007)