

Chapter 35.91 RCW
MUNICIPAL WATER AND SEWER FACILITIES ACT

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Water-sewer districts: Title 57 RCW.

RCW 35.91.010 Declaration of purpose—Short title. The improvement of public health and the implementation of both urban and rural development being furthered by adequate and comprehensive water facilities and storm and sanitary sewer systems, and there being a need for legislation enabling such aids to the welfare of the state, there is hereby enacted the "municipal water and sewer facilities act." [1965 c 7 s 35.91.010. Prior: 1959 c 261 s 1.]

RCW 35.91.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Latecomer fee" means a charge collected by a municipality, whether separately stated or as part of a connection fee for providing access to a municipal system, against a real property owner who connects to or uses a water or sewer facility subject to a contract created under RCW 35.91.020.

(2) "Municipality" means the governing body of any county, city, town, or drainage district.

(3) "Water or sewer facilities" means storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances. [2013 c 243 s 2.]

Effective date—2013 c 243 ss 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2014." [2013 c 243 s 5.]

RCW 35.91.020 Contracts with owners of real estate for water or sewer facilities—Requirements—Financing—Reimbursement of costs.

(1)(a) At the owner's request, a municipality must contract with the owner of real estate for the construction or improvement of water or

sewer facilities that the owner elects to install solely at the owner's expense. The owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality. The owner's request may only require a contract under this subsection (1)(a) in locations where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) must be located within the municipality's corporate limits or, except as provided otherwise by this subsection (1)(a), within ten miles of the municipality's corporate limits. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) may not be located outside of the county that is party to the contract. The contract must be filed and recorded with the county auditor and must contain conditions required by the municipality in accordance with its adopted policies and standards. Unless the municipality provides written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for a water or sewer facility, if required, and connection of the water or sewer facility to the municipal system must be conditioned upon:

- (i) Construction of the water or sewer facility according to plans and specifications approved by the municipality;
- (ii) Inspection and approval of the water or sewer facility by the municipality;
- (iii) Transfer to the municipality of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water or sewer facility;
- (iv) Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;
- (v) Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;
- (vi) Payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and
- (vii) Verification and approval of all contracts and costs related to the water or sewer facility.

(b) If authorized by ordinance or contract, a municipality may participate in financing water or sewer facilities development projects authorized and improved or constructed in accordance with (a) of this subsection. Unless otherwise provided by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved or constructed in accordance with (a) of this subsection:

- (i) Have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and
- (ii) Are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality.

(2) A contract entered into under this section must also provide, in accordance with the requirements of this section, for the pro rata reimbursement to the owner or the owner's assigns for twenty years, or for a longer period if extended in accordance with subsection (4) of this section. The reimbursements must be: (a) Within the period of time that the contract is effective; (b) for a portion of the costs of the water or sewer facilities improved or constructed in accordance

with the contract; and (c) from latecomer fees received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

(3) Except as provided otherwise by this section, a municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized in accordance with subsection (7) of this section. This does not prevent the municipality from collecting amounts for services or infrastructure that are additional expenditures not subject to the ordinance, contract, or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the municipality in complying with this section.

(4) (a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(5) The requirement for a municipality to contract with an owner of real estate for the construction or improvement of water or sewer facilities under this section is only applicable if the facilities are consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve.

(6) Each contract must include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. The funds collected under this subsection must be deposited in the capital fund of the municipality.

(7) To the extent it may require in the performance of the contract, the municipality may install the water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to reasonable requirements as to the manner of occupancy of the streets as the county may by resolution provide. The provisions of the contract may not be effective as to any owner of real estate not a party thereto unless the contract has been recorded in the office of the county auditor of the county in which the real estate of the owner is located prior to the time the owner taps into or connects to the water or sewer facilities.

(8) Within one hundred twenty days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for

determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

(9) Nothing in this section is intended to create a private right of action for damages against a municipality for failing to comply with the requirements of this section. A municipality, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of a municipality to comply with the requirements of this section does not relieve a municipality of any future requirement to comply with this section. [2013 c 243 s 3. Prior: 2009 c 344 s 1; 2009 c 230 s 1; 2006 c 88 s 2; 1999 c 153 s 38; 1981 c 313 s 11; 1967 c 113 s 1; 1965 c 7 s 35.91.020; prior: 1959 c 261 s 2.]

Effective date—2013 c 243 ss 2 and 3: See note following RCW 35.91.015.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Severability—1981 c 313: See note following RCW 36.94.020.

RCW 35.91.025 Extension outside city subject to review by boundary review board. The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 s 33.]

RCW 35.91.030 Approval and acceptance of facilities by municipality—Rates, costs. Upon the completion of water or sewer facilities pursuant to contract mentioned in the foregoing section, the governing body of any such municipality shall be authorized to approve their construction and accept the same as facilities of the municipality and to charge for their use such water or sewer rates as such municipality may be authorized by law to establish, and if any such water or sewer facilities are so approved and accepted, all further maintenance and operation costs of said water or sewer lines and facilities shall be borne by such municipality. [1965 c 7 s 35.91.030. Prior: 1959 c 261 s 3.]

RCW 35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection. (1) A person, firm, or corporation may not be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions thereof during the period of time prescribed in such contract without first paying to the municipality, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the contract under which the water or sewer facilities so tapped into or used were constructed. All amounts so received by the municipality shall be paid out by it under the terms of such contract within sixty days after the receipt thereof. Whenever any tap or connection is made into any such contracted water or sewer

facilities without such payment having first been made, the governing body of the municipality may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile, or pipe located in the facility right-of-way and dispose of unauthorized material so removed without any liability whatsoever.

(2) A tap or connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community only if the municipality provides and maintains the tap-in connection. [2005 c 324 s 1; 1965 c 7 s 35.91.040. Prior: 1959 c 261 s 4.]

RCW 35.91.050 Owner's pro rata share of cost to which he or she did not contribute. Whenever the cost, or any part thereof, of any water or sewer improvement, whether local or general, is or will be assessed against the owners of real estate and such water or sewer improvement will be connected into or will make use of, contracted water or sewer facilities constructed under the provisions of this chapter and to the cost of which such owners, or any of them, did not contribute, there shall be included in the engineer's estimate before the hearing on any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided in or computed from such contract as the fair pro rata share due from such owners upon and for such contracted water or sewer facilities. [1965 c 7 s 35.91.050. Prior: 1959 c 261 s 5.]

RCW 35.91.060 Assessment reimbursement areas for water or sewer facilities—Requirements—Boundaries—Reimbursement of costs. (1) As an alternative to the procedures provided in RCW 35.91.020 for financing the construction or improvement of water or sewer facilities, a municipality may create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance all of the costs associated with the construction or improvement, and become the sole beneficiary of reimbursements.

(a) A municipality may only establish an assessment reimbursement area in locations where a municipality's ordinances require water or sewer facilities to be improved or constructed as a prerequisite to further property development or redevelopment.

(b) The boundaries of an assessment reimbursement area must be formulated by the municipality based upon a determination of which parcels in the proposed area would require construction or improvement of water or sewer facilities upon development or redevelopment, or would be allowed connection to or usage of constructed or improved water or sewer facilities.

(c) A preliminary determination of the assessment reimbursement area boundaries and assessments, along with a description of property owners' rights and options, must be sent by certified mail to each owner of record of real property within the proposed assessment reimbursement area. Owners of property within the proposed area may request a public hearing by submitting a written request to the municipality within twenty days of the preliminary determination's mailing. If a written request is submitted, the legislative authority of the municipality must hold a public hearing on the assessment reimbursement area. Notice of the hearing must be provided to all affected property owners. Any rulings of the legislative authority of

the municipality are determinative and final, subject to judicial review.

(d) The final determination of the assessment reimbursement area boundaries and assessments must be recorded in the county auditor's office of the county in which the area is situated.

(2) A municipality may be reimbursed in accordance with this section only for the costs associated with construction or improvements that benefit property that will be connected to, and property owners who will use, the water or sewer facilities within the assessment reimbursement area. Reimbursement may only occur when a property is developed or redeveloped in a manner requiring connection to or use of the water or sewer facilities, or when a property is requesting connection to or use of the water or sewer facilities. The reimbursement assessment may be no greater than a property's pro rata share of costs associated with construction of the water or sewer facilities required to meet utility service and fire suppression standards. The municipality must determine the reimbursement share of each property owner by using a method of cost apportionment that is based on the benefit to the property owner from the project and that is consistent with the method used to determine the cost and reimbursement share under RCW 35.91.020(1) (a) and (b). However, the municipality's administrative and legal costs are not subject to reimbursement. A municipality 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 or sewer facilities that only benefit property outside of the assessment reimbursement area.

(3) For the purposes of this section, administrative costs do not include engineering and construction management costs. [2015 c 96 s 1.]