

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.