CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: July 13, 2015

AGENDA ITEM: 1. Ordinance revising MMC 14.07.090 establishing requirements for latecomer reimbursement contracts for water and sewer improvements.	
PREPARED BY: Gloria Hirashima, Chief Administrative Officer	**DIRECTOR APPROVAL:**
DEPARTMENT: Community Development	
ATTACHMENTS: 1. Memo from Keithly, Weed and Graafstra 2. Redline ordinance showing revisions to existing municipal code. 3. Draft ordinance.	
BUDGET CODE:	**AMOUNT:** N/A

SUMMARY:

Chapter 35.91 RCW, the Municipal Water and Sewer Facilities Act, authorizes cities to contract with the owners of real property to construct water and sewer facilities, and to provide for reimbursement from the owners of real property who did not contribute to the original cost of construction and who subsequently tap into or use such sewer and water facilities, referred to as "latecomer reimbursement contracts." In 2013 the Washington State Legislature adopted significant procedural and substantive he amendments to chapter 35.91 RCW affecting latecomer reimbursement contracts that became effective July 1, 2014. The most significant of these changes was to take away the city's discretion to enter into latecomer agreements when requested by a developer.

The municipal code currently addresses latecomer agreements in MMC 14.07.090. This proposed amendment to MMC 14.07.090 will implement the 2013 RCW amendments and provide clear guidance to both city officials and property owners.

RECOMMENDED ACTION:
Staff recommends that Council authorize the Mayor to approve the Ordinance amending MMC 14.07.090.

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MEMORANDUM

FROM: Pat Anderson
TO: Weed, Graafstra and Benson Municipal Clients
RE: 2013 AMENDMENTS TO RCW 35.91 (UTILITY LATECOMER AGREEMENTS)
DATE: May xx, 2014

I. Introduction.

Two separate statutes govern latecomer agreements. Chapter 35.72 RCW governs latecomer agreements for street projects,[1] while chapter 35.91 RCW governs utility latecomer agreements. While the procedural and substantive requirements of the two chapters are significantly different, both provide for a municipality to contract with the owners of real property to construct improvements, and upon acceptance and conveyance to the municipality, require owners of other properties who did not contribute to the cost of construction to pay a pro rata share when they seek to develop their properties.

In 2013, the legislature adopted significant amendments to chapter 35.91 RCW, the Municipal Water and Sewer Facilities Act, which changes the procedural and substantive requirements for utility latecomer agreements effective July 1, 2014. While no provision of either statute contains a requirement that municipalities adopt ordinances addressing procedural or substantive requirements for latecomer agreements in their municipal codes, many municipalities have adopted such ordinances. Municipalities that have not adopted ordinances incorporating code provisions addressing the substantive and procedural requirements for

[1] Under chapter 35.72 RCW, latecomer agreements are referred to as "assessment reimbursement contracts," RCW 35.72.040, but they are commonly referred to as "latecomer agreements."

latecomer agreements should consider adopting such ordinances to provide clear guidance to both city officials and property owners. If required procedures are not followed, property owners ostensibly subject to latecomer agreements who later seek to develop their property may have the latecomer agreements invalidated.[2] Although the 2013 amendments only affected requirements for utility latecomer agreements, a parallel review of code provisions for street project latecomer agreements is appropriate as well.

The amendments to the utility latecomer agreement statue are contained in ESHB 1717 Section 2 (adding a new definition section as RCW 35.91.015) and Section 3 (repealing the prior RCW 35.91.020 and substituting entirely different substantive and procedural requirements). The statutory changes are included at the end of this memo. ESHB 1717 also made significant amendments to SEPA, chapter 43.21C, which are not addressed in this memo. The amendments to SEPA became effective July 28, 2013, while the effective date of the amendments to chapter 35.91 was delayed until July 1, 2014.

Weed, Graafstra and Benson, Inc., has reviewed each of its clients' municipal codes and will provide a city-specific recommendation and assistance in revising municipal codes on request; however, this memorandum is to assist our clients attain a basic understanding in the new legal requirements generally.

2. Utility Latecomer Agreements Prior to ESHB 171.

The utility latecomer agreement statute, chapter 35.91 RCW, was short, straightforward and largely devoid of complicated procedural requirements prior to ESHB 1717. It was adopted

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[2] *Woodcreek Land Limited Partnersips v. City of Puyallup,* 69 Wn.App 1 (1993) is an example of a such a challenge in the context of a street project latecomer agreement, and will be discussed in this memo because some of its principles now will apply to utility latecomer agreements as well under the 2013 amendments.

in 1965, and remained largely unchanged to the present day, except some amendments relating to the authorized term of utility latecomer agreements and potential extensions of the term.

Section 35.91.010 RCW simply declared the purpose (improvement of public health and implementation of development being furthered by adequate water facilities and storm and sanitary storm and sanitary sewer systems) and the short title of the chapter (Municipal Water and Sewer Facilities Act).

Section 35.91.020 RCW contained the heart of the statute in one paragraph in Subsection 1(a), which authorized but did not require municipalities to contract with property owners to construct utility improvements and receive partial reimbursement:

> (1)(a) … the governing body of any city, town, county, water-sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed twenty years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.

Subsection 4 of this section provided that the latecomer agreement was not effective as to any property owner who tapped into or connected to the contracted water or sewer improvement prior to the time the latecomer agreement was recorded with the county auditor.

Section 35.91.030 RCW provided for approval and acceptance of the contracted facilities by the municipality, and section 35.91.040 RCW required payment of the latecomer charge prior

to any other property owner being authorized to tap into or use the contracted facilities, and latecomer fees to be paid to the party who constructed the facilities within sixty days of receipt.

In practice, utility latecomer agreements are only appropriate when a property owner needs to construct a water or sanitary or storm sewer improvement for his own development, and the improvement will contain excess capacity that will be available to others. Typically, the requirement for the improvements existed in water, sewer, or surface water regulations that required the specific service for development, would be applied through SEPA and development review, and would be made conditions of development approvals such as preliminary plats or site plan review. For example, a plat might require a pump station or water main that was required for that plat but oversized for the property owner's own development.

The subsequent property owner who takes advantage of the contracted improvements who did not contribute to the original cost in fairness should in fairness pay a pro rata share of the cost. While there are several ways to determine that, probably the most common has been to determine the total capacity created by the contracted improvement in equivalent residential units (ERUs), and divide the total cost by the total ERUs created (or added), resulting in a per ERU latecomer fee, payable only if and when a property owner seeks to tap into or use the contracted improvement.

The utility latecomer statute provided no requirement for notice to other property owners or for a hearing prior to approval of the latecomer agreement. Recording of the latecomer agreement itself provided notice to potentially affected property owners. Unlike street project latecomer agreements, there is no issue as to the reimbursement assessment area, which might affect the decision to enter into a latecomer agreement for a street project, since the latecomer fee is only assessed to a property owner who actually connects or taps into the contracted

improvement, rather than anyone who develops in an approved assessment reimbursement area. Likewise, the amount of the latecomer fee (fair pro rata share) is typically a fairly straightforward mathematical computation of dividing cost by capacity created rather than a more LID-like assessment of "benefit" to particular properties to calculate pro rata shares for a street project latecomer agreement.

3. Street Project Latecomer Agreements.

In order to understand the most significant change to utility latecomer agreements from the ESHB 1717, it is helpful to contrast what the street project latecomer statute, chapter 35.72 RCW, has provided since the 1980s, and to understand how the requirements of that statute have been interpreted by the appellate court.

Section 35.72.010 RCW authorizes municipalities to contract with the owners of real property for the construction of street projects that the owners elect to install "as a result of ordinances that require the projects as prerequisite to further property development." The judicial interpretation of the quoted phrase has been critically important for street project latecomer agreements. Simply assume, however, that this means some ordinance existing at the time of the development application must require the construction of the street project as a condition of property development in order for the street project latecomer agreement to be valid and binding on property owners who subsequently develop their property. There had been no similar requirement for utility latecomer agreements prior to ESHB 1717.

Section 35.72.020, 35.72.030 and 35.72.040 are where the differences between street project latecomer agreements and utility latecomer agreements start to become apparent. Unlike the utility latecomer agreement trigger of "tapping into or using" the utility improvement, the street project latecomer agreement is triggered by seeking to develop property within the

"assessment reimbursement areas" and being determined to have a reimbursement share based on the "benefit" to the property owner.

Because of the requirement for determination of an "assessment reimbursement area" and calculation of the latecomer fee on the basis of a specific "benefit" to identified properties, the procedural requirements are considerably more complex. Section 35.72.040 RCW specifies the required procedures. The municipality must first formulate an "assessment benefit area" based on determining which parcels adjacent to the improvements would require similar street improvements upon development. Then the municipality must notify property owners within the proposed reimbursement assessment area of the proposed boundaries and assessments, with certain additional information on rights and options, by certified mail. Any property owner may request a hearing on the boundaries or assessments within twenty days, and a hearing must be held before the legislative body on notice to all affected property owners. The legislative body's "ruling" is determinative and final. The judicial interpretation of "ruling" is also quite important for street project latecomer agreements, as it has been interpreted as an ordinance confirming the assessment reimbursement area and the pro rata shares. Finally, the reimbursement contract (latecomer agreement) is recorded and become binding on owners of record within the assessment area when they seek to develop their property.

Those familiar with Local Improvement Districts will immediately see the parallels to LIDs, and appreciate the complications these provisions introduce to street project latecomer agreements. However, these provisions have existed since the 1980s, and so should be familiar to city officials who deal with street project latecomer agreements.

4. Judicial Interpretation of the Street Project Latecomer Agreement.

The interpretation of the street project latecomer statute was before the Court of Appeals in *Woodcreek Land Limited Partnerships v City of Puyallup* in 1993. The holding of this case has not been affected by any subsequent court decision. Understanding the requirements for street project latecomer agreements as interpreted in *Woodcreek* is important because ESHB 1717 brings the requirements for utility latecomer agreements closer to street project latecomer agreements in at least one major respect, that the utility improvements are required "as a result of ordinances that require the projects as prerequisite to further property development."

Puyallup constructed a project to widen South Meridian Street in 1988. It had no ordinance specifically requiring improvements to South Meridian as a prerequisite to further development in any identified area adjacent to South Meridian. It did not contract with any property owner to construct the street improvements. Instead, Puyallup attempted to condition development approvals on participating in the cost of the street improvements through agreements with the property owners seeking development approvals. It did not formulate the reimbursement assessment area until six months after the improvements had been constructed. It adopted an ordinance establishing the reimbursement assessment area and assessments, gave notice of the reimbursement assessment area and assessments, held a hearing, and adopted a subsequent ordinance "confirming" the assessments. No contracts were ever finalized or executed. The property owners challenged the ordinances establishing and confirming the assessments for failure to comply with chapter 35.72 RCW.

The Court of Appeals had no trouble deciding that the Puyallup had violated chapter 35.72 RCW, because it concluded the fundamental requirement that the street improvements be constructed "as a result of ordinances that require the projects as prerequisite to further property

development" had not been met. It is unclear what ordinances Puyallup advanced to meet the "constructed as a result of ordinances that require the projects" requirement, if any, other than its substantive authority under SEPA to condition projects to mitigate significant impacts.

The Court of Appeals was looking for some existing ordinance, any existing ordinance, that required the widening of South Meridian Street as a prerequisite to further development. Puyallup apparently conceded that there was no such specific ordinance requiring the widening of South Meridian Street as a prerequisite of further development. This is not surprising. Most cities would be hard-pressed to identify an existing ordinance requiring some street project as a prerequisite to further development at some specific location.

This conclusion by the Court was sufficient to determine the outcome of the case, but the Court went on to announce its view of other requirements, including the requirement for the legislative authority's "ruling" and the sequencing of eleven required "steps" under the street project latecomer agreement statute. Although the statute does not address requirements for the "ruling" of the legislative authority, according to the *Woodcreek* court, the "ruling" after the hearing, if one is requested, is the adoption of an ordinance that is the final determination of the assessment reimbursement area and the pro rata shares of reimbursable costs. Although the statute does not specify the form of the determination of the preliminary reimbursement area and assessments, the Court also refers to this as being by adoption of an ordinance as well.

The Court finally lays out its view of the eleven step process for sequencing street project latecomer agreements. Right or wrong, this has been the law since 1993, and each city may wish to review its own procedures against the *Woodcreek* requirements, which are also included at the end of this memo.

5. Changes to Utility Latecomer Agreements in ESHB 1717.

ESHB Section 2 adds a definition section to chapter 35.91, which previously lacked any definitions. None of the definitions (latecomer fee, municipality, and water or sewer facilities) is startling.

Section 3, however, replaces the existing Subsection 35.91.020(1)(a) in its entirety. The new requirements can be summarized:

(1) At the owner's request, a municipality *must* contract with the owner of real estate for water or sewer facilities the owner elects to install solely at the owner's expense. The municipality no longer has any discretion whether or not to contract with the property owner if all of the requirements are met.

(2) The owner must submit a request for a latecomer agreement prior to approval of the water or sewer facility by the municipality.

(3) The owner may only request a latecomer agreement in "locations" where the municipality's ordinances require the facilities be constructed or improved "as a prerequisite to further development." This requirement appears to have been brought over verbatim from chapter 35.72 RCW governing street project latecomer agreements.

(4) The facilities must be within the corporate limits or within ten miles of the corporate limits.

(5) The latecomer agreement must have a minimum term of 20 years.

(6) The latecomer agreement must be recorded, and must contain conditions required by the municipality in accordance with its adopted policies and standards.

(7) The owner must request a comprehensive plan approval (amendment?) for the facility if required.

(8) Connection of the facility to the municipal system must be conditioned upon inspection and approval by the municipality, transfer to the municipality without cost, compliance with the owner's obligations under the latecomer agreement, provision of security for completion of the facility, payment of the municipality's costs associated with the facility, and verification of all contracts and costs related to the facility.

There are other procedural and substantive requirements, but these are the significant amendments. Under the ESHB 1717 amendments, if an owner requests a utility latecomer agreement, and the required conditions are met, entering a latecomer agreement is mandatory rather than discretionary. Because of the requirement that the municipality's ordinances require

the facilities be constructed as a prerequisite to further development, the property owner's choice is really to construct the facilities at its sole expense or forego development. If the property owner elects to install facilities the municipality has required be constructed as a prerequisite to development, then the property owner is entitled to a latecomer agreement if he requests it.

The nature of the "ordinances" establishing the "locations where facilities must be constructed or improved as a prerequisite to further development " is the most significant question arising from ESHB 1717. These ordinances probably will be uncodified ordinances adopted after updates to comprehensive plans and water, sewer and storm functional plans, which will identify the new facility construction and improvements for development in specific locations. This is supported by the title of ESHB 1717 ("AN act Relating to incentivizing up-front environmental planning, review and infrastructure actions..."). These ordinances are much more likely to be ordinances establishing the general locations where water and sewer facilities must be constructed or improved for future development in some planning subarea or other identified location. The large unanswered question from ESHB 1717 is how specific the location must be identified; *Woodcreek* suggests it should be very specific, but if it is based on comprehensive planning, it may be that a very high level conceptual description of the required improvements and locations will be sufficient.

Comprehensive plan land use and utility chapters and water and sewer comprehensive plans should be reviewed, required facility construction or improvement identified, and ordinances adopted specifically requiring such facilities as a prerequisite of further development in the locations to be served by the identified facilities. A parallel review of the transportation chapter of comprehensive plans should be made and ordinances adopted requiring construction or improvement of identified transportation facilities as a prerequisite to further development

adjacent to the identified transportation facilities. These ordinances will clearly meet the statutory requirement under *Woodcreek,* and will allow municipalities to contract with developers to construct the facilities and receive partial reimbursement.

With the repeal of the prior authority for discretionary latecomer agreements with property owners, where no ordinance other than utility standards required such facilities, it appears there is no longer any authority to enter a latecomer agreement with, for example, a plat developer who constructs an oversized pump station or water main, which was probably the most common circumstances in which utility latecomer agreements were historically used.

What is clear from *Woodcreek*, although it is in the context of street project latecomer agreements, is that when the statute says there must be an ordinance requiring construction of some project as a perquisite to further development, then there must be some existing ordinance requiring the project prior to the time the development application is filed. This is the first requirement for a valid and binding latecomer agreement under *Woodcreek*. As the new requirement for utility latecomer agreements of an ordinance requiring specific utility facilities in specific locations "as a prerequisite to further development" is virtually identical to the language in the street project latecomer agreement statute, it is nearly certain that it will be interpreted in the same way. SEPA substantive authority is not enough to be that ordinance, and general water and sewer standards ordinances for development approval will not be enough, since they are not specific to a "location." Only as this new statute is tested in practice will the answers likely start to become known.

What is certain that ESHB 1717 will require amendment of local ordinances addressing utility latecomer agreements, and will require changes in practices of those jurisdictions without

local code provisions. Our office will be in touch with each of you to discuss whether you wish for us to help draft an amending ordinance to bring your code into compliance with the new law.

RCW 35.91.015

Definitions. (*Effective July 1, 2014.*)

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 § 2.]

RCW 35.91.020

Contracts with owners of real estate for water or sewer facilities — Requirements — Financing — Reimbursement of costs. (*Effective July 1, 2014.*)

(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 § 3. Prior: 2009 c 344 § 1; 2009 c 230 § 1; 2006 c 88 § 2; 1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 §35.91.020 ; prior: 1959 c 261 § 2.]

Excerpt from *Woodcreek land Limited Partnerships v City of Puyallup*:

We conclude that the appropriate sequence is as follows:

(1) The owner of property has property that it wishes to develop, but a prerequisite of that development is an ordinance requiring the construction or improvement of street projects. RCW 35.72.010.

(2) The owner elects to install those required projects, and it proposes to the city, town or county [hereinafter city] that an assessment reimbursement contract be created. RCW 35.72.010.

(3) The city may agree to a contract in which the owner can be reimbursed for a portion of the costs of the projects by other property owners. RCW 35.72.020.

(4) The contract between the city and the owner constructing the projects must identify the other properties within the assessment reimbursement area that would be liable to assessment, and must include the reimbursement shares of those other properties. RCW 35.72.020(1) and (2).

(5) The city determines the reimbursement share by selecting a method of cost apportionment based on the benefit of the projects to the other property owners. RCW 35.72.030.

(6) The city formulates the assessment reimbursement area based on a selection of parcels adjacent to the projects that will require similar street improvements upon development. RCW 35.72.040(1). After making a preliminary determination of the boundaries of those parcels, the city must notify the record owners of those parcels, by certified mail, of the **[847 P.2d 506]** proposed assessment area, the assessment share, and the owners' rights and options. RCW 35.72.040(2). If any owner requests a public hearing within twenty days of the notice, the city must conduct a public hearing, notice of which must be given to all affected owners. RCW 35.72.040(2).

(7) After conducting the public hearing, if requested, the city adopts an ordinance that is the final determination of the assessment reimbursement area and the pro rata shares of reimbursable costs. RCW 35.72.040(2).

(8) The city and the owner constructing the projects then finalize and execute the assessment reimbursement contract and include the assessment reimbursement area and pro rata share of reimbursement determined by the city. RCW 35.72.040(3).

(9) The assessment reimbursement contract must be recorded in the appropriate county auditor's office within thirty days of its execution. RCW 35.72.040(3).

(10) Once the assessment reimbursement contract is recorded, its provisions for reimbursement are binding on owners of record within the reimbursement assessment area who were not parties to the contract. RCW 35.72.040(4).

(11) If an owner subsequently develops his or her property within the reimbursement assessment area within fifteen years, and is not required to install similar street projects because the projects were already installed under the contract, then the city can require that that owner reimburse the owner who initially constructed the project, pursuant to the reimbursement share determined previously under RCW 35.72.030. RCW 35.72.020(4).

As explained above, the City did not comply with the first step of this process because it did not have an ordinance in effect requiring improvements "as a prerequisite to further property development." RCW 35.72.010.

14.07.090 Recovery contracts.

~~At the option of the city council, any party having constructed a public water or sewer line at its own cost, extending over 200 feet from the nearest mainline, may be allowed to enter into a recovery contract with the city providing for partial reimbursement to such party, or its assigns, for the costs of such construction, including the costs of engineering and design work, and all costs of labor and materials reasonably incurred for the length of the improvements. Such contracts shall be governed by the following provisions:~~

~~(1) Within 30 days after a utility line is accepted by the city and a bill of sale/warranty is filed with respect to the same, the proponent of the recovery contract shall submit a request for the same, using a form supplied by the city, together with supporting documentation showing all costs incurred in the project.~~

~~(2) An assessment area shall be formulated based upon a determination by the city as to which parcels of real estate will be directly benefited by the same.~~

(1) When an owner of real estate is required by MMC 14.01.050, 14.01.055, 14.03.250, 14.03.300, 14.03.310, 14.07.080, or any other ordinance, to improve or construct water or sewer facilities as a prerequisite to further property development, the provisions of chapter 35.91 RCW shall apply. The owner must submit a written request on a form provided by the city for a contract to recover the cost of the improvement or construction of water or sewer facilities prior to the approval of the water or sewer facility by the city. If an owner does not timely submit a written request, the city is not obligated to enter into a contract with the owner for the recovery of latecomer fees.

(a) Within one hundred twenty (120) days of completion of the water or sewer facility and its acceptance by the city, the owner of real estate must submit the total cost of the water or sewer facility to the City in a form acceptable to the City. This information will be used by the City to determine reimbursements by future users who will benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

(2) The city will determine the parcels which will directly benefit from the improvements and include those parcels in the assessment area.

(3) The reimbursement share of all property owners in the assessment area shall be the pro rata share of the total cost of the project, less any contributions paid by the city. Each reimbursement share shall be determined by the city using a method of cost apportionment which is based upon the benefit received by each property

from the project. This will generally be prorated on a front-footage basis, but the City may utilize another method of cost apportionment provided that the method assesses properties on a pro rata basis. The owner seeking a recovery contract shall not be reimbursed for the share of benefits which are allocated to its property. ~~There shall be no reimbursement to the proponent for the share of the benefits which are allocated to its property.~~

(4) A preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by certified and first class mail to the property owners of record within the proposed assessment area. A property owner within the assessment area may request a hearing before the city council. Such request must be in writing and specify the relief sought. The request must be filed with the city clerk, the city attorney, and director of public works ~~If any property owner requests a hearing in writing~~ within 20 days of the mailing of the preliminary determination. After receiving a timely request for a hearing, notice shall be given to all property owners in the assessment area of the date, time, and location of the hearing. ~~, a hearing shall be held before the city council, notice of which shall be given to all affected property owners.~~ The city council's ruling shall be determinative and final.

(5) The contract, upon approval by the city council, shall be recorded ~~in the records of~~ with the Snohomish County auditor within 30 days of such approval. The recorded contract shall constitute a lien against all real property within the assessment area which did not contribute to the original cost of the utility project.

(6) If, within a period of ~~15~~ 20 years from the date the contract was recorded (or such other period provided for in the contract), any property within the assessment area applies for connection to the utility line, the lien for payment of the property's proportionate share shall become immediately due and payable to the city as a condition of receiving connection approval.

(7) All assessments collected by the city pursuant to a recovery contract, less the city's administrative charge, shall be paid to the original proponent, its personal representative, successors or assigns within 30 days after receipt by the city. The city's administrative charge for each collection is set forth in MMC 14.07.005.

~~(8) At the termination of the 15-year recovery period the lien shall continue, but all collections thereafter shall be for the benefit of the city and shall be deposited in the city's utility fund.~~

(~~9~~8) Nothing in this section, nor any provision in a recovery contract, shall be construed as establishing the city as a public utility in areas not already connected to the city's utility system, nor shall this section, or any recovery contract, be construed as establishing express or implied rights for any property owner to connect to

the city's utility system without first qualifying for such connection by compliance with all applicable city codes and ordinances.

(9) In all cases, the city engineer shall determine the size and depth of water and sewer mains connected to the city utility system and the need to any pumps, lift stations, or other appurtenances. The determination shall be consistent with the city's comprehensive plan and the long-range objectives for the water and sewer utility. Where the city engineer determines that a property owner/developer of residential property is required to install a water main with a diameter in excess of eight inches or a sewer main with a diameter in excess of 10 inches, and if the purpose of such oversizing is to provide for future extension of the main to adjacent properties within the utility service area, and not merely to meet the needs of the property responsible for constructing the main, then the property owner will be entitled to reimbursement under MMC 14.07.080.

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, AMENDING MMC 14.07.090 ESTABLISHING PROCEDURES FOR WATER AND SEWER LATECOMER REIMBURSEMENT CONTRACTS; PROVIDING FOR SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, chapter 35.91 RCW, the Municipal Water and Sewer Facilities Act, authorizes cities to contract with the owners of real property to construct water and sewer facilities, and to provide for reimbursement from the owners of real property who did not contribute to the original cost of construction and who subsequently tap into or use such sewer and water facilities, referred to as "latecomer reimbursement contracts," and

WHEREAS, in 2013 the Washington State Legislature adopted significant procedural and substantive he amendments to chapter 35.91 RCW affecting latecomer reimbursement contracts that became effective July 1, 2014; and

WHEREAS, adoption of city regulations to implement the 2013 amendments will provide clear guidance to both city officials and property owners; and

WHEREAS, the City desires to update and revise MMC 14.07.090 to be consistent with the amendments to chapter 35.91RCW.

NOW THEREFORE, the City Council of the City of Marysville, Washington do ordain as follows:

Section 1. MMC 14.07.090 is hereby amended as set forth in Exhibit "A."

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 3. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of

_____, 2015.

CITY OF MARYSVILLE

By: _____
JON NEHRING, MAYOR

Attest:

By: _____
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to form:

By: _____
JON WALKER, CITY ATTORNEY

Date of Publication: _____

Effective Date: _____
(5 days after publication)