ORDINANCE NO. 19-0542

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGECOOMBE, PIERCE COUNTY, WASHINGTON, RELATING TO LATECOMER AGREEMENTS, PROVIDING A NEW PROCEDURE FOR A DEVELOPER/OWNER OR THE CITY OF EDGECLOOD TO FUND THE CONSTRUCTION OF CERTAIN SEWER FACILITIES, AND THEN BE REIMBURSED BY PROPERTY OWNERS WHO SUBSEQUENTLY CONNECT TO OR USE THE SEWER FACILITIES; UPDATING REFERENCES TO THE NEW PROCEDURE IN THE CODE; REPEALING THE EXISTING LATECOMER AGREEMENT PROCESS IN EDGECLOOD MUNICIPAL CODE SECTION 11.35.100, AMENDING SECTION 11.20.040 AND 11.40.110; AND ADOPTING A NEW CHAPTER 11.36, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the State of Washington has adopted a procedure in chapter 35.91 RCW, allowing an owner/developer to contract with a city for the partial reimbursement of the cost of constructing water and/or sewer facilities through a procedure commonly known as a “latecomer agreement,” which requires property owners who subsequently connect to the water and/or sewer facilities to pay the city a fair pro rata fee of the cost of such construction, which the city then transmits to the owner/developer; and

WHEREAS, the Washington State Legislature recently amended chapter 35.91 RCW in pertinent part, and also included a procedure that allows a city to construct such water and/or sewer facilities, and to become the sole beneficiary of the latecomer fee; and

WHEREAS, Edgewood’s latecomer agreement procedure in EMC Section 11.35.100 was adopted prior to the Legislature’s most recent amendments and is outdated; and

WHEREAS, the provisions for water facilities are not applicable to the City of Edgewood, as it does not presently own or operate any water facilities and all areas within its corporate boundary are served by other water purveyors; and

WHEREAS, this Ordinance is categorically exempt under SEPA (WAC 197-11-800(19)), as relating only to procedure; and

WHEREAS, the Council considered this Ordinance during its March 5, 2019 study session; and

WHEREAS, the Council considered this Ordinance during its regular City Council meeting of March 12, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGECLOOD, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:
Section 1. The City Council hereby repeals Section 11.35.100 of the Edgewood Municipal Code.

Section 2. A new chapter 11.36 is hereby added to the Edgewood Municipal Code, which shall read as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.

Section 3. Edgewood Municipal Code Section 11.20.040 is hereby revised to read as follows:

11.20.040 Sewer utility creation policies. Policies guiding the creation of the sewer utility are hereby established as follows:

* * *

B. System extensions shall be paid for by the benefited parties. May be done through developer extension or formation of a local improvement district.

1. Developer extensions.
   a. Shall be paid for by the developer.
   b. Are subject to approval by the city council and require execution of a system extension agreement with the City.
   c. Reimbursement from other properties that later connect to and benefit from such extensions and/or improvements may be made at the sole discretion of the City, pursuant to chapter 35.91 RCW and chapter 11.36 EMC.

2. Local Improvement Districts.
   a. The initial 50 percent of estimated LID preformation costs shall be advanced by the proponents of the project. The remaining 50 percent of LID preformation costs shall be advanced by the City. The source of funds shall be the sewer utility fund via an interfund loan from the general fund.
   b. The proponents shall provide a petition requesting that the City Council initiate the LID process by resolution.
   c. To assess support of the project, the petition must be signed by the owners of the property aggregating a majority of the area within the proposed district.
   d. The formation of a local improvement district shall be pursuant to Chapters 35.43 through 35.54 RCW and subject to approval by the City Council.
* * *
Section 4. Edgewood Municipal Code Section 11.40.110 is hereby revised to read as follows:

11.40.110 Connection Charges. A connection charge shall be assessed for each new sewer connection made to the City’s sewer system. Connection charges and fees shall be set by ordinance of the City Council following a hearing on the proposed connection charges. A connection charge shall be comprised of the following elements:

* * *

H. Reimbursement Charges Latecomer Agreements. No owner shall be granted a permit to connect directly or indirectly to sewer facilities, for which exists a contract providing for reimbursement to other owners of real estate who constructed and paid for such sewer facilities, without first paying a fair pro rata share of the cost of same, as provided for in chapter 11.36 EMC 11.35.100.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Code, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason or should any portion of this Code be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Code or its application to other persons or circumstances.

Section 6. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED THIS 12TH DAY OF MARCH, 2019

Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney
Exhibit A

Chapter 11.36
SEWER LATECOMER AGREEMENTS

Sections:
11.36.010  Purpose.
11.36.020  Definitions.
11.36.030  Mandatory Requirements for Latecomer Agreements.
11.36.040  Conditions Imposed on and Included in Latecomer Agreements.
11.36.050  Procedure for Processing Request.
11.36.060  Notice – Hearing – Consideration by City Council
11.36.070  Approval and Acceptance of Facilities.
11.36.080  Recording Required.
11.36.090  Duration of Agreement, Extensions.
11.36.100  Reimbursement to Owner.
11.36.110  Prohibition on Unauthorized Connections, Enforcement.
11.36.120  City or County Construction.
11.36.130  No City Liability.

11.36.010  Purpose.
The purpose of this chapter is to implement Chapter 35.91 RCW and to describe the process for a developer/property owner, or the City of Edgewood, to fund the construction of certain sewer facilities, and then to be reimbursed by property owners who subsequently connect to or use the sewer facilities.

11.36.020  Definitions.
The definitions set forth in this section shall apply throughout this chapter:

A.  “Cost of construction” means the cost incurred by the owner/developer for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), as required in order to install/construct the sewer facilities in accordance with all applicable laws, ordinances and standards, including the City’s public works standards. The cost of construction shall be documented in writing by the owner/developer on final invoices or other documents showing the amounts actually paid by the owner/developer.

B.  “Developer” or “owner” means a property owner or authorized agent of the property owner who may construct a sewer facility, and desires a latecomer agreement under the terms and conditions set forth in this chapter. The City of Edgewood may be a “developer” or “owner” under this chapter.

C.  “Latecomer agreement” means a written contract between the City and an owner/developer providing for the partial reimbursement of the cost of constructing the sewer facilities (the “fair pro rata share” as provided in RCW 35.91.050). The latecomer agreement shall be a contract approved as to form by the city attorney. Where the City constructs sewer facilities under a latecomer agreement, the agreement may provide for the total reimbursement of the cost of construction of the sewer facilities.
D. "Latecomer fee" means a charge collected by the City, whether separately stated or as part of a connection fee for providing access to the City’s sewer system, against a real property owner who connects to, connects to or uses a sewer facility subject to a latecomer agreement created under this Chapter and Chapter 35.91 RCW.

E. "Latecomer" means a property owner not a party to a duly executed and recorded latecomer agreement, who did not contribute to the original cost of the facilities, and who: (a) owns property in the area benefitted by such agreement; (b) seeks to connect to the sewer facilities constructed under the latecomer agreement within the time frame established in the agreement; and (3) may only do so by making payment to the City of his/her pro rata share of the cost of construction.

F. "Sewer facilities" means storm, sanitary, or combination sewers, pumping stations and disposal plants, reservoirs or appurtenances.

**11.36.030 Mandatory Requirements for Latecomer Agreements.**

A. **Requirements.** At the owner/developer’s request, the City must contract with the owner of real estate for the construction or improvement of sewer facilities that the owner elects to install solely at the owner’s expense, as long as such contract is consistent with this Chapter and all of the following conditions are satisfied:

1. The latecomer agreement must be for the construction of sewer facilities in locations where the City’s ordinances require such facilities to be improved or constructed as a prerequisite to further property development; and

2. The sewer facilities must be consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve; and

3. The sewer facilities to be constructed or improved must be included in the City of Edgewood’s comprehensive plan. Unless the City provides written notice to the owner of its intent to request comprehensive plan approval for the facilities, the owner must request comprehensive plan approval for the sewer facility; and

4. The sewer facilities to be constructed may not be located outside the City’s corporate limits. If Pierce County is a party to the latecomer agreement, the sewer facilities may not be located outside Pierce County; and

5. The latecomer agreement shall meet all of the conditions required by the City under this chapter, and shall be filed and recorded against the affected properties with the county auditor and as provided in EMC 11.36.080; and

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1 The language from RCW 35.91.020 regarding facilities being located "within ten miles of the municipality’s corporate limits" is not included herein, as the City of Edgewood does not currently have an Urban Growth Area and all areas abutting the City’s corporate limits are served by other agencies.
6. The owner/developer’s request shall be submitted within one hundred twenty (120) days of the completion of the sewer facility and prior to approval and acceptance of the sewer facility by the City for ownership and maintenance; and

7. The total cost of the construction of the sewer facility must be submitted to City by the owner/developer no more than one hundred twenty (120) days of the completion of the sewer facility.

B. Rejection of Requests Not in Compliance. The City shall reject requests made by developer/owners that are not in compliance with this Section 11.36.030. Such requests are not subject to project permit processing, under RCW 36.70B.140.

11.36.040 Conditions imposed on and included in latecomer agreements.
Every latecomer agreement shall include the following conditions:

A. The sewer facility shall be constructed by the developer/owner according to plans and specifications approved by the City;

B. The sewer facility shall be inspected and approved for ownership and maintenance by the City;

C. The developer/owner shall transfer the sewer facility to the City with a bill of sale, without cost to the City, at the time the City approves the facility for ownership and maintenance;

D. The developer/owner shall fully comply with all of the owner’s obligations under the latecomer agreement and the applicable City rules and regulations;

E. The developer/owner shall provide sufficient security to the City to ensure completion of the sewer facility and compliance with other performance measures under the contract;

F. The developer/owner shall pay all of the City’s costs associated with the sewer facility including, but not limited to, engineering, legal and administrative costs;

G. The City shall verify and approve all contracts and cost of construction related to the sewer facility;

H. The agreement shall provide that the owner and/or the owner’s assigns shall be entitled to a pro rata share of the fees received by the City from property owners who did not contribute to the original cost of the facilities but who subsequently connect to the facilities, as reimbursement for the costs of the sewer facilities constructed and installed in accordance with the agreement;

I. The agreement shall include a provision requiring that, every two years from the date the agreement was executed, the developer/owner entitled to reimbursement shall provide the municipality with information regarding the current contact name, address and telephone number of the person, company, or partnership that originally entered into the latecomer agreement. If the owner fails to comply with the notification requirements of this subsection within sixty (60) days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the agreement. The funds collected under this subsection must be deposited in the capital fund of the municipality; and
J. The agreement shall provide that all latecomer fees received by the City for sewer facilities constructed by a developer/owner shall be paid to the developer/owner or his/her assigns within sixty (60) days of the receipt of such fees.

11.36.050 Procedure for Processing Request.

A. Owner’s Responsibilities.

1. Deadline for submission of request. Within one hundred twenty (120) days of the completion of the sewer facilities, the owners of the real estate must provide the City with the total cost of construction of the sewer facility actually paid by the owner. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City and the developer/owner concerning the cost of the construction of the sewer facilities, the City Public Works Director’s decision shall be final. This information on the cost of construction shall be used by the City as the basis for determining reimbursements by future users who benefit from the sewer facility, but who did not contribute to the original cost of the sewer facilities.

2. Recommendation by Owner of Pro Rata Share. The amount of the pro rata share to be paid under the latecomer agreement shall be recommended by the owner, so that each property within the latecomer assessment reimbursement area (including the property owned by the developer/owner) will be assessed a share of the costs of the improvements proportional to the benefits which accrue to the property. The methodology utilized in calculating the amount of the pro rata share shall be the responsibility of the owner. For example, the method of assessment permitted for local improvement district assessment, including, but not limited to, the front-foot method, the zone and termini method, and square footage method, may be proposed.

B. City Public Works Director’s Responsibilities.

1. Recommendation to City Council. The City Public Works Director shall determine whether a request for a latecomer agreement satisfies the requirements in EMC 11.36.030 and this Chapter. The Director’s recommendation to the City Council shall include, but not be limited to, his/her analysis on the following factors:

   a. Whether the sewer facilities are consistent with the applicable comprehensive plan(s) and development regulations; and

   b. Whether the preliminary determination of the boundaries of the latecomer assessment reimbursement area, based upon the identification of parcels who may subsequently connect to or use the facilities, including through laterals and branches connecting thereto; and

   c. Whether the developer/owner’s receipts and invoices relating to the cost of construction of the sewer facilities are reasonable and accurate and have been verified by the Public Works Director in the “Engineer’s Estimate,” which shall include separate itemizations of costs; and

   d. Whether the pro rata share calculated by the developer/owner ensures that each property subject to the latecomer fee will pay a fair pro rata share of the costs of the
improvements as determined by any appropriate method, including, but not limited to determining the total capacity of the sewer improvements expressed in equivalent residential units (ERUs) and dividing the total cost by the number of ERUs created by construction or added by improvement of the sewer facility.

11.36.060 Notice – Hearing – Consideration by City Council.

A. Upon receipt of the Public Works Director’s recommendation as provided in EMC 11.36.050(B), the City shall prepare a latecomer agreement (based on EMC Section 11.36.030) for inclusion in the council agenda.

B. At least ten (10) days prior to the City Council public hearing, individual notice shall be sent to the owners of property located within the preliminary boundaries of the latecomer assessment reimbursement area, as these property owners are identified in the records of the county assessor. This notice shall state that the City Council will be holding a public hearing for the purpose of allowing public testimony and submission of evidence in order to consider the execution of the latecomer agreement with the developer/owner; establish the final boundaries of the latecomer reimbursement area; and establish the proposed pro rata share. The notice shall reference this chapter 11.36 EMC, include the date and time scheduled for the public hearing before the City Council, and shall be forwarded by certified mail to the property owners of record within the proposed latecomer reimbursement area.

C. The City Council shall consider the request for a latecomer agreement in a public hearing, together with the Public Works Director’s recommendation, all application materials; all submitted evidence and public testimony. The City Council shall make the final determination whether the request satisfies the criteria set forth in this chapter and as specified in Chapter 35.91 RCW, the Council shall approve the latecomer agreement. The Council’s decision on the method for determining the pro rata share used to calculate the latecomer fee and the latecomer fee shall be final. The fair pro rata share of the cost of the sewer facilities attributable to the owner’s property shall be deducted from the cost of construction.

D. If approved, the final determination of the boundaries of the latecomer reimbursement area and pro rata share shall be included in an ordinance, which shall authorize the Mayor to sign the latecomer agreement. The ordinance and all attachments shall be recorded against the affected properties as provided in EMC 11.36.080.

11.36.070 Approval and Acceptance of Facilities. Upon the completion of sewer facilities pursuant to a latecomer agreement and all applicable codes and development regulations, the City council shall be authorized to approve their construction and accept the sewer facilities for ownership and maintenance. The City may then charge for their use such sewer rates that the city is authorized by law to establish. All further maintenance and operation costs shall be borne by the City.

11.36.080 Recording Required. After the final latecomer reimbursement pro rata fee has been established as provided in EMC 11.36.060, the agreement shall be recorded with the Pierce County Auditor. The provisions of the latecomer agreement may not be effective as to any
owner of real estate not a party thereto unless the latecomer agreement has been recorded against the affected property 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 sewer facilities. It shall be the sole responsibility of the developer/owner (or the City, if the City is the beneficiary of the latecomer fee) to record the latecomer agreement. Within thirty (30) days after receipt of evidence that the latecomer agreement has been recorded, the Public Works Director shall ensure that a notice of additional sewer connection charges has been recorded with the Pierce County Auditor’s office, as required by RCW 65.08.170.

11.36.090 Duration of Agreement, Extensions. The latecomer agreement shall provide for the pro rata reimbursement to the owner or the owner’s assigns for twenty (20) years. The agreement may provide for an extension of the 20-year reimbursement period for a time not to exceed the effective date of any moratorium, phasing ordinance, concurrency designation or other governmental action that prevents making applications for, or obtaining approval of, any new development within the benefit area for a period of six months or more. If the latecomer agreement is extended pursuant to this section, the amended latecomer agreement must specify the duration of the extension and must be filed and recorded as provided in EMC 11.36.080 in order to be effective. Property owners who are subject to the reimbursement obligations in the latecomer agreement shall be notified by the City of any extension filed under this section.

11.36.100 Reimbursement to Owner. Where a developer/owner has constructed the sewer facilities, all latecomer fees received by the City shall be paid out by the City under the terms of the latecomer agreement to the developer/owner within 60 days after the receipt thereof. Where the City has constructed the sewer facilities under this Chapter, the City shall retain the latecomer fees as provided in the approving Ordinance.

11.36.110 Prohibition on Unauthorized Connections, Enforcement.

A. Unauthorized connections. A person, firm or corporation may not be granted a permit or be authorized to tap into, connect or use any such sewer facilities or extensions subject to a latecomer agreement during the period of time prescribed in the latecomer agreement without first paying to the City, in addition to any and all other costs and charges made or assessed for such tap or use, or for the sewers constructed in connection therewith, the amount required by the provisions of the applicable latecomer agreement.

B. Enforcement. Whenever any tap or connection is made into any sewer facilities subject to a latecomer agreement without such payment having first been made, the City may authorize the removal, 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.

11.36.120 City or county participation in latecomer agreements.

A. City as Beneficiary of Latecomer Fee. The City 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 of the sewer facilities and become the
sole beneficiary of the facilities. Unless otherwise provided by ordinance or contract, the City or the county participating in the financing of sewer facilities improved or constructed under this Section EMC 11.36.120:

(a) Shall have the same rights to reimbursement as owners of real estate who make contributions as authorized under this Chapter; and

(b) Are entitled to a pro rata share of the reimbursement based on the respective contributions of the owner and the city/county.

B. Authorized Locations for Construction Sewer Facilities. The sewer facilities must be consistent with the City’s comprehensive plan(s) and development regulations. The boundaries of the assessment reimbursement must be formulated by the City based upon a determination of which parcels in the proposed area would require construction or improvement of sewer facilities upon development or redevelopment, or would be allowed connection to or usage of constructed or improved sewer facilities. The sewer facilities to be constructed or improved may not be located outside the City’s corporate limits\(^2\). If Pierce County is a party to the latecomer agreement, the sewer facilities may not be located outside Pierce County.

C. Public Works Director Recommendation. The Public Works Director shall prepare a recommendation to the City Council as provided in EMC 11.36.050(B).

D. Notice of the Public Hearing. Notice of the public hearing shall be provided consistent with EMC 11.36.060.

E. Public Hearing. The City shall hold a public hearing on the proposed assessment reimbursement area and assessment (pro rata share), as provided in EMC 11.36.060. The City Council’s final determination of the assessment reimbursement area and assessment shall be included in an ordinance, which shall be final. The City shall record the ordinance as required by EMC 11.36.080.

F. Limit on Reimbursement. Except as otherwise provided in this chapter, the city or county seeking reimbursement from an owner of real estate subsequently connecting to the sewer facilities constructed under this Section 11.36.120 is limited to the dollar amount authorized in the resolution contemplated in subsection (3) of this section. This does not prevent the city or county 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 City or county in complying with this section.

H. Installation. To the extent that it may require in the performance of the latecomer agreement, the City or county may install the sewer facilities in and along the city or county streets in the area to be served as hereinabove provided, subject to reasonable requirements as the manner of occupancy of the streets as the city or county may by resolution provide.

\(^2\) The language from RCW 35.91.020 regarding facilities being located “within ten miles of the municipality’s corporate limits” is not included herein, as the City of Edgewood does not currently have an Urban Growth Area and all areas abutting the City’s corporate limits are served by other agencies.
11.36.130 No City Liability.
Nothing in this chapter is intended to create a private right of action for damages against the City or any municipality for failing to comply with the requirements of this chapter. The City, 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 the City to comply with the requirements of this chapter does not relieve the City of any future requirements to comply with this chapter.