



2012-010-CPA

Amending LCMC 13.10.370

13.10.370 Service outside city limits.

- 1) The city is authorized pursuant to RCW 35.67.310 to provide sewer service to property outside the city limits. The city's provision of such service is not mandatory. In all circumstances in which the city agrees to provide sewer service to property beyond its limits, the applicants for such service must comply with all of the terms and conditions of this section.
- 2) After designation of the city's urban growth area boundary by the county as contemplated by RCW 36.70A.110, the city is prohibited from annexing territory beyond such boundary (RCW 35A.14.005). Therefore, except to municipal corporations or quasi-municipal corporations, the city's extension of sewer service outside the city limits to property not contained within the city's urban growth area is not appropriate except as noted in **subsequent** sections.
- 3) The Growth Management Act, Chapter 36.70A RCW, generally allocates to cities the responsibility of providing urban services. In general, it is not appropriate that urban services be extended to or expanded in rural areas except in limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Where, as a matter of law, the GMA does not apply (e.g., on land owned or held in trust by the federal government, these prohibitions and limitations do not apply. ~~allows cities to provide sewer services in rural areas in those limited circumstances shown to be necessary to protect basic public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development (RCW 36.70A.110(4)).~~ Applications for sewer service in rural areas that are designated as "rural" under the Growth Management Act and subject to the GMA's requirements ~~or areas outside the city's urban growth areas~~ may be granted by the city council under the circumstances in this subsection, and under the procedures set forth in subsection (6) of this section.
- 4) Sewer Service Application. ~~Any person owning~~ The owner of any property outside the city limits and desiring ~~to have their property connected to the city's~~ sewer system from the city shall make application at the office of the city clerk on the appropriate form. Every such application shall be made by the owner of the property to be connected and supplied the service, or by his/her ~~their~~ authorized agent. The applicant must state fully the purposes for which the sewer service is requested, ~~required~~. Applicants must agree to comply with conform to the city's rules and regulations concerning sewer service set forth in this section, as the same now exists or may be amended in the future. If the city receives such a sewer application and subsequently issues a permit, such permit shall expire within one year of the date of issuance, if the applicant does not pay the required fees and request an actual hook-up or connection to the subject property within that time period.
- 5) Charges for Sewer Service. Applicant for sewer service to property outside the city limits shall be charged the rates for such service as set forth by city council resolution, as may

now exist or may hereafter be amended. All other additional charges applicable to sewer service to property within the city limits in this section shall also be imposed, where appropriate.

- 6) Utility Extension Agreement. Every applicant for sewer service outside the city limits, except for municipal corporations or quasi-municipal corporations, making application under subsection (7) of this section, must agree to sign an agreement with the city, which conditions the provision of the service on the following terms:
 - a) Agreement to Run with the Property. The agreement shall be recorded against the property in the Clark County auditor's office, and shall constitute a covenant running with the land. All covenants and provisions of the agreement shall be binding on the owner and all other persons subsequently acquiring any right, title, or interest in or to said property.
 - b) Warranty of Title. The agreement shall be executed by the owner of the property, who shall also warrant that he/she is authorized to enter into such agreement.
 - c) Costs of Design, Engineering and Construction of Extension. The owner shall agree to pay all costs of design, engineering and construction of the extension, which shall be accomplished to city standards and conform to plans approved by the city public works director. Costs of plan review and construction inspection shall also be paid by the owner.
 - d) Capacity Commitment Payments. The owner shall agree to pay for the city's reservation of sewer, which is calculated as a percentage of the connection fee for the sewer service. Such payments shall be made under the payment schedule determined by the city.
 - e) Easements and Permits. The owner shall secure and obtain at the owner's sole cost and expense all permits, easements and licenses necessary to construct the extension.
 - f) Dedication of Capital Facilities. The owner shall agree to dedicate all capital facilities constructed as part of the sewer extension (such as sewer main lines, pump stations, etc.), at no cost to the city, upon the completion of construction, approval and acceptance by the city.
 - g) Connection Charges. The owner shall agree to pay the connection charges set by the city in LCMC 13.10.350 (as these sections now exist or may hereafter be amended) as a condition connection to the city sewer system. Such connection charges shall be calculated at the rate schedules applicable at the time of actual connection.
 - h) Agreement Not to Protest Annexation. The owner shall provide the city with an irrevocable power of attorney to allow a city representative to sign a petition for annexation on behalf of the property owner or the property owner shall agree to sign a petition(s) for annexation of his/her property when requested to do so by the city.
 - i) Waiver of Right to Protest LID. If, at the time of execution of the agreement, the city has plans to construct certain improvements that would specially benefit the owner's property, the agreement shall specifically describe the improvement. The owner shall agree to sign a petition for the formation of an LID for the specified improvement at the time one is circulated, and to waive his/her right to protest formation of any such LID.
 - j) Development of Property to Conform to City Code – Exceptions. The owner shall agree to comply with all requirements of the city's land use plan, zoning, fire code and those portions of the city building code which are referenced by the fire code, and the city public works standards when developing or re-developing the property subject to the

agreement. The city council may grant exceptions to the requirements contained in this subsection only under the following conditions:

- i) The applicant must demonstrate that the proposed departure from the city's land use standards, zoning code, or public works standards would result in a development which meets the intent of the applicable provision of the comprehensive plan, zoning code or public works standards, based upon compliance with all of the following criteria:
 - A) That the site of the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features necessary to ensure compatibility with and not inconsistent with the underlying zoning district;
 - B) That the site for the proposed use relates to streets, adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed uses and that adequate public utilities are available to serve the proposal;
 - C) That the proposed use will have no significant adverse effect on existing uses or permitted uses;
 - D) That the establishment, maintenance and/or conduction of the uses for which the utility agreement is sought will not, under the circumstance of the particular case, be detrimental to the public welfare, injurious to the environment, nor shall the use be inconsistent with or injurious to the character of the neighborhood or contrary to its orderly development.
 - E) Termination of Noncompliance. In addition to all other remedies available to the city for the owner's noncompliance with the terms of the agreement, the city shall have the ability to disconnect the utility, and for that purpose may at any time enter upon the property.

7) Extensions for Public Health, Safety or Environmental Reasons.

- a) Municipal corporations or quasi-municipal corporations may make application for expansion or extensions of sewer service to their property if, in addition to all other requirements of this section, the applicant can demonstrate all of the following:
 - i) The expansion or extension is necessary to protect basic public health, safety and the environment; and
 - ii) The expansion or extension is financially supportable at rural densities; and
 - iii) The expansion or extension does not permit urban development.

This showing may include, among other documentation, an emergency order issued by the Department of Ecology relative to any sewer extension request.

- b) The city council shall review the application and may, in its sole discretion, allow the extension or expansion of sewer service if the council finds:
 - i) That the city's NPDES permit will not be affected by the extension or expansion; and
 - ii) That the extension or expansion is consistent with the goals of the city's sewer comprehensive plan and all other applicable law, including, but not limited to, the State Environmental Policy Act (Chapter 42.31C RCW).

- c) The council approval of any extension or expansion under the criteria in subsections (7)(b)(i) and (ii) of this section may be conditioned. Such conditions may include, but shall not be limited to, the following:
 - i) Restrictions may be placed on the hours that the city will accept sewage flow from the applicants.
 - ii) Restrictions may be placed on the amount of sewage flow or water provided to the applicant.
 - iii) The applicant shall have the responsibility to maintain and operate its own facilities.