

**ORDINANCE NO. 2004-09-063**

**AN ORDINANCE OF THE CITY OF BELLINGHAM RELATING TO UTILITY SERVICE ZONE EXTENSIONS IN THE URBAN GROWTH AREA, AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 15.36.**

**WHEREAS**, in order to provide further direction to City of Bellingham (the "City") staff, clarification of certain provisions of Chapter 15.36 of the City of Bellingham Municipal Code are necessary; and

**WHEREAS**, it is in the best interests of the citizens of Bellingham to have Bellingham Municipal Code Chapter 15.36 clarified; and

**WHEREAS**, Bellingham Municipal Code Section 2.56.050, which refers to Bellingham Municipal Code Chapter 15.36, needs to be amended pursuant to the section numbering changes referenced below:

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** Bellingham Municipal Code Chapter 15.36 is hereby amended as follows:

**15.36.010 – Water Service Zone Established**

The City Council establishes a water service zone outside the corporate limits of the City, within which water distribution service may be obtained directly from the City and main extensions made to the City's water distribution system, pursuant to the terms and conditions provided in this chapter and within all other applicable statutes, ordinances or City regulations including necessary and appropriate utility-related practices of the City's Department of Public Works. The said water service zone is identified as such on a map, a copy of which is available at the Public Works Department.

**15.36.020 – Sewer Service Zone Established**

The City Council establishes a sewer service zone outside the corporate limits of the City, within which sewerage collection services may be obtained directly from the City and main extensions made to the system, pursuant to the terms and conditions provided herein and within all other applicable statutes, ordinances or City regulations including necessary and appropriate utility-related practices of the City's Department of Public Works. The said sewer service zone is identified as such on a map, a copy of which is available at the Public Works Department.

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**15.36.030 – Interpretation of Chapter**

- A.** The terms of this chapter relate principally to the City's water distribution and sewerage collection (transmission) systems and in no way shall be construed or otherwise inferred to constitute a refusal on the part of the City to treat sewerage otherwise delivered to its sewerage treatment plant or to sell potable water at its point of entrance into the City's distribution system.
- B.** While the City operates a combined water and sewerage system, the zones of service outside the City for the respective services are not coterminous and have been so form-ulated based on areas to which such service had been formerly extended and such other areas which should be so served based on service or system related criteria.
- C.** Agreement to provide any service to a given area shall in no way whatsoever be construed to constitute approval of the City Council to provide any other service within the same area.
- D.** It is specifically declared to be the policy of the City only to so expand such service zones or to otherwise contract water distribution and sewerage collection services with districts and associations where the City can be assured that the development which will use the City's system will not impose adverse impact upon the City.

**15.36.040 – Authority of City Council to Expand Existing Service Zones**

- A.** The City Council reserves unto itself the authority to enlarge the herein established water and sewer service zones subject to applicable statutory limitations and procedures. No direct water distribution or sewerage collection service shall be provided to ultimate users outside the corporate limits of the City unless the property to which such service is directed is situated within the established service zones, as provided in this chapter or hereafter modified. In no circumstance whatsoever shall the public works department be empowered to authorize main extensions or itself install such main extensions without the amendment of the applicable service zone as provided in Section 15.36.070 to include the property upon which such extensions are proposed to be laid.
- B.** The Public Works Director, however, shall be empowered to grant main extensions to serve property outside the direct service zone, but inside the urban growth area, provided the property to be served is single family residential developed to the maximum density practical, the extension is for three units or less, and there is a compelling health-related need to connect to City water and/or sewer. Compelling health-related needs shall be limited to failing septic tanks or wells or to protect environmentally sensitive areas. Where a property is outside the direct service zone, but is inside the urban growth area and abuts a water or sewer main, the Public Works Director shall be authorized to connect the property to the

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water and/or sewer main in order to avoid installation of a well and/or septic system, provided the property to be served is single family residential developed to the maximum density practical and the connection is for three units or less. In no event shall the Public Works Director be empowered to grant main extensions under this section in the Lake Whatcom Watershed. All decisions regarding requests for extensions in the Lake Whatcom Watershed shall be made by City Council pursuant to the procedures established in this chapter.

**15.36.050 – Urban Growth Area Policies**

The City Council adopts the following policies regarding the urban growth area and service extensions:

A. The City identifies and establishes an urban growth area as that area which has been adopted as the valid urban growth area for the City of Bellingham pursuant to RCW 36.70A.110, as such area may from time to time be amended.

B. The City will deliver services (including municipal water, sewer, police and fire protection) within the urban growth area by means of annexation to the City. Where it is determined by the City Council that it is in the best interest of the City and the area seeking service to extend City sewer and water service without annexation, that service may be extended within the urban growth area consistent with Chapter 15.36 of Bellingham's Municipal Code (as amended). The extension of City fire and/or police services, including dispatching/communications and other support services, to jurisdictions beyond the City's boundaries may also be permitted by contractual arrangement, in compliance with applicable state laws, where it is determined that such contractual arrangements are in the best interests of the City. Mutual aid agreements between the City and other governmental entities for police and fire protection shall include an agreement not to protest City initiated annexations within the urban growth area unless it is determined by the City Council public safety committee upon the recommendation of the City administration that such an inclusion is not in the best interests of the City.

**15.36.060 - Requests For Service Outside Established Service Zones.**

No change.

**15.36.070 - Enlargement of Service Zones**

Further expansion of the water and/or sewer service zone(s) may be accomplished only in accordance with this chapter. In no event will the City consider incorporating any property into existing service zone(s) where the requesting party is unable to describe the proposed development which would be served by the main extensions which the applicant proposes to

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install. Neither will the City consider extending water and/or sewer service zones into areas which are not within the City's urban growth area, as described in Section 15.36.050, unless City Council determines that special public health and safety concerns warrant minor extensions, as addressed in Section 15.36.040 of this code. Extension of water and/or sewer service zones within the urban growth area may be conditional upon the commitment of property owners to annex whenever the City initiates such proceedings. Failure to provide that commitment may result in denial of service by the City, regardless of the reasons for the lack of a commitment.

The City administration will initiate a cost-revenue analysis described in Section 15.38.020 at such time as land valued at 75% of the total assessed valuation of the neighborhood area (as identified in the City Comprehensive Plan for the urban growth area) is to be serviced by City sewer and/or water and has made commitments to annex as a condition of receiving that service. The City may initiate a cost-revenue analysis with any utility extension request, if the City Council deems it appropriate. Based on the results of the cost-revenue analysis and other considerations enumerated in Section 15.38.010, the City Council will determine whether to initiate annexation proceedings for the affected neighborhood area. The City may, but will not necessarily, require annexation prior to extending utilities based on the results of the cost-revenue analysis. As a general rule the Council should have required cost-revenue analysis results before making their utility extension or annexation decision, but they may choose to extend services prior to having those results and without requiring immediate annexation.

Direct water distribution service shall not be provided to any area that is not contiguous to the existing water service zone or the corporate limits of the City. Direct sewerage collection service shall not be provided to any area that is not contiguous to the existing sewer service zone or the corporate limits of the City.

In the event the City Council agrees to the enlargement of one or both of the service zones so as to authorize main extensions, the owner or owners of the property to be so served shall be required to execute an agreement with the City describing the terms and conditions upon which such service is granted and the failure of the owner, a tenant or a successor in interest to comply with the terms and conditions upon which service is granted shall constitute a breach of contract thereby authorizing the Public Works Department to discontinue service altogether.

The procedures for requesting enlargement of the service zones and the criteria which shall be considered in determining whether or not such requests shall be granted shall be exactly the same as are utilized in considering contract services with districts and associations pursuant to BMC Sections 15.36.080, 15.36.090, 15.36.100 and 5.36.110, with the exception that enlargement of service zones may also be denied where the City finds that the affected property should be served by a district or association.

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**15.36.080 – Contract Services**

A. All contracts for water distribution and/or sewerage collection services, whether new or extensions of existing agreements shall be executed by the Mayor as provided in Section 5.02 of the City Charter. In no event shall the Mayor execute such agreements without the express authorization of the City Council. Requests for such contract services shall first be directed to the Director of Public Works, and shall thereafter be processed as provided in Section 15.36.100. Existing contracts with districts and associations for water distribution and sewerage collection services may be renewed or extended and contracts negotiated with newly formed districts or associations, but all such contracts shall be subject to the terms and conditions of this chapter.

B. All new contracts as well as existing contracts being negotiated for renewal relating to sewerage collection services shall include provisions specifically providing the maximum quantities of effluent that will be accepted for transmission and treatment. All new contracts as well as existing contracts being negotiated for renewal relating to water distribution shall include provisions specifically providing the maximum quantities that will be supplied at the point of distribution.

C. Such contracts shall further specifically prohibit the district or association from enlarging its area of jurisdiction or service without the express approval of the City Council, if such enlargement would in any way affect the obligation of the City to provide services pursuant to an existing contract with that district or association.

**15.36.090 – Requests For Contract Services Or Enlargement Of Service Zones - Procedure.**

As provided in Section 15.36.080, all requests for contract services, and all requests for enlargement of either service zone, shall be made to the Director of Public Works. Preliminary consideration of the request shall be directed to service and/or system related matters, including the question of the most appropriate manner of providing the service. The Public Works Department shall prepare a feasibility report with recommendations addressing these issues. Such feasibility report shall be completed within 30 days of the City's receipt of the request including all necessary material to make a decision. Should such final report recommend denial of the request, the applicant shall be so notified and if such party requests that the denial be reviewed by the City Council, such request along with the feasibility report and recommendations shall be forwarded to the City Council for review.

In the event the recommendation of the City Council is that the service can be feasibly provided, based on service and/or system related criteria, or where the initial recommendation of the Public Works Director was that the service could be provided based only upon service and/or system related criteria, the request with recommendations shall be

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forwarded to the Planning and Community Development Department. The Planning and Community Development Department shall thereafter prepare an impact report with recommendations addressing those criteria set out in Section 15.36.110. It shall be the obligation of the applicant to provide the Planning and Community Development Department with all information reasonably necessary to prepare the impact report. Such report shall be completed within 45 days from the date of receipt of the applicant's request from the City Council or Public Works Department. Such report as well as a statement of conditions to service that should be included within the contract for services shall thereafter be forwarded to the City Council for final disposition of the request.

Applications for enlargement of service zones and/or contract services shall expire two years after the date a request for service is made to the Director of Public Works, unless an extension, not to exceed one year, is granted by the Director of Public Works.

Following further consideration of the matter by the City Council in public hearing, the City Attorney shall be advised as to whether or not an amendatory ordinance should be prepared enlarging the boundaries of the existing service zone(s) and what terms should be included in the contract for services. In making its determinations the City Council shall consider the recommendation of the administrative departments, and the criteria set out in Section 15.36.110 as well as any other applicable statutes, ordinances or policies and procedures of the City.

With the exception of those agreements executed pursuant to the Public Works Director's administrative powers under BMC 15.36.040, a motion to be considered by the City Council to authorize the Mayor to execute any agreement for the extension of utility services shall be required and only made after the formal agreement has been prepared and presented to the City Council for review.

**15.36.100 – Requests For Contract Services Or Enlargement Of Service Zones –  
Application Fees**

A. Requests for enlargement of service zones must be accompanied by the payment of an application fee based upon the proposed development to be served by the property covered by the contract or the property to be included within the enlarged service zone. The City shall collect such application fee in accordance with the schedule as established by City Council resolution.

Requests for contract services within existing service zones shall be accompanied by a payment also established by City Council resolution.

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B. In the event the City Council denies a request for service, no further applications for services may be submitted for 6 months following such denial unless the subsequent request is substantially different than the preceding request.

**15.36.110 – Criteria For Determining Whether Services Should Be Provided**

The criteria to be considered in determining whether services should be provided are:

A. The consistency of the proposed development with the following land use plans and development standards acceptable to the city:

(1) Consistency with the goals, policies and land use designations in Whatcom County's adopted subarea plan for the area; the applicable goals and policies in Bellingham's Comprehensive Plan; and the provisions of the city/county interlocal agreement related to annexation and development in Bellingham's urban growth area.

(2) Consistency with all City design and development standards and environmental regulations;

B. The expected impact such development might have on City streets and arterials as currently developed;

C. For property located within the Lake Whatcom watershed, whether the proposed development might be expected to adversely impact the watershed;

D. Whether or not adequate consideration has been given to retention and discharge of stormwater so as to preclude adverse impact upon the City;

E. Whether it is in the best interests of the city to authorize the requested extension even though sufficient capacity is available within existing transmission lines if the City Council finds that such capacity should be reserved for future development within the corporate limits of the City.

**15.36.120 - Boundary Review Board Approval Required.**

As required by RCW 36.93.090(4) relating to the jurisdiction of the county-wide boundary review board, no extension of permanent water and/or sewer services outside the City's existing service area, as defined in RCW 36.93.090(4), whether within the service zones as herein provided or hereinafter enlarged or by the City's agreement to provide services pursuant to contract, shall be approved unless the initiators thereof have gained the approval of the Whatcom County boundary review board. For the purposes of this section "extension of permanent service" shall be deemed to be limited to that service which requires the

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installation of additional water mains or sewer mains whether to be a part of the City's system or a district or association's system.

While it shall be the obligation of the requesting party to process the application through the boundary review board, such requests should not be made in advance of the City's approval to provide service and in the event the applicant gains the approval of the board prior to City approval, the City reserves the right to refuse or to condition any such service.

**15.36.130 – County Plan Land Use Designations Adoption And Provision For Creation Of A City/County Subarea Plan for Bellingham's Urban Growth Area.**

Pursuant to State Law RCW 35.13.177, the city adopts the land use designations in Whatcom County's Urban Fringe Subarea Land Use Plan for Bellingham's northern growth area. The City also adopts, as an interim measure, the land use designations in the Lake Whatcom Subarea Land Use Plan for the Geneva portion of Bellingham's urban growth area and the land use designations in the Chuckanut/Lake Samish Subarea Land Use Plan for the Yew Street portion of Bellingham's growth area. The City and County will jointly develop, adopt and update subarea land use plans that contain appropriate City land use designations for all lands in Bellingham's urban growth area. Until such time as these a plans are completed and adopted, lands annexing to the City should, upon annexation, be given City land use designations which most closely match the County's subarea plan designations.

**Section 2.** Section 2.56.050(D) is hereby amended as follows:

**D.** Notwithstanding provisions of other Chapters of the Bellingham Municipal Code the following matters shall be determined by the City Council. Council may in its discretion refer any of the following matters to the Hearing Examiner for a recommended decision:

1. Approval of final plats;
2. Applications for utility and telecom franchises as provided by BMC Chapters 6.17 and 6.70;
3. Expansion of existing water and sewer service zones outside the city limits as provided by BMC 15.36.040;
4. Appeals from determination of the City Attorney on applications for remission and mitigation of civil penalties relating to stormwater management pursuant to BMC 15.42.070(4.2)(D).

All other subparts of Section 2.56.050 remain unchanged.

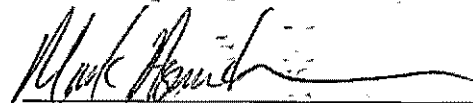
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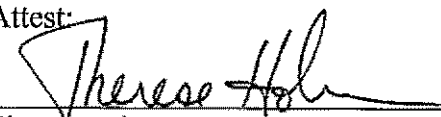


PASSED by the Council this 27th day of September, 2004.

  
\_\_\_\_\_  
Council President

APPROVED by me this 29<sup>th</sup> day of Sept., 2004.

  
\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
Finance Director

Approved as to Form:

  
\_\_\_\_\_  
Office of the City Attorney

Published: October 1, 2004

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