



**LAKE COUNTRY**  
Life. The Okanagan Way.

## **Latecomer Policy No. 09.92**

**District of Lake Country**  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1  
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lakecountry.bc.ca

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**Date**

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The following was adopted as Policy at the **Regular Council Meeting** held on **April 21, 2009**.

**Resolution No. 09.04.178**

**Moved by :** Councillor Rees  
**Seconded by:** Councillor Leamont

Original signed by James Baker  
Mayor

Original signed by Hazel Christy  
Clerk

# District of Lake Country

## Latecomer Policy

### 09.92



**April 21, 2009**

**District of Lake Country****Latecomer Policy 09.92**

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## 1.0 General

- 1.1 This policy outlines the procedures to be followed for the processing and implementation of Latecomer Charges.
- 1.2 This policy applies to Excess or Extended Services including roads, water, sewage and drainage systems that are required as part of the subdivision or development process.
- 1.3 Parcels within the ALR will be exempt from Latecomer fees, but may be permitted to connect to District services for a connection fee.
- 1.4 On a parcel with an existing service connection or highway access, exemption will be given for one residential dwelling unit. Parcels with on-site servicing (well, septic system, drainage disposal system) shall not be entitled to this exemption.
- 1.5 Appendix A provides guidelines for the determination for Benefiting Lands.

## 2.0 Definitions

The following definitions apply to terms used in this policy:

Benefiting Lands means lands deemed by the District to benefit from an Excess or Extended Service, other than the lands being subdivided or developed.

Designated Use means land use as designated by the Official Community Plan.

Developable Property means the gross area of a parcel less any portion dedicated for a highway or other public use and less any portion which cannot be developed for the use intended.

Excess Service means the excess capacity built into a highway, water, sewage or drainage systems in order to provide service to properties beyond the land being subdivided or developed.

Extended Service means a highway, water, sewage or drainage system that has been extended to service a development, but which also provides adjacent or abutting properties other than the land being subdivided or developed with the opportunity to immediately make use of those services.

Latecomer means an owner of Benefiting Lands.

Latecomer Charge means a charge imposed on Benefiting Lands which will be collected by the District as a condition of a Latecomer connecting to or using Excess or Extended Services.

Minimum Size means the size of a District water, sewer, drainage, or highway system as required by the Subdivision, Development and Servicing Bylaw.

Owner in respect of real property means the registered owner of an estate in fee simple and includes:

- i) the tenant for life under a registered life estate,
- ii) the registered holder of the last registered agreement for sale.

Parcel means any lot, block, or other area in which land is held of into which land is subdivided including strata lots created by strata plan.

Substantial Completion means substantial completion of works as required pursuant to the Subdivision, Development and Servicing Bylaw 97-139 (as may be amended from time to time) and as certified by the Director of Engineering.

Utility Extension means the extension of water, sewage or drainage system not related to subdivision or development of land.

### **3.0 Administration**

- 3.1 The District Engineer will, in consultation with the Approving Officer or Building Inspector, as the case may be, consider every application for Subdivision or Building Permit to:
- (i) determine whether any of the works and services to be designed and constructed in connection with the proposed subdivision or development include highway, water, sewage or drainage facilities that would benefit land other than the land being subdivided or developed, and as such, constitute Extended or Excess Services;
  - (ii) identify the lands that are capable of being connected to or serviced by the Excess or Extended Services and, as such, constitute Benefiting Lands;
  - (iii) determine whether the applicant is also a Latecomer for the purpose of paying Latecomer Charges.
- 3.2 Latecomer Charges do not have to be applied for. Where considered applicable by the District according to this policy, they will be determined and imposed on Benefiting lands by the District Engineer pursuant to Subdivision and Development Servicing Bylaw 97-139 as may be amended or replaced from time to time.
- 3.3 Latecomer Charges will be determined only after approved drawings have been issued by the District and prior to the signing of a Servicing Agreement.
- 3.4 Latecomer Charges shall be paid to the Owner by the District. The Owner may assign his right to receive Latecomer Charges only by the submission of a letter as shown in Appendix C.
- 3.5 Latecomer Charges will be collected by the District for a period of 15 years from the date of Substantial Completion of the Excess or Extended Services.
- 3.6 An executed Latecomer Agreement does not become effective until the date of Substantial Completion.
- 3.7 Upon execution of a Latecomer Agreement, the District will notify the Owners of all parcels affected by a Latecomer Charge.

### **4.0 Process**

- 4.1 The Owner shall provide the following information with the first submission of the design drawings for the proposed development:

- (i) a plan for each excess or extended service showing the size(s) and length(s) of the service required to service the proposed development only; and
- (ii) where the development includes excess service, a plan for each excess service showing the size(s) and length(s) of the services(s) required to service the entire catchment or design area.

4.2 The plans required in section 4.1 shall be provided in the following format:

- (i) 1:2500 base map showing legal and contour information must be used;
- (ii) location and details of excess or extended services must be shown in a bold manner, in the format specified in the Subdivision, Development and Servicing Bylaw 97-139, as amended from time to time;
- (iii) each portion of infrastructure must be illustrated on a separate sheet;
- (iv) the catchment area must be defined and shown for sanitary and storm sewer services;
- (v) the dimensions of each property in whole or in part within a catchment area must be shown for each plan submitted and each sheet must be clearly labeled in the bottom right hand corner indicating the Development, Project number, Service, Scale, Date and Consulting Engineer seal and signature; and
- (vi) each sheet must be labeled consecutively and the Benefiting Area outlined and shown on a Plan entitled Appendix B.

4.3 Where an Owner provides excess or extended services, the District will, upon acceptance of the drawings:

- (i) determine which proportion of the cost of providing the highway or water, sewerage or drainage facilities that it considers constitutes the excess or extended service;
- (ii) determine which part of the excess or extended service that it considers will benefit each of the parcels of land that will be served by the excess or extended service and apportion the charges based on the respective areas of the benefiting lands;
- (iii) impose, as a condition of an owner connecting to or using the excess or extended service, a charge related to the benefit determined under section 4.3 (ii).

4.5 Owners may qualify for cost sharing of Excess Service. Where sufficient funds for cost sharing are not available, the development may be deemed to be premature.

4.6 The costs of Extended Services for water, sewage and drainage systems shall be based on that size of service required to serve the Owner's land in accordance with the Subdivision, Development and Servicing Bylaw. The cost of Extended Service shall include the cost of installing mains only and shall not include:

- (i) land or right of way costs;
- (ii) cost of connection;
- (iii) costs of any excess capacity where such cost is distributed by way of Latecomer Charges to benefiting parcels;
- (iv) design and inspection costs;
- (v) financing costs.

The estimated costs of the Extended Service shall be approved by the District Engineer and shown on a Schedule attached to the Latecomer Agreement.

4.7 The cost of Extended Services for highway systems shall be based upon the applicable standard required to serve the Owner's land as determined by the District.

4.8 For phased developments, Latecomer Charges will be pro-rated to reflect only the area being developed in each phase.

## **5.0 Financial**

5.1 Any Latecomer Charges collected shall be paid to the Owner by mail to the address set out in the Latecomer Agreement, as may be amended by the Owner in writing, or to such assignee of the Owner's rights under the Latecomer Agreement as the District has notice of pursuant to the Latecomer Agreement. Latecomer Charges shall be paid within sixty (60) days following each anniversary date of the date of Substantial Completion. No Latecomer Charge shall be collected after the Latecomer Agreement has expired.

5.2 The total paid to the Owner shall not exceed the total estimated cost of the Excess or Extended services plus accumulated interest.

5.3 Interest shall be calculated as set out in the Latecomer Agreement.

5.4 A Latecomer Agreement shall become null and void on the earlier of the 15<sup>th</sup> anniversary of the date of Substantial Completion or when all excess or extended service costs as estimated by the District have been paid to the Owner.

5.5 Latecomer Charges are payable at the time of application for a connection to an excess or extended service for which the charge was imposed.

**Appendix A Guidelines for the Determination of Benefiting Lands****1.0 General**

- 1.1 These guidelines will provide the general approach to establishing benefiting areas. Site specific situations may require the variation of these general guidelines.
- 1.2 Lands with an existing service connection or highway access will not be included in a determination of benefiting lands.
- 1.3 Latecomer Charges are not collected for infrastructure or portions of infrastructure to which the Development Cost Charge Bylaw applies.
- 1.4 A parcel with an existing service connection or highway access will be re-connected to the new service without a Latecomer Charge. Parcels with on-site servicing (well, septic system, drainage disposal system) shall not be entitled to this free connection.

**2.0 Storm Sewer**

- 2.1 Benefiting areas shall comprise all developable property upstream of and contributing to the storm system required to be installed as part of the development.
- 2.2 The total catchment area shall be used to design the storm sewer system.
- 2.3 Benefiting areas shall be determined using good engineering practice and available contour and topographic information.

**3.0 Sanitary Sewer**

- 3.1 The sewer system shall be designed to meet the requirements of the District and will be based on the ultimate collection network.
- 3.2 Benefiting areas for sewer mains shall include those properties which are immediately adjacent to the new sewer main and which could benefit by a service connection to that main.

**4.0 Water**

- 4.1 The water system shall be designed to meet the requirements of the District and will be based on the ultimate distribution network.
- 4.2 Benefiting areas for watermains shall include those properties which are immediately adjacent to the new watermain, and which could benefit by a service connection to that main.

**5.0 Roads**

- 5.1 The requirements for any proposed road(s) will be established by the District.



- 5.2 The benefiting area for a road will include those properties immediately adjacent to the new road, and which could benefit by an access to that road.
- 5.3 For half roads, no benefit will be deemed to accrue to an adjacent property owner where such owner will be required to construct the other half of the road when he develops his property.

**Appendix B Notification of Latecomer Charges**

Name of Property Owner

Address

Re: Legal Parcel Description  
Roll Number

Dear Sir or Madam:

Pursuant to the District of Lake Country Subdivision, Development and Servicing Bylaw, a recently approved development requires the Developer to install excess or extended services which have been deemed by the District to have a benefit on the above noted property.

The cost of installing these services will be paid by the Developer. However, should you choose to connect to or use these services within a 15 year period from the date of substantial completion of the services (INSERT DATE), you will be required to pay a latecomer charge to the District for this benefit at the time of connection or use of these services.

The latecomer charge is a pro-rated share of the cost of these services which the District has determined will benefit the above noted property. The latecomer charge has been established as follows:

<b>Service</b>	<b>Current latecomer charges</b>	<b>Previous latecomer charges</b>	<b>Total accumulated latecomer charges</b>
<b>Water system</b>			
<b>Sanitary system</b>			
<b>Storm system</b>			
<b>Highway system</b>			
<b>Total</b>			

Should you decide to connect to or use these services, the latecomer charge payable at the time of connection to or use of the service(s) shall be imposed. If you do not connect to or use the services you will not have to pay a latecomer charge.

In addition to the charges shown, you will be required to pay interest at 3% compounded annually on the latecomer charge which will be calculated at the time of application for connection to or use of the services.

If you require further explanation of the contents of this letter, please contact the District of Lake Country Engineering Department.

Yours truly,

Director of Engineering and Operations

**Appendix C    Assignment or Transfer of Rights**

Letter to:

District of Lake Country  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1

Attention: Chief Financial Officer

Dear Sir or Madam:

Re:     Name of Developer / Property Owner  
       Latecomer Agreement No.  
       Date of Agreement

This is to inform you that any right to payment of Latecomer Charges pursuant to the above noted Latecomer Agreement has been duly assigned to:

Name of Assignee                      Address of Assignee

Payment of any Latecomer Charges accruing due under the above noted Latecomer Agreement to the above named Assignee shall constitute valid performance under the provisions of said Agreement as if the said Latecomer Charges had been paid to the undersigned.

Yours truly,

Signature and Title of Authorized Signatory

**APPENDIX D - LATECOMER AGREEMENT**

**THIS AGREEMENT** made the      day of      , 20      .

**BETWEEN:**

(hereinafter referred to as the "*Owner*")

**OF THE FIRST PART**

**AND:**

**DISTRICT OF LAKE COUNTRY**, a municipal corporation having its offices at 10150 Bottom Wood Lake Road, Lake Country, British Columbia, V4V 2M1.

(hereinafter referred to as the "*District*")

**OF THE SECOND PART**

**WHEREAS** the *Owner* is the owner within the meaning of the Community Charter and proposes to subdivide or develop certain lands and premises located within the District of Lake Country, Province of British Columbia and legally described as:

(hereinafter referred to as the "*Lands*")

**AND WHEREAS** the District has required and the *Owner* has agreed to provide certain excess or extended services as defined in Section 939 of the Local Government Act (hereinafter called the "*Excess or Extended Services*") in connection with the proposed *subdivision* or *development* of the *Lands*;

**AND WHEREAS** the *Excess or Extended Services* may serve land other than the *Lands* being *subdivided* or *developed*;

**AND WHEREAS** the *District* considers the costs to provide the *Excess or Extended Services* in whole or in part to be excessive and accordingly has required the *Owner* to pay for and provide the *Excess or Extended Services*;

**AND WHEREAS** the *Owner* has paid (**\*\*insert capital costs\*\***) as the capital cost of the *Excess or Extended Services*;

**AND WHEREAS** it is the intent of the *District* to make every effort to provide for the collection of a share of the costs of the required *Excess or Extended Services* from the owner of all new *subdivisions* and *developments* (hereinafter referred to as the "Latecomer") that may connect to or use the *Excess or Extended Services* and provide for the repayment of these monies to the *Owner*;

**AND WHEREAS** this agreement is made pursuant to Section 939 of the *Local Government Act*.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

1. In this Agreement, unless the context otherwise requires, all words and expressions must have the same meaning assigned to them as like word or expressions contained in the Interpretation Section of the Subdivision and Development Servicing Bylaw of the *District*.
2. The *District* shall:
  - a) determine the proportion of the costs of providing the services that it considers constitutes the *Excess or Extended Services*;
  - b) determine which part of the *Excess or Extended Services* that it considers will benefit each of the *parcels* of land that will be served by the *Excess or Extended Services*;
  - c) impose as a condition of an *owner* connecting to or using the *Excess or Extended Services*, a charge related to the benefit determined under Section 2 (b) of this agreement (hereinafter referred to as the "*Latecomer Charge*").
3. Residential latecomer:

The parties agree that the *Latecomer Charge* which constitutes the *Excess or Extended Services* to each residential dwelling unit that will be served by the *Excess or Extended Services* shall be determined as follows:

$$A/C + B$$

Non Residential latecomer:

The parties agree that the *Latecomer Charge* which constitutes the *Excess or Extended Services* to lands *developed* for uses other than residential that will be served by the *Excess or Extended Services* shall be determined as follows:

$$((A/C + B)*D) / 1200$$

4. For the purposes of Section 3 above, the parties hereto agree that:
  - (i) "A" equals (\*\*insert total costs\*\*) which is the (\*\*insert capital costs\*\*) paid by the *Owner* as his capital cost contribution to the *Excess or Extended Services* payable to the *District*;

- (ii) "B" shall mean interest on the sum equal to (A divided by C) at a rate of three percent (3%) compounded annually calculated from the date of *substantial performance* to the date of connection to the benefitting *parcel*. The date of *substantial performance* (hereinafter referred to as "*Substantial performance*") shall be as certified in writing by the *Owner's Engineer* and attached hereto as Appendix "A" and forming part of this agreement.
  - (iii) "C" shall be the figure (\*\*insert # of parcels\*\*) being the total number of *parcels* the *District* calculates will benefit from connection to the *Excess or Extended Services* within the term of this Agreement;
  - (iv) "D" shall be defined as meaning the projected daily sewerage flow (in litres) as calculated by the *Owner's Engineer* and as approved by the *District Engineer* relating to the non-residential lands being connected to the *Excess or Extended Services*.
5. The parties agree that the area which is subject to the *Latecomer Charge* as set out in this agreement is that area shown outlined in Appendix "B" attached hereto and forming part of this agreement.
  6. The *District* shall collect from the *Latecomer* within the benefitting area, the *Latecomer Charge* at the time of *subdivision* when the lands may connect to or use the *Excess or Extended Service* and at the time of building permit when the *Owner* of a benefitting property applies to connect to and use the *Excess or Extended Services*. For phased *development* the charges will be pro rated and collected at each phase.
  7. The Parties hereto agree that the Lands shall be subject to *Latecomer Charges* pursuant to this agreement and these charges will be added to those *Latecomer Charges* collected from other benefitting properties in order to ascertain if the total capital cost contribution has been collected as per Section 15 of this agreement.
  8. Except as otherwise provided, the *District* agrees not to allow any *owner* or user of any benefitting property to connect to the *Excess or Extended Services* without such *owner* or user having first paid the *District* the *Latecomer Charge*.
  9. The *District* shall pay all collected *Latecomer Charges* to the *Owner* at the address of the *Owner* as set forth in this agreement or at such other address as the *Owner* may provide. If the said payments are returned to the *District*, the *District* shall hold such funds for one (1) year. If said funds are not claimed by the *Owner* within such time periods, the *District* shall retain all sums so held for its own use absolutely.
  10. The parties agree that the *District* is under no obligation to force any residence or development in existence prior to *Substantial Performance* to connect to the *Excess or Extended Services* which are the subject of this Agreement.
  11. The *Owner* covenants and agrees that there are no financial agreements or arrangements by which *owners* of land within the benefitting areas have contributed or will be contributing to the cost of the *Excess or Extended Services* which are the subject of this Agreement.
  12. In the event of any assignment or transfer of the rights of the *Owner* voluntarily, involuntarily or by operation of law, the *District* shall pay any benefits accruing hereunder, after notice, to such successor of the *Owner* as the Administrator of the *District*, in his sole judgment, deems entitled to such benefits;

and in the event that conflicting demands are made upon the *District* for benefits accruing under this Agreement, then the *District* may, at its option, commence an action in interpleader joining any other party claiming rights under this Agreement, or other parties which the *District* believes to be necessary or proper, and the *District's* liability therefore shall be fully extinguished, upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine. In such action, the *District* shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

13. The parties agree that the *District* shall use reasonable efforts to collect *Latecomer Charges* pursuant to Section 939 of the Local Government Act. The *Owner* agrees that in the event that the *District* does not collect the *Latecomer Charge*, the *District* shall not be liable to the *Owner* for the same. The *Owner* does hereby further remise, release and forever discharge the *District*, its directors, *Officers* and employees of all matters arising out of this agreement and the collection of *Latecomer Charges* pursuant to this Agreement.
14. This agreement shall become null and void upon the earlier of fifteen (15) years after *Substantial Completion* or at that date when the *Owner* has recovered his total capital cost contribution as stipulated in Section 4 (i) above, plus any applicable interest. The total *Latecomer Charges* paid to the *Owner* shall not exceed the total capital cost contributed by the *Owner* plus any applicable interest.
15. It is agreed that the *District* has made no representations, covenants, warranties, guarantees, promises or agreements, oral or otherwise, with the *Owner* other than those contained in this agreement.
16. Subject to the *District's* contractual obligation to the *Owner* as provided herein, nothing contained or implied in this agreement shall prejudice or affect the rights and powers of the *District* in the exercise of its functions under any letters patent, statute, by law, order and regulation.
17. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context so requires.
18. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
19. The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.
20. Time is of the essence in this Agreement.
21. Any notice to be given pursuant to this Agreement shall be sufficiently given if delivered or mailed to the parties at the addresses indicated on this Agreement.
22. This Agreement shall be governed by the laws of the Province of British Columbia.
23. If a company, the *Owner* represents and warrants to the *District* that all necessary corporate actions and proceedings have been taken to authorize the entering into this Agreement and that this Agreement constitutes an agreement binding to the *Owner*.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement at the District of Lake Country, Province of British Columbia, the day and year above written.

**SIGNED** by the *District* in the **DISTRICT OF LAKE COUNTRY**

in the presence of:	)	by its authorized signatories
	)	
_____	)	_____
Signature of Witness	)	
	)	
_____	)	_____
_____	)	_____
_____	)	
Name of Witness	)	
	)	

If *Owner* is an individual:

**SIGNED** by the *Owner* in the presence of:

_____	)	_____
Signature of Witness	)	<i>Owner's name</i>
	)	
_____	)	_____
_____	)	_____
_____	)	
Name of Witness	)	<i>Owner's name</i>
	)	
_____	)	
Occupation of Witness	)	

If *Owner* is a company:

<b>SIGNED</b> by the <i>Owner</i> in the	)	_____
presence of:	)	Company name
	)	
_____	)	by its authorized signatories
Signature of Witness	)	
	)	
_____	)	_____
_____	)	_____
_____	)	
Name of Witness	)	
	)	
_____	)	_____
Occupation of Witness	)	



**APPENDIX "A"**

Attach a copy of *Engineer's* letter certifying *Substantial performance*

**APPENDIX "B"**

Attach a copy of the map indicating the boundaries of the benefitting area