

**ORDINANCE NO. 1189**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LATECOMER REIMBURSEMENT OF THE COSTS OF DEVELOPER-CONSTRUCTED STREET IMPROVEMENTS; ESTABLISHING THE REQUIREMENTS FOR APPLICATION, PROCESSING AND CONSIDERATION OF STREET LATECOMER AGREEMENTS; ADDING A NEW CHAPTER 12.20 TO THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, Chapter 35.72 RCW authorizes cities to enter into agreements with developers providing for reimbursement of developer-constructed street projects by property owners benefitting from such street projects; and

WHEREAS, the City Council desires to incorporate a formal process for the approval of street latecomer agreements in the City code; and

WHEREAS, the City SEPA Responsible Official determined that this ordinance was categorically exempt from SEPA under WAC 197-11-800(2); and

WHEREAS, the Gig Harbor City Council considered this ordinance during its regular City Council meetings of March 22, 2010 and April 26, 2010; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 12.20 is hereby added to the Gig Harbor Municipal Code, to read as follows:

**Chapter 12.20  
LATECOMER AGREEMENTS FOR STREET IMPROVEMENTS**

**Sections:**

- 12.20.010 Purpose.**
- 12.20.020 Definitions.**
- 12.20.030 Minimum project size; timing of application.**
- 12.20.040 Contents of application.**
- 12.20.050 City engineer's review of application.**
- 12.20.060 Preliminary determination of benefited area boundaries and assessments.**
- 12.20.070 Notice; hearing; consideration by city council.**
- 12.20.080 Duration of agreement.**

- 12.20.090 Latecomer agreement must be recorded.**
- 12.20.100 Payment of city costs in excess of application fee.**
- 12.20.110 Construction and acceptance of improvements; recording of final assessment.**
- 12.20.120 Collection of assessments; no liability for failure to collect.**
- 12.20.130 Disposition of undeliverable reimbursement funds.**
- 12.20.140 No requirement to execution of latecomer agreement.**
- 12.20.010 Purpose.**

The purpose of this chapter is to prescribe rules and regulations for exercise of the authority to enter into street latecomer agreements granted to the city by chapter 35.72 RCW.

**12.20.020 Definitions.**

As used in this chapter, the terms listed below shall be defined as follows:

A. "Cost of construction" means those costs incurred for design, acquisition of right-of-way and/or easements, construction, construction management, materials, and installation required in order to create an improvement which complies with city standards. In the event of a disagreement between the city and the applicant concerning the cost of the improvement, the city engineer's determination shall be final.

B. "Latecomer agreement" means a written contract between the city and one or more property owners providing for construction or improvement of street projects and for partial reimbursement to the party causing such improvements to be made of a portion of the costs of such improvements by owners of property benefited by the improvements, as more specifically described in Chapter 35.72 RCW.

C. "Street project" shall have the meaning specified in RCW 35.72.020(1) as now exists or hereafter amended.

**12.20.030 Minimum project size; timing of application.**

In order to be eligible for a latecomer agreement, the estimated cost of the improvement must not be less than Three Hundred Thousand Dollars (\$300,000.00). The cost of the improvement shall be determined by the city engineer, based upon a construction contract for the project, bids, engineering or architectural estimates, receipts or other information deemed by the city engineer to be a reliable basis for determining cost. Latecomer agreements may be applied for before or after completion of construction of the street project.

#### **12.20.040 Contents of application.**

An application for a latecomer agreement shall be on a form approved by the city, accompanied by:

A. A nonrefundable application fee of Three Thousand Dollars (\$3,000.00);

B. Preliminary, or in the case of completed street projects, final City approved street improvement design drawings;

C. For applications submitted before the street project is completed, itemized estimates of construction costs prepared and signed by a licensed civil engineer or in the form of a bid submitted by a qualified contractor (if more than one bid has been obtained, all bids must be submitted to the city engineer);

D. For applications submitted after construction of a street project, receipts and itemized construction costs must be submitted to establish the costs of construction of the street project;

E. Scaled and clearly reproducible vicinity drawing, stamped by a licensed civil engineer or licensed land surveyor depicting the improvements, their location, the proposed benefit area including dimensions and county assessor's numbers for each tax parcel, size of parcels, and evaluations where necessary for determining benefit;

F. The proposed pro rata share of costs for reimbursement for each parcel in the proposed benefit area and methodology supporting the pro rata shares;

G. An assessment roll containing Pierce County assessor's tax parcel numbers, owners of record, legal descriptions and assessed value for each benefited parcel; and

H. Such other information as the city engineer determines is necessary to properly review the application.

#### **12.20.050 City engineer's review of application.**

A. The city engineer shall review all applications and shall approve the application for further processing only if the following requirements are met:

1. The project satisfies the minimum size requirement of Section 12.20.030;

2. The proposed improvements fall within the description of “street projects” as that term is described in chapter 35.72 RCW; and

3. The construction of the improvements is required by city ordinance as a prerequisite to development of property owned by the applicant.

4. The application meets all requirements under GHMC 12.20.040.

B. In the event all of the above criteria are not satisfied, the city engineer shall deny the application in writing. The applicant may obtain a review of the city engineer’s decision by filing a request with the city clerk no later than ten days after the date the city mails the city engineer’s decision to the applicant at the address listed on the application.

C. In reviewing a city engineer’s decision, the city council shall apply the criteria set forth in this chapter and Chapter 35.72 RCW as now exists or hereafter amended. The council may adopt, reject or modify the engineer’s decision.

**12.20.060 Preliminary determination of benefitted area boundaries and assessments.**

In the case of all applications which are approved, the city engineer shall define an assessment reimbursement area based upon a determination of which parcel of property adjacent to the improvements would have been required to construct similar street improvements as a condition of development had it not been for the construction which is the subject of the latecomer agreement. The amount of assessment shall be established so that each property will be assessed a share of the costs of the improvements, which is proportional to the benefits which accrue to the property. The methodology utilized in calculating the amount of assessment shall be the responsibility of the applicant. Parcels with previously approved development permits are exempt from latecomers assessment.

**12.20.070 Notice; hearing; consideration by city council.**

A. Upon approval of the application and the determination of the estimated costs, benefitted area and assessments by the city engineer, the city shall prepare a latecomer agreement.

B. The preliminary determination of area boundaries and assessments, along with a description of the property owner’s rights and options, shall be forwarded by certified mail to the property owners of record within the proposed assessment area shown on the records of the Pierce County assessor.

C. If any property owner requests a hearing in writing within twenty days of the mailing date of the preliminary determination, a hearing shall be held before the city council, notice of which shall be given to all affected property owners by mail not less than ten days prior to the hearing. After considering public testimony at the hearing, the city council shall make a final determination of the benefitted area boundaries and assessments based upon the criteria set forth in this chapter and as specified in Chapter 35.72 RCW as now exists or hereafter amended. The council may adopt, reject or modify the engineer's determination. The final determination of the benefitted area and assessments shall be established by ordinance.

D. In the event no hearing is requested, the city engineer's determination of the benefitted area and assessments shall be final.

E. The agreement, application and supporting documents, along with the city engineer's determination of costs, benefitted area and assessments, shall be presented to the city council for consideration. The city council may approve, reject or modify the latecomer agreement.

**12.20.080 Duration of agreement.**

No latecomer agreement shall provide for reimbursement for a period that exceeds fifteen years.

**12.20.090 Latecomer agreement must be recorded.**

In order to become effective, a latecomer agreement must be recorded with the office of the Pierce County auditor no later than thirty days after the latecomer agreement is signed by all parties.

**12.20.100 Payment of city costs in excess of application fee.**

In the event that costs incurred by the city for administrative, engineering, legal or other professional consultant services required in processing the application and preparing the latecomer agreement exceed the amount of the application fee, the city engineer shall so advise the city council and council approval shall be conditioned upon receipt of payment by the applicant of an amount sufficient to compensate the city for its costs in excess of the application fee as set forth in Section 12.20.040.

**12.20.110 Construction and acceptance of improvements; recording of final assessment.**

A. When an application is made prior to construction of the street project and the latecomer agreement has been signed by all parties and all necessary permits and approvals have been obtained, the applicant

shall construct improvements, and upon completion, request final inspection and formal acceptance of the improvements by the city, subject to any required obligation to repair defects. When deemed appropriate by the city engineer, a bill of sale, easement and any other documents needed to convey the improvements to the city and to ensure right of access for maintenance and replacement shall be provided, along with documentation of the actual costs of the improvement and a declaration by the applicant verifying the actual costs and that all of such costs have been paid.

B. In the event that actual costs are less than the costs determined by the city engineer in calculating the assessments by ten percent or more, the city engineer shall recalculate the assessments, reducing them accordingly, and shall cause a revised list of assessments to be recorded with the county auditor.

**12.20.120 Collection of assessments; no liability for failure to collect.**

A. Subsequent to the recording of a latecomer agreement, the city shall not issue any permit for development upon property which has been assessed pursuant to the agreement unless the share of the costs of such facilities required by the recorded agreement is first paid in full to the city.

B. Upon receipt of any reimbursement funds, the city shall deduct a five percent administrative fee and remit the balance of such funds to the party entitled to the funds pursuant to the agreement. In the event that through error the city fails to collect a required reimbursement fee prior to issuance of development approval, the city shall make diligent efforts to collect such fee, but shall under no circumstances be obligated to make payment to the party entitled to reimbursement or in any other way be liable to such party, unless such reimbursement fee has actually been paid to the city.

**12.20.130 Disposition of undeliverable reimbursement funds.**

Every two years from the date a latecomer agreement is executed, a property owner entitled to reimbursement under the latecomer agreement shall provide the city with information regarding the current contact 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 section within sixty days of the specified time, then the city may collect any reimbursement funds owned to the property owner under the contract. Such funds must be deposited in the capital fund of the city.

**12.20.140 No requirement for execution of latecomer agreement.**


Nothing in this chapter shall be construed as requiring the city to enter into a latecomer agreement with a developer.

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


Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 10th day of May, 2010.

CITY OF GIG HARBOR

  
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Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

  
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Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Angela S. Belbeck

FILED WITH THE CITY CLERK: 03/17/10  
PASSED BY THE CITY COUNCIL: 05/10/10  
PUBLISHED: 05/19/10  
EFFECTIVE DATE: 05/24/10  
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