

ORDINANCE NO. 942

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LATECOMER REIMBURSEMENT OF THE COSTS OF DEVELOPER-INSTALLED SEWER AND WATER EXTENSIONS; DESCRIBING THE METHOD FOR DETERMINING THE PRO RATA SHARE TO BE PAID BY LATECOMERS; ESTABLISHING DEFINITIONS, LIMITATIONS ON LATECOMER AGREEMENTS, APPLICATION REQUIREMENTS, FEES, DEADLINE FOR SUBMISSION, AND DESCRIBING THE PROCESS FOR COUNCIL APPROVAL OF A LATECOMER AGREEMENT; ADDING A NEW CHAPTER 13.35 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW) and

WHEREAS, the City Council desires to incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code; and

WHEREAS, the City SEPA Responsible Official determined that this ordinance was categorically exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting's of September 22 and October 13, 2003; Now, Therefore,

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

Section 1. A new chapter 13.35 is hereby added to the Gig Harbor Municipal Code, to read as follows:

**Chapter 13.35
LATECOMER AGREEMENTS
FOR WATER AND SEWER**

Sections:

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| 13.35.020 | Definitions. |
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- 13.35.060** **Deadline for Submission of Application.**
- 13.35.070** **Administrative Fees and Recording Costs.**
- 13.35.080** **Method for Determining Fair Pro Rata Share.**
- 13.35.090** **Cost of Construction to be Examined by City Engineer.**
- 13.35.100** **Approval and Acceptance of Water and/or Sewer Facilities.**
- 13.35.101** **No Requirement for Execution of Latecomer Agreement.**

13.35.010 Purpose. The purpose of this chapter is to implement chapter 35.91 RCW, and to describe the process for a developer to request the execution of a latecomer agreement with the City Council, so that the developer may be reimbursed by other property owners for the cost of installation of an extension for water and/or sewer facilities.

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

A. "Cost of construction" means the cost incurred by the 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 create and install the water and/or 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 developer on final invoices or other documents showing the amounts 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 concerning the cost of the water and/or sewer facilities, the City Engineer's determination shall be final.

B. "Developer" means a property owner or authorized agent of the property owner who has constructed a water and/or sewer extension, and desires to execute a latecomer agreement with the City.

C. "Engineer" means the City Engineer or his/her designated representative.

D. "Latecomer ('s) Agreement" means a written contract between the City and a Developer(s) providing for the partial reimbursement of the cost of constructing the water and/or sewer facilities. The Latecomer Agreement shall be a standard agreement approved as to form by the City Attorney.

E. "Latecomer" means a property owner not a party to a duly executed and recorded Latecomer Agreement, who seeks to connect to the water and/or sewer extension constructed under the Latecomer Agreement, by making payment to the City of his or her pro rata share of the cost of construction within the timeframe established in the Agreement.

F. "Water and/or Sewer Facilities" means storm, sanitary or combination sewers, force mains, pumping stations and disposal plants, water mains, hydrants, reservoirs, or appurtenances.

13.35.030 Limitations on Latecomer Agreement. The City Council may execute a Latecomer Agreement for water and/or sewer facilities with a property owner who constructs water and/or sewer facilities as long as the following are met:

A. The water and/or sewer facility to be constructed by the Developer must be consistent with the City's latest adopted version of the comprehensive plan. The water and/or sewer facility to be constructed by the Developer must be within the City or within ten miles from the City corporate limits, connecting with the City public water or City sewerage system to serve the area in which the real estate owned by the Latecomers is located.

B. The Latecomer Agreement must provide for a period of not to exceed fifteen years for the reimbursement of the Developer and his/her assigns by the Latecomer who did not contribute to the actual cost of such water and/or sewer facilities and who subsequently taps into or uses the same.

C. The Latecomer Agreement must require that the Latecomer pay his or her fair pro rata share of the cost of the construction of the water and/or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto.

D. The Latecomer Agreement shall be effective as to any owner of real estate not a party unless such Latecomer Agreement has not been recorded in the office of the Pierce County Auditor prior to the time that the latecomer taps into or connects to said water and/or sewer facilities.

13.35.040 Effect of Latecomer Agreement. No person, firm or corporation shall be granted a permit or be authorized to tap into, or use any such water and/or sewer facilities or extensions thereof during the period of time set forth in a recorded Latecomer Agreement without first paying to the City, in addition to any and all other costs and charges assessed for such tap, or use or for the water and/or sewer facilities constructed in connection therewith, the amount required by the Latecomer Agreement. Whenever any tap or connection is made into a water and/or sewer facility subject to a Latecomer Agreement, without such payment having first been made, the City may remove, 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.

13.35.050. Fees – application. An application for a latecomer agreement shall be made on a form provided by the City, accompanied by:

A. A non-refundable application fee of \$250.00 plus \$25.00 for every separate parcel proposed to be encumbered by the Latecomer Agreement or a non-refundable fee equal to 6% of the total estimated cost of the Latecomer Agreement, whichever is greater;

B. Record drawings stamped by a Washington State Licensed Engineer or Land Surveyor and a Bill of Sale;

C. Itemized and quantified list of costs of construction, prepared, stamped and signed by a Washington State Licensed Civil Engineer.

D. An 18" x 24" scaled drawing stamped by either a Washington State Licensed Civil Engineer or Land Surveyor showing the water and/or sewer facility size, location and the proposed areas potentially encumbered for this Latecomer Agreement, including dimensions, County identification number of each tax parcel therein, the size of the parcel, useful elevations as necessary by the City for determining benefit, all existing utility services and appurtenances. The map must also include the method proposed to be used by the Developer to determine the assessment, *i.e.*, frontage square footage and zone end termini.

E. An 18" x 24" vicinity map showing tax lot numbers and dollar amounts assessed on each lot. Also, a separate legal description for each individual tax parcel potentially encumbered for the Latecomer Agreement.

13.35.060 Deadline for Submission of Application. An application for a Latecomer Agreement must be submitted to the City within ninety (90) days after: (a) the City notifies the owner that the water and/or sewer facilities constructed by the Developer are acceptable to the City for City operation and maintenance; and (b) the Developer has posted a two-year maintenance bond. Failure by the Developer to submit a complete application prior to this deadline constitutes a waiver of the ability to request execution of a Latecomer Agreement with the City.

13.35.070 Administrative Fees and Recording Costs. In addition to the fair pro rata charge imposed by the Latecomer Agreement, the City shall charge a fee of five (5) percent of the amount collected from a Latecomer to cover the City's administrative costs of collecting and dispersing reimbursed amounts. Collected Latecomer Agreement fees disbursed to the Developer shall be less the five (5) percent charge. The Developer shall pay all costs of recording the Latecomer Agreement with the Pierce County Auditor's Office, as required by law (RCW 65.08.170).

13.35.080 Method for Determine Fair Pro Rata Share. The Developer may propose any method for determining the fair pro rata share, for example, the method of assessment permitted for local improvement district assessment, including, but not limited to the front-foot method, the zone end termini method, and square footage

method. The City may, in its discretion, determine the method of assessment used to calculate the Latecomer Fee and the City's decision on the method of assessment shall be final. The fair pro rata share of the cost of the water and/or sewer facilities attributable to the Developer's property shall be deducted from the cost of construction.

13.35.090 Cost of Construction to be Examined by City Engineer. The cost of construction of the water and/or sewer facilities shall be examined by the City Engineer, prior to the City Council meeting on the Latecomer Agreement. The City Engineer shall provide a recommendation to the Council as to his examination of the cost of construction, the method of assessment, the Latecomer reimbursement area, or any other matter connected to the Latecomer Agreement.

13.35.100 Approval and Acceptance of Water and/or Sewer Facilities by City. All water and/or sewer facilities proposed to be accepted for City ownership and maintenance (and later subject to a Latecomer Agreement), must be located on City-owned property or the necessary easements must be dedicated to the City prior to execution of a Latecomer Agreement, such that the City may operate, maintain, demolish, reconstruct, improve or expand the water and/or sewer facilities in the future.

13.34.101 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. Nothing in this chapter requires the City to enter into a Latecomer Agreement ninety one (91) days after the City formally accepts the water and/or sewer facilities for ownership and maintenance.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, 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 City Council and approved by the Mayor of the City of Gig Harbor this 13th day of October, 2003.

CITY OF GIG HARBOR

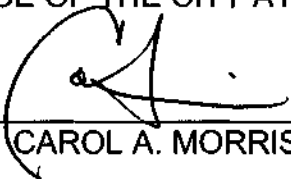


GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: 
MOLLY FOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: 
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 9/17/03
PASSED BY THE CITY COUNCIL: 10/13/03
PUBLISHED: 10/22/03
EFFECTIVE DATE: 10/27/03
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