

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO LATECOMER AGREEMENTS, ADDING A NEW CHAPTER TO TITLE 18 OF THE OLYMPIA MUNICIPAL CODE IN ARTICLE IV GENERAL REGULATIONS, TO BE DESIGNATED AS CHAPTER 18.41, ENTITLED LATECOMER AGREEMENTS.

WHEREAS, in recent years, state law regarding latecomer agreements has been updated; and

WHEREAS, the Revised Code of Washington requires in Chapter 35.91 that, if statutory conditions are met, cities must enter into utility latecomer agreements with property owners who upgrade water or sewer facilities where a municipality's ordinances require facilities to be improved as a prerequisite to further property development; and

WHEREAS, the Revised Code of Washington provides in Chapter 35.72 that, if statutory conditions are met, cities have the discretion to enter into street latecomer agreements with property owners who upgrade street facilities where a municipality's ordinances require facilities to be improved as a prerequisite to further property development; and

WHEREAS, the City wishes to add its latecomer provisions to a separate section of city code; and

WHEREAS, on December 11, 2018, a public hearing was held to consider and approve amendments to the EDDS and this ordinance; and

WHEREAS, this Ordinance is supported by the staff report and attachments associated with the Ordinance along with documents on file with the City of Olympia; and

WHEREAS, this Ordinance is consistent with the comprehensive plan; and

WHEREAS, the Department of Commerce received information related to the adoption of these provisions pursuant to RCW 36.70A.106 on November 29, 2018; and

WHEREAS, a State Environmental Policy Act DNS was issued on December 24, 2018; and

WHEREAS, the amendments contained in this Ordinance are adopted pursuant to Article 11, Section 11, of the Washington State Constitution and other legal applicable authority;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 18.00.000. Olympia Municipal Code 18.00.000 is hereby amended to read as follows:

18.00.000 Title Contents

Title 18

UNIFIED DEVELOPMENT CODE

Chapters:

Article I. GENERAL PROVISIONS

18.02 Basic Provisions

Article II. LAND USE DISTRICTS

18.04 Residential Districts

18.05 Villages and Centers

**18.05A Urban Village, Neighborhood Village, Neighborhood Center and Community
Oriented Shopping Center Design Guidelines**

18.06 Commercial Districts

18.08 Industrial Districts

Article III. OVERLAY DISTRICTS

18.10 Height Overlay Districts

18.12 Historic Preservation

18.16 Pedestrian Street Overlay District

18.20 Shoreline Master Program Regulations

Article IV. GENERAL REGULATIONS

18.32 Critical Areas

18.36 Landscaping and Screening

18.37 Nonconforming and Conforming Buildings and Uses

18.38 Parking and Loading

18.40 Property Development and Protection Standards

18.41 Latecomer Agreements

18.42 Signs

18.44 Antennas and Wireless Communications Facilities

18.46 Eligible Wireless Communication Facilities Modifications

Article V. DISCRETIONARY APPROVALS

18.48 Conditional Uses

18.50 Emergency Housing Facilities

18.51 State-Licensed Marijuana Producers, Processors, and Retailers

18.52 Limited Zones

18.53 Development Agreements

- 18.54 Planned Unit Development (PUD)**
- 18.56 Planned Residential Development (PRD)**
- 18.57 Master Planned Development (MPD)**
- 18.58 Rezones and Text Amendments**
- 18.59 Olympia Comprehensive Plan Amendment Process**
- 18.60 Land Use Review and Approval**
- 18.64 Townhouses**
- 18.66 Variances and Unusual Uses**

Article VI. ADMINISTRATION

- 18.72 Administration**
- 18.73 Civil and Criminal Penalty**
- 18.75 Appeals/Reconsideration**
- 18.76 Design Review Board**
- 18.77 Permit Application Contents**
- 18.78 Public Notification**
- 18.82 Hearing Examiner**
- 18.86 Neighborhood Association Recognition and Notification**
- 18.90 Transfer of Development Rights**
- 18.100 Design Review**
- 18.105 Historic Structures and Buildings Within Historic Districts**
- 18.110 Basic Commercial Design**
- 18.120 Commercial Design Criteria Downtown**
- 18.130 Commercial Design Criteria High Density Corridor (HDC)**
- 18.135 Commercial Design Criteria Residential Scale District**
- 18.140 Commercial Design Review Auto Oriented District**
- 18.145 Commercial Design Review Freeway Corridor District**
- 18.150 Port Peninsula**
- 18.155 West Bay Drive District**
- 18.170 Multi-Family Residential**
- 18.175 Infill and Other Residential**
- 18.180 Manufactured Home Parks**

Section 2. New Chapter. There is hereby added a new Chapter to Title 18 of the Olympia Municipal Code under Article IV, General Regulations, to be designated as Chapter 18.41 entitled, "Latecomer Agreements" which shall read as follows:

Chapter 18.41 LATECOMER AGREEMENTS

18.41.000 Chapter Contents

Sections:

18.41.020 Utility Latecomer Agreements.

18.41.040 Street Latecomer Agreements.

18.41.020 Utility Latecomer Agreements

A. The provisions of Chapter 35.91 RCW shall apply when an owner of real estate is required by any city ordinance, including but not limited to the City's Engineering Design and Development Standards, which are adopted into the Olympia Municipal Code by reference in Chapter 12.02, to improve or construct water or sewer facilities (including storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances) as a prerequisite to further property development. The improvements must be located within the corporate limits of the city except as provided otherwise under Chapter 35.91 RCW. The owner must submit a written request on a form provided by the city for a contract to recover the cost of the improvement or construction of water or sewer facilities prior to the approval of the water or sewer facility by the city. The application shall include the proposed benefitting properties, along with an estimated pro rata share that each property should pay. If an owner does not timely submit a written request, the city is not obligated to enter into a contract with the owner for the recovery of latecomer fees. The requirement of the city to contract with an owner of real estate for the construction or improvement of water or sewer facilities is only applicable if the facilities are consistent with all applicable comprehensive plans and development regulations of the city through which the facilities will be constructed or will serve.

1. Unless the city provides a written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for water or sewer facility, if required.
2. Connection of the water or sewer facility to the city's system must be conditioned on:
 - a. Construction of the water or sewer facility according to plans and specifications approved by the city;
 - b. Inspection and approval of the water or sewer facility by the city;
 - c. Transfer to the city of the water or sewer facility, without cost to the city, upon acceptance by the city of the water or sewer facility;

- d. Full compliance with the owners' obligations under the contract and with the municipality's rules and regulations;
- e. Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;
- f. Payment by the owner to the city of all of the city's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and
- g. Verification and approval of all contracts and costs related to the water or sewer facility.

3. Within 120 days of completion of the water or sewer facility and its acceptance by the city, the owner of real estate must submit the total cost of the water or sewer facility to the city in a form acceptable to the city. This information will be used by the city to determine reimbursements by future users who will benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

B. The city will make the final determination of which parcels will directly benefit from the improvements and include those parcels in the assessment area.

C. The reimbursement share of all property owners in the assessment area shall be the pro rata share of the total cost of the project, less any contributions paid by the city. Each reimbursement share shall be determined by the city using a method of cost apportionment which is based upon the benefit received by each property from the project. The owner seeking a latecomer agreement shall not be reimbursed for the share of benefits that are allocated to its property.

D. A preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by mail to the property owners of record within the proposed assessment area. A property owner within the assessment area may request a hearing before the city council. Such request must be in writing and specify the relief sought. The request must be filed with the city clerk, the city attorney, and director of public works within 20 days of the mailing of the preliminary determination. After receiving a timely request for a hearing, notice shall be given to all property owners in the assessment area of the date, time, and location of the hearing. The city council's ruling shall be determinative and final.

E. The contract shall be recorded with the Thurston County Auditor within 30 days of such approval by city council. The recorded contract shall constitute a lien against all real property within the assessment area for whom the owners did not contribute to the original cost of the utility project. The provisions of the contract may not be effective as to any owner of real estate not a party thereto unless the contract has been recorded with the Thurston County Auditor's office prior to the time the owner taps into or connects to the water or sewer facilities.

F. If, within a period of 20 years from the date the contract was recorded (or such other period provided for in the contract), any property within the assessment area applies for connection to the utility line, the lien for payment of the property's proportionate share shall become immediately due and payable to the city as a condition of receiving connection approval. An extension of the 20 years may be granted for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more. Upon extension of the reimbursement period, the contract amendment must specify the duration of the extension and must be filed and recorded with the county auditor. The city will notify property owners within the reimbursement area of any extension filed.

G. All assessments collected by the city pursuant to a latecomer agreement, minus the city's administrative charge, shall be paid to the original proponent, its personal representative, successors or assigns within 60 days after receipt by the city. The city's administrative charge for each collection is set forth in OMC Chapter 4.04. However, the property owner entitled to reimbursement must update his/her address with the city every two years from the date the contract is executed with information regarding the current contract 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 such notifications, within sixty days of the specified time, then the city may collect any reimbursement funds owed to the property owner under contract and deposit such funds into the capital fund of the city.

H. A person, firm, or corporation may not be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions thereof during the period of time prescribed in such contract without first paying to the city, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provision of the contract under which the water or sewer facilities so tapped into or used were constructed. Whenever any tap or connection is made into any such contracted water or sewer facilities 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.

I. Nothing in this section, nor any provision in a latecomer agreement, shall be construed as establishing the city as a public utility in areas not already connected to the city's utility system, nor shall this section, or any latecomer agreement, be construed as establishing express or implied rights for any property owner to connect to the city's utility system without first qualifying for such connection by compliance with all applicable city codes and ordinances.

J. Alternatively, the City may finance the construction or improvement of water or sewer facilities and create an assessment reimbursement area without the participation of a private property owner pursuant to RCW 35.91.060.

K. Nothing in this section is intended to create a private right of action for damages against the city for failing to comply with the requirements of this section. The city, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of a city to comply with the requirements of this section does not relieve the city of any future requirement to comply with this section.

18.41.040 Street Latecomer Agreements

A. The provisions of Chapter 35.72 RCW shall apply when an owner of real estate is required by any city ordinance, including but not limited to the City's Engineering Design and Development Standards, which are adopted into the Olympia Municipal Code by reference in Chapter 12.02, to improve or construct street facilities (including design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements, as required by the street standards of the city) as a prerequisite to further property development. The owner must submit a written request on a form provided by the city for a contract to request recovery of the cost of the improvement or construction of street facilities prior to the approval of such facilities by the city. The application shall include the proposed benefitting properties, along with an estimated pro rata share that each property should pay. The city has discretionary authority whether or not to enter into a contract with the owner for the recovery of latecomer fees for these types of improvements.

1. Within 120 days of completion of the street facilities and its acceptance by the city, the owner of real estate must submit the total cost of the street facilities to the city in a form acceptable to the city. This information will be used by the city to determine reimbursements by owners of parcels adjacent to the improvements that would require similar street improvements upon development, but who did not contribute to the original cost of the improvements.

B. The city will make the final determination of which parcels will directly benefit from the improvements and include those parcels in the assessment area.

C. The reimbursement share of all property owners in the assessment area shall be the pro rata share of the total cost of the project, less any contributions paid by the city. Each reimbursement share shall be determined by the city using a method of cost apportionment, which is based upon the benefit received by each property from the project. The owner seeking a latecomer agreement shall not be reimbursed for the share of benefits that are allocated to its property.

D. A preliminary determination of area boundaries and assessments, along with a description of the property owners' rights and options, shall be forwarded by certified mail to the property owners of record within the proposed assessment area. A property owner within the assessment area may request a hearing before the city council. Such request must be in writing and specify the relief sought. The request must be filed with the city clerk, the city attorney, and director of public works within 20 days of the mailing of the preliminary determination. After receiving a timely request for a hearing, notice shall be given to all property owners in the

assessment area of the date, time, and location of the hearing. The city council's ruling shall be determinative and final.

E. The contract, upon approval by the city council, shall be recorded with the Thurston County Auditor within 30 days of such approval. The filed contract shall be binding on owners of record within the assessment area who are not party to the contract.

F. If, within a period of 15 years from the date the contract was recorded (or such other period provided for in the contract), any property within the assessment area applies for connection to the utility line, the lien for payment of the property's proportionate share shall become immediately due and payable to the city as a condition of receiving connection approval. An extension of the 15 years may be granted for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more. Upon extension of the reimbursement period, the contract amendment must specify the duration of the extension and must be filed and recorded with the county auditor. The city will notify property owners within the reimbursement area of any extension filed.

G. All assessments collected by the city pursuant to a latecomer agreement, minus the city's administrative charge, shall be paid to the original proponent, its personal representative, successors or assigns within 60 days after receipt by the city. The city's administrative charge for each collection is set forth in OMC Chapter 4.04. However, the property owner entitled to reimbursement must update his/her address with the city every two years from the date the contract is executed with information regarding the current contract 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 such notifications within sixty days of the specified time, then the city may collect any reimbursement funds owed to the property owner under contract and deposit such funds into the capital fund of the city.

H. Nothing in this section, nor any provision in a latecomer agreement, shall be construed as establishing the city as a public utility in areas not already connected to the city's utility system, nor shall this section, or any latecomer agreement, be construed as establishing express or implied rights for any property owner to connect to the city's utility system without first qualifying for such connection by compliance with all applicable city codes and ordinances.

I. Alternatively, the City may finance the construction or improvement of street facilities and create an assessment reimbursement area without the participation of a private property owner pursuant to RCW 35.72.050.

Section 3. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: