

**ORDINANCE #2016-09-034**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING THE LATECOMER PROCESS, AMENDING CHAPTERS 14.02 AND 2.56 OF THE BELLINGHAM MUNICIPAL CODE**

**WHEREAS**, Chapter 14.02 of the Bellingham Municipal Code establishes a uniform methodology and process for administration of the latecomer process authorized under state law (see RCW 35.72 regarding streets and RCW 35.91 regarding utilities); and

**WHEREAS**, the latecomer process allows a private property owner to finance and install public street or utility system improvements and recover a portion of the cost from other property owners who later develop property in the vicinity and use the improvements; and

**WHEREAS**, both the street and utility latecomer statutes specifically allow a municipality to join with a private property owner to create an assessment reimbursement area, jointly finance the costs of the improvements, and share in the reimbursements based upon the relative contributions of each; and

**WHEREAS**, the street latecomer statute also specifically allows a municipality to create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance all of the costs of the street improvements, and become the sole beneficiary of the reimbursements; and

**WHEREAS**, in 2015, the Washington State Legislature amended the utility latecomer statute to align it with the street latecomer statute by providing specific authorization for a municipality to create a utility assessment reimbursement area on its own initiative, without the participation of a private property owner, finance all of the cost of the utility improvements, and become the sole beneficiary of reimbursements; and

**WHEREAS**, City Council desires to amend Chapter 14.02 of the Bellingham Municipal Code to adopt the provisions of the 2015 amendment to state law regarding use of the latecomer process for publicly-funded utility system improvements; and

**WHEREAS**, City Council desires to further amend Chapter 14.02 of the Bellingham Municipal Code to enhance fairness, clarity and consistency; and

**WHEREAS**, City Council also desires to amend Chapter 2.56 of the Bellingham Municipal Code, to clarify the hearing examiner's jurisdiction to hear contested matters arising under Chapter 14.02 of the Bellingham Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:**

**Section 1.**

Chapter 14.02 of the Bellingham Municipal Code is amended as follows:

**14.02.010 – Purpose.**

Pursuant to the authority conferred in Chapters 35.72 and 35.91 Revised Code of Washington, the purpose of this chapter is to encourage private and public construction of municipal street and utility system improvements by providing means for the recovery of the costs of installation through a charge to later users of the improvements who did not contribute to the costs thereof.  
~~To establish a uniform methodology and process for the administration of latecomer agreements in circumstances where a developer uses private funds to construct public street and/or utility system improvements and desires to be partially reimbursed by property owners who subsequently connect to or use the improvements but who did not contribute to the original cost of the improvements.~~

~~The provisions of this chapter are in addition to and intended to supplement any other requirements contained elsewhere in the Bellingham Municipal Code.~~

~~This chapter is also intended to implement Chapters 35.72 and 35.91 RCW.~~

**14.02.020 – Definitions. [UNCHANGED]**

**14.02.030 – Applicability. [UNCHANGED]**

**14.02.040 – Application for latecomer agreement. [UNCHANGED]**

**14.02.050 – Application – Review. [UNCHANGED]**

**14.02.060 – Preliminary determinations.**

Upon approval of a latecomer application, the public works department shall formulate a preliminary assessment reimbursement area and preliminary assessment amount for each real property included in the preliminary assessment reimbursement area as follows: ~~based on the following factors:~~

A. For street system improvements, the assessment reimbursement area shall be formulated based upon a determination of which parcels adjacent to the street improvements would require similar street improvements upon development or redevelopment. ~~The likelihood that benefited property will be developed within the period of time that the latecomer agreement will be effective.~~

~~B. For utility system improvements, the assessment reimbursement area shall be formulated based upon a determination of which parcels in the proposed area would require similar utility system improvements upon development or redevelopment, or would be allowed to connect to or use the utility system improvements. The likelihood that at the time of development of the benefited property such property will not be required to install similar street and/or utility system improvements because they were already installed by the developer.~~

~~C. For street system improvements, that benefited parcels are adjacent to such street system improvements.~~

~~D. For utility system improvements, the likelihood that such improvements will be tapped into or used (including not only direct connections but also connections to laterals or branches connecting thereto) by properties within the assessment reimbursement area.~~

~~CE. A pro rata share of the cost of the improvements shall be allocated to each property included in the assessment reimbursement area based upon the benefit to the property owner. An equitable allocation of the cost of construction among the properties within the assessment reimbursement area, so that each pays for benefits attributable to those improvements. The method or methods used to calculate the allocation of the assessment may be either front footage, number of units, square footage, zone and termini method, or other equitable method, as determined by the city.~~

#### **14.02.070 – Preliminary determination notice.**

A. The preliminary assessment reimbursement area and the preliminary assessment amounts formulated by the public works department shall be sent by certified mail to the developer and the property owners of record within the preliminary assessment reimbursement area.

B. The developer or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the hearing examiner pursuant to BMC 2.56.050(C) to contest the preliminary assessment reimbursement area and/or preliminary assessment amounts. Notice of such hearing shall be given to the developer and all property owners within the preliminary assessment reimbursement area and the hearing before the hearing examiner shall be conducted as soon as is reasonably practical. The procedure contained in Chapter 2.56 BMC shall govern the hearing. After the hearing, the hearing examiner shall develop a report with findings of fact, conclusions of law and recommendations to the city council regarding establishing the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The city council shall consider the record developed before the hearing examiner and the hearing examiner's report. City council ~~shall~~ may allow public comment on the hearing examiner's report and, if a majority of the council finds the record insufficient, may add to the record. After considering the record, the hearing examiner's report and public comment thereon, if any, city council may adopt or reject the hearing examiner's recommendations in whole or in part or it may render its own findings and conclusions. City council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The city council's determination of

the assessment reimbursement area and the assessment shall be as provided by BMC 1.26.040040 and BMC 1.26.050 and shall be determinative and final.

C. In the event no written request for a hearing is received within the allotted time, the determination of the public works department shall be final.

**14.02.080 – Latecomer agreement. [UNCHANGED]**

**14.02.090 – Recording. [UNCHANGED]**

**14.02.100 – Construction – Final costs – Conveyance. [UNCHANGED]**

**14.02.110 – Defective work. [UNCHANGED]**

**14.02.120 – Payment of latecomer – Remittance to developer.**

A. Upon recording, the latecomer agreement and assessment shall be binding upon all properties located property owners of record within the assessment reimbursement area. If an owner applies to the city to connect to or use the improvements installed by the developer, the city shall require that owner to pay his or her pro rata share of the cost of the improvements as set forth in the latecomer agreement. Assessments shall be paid to the city in one lump sum, including interest through the date of payment, as follows:-

1. Assessments for street improvements shall be paid prior to the development or redevelopment of property if at the time of development or redevelopment the property owner is not required to construct similar street improvements because they were already constructed by the developer.

2. Assessments for utility system improvements shall be paid prior to connection to or use of the utility system improvements.

B. The city will pay over to the developer the amounts due within 60 days of receipt.

C. When the assessment for any property has been paid in full, the public works director or his designee shall record a certification of payment that will release the property from the latecomer agreement.

D. The latecomer charge shall be in addition to the usual and ordinary charges, including connection charges, system development charges, and any other fees or charges which must be paid by persons applying for city services.

~~E. The public works director or his designee has the authority to issue building permits to owners of properties located within the assessment reimbursement area without collecting latecomer assessments if the building permit application indicates to the city's satisfaction that the property will be developed without connecting to or using the latecomer improvements.~~

**14.02.130 – Segregation [UNCHANGED]**

**14.02.140 – Term of developer reimbursement agreements.**

A. For street system improvements, each latecomer agreement shall be valid for a period of 15 years from the date of its recording, unless earlier terminated as provided in subpart C of this section.

B. For utility system improvements, each latecomer agreement shall be valid for a period of 20 years from the date of its recording, unless earlier terminated as provided in subpart C of this section.

C. The city may terminate a latecomer agreement if the developer fails to commence or complete construction within the time and manner required in the public facilities construction agreement for the improvements. In the event of termination, the city shall record a release of latecomer's agreement in the county auditor's office.

**14.02.150 – Removal of unauthorized connections or taps. [UNCHANGED]**

**14.02.160 – Interest on assessment.**

Each assessment established under this chapter in the latecomer agreement shall bear interest from the date of recording of the latecomer agreement or notice of assessment at an interest rate fixed at the federal reserve rate for a two-year treasury note, as determined on the date of recording the latecomer agreement or notice of assessment.

**14.02.170 – City fees. [UNCHANGED]**

**14.02.180 – Appeal.**

With the exception of the determination of the preliminary assessment reimbursement area and preliminary assessment as provided by BMC 14.02.070, a developer or owner of record of property located within the assessment reimbursement area may appeal the interpretation, implementation, and/or decisions of the public works department concerning any aspect of this chapter to the hearing examiner as provided by BMC 2.56.050(B)(7). The appeal must be filed within twenty days of the date of the action or decision being appealed.

**14.02.190 – Enforcement of latecomer obligations. [UNCHANGED]**

**14.02.200 – Alternative financing methods.**

A. As an alternative to financing street and/or utility improvements under this chapter solely by developers, the city may join in the financing of the improvements and may be reimbursed in the same manner as developers who participate in funding the improvements. If the city elects to join

in the financing of street or utility system improvements under this chapter, it shall have the same rights to reimbursement as developers who make contributions as authorized under this chapter and shall be entitled to a pro rata share of the reimbursement based on the respective contribution of the developer and the city municipality.

B. As another alternative to for financing street and/or utility system improvements under this chapter in whole or in part by developers, the city may create an assessment reimbursement area on its own initiative, without the participation of a private developer, finance all of the costs of the street and/or utility system improvements, and become the sole beneficiary of the reimbursements that are contributed. The city may establish an assessment reimbursement area under this subsection only in locations where the city's ordinances require utility or street improvements to be constructed as a prerequisite to further property development or redevelopment. The process shall be as follows:

1. The public works department shall formulate the boundaries of a preliminary assessment reimbursement area and determine the amount of the preliminary assessment applicable to each parcel located within the preliminary assessment reimbursement area in accordance with BMC 14.02.060, subject to the following limitations:

a. The assessment for water and sewer improvements shall be no greater than a property's pro rata share of costs associated with construction of the water or sewer facilities required to meet water and sewer service and fire suppression standards. No city costs for any portion of the utility system improvements that only benefit property outside of the assessment reimbursement area may be reimbursed.

b. The city may be reimbursed only for the costs of street improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area. No city costs for improvements that benefit the general public may be reimbursed.

2. The public works department shall provide notice of its preliminary determination to all owners of record of property located within the preliminary assessment reimbursement area in accordance BMC 14.02.070.

3. Owners of record of property located within the preliminary assessment reimbursement area may contest the public works department's preliminary determinations in accordance with BMC 14.02.070.

4. Based upon staff's preliminary determination, if no hearing is requested, or based upon city council's determination, if a hearing is requested, the public works department shall prepare and record a notice of assessment against each property in the county auditor's office. Upon recording of the notice, the assessment shall be binding upon the property and shall run with the land in perpetuity until paid. The term limits contained in BMC 14.02.140 shall not apply to latecomer assessments established under this subsection.

5. Assessments shall be paid to the City as follows:

a. Assessments for street improvements shall be paid prior to the development or redevelopment of property if at the time of development or redevelopment the owner is not required to install similar street improvements because they were already installed by the city.

b. Assessments for utility system improvements shall be paid prior to connection to or use of the utility system improvements.

6. Upon receipt of payment in full, the City shall record a notice of release of assessments in the county auditor's office. Recording costs shall be paid in advance by the property owner.

7. Assessments may be determined and recorded at any time prior to or after completion of construction of the improvements. If the recorded assessment amounts were determined prior to completion of construction based upon estimated costs, the city shall subsequently prepare revised notices of assessment based upon actual costs following completion of construction, provided that assessments shall not be increased by more than ten percent. The revised notices shall be sent by certified mail to each owner of record of property within the assessment reimbursement area and recorded in the county auditor's office.

**14.02.210 – Limitation of liability. [UNCHANGED]**

**Section 2.**

Section 2.56.050 of the Bellingham Municipal Code is amended as follows:

A. [UNCHANGED]

B. The decision of the hearing examiner on the following matters which shall be within the jurisdiction of the hearing examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:

1. - 6. [UNCHANGED]

7. Appeals of the interpretation and/or decisions of the public works department regarding latecomer matters as authorized in local improvement districts pursuant to BMC 14.02.180-50.

8. - 16. [UNCHANGED]

C. On the following matters, which shall be within the jurisdiction of the hearing examiner notwithstanding any other provision in the Bellingham Municipal Code, the hearing examiner shall enter findings of fact, conclusions of law, and recommendations to the city council:

1. Formation of a local improvement district.

2. Approval of local improvement district assessments, ~~including contests of the preliminary assessment reimbursement area and preliminary assessment for local improvement districts pursuant to BMC 14.02.060.~~

a. - g. [UNCHANGED]

3. Formulation of latecomer preliminary assessment reimbursement areas and amounts as provided in BMC 14.02.070.

~~3.4.~~ Petitions for street and alley vacations.

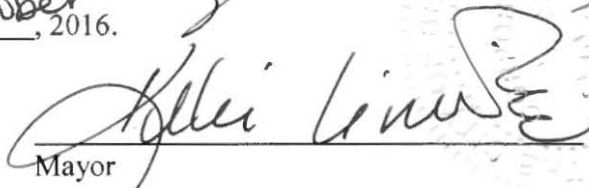
D. - G. [UNCHANGED]

PASSED by City Council this 26<sup>th</sup> day of September, 2016.



Council President

APPROVED by me this 5<sup>th</sup> day of October, 2016.



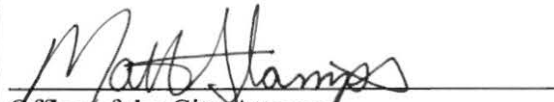
Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

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