

**POULSBO DISTRIBUTION SCHEDULE**

**ORDINANCE NO. 2018-21**

**SUBJECT: PMC 15.30 Latecomer Agreement**

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**CONFORM AS TO DATES & SIGNATURES**

- Filed with the City Clerk: 8/3/18
- Passed by the City Council: 8/8/18
- Signature of Mayor
- Signature of City Clerk
- Publication: 8/17/18
- Effective: 8/22/18
- Recorded: \_\_\_\_\_

**DISTRIBUTED COPIES AS FOLLOWS:**

- NK Herald: \_\_\_\_\_
- Code Publishing
- City Attorney
- Clerk's Department: Original
- City Council
- Finance:
- Posted to Library Drive and Website
- \_\_\_\_\_

Rhiannon Fernandez  
City Clerk

8/9/18  
Date

**ORDINANCE NO. 2018-21**

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, AMENDING CHAPTER 15.30 OF THE POULSBO MUNICIPAL CODE IN ORDER REVISE THE LATECOMER AGREEMENT REQUIREMENTS AS REQUIRED BY RCW AND TO MAKE MINOR GRAMMATICAL REVISIONS AND CLARIFY LATECOMER REIMBURSEMENT REQUIREMENTS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

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**WHEREAS**, Chapter 15.30 of the Poulsbo Municipal Code regulates Latecomer Agreements for Street and Utility Improvements within the City; and

**WHEREAS**, The City desires to make the Poulsbo Municipal Code consistent with the RCW relating to Latecomer Agreements and;

**WHEREAS**, The City desires to make minor grammatical corrections and revisions to Chapter 15.30; and

**WHEREAS**, Revisions are made to clarify when the reimbursement terms of the Latecomer Agreement are due; and

**WHEREAS**, On January 10, 2018, April 11, 2018, and July 25, 2018 the Public Works Committee reviewed the draft revisions to Chapter 15.30 and on July 25, 2018 moved to recommend approval to Council, NOW THEREFORE,

**THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** **Adoption of Findings.** The recitals set forth above are hereby adopted as the Poulsbo City Council's findings justifying the revisions to the chapter of code adopted by this ordinance.

**Section 2. Adoption of PMC 15.30.** Chapter 15.30 of the Poulsbo Municipal Code is hereby amended as shown in Attachment A.

**Section 3. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 4. Effective Date.** This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

  
\_\_\_\_\_  
MAYOR REBECCA ERICKSON

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CITY CLERK RHIANNON FERNANDEZ

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY JAMES E. HANEY

FILED WITH THE CITY CLERK: 08/03/2018  
PASSED BY THE CITY COUNCIL: 08/08/2018  
PUBLISHED: 08/17/2018  
EFFECTIVE DATE: 08/22/2018  
ORDINANCE NO. 2018-21

SUMMARY OF ORDINANCE NO. 2018-21  
of the City of Poulsbo, Washington

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On August 8, 2018 the City Council of the City of Poulsbo, Washington, approved Ordinance No. 2018-21, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, AMENDING CHAPTER 15.30 OF THE POULSBO MUNICIPAL CODE IN ORDER REVISE THE LATECOMER AGREEMENT REQUIREMENTS AS REQUIRED BY RCW AND TO MAKE MINOR GRAMMATICAL REVISIONS AND CLARIFY LATECOMER REIMBURSEMENT REQUIREMENTS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

DATED this 9th day of August, 2018



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CITY CLERK, RHIANNON FERNANDEZ CMC

# Attachment A

Additions are shown by **bold underline** and deletions are denoted by ~~strike through~~.

## Chapter 15.30 LATECOMER AGREEMENTS FOR STREET AND UTILITY IMPROVEMENTS

Sections:

- 15.30.010 Purpose.**
- 15.30.020 Definitions.**
- 15.30.030 Minimum project size.**
- 15.30.040 Contents of application.**
- 15.30.050 Duration of agreement.**
- 15.30.060 City engineer's determination—City council.**
- 15.30.070 Determination of benefitted area boundaries and assessments.**
- 15.30.080 Notice to affected property owners—Hearing, final determination by city council.**
- 15.30.090 Latecomer agreement must be recorded.**
- 15.30.100 Written agreement—Payment of city costs in excess of application fee.**
- 15.30.110 Construction and acceptance of improvements—Recording of final assessment.**
- 15.30.120 Collection of assessments—No liability for failure to collect.**
- 15.30.130 Disposition of undeliverable reimbursement funds.**

### **15.30.010 Purpose.**

The purpose of this chapter is to prescribe rules and regulations for exercise of the authority to enter into street and utility latecomer agreements granted to the city by Chapters [35.72](#) and [35.91](#) RCW. (Ord. 95-4 § 1 (part), 1995)

### **15.30.020 Definitions.**

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

- A. "Cost of construction" means those costs incurred **specifically for improvements eligible to the latecomer** for design, acquisition of right-of-way and/or easements, construction, materials and installation required in order to create an improvement which complies with city standards. Until such time as Chapter [35.72](#) or [35.91](#) RCW is amended to expressly authorize inclusion of interest charges or other financing costs, such expenses shall not be included in the calculation of construction costs. 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 of water or sewer facilities and/or 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 benefitted by the improvements, as more specifically described in Chapters [35.72](#) and [35.91](#) RCW.

C. "Street project" shall have the meaning specified in RCW [35.72.020](#)(1) as it now reads, or as hereafter amended.

D. "Water or sewer facilities" shall have the meaning specified in RCW [35.91.015](#) as it now reads, or as hereafter amended. (Ord. 2007-50 § 3, 2007; Ord. 95-4 § 1 (part), 1995)

#### **15.30.030 Minimum project size.**

**A.** In order to be eligible for a latecomer agreement, the estimated cost of the improvement must not be less than five thousand dollars. 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.

**B.** Latecomer agreements may be applied for before and/or after construction of the street project or water or sewer facility is complete. Applicants that submit applications after utility project or facility construction bear the risk that the city council may reject or modify the terms of the latecomer agreement. (Ord. 95-4 § 1 (part), 1995)

#### **15.30.040 Contents of application.**

The application fee for a latecomer agreement shall be as set forth in Section [3.12.020](#)(I). An application shall be considered complete upon submission of a fee to the ~~finance director~~ **City** and the written application on a form approved by the city that is accompanied by:

A. Preliminary, or in the case of completed street projects or water or sewer facilities, final utility and/or street design drawings;

B. For applications submitted before the street project or water or sewer facility 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);

C. For applications submitted after construction of a street project or water or sewer facility is completed, receipts and itemized construction costs must be submitted to establish the costs of **directly associated with** construction of the street project or water or sewer facility. **Itemized constructions costs shall include only eligible items and shall be clearly separated from other costs incurred during construction;** ~~eligible to the latecomer agreement.~~

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

E. An assessment roll containing **the** county **assessor's** ~~tax auditor's~~ tax lot **parcel** numbers, owners of record, **mailing addresses for owners of record, legal descriptions and the proposed latecomer assessment for each** ~~assessed value for each benefitted parcel; and~~

F. **Evaluations for determining benefits and** such other information as the city engineer determines is necessary to properly review the application; **and** (Ord. 2003-16 § 40 (part), 2003: Ord. 95-4 § 1 (part), 1995)

**G. A deposit for mailing costs and recording fees in an amount determined by the city engineer. Any unused funds shall be refunded to the applicant.**

#### 15.30.050 Duration of agreement.

~~No latecomer agreement shall provide for reimbursement for a period of longer than fifteen years from the date of final acceptance of the street project or water or sewer facility by the city. (Ord. 2007-50 § 1, 2007: Ord. 95-4 § 1 (part), 1995)~~

**A. No latecomer agreement shall provide for reimbursement for a period of longer than fifteen years from the date of final acceptance of the street, road, and highway project by the city or as specified in RCW 35.72.020.**

**B. No latecomer agreement shall provide for reimbursement for a period of longer than twenty years from the date of final acceptance of the water or sewer facility by the city or as specified in RCW 35.91.020.**

#### 15.30.060 City engineer's determination—City council.

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



1. The project satisfies the minimum size requirement of Section [15.30.030](#);
2. The proposed improvements fall within the description of “street projects” and/or “water or sewer facilities” as those terms are described in Chapters [35.72](#) and [35.91](#) RCW; and
3. In the case of street projects, the construction of the improvements is required by city ordinances as a prerequisite to development of property owned by the applicant.

B. In the event all of the above criteria are not satisfied, the city engineer may condition approval as necessary in order for the application to conform to such criteria, or shall deny the application. The final decision of the city engineer shall be in writing. The applicant may obtain a review of the city engineer’s decision by filing a request therefor with the city clerk no later than ten days after mailing of a copy of the city engineer’s determination to the applicant at the address listed on the application.

C. In reviewing a city engineer’s determination, the city council shall apply the criteria set forth in this chapter and Chapters [35.72](#) and [35.91](#) RCW as now or hereafter amended. The council may adopt, reject or modify the engineer’s determination. (Ord. 95-4 § 1 (part), 1995)

**15.30.070 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 parcels, in the case of a utility improvement, did not contribute to the original cost of the water or sewer facility and who may subsequently tap into or use the same, including not only those who may connect directly thereto, but also those who may connect to laterals or branches connecting thereto. In the case of street projects, the assessment reimbursement area shall be based upon a determination of which parcels 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 the 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. (Ord. 95-4 § 1 (part), 1995)

**15.30.080 Notice to affected property owners—Hearing, final determination by city council.**

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

B. If any property owner requests a hearing in writing within twenty days of the mailing 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.

C. In the event a hearing is conducted as provided in this section, after considering public testimony, the city council shall make a final determination of the reimbursement area boundaries and assessments based upon the criteria set forth in this chapter and as specified in Chapters [35.72](#) and [35.91](#) RCW as now or hereafter amended. The council may adopt, reject or modify the engineer's determination. (Ord. 95-4 § 1 (part), 1995)

**15.30.090 Latecomer agreement must be recorded.**

In order to become effective, a latecomer agreement must be recorded with the office of the Kitsap County auditor no later than thirty days after the latecomer agreement is signed by all parties. (Ord. 95-4 § 1 (part), 1995)

**15.30.100 Written agreement—Payment of city costs in excess of application fee.**

A. Upon approval of the application and the determination of the estimated costs, benefitted area and assessments by the city engineer, the finance director shall prepare a latecomer agreement. The agreement, application and supporting documents, together with the city engineer's determination of costs, benefitted area and assessments, shall be presented to the city council with a request that the city council approve the latecomer agreement and authorize the mayor to sign the agreement on behalf of the city. The city council may approve, reject or modify the latecomer agreement. Upon approval by the city council, the finance director shall acquire the signatures of all other parties and record the agreement as required by Section [15.30.090](#) of this chapter.

B. In the event that costs incurred by the city for engineering or other professional consultant services required in processing the application exceed the amount of the application fee, the city's finance director 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 3.12.010(D). (Ord. 2003-16 § 40 (part), 2003; Ord. 95-4 § 1 (part), 1995)

**15.30.110 Construction and acceptance of improvements—Recording of final assessment.**

A. When an application is made prior to construction of the street project or water or sewer facility and the reimbursement 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 acceptance of the improvements by the city, subject to any required obligation to repair defects. When deemed appropriate by the finance director, 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 certification 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. (Ord. 95-4 § 1 (part), 1995)

**15.30.120 Collection of assessments—No liability for failure to collect.**

A. Subsequent to the recording of a reimbursement a latecomer agreement, the city shall ~~not~~:

1. In the case of a street project agreement, ~~issue any permit for development upon which has been assessed pursuant to the agreement;~~ **collect payment at time the developer would have been required to install similar improvements in order to develop the property. To the City, this means latecomer payment shall be collected:**

**a. Prior to recording Final Plat for subdivisions;**

**b. Prior to issuing Certificate of Occupancy for commercial or multifamily developments;**

**c. As otherwise specified in the agreement.**

2. In the case of a water or sewer facility agreement, ~~permit connection of the assessed property to any sewer or water facility constructed pursuant to the reimbursement agreement, unless the share of the costs of such facilities required by the recorded agreement is first paid to the city.~~ **collect payment before the City authorizes connection to the utility. The City shall collect payment prior to issuing first applicable permit which authorizes connection to the utility. To the City, this means latecomer payment shall be collected:**

**1. Prior to issuance of Clearing and Grading Permits in the case of subdivisions and site plans;**

**2. Prior to issuance of Public Property Construction Permit if Clearing and Grading permit is not required;**

**3. Prior to issuance of Building or Plumbing permit.**

B. Upon receipt of any reimbursement funds, the city shall deduct an ~~an five percent~~ administrative fee **of \$250,** 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 or connection to a sewer or water facility, 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. (Ord. 95-4 § 1 (part), 1995)

**15.30.130 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 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 the notification requirements of this section within sixty days of the specified time, then the city may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the city. (Ord. 2007-50 § 2, 2007: Ord. 95-4 § 1 (part), 1995)