

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 10-15

AN ORDINANCE of the City Council of the City of Buckley, Pierce County, Washington, repealing chapter 13.40 of the Buckley Municipal Code entitled “Street Latecomer’s Agreements” and amending a chapter 14.14 entitled “Latecomer Agreements for Water, Sewer, Stormwater and Natural Gas Improvements”.

WHEREAS, in October, 2006 the City Council adopted ORD #11-06 creating a new chapter 14.14 in the Buckley Municipal Code entitled Latecomer Agreements for Water, Sewer and Natural Gas Improvements; and

WHEREAS, at the time of adoption City staff failed to identify that in Title 13 of the Municipal Code the City already had an older code section under BMC 13.40 Street Latecomers Agreements that permitted reimbursement for utilities similar to that outlined in the new BMC 14.14; and

WHEREAS, BMC 14.14 allowed a developer to recover costs associated with installation and extension of natural gas facilities; and

WHEREAS, in July, 2014 the City sold its natural gas utility to Puget Sound Energy and no longer owns or operates this type of facility; and

WHEREAS, due to the overlap and redundancy between conflicting code sections the City Council desires to repeal BMC 13.40; and

WHEREAS, RCW 35.91.020 (2) has been amended to read “*A contract entered into under this section must also provide, in accordance with the requirements of this section, for the pro rata reimbursement to the owner or the owner's assigns for twenty years, or for a longer period if extended in accordance with subsection (4) of this section*” and the current code stipulates repayment over a ten year period; and

WHEREAS, in addition the City Council desires to amend BMC 14.14 to comply with State statutes, correct errors and eliminate references to the natural gas system and adjust fees associated with application and administration of latecomer’s agreements to reflect a fairer charge for costs;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 13.40 entitled “Street Latecomer’s Agreements” is repealed in its entirety;

Section 2. BMC 14.14 entitled “Latecomer Agreements for Water, Sewer and Stormwater Improvements” is hereby amended to read as follows;

14.14.010 Purpose.

The purpose of this chapter is to implement Chapter 35.91 RCW, and to describe the process for a property owner or developer to request the execution of a latecomer agreement with the city council for water, sewer and/or stormwater facilities.

14.14.020 Definitions.

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

(1) “Cost of construction” means the cost incurred 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, sewer and/or stormwater 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 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 owner concerning the cost of the water, sewer and/or stormwater facilities, the city engineer’s determination shall be final.

(2) “Engineer” means the city engineer or his/her designated representative.

(3) “Latecomer agreement” means a written contract between the city and one or more property owners providing for the partial reimbursement of the cost of constructing the water, sewer and/or stormwater facilities. The latecomer agreement shall be a standard agreement approved as to form by the city attorney.

(4) “Water, sewer and/or stormwater facilities” means stormwater, sanitary or combination sewers, pumping stations and disposal plants, water mains, hydrants, reservoirs, or appurtenances.

14.14.030 Limitations on latecomer agreement.

The city council may execute a latecomer agreement for water, sewer and/or stormwater facilities with a property owner or developer who constructs water, sewer and/or stormwater facilities:

(1) Within the city or within 10 miles from the city corporate limits, connecting with the city public water, city sewerage system or stormwater system to serve the area in which the real estate is located;

(2) To provide for a period of not to exceed 20 years for the reimbursement of such real estate owners or developers and their assigns by any owner of real estate who did not contribute to the actual cost of such water, sewer and/or stormwater facilities and who subsequently tap into or use the same (the “latecomer”);

(3) To require that the latecomer pay his or her fair pro rata share of the cost of the construction of the water, sewer and/or stormwater facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto;

(4) To be effective as to any owner of real estate not a party to the latecomer agreement so long as such latecomer agreement has been recorded in the office of the Pierce County auditor prior to the time that the latecomer taps into or connects to said water, sewer and/or stormwater facilities.

14.14.040 Effect of latecomer agreement.

No person, firm or corporation shall be granted a permit or be authorized to hook up or use any such water, sewer and/or stormwater 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 hook-up or use or for the water lines, sewers and/or stormwater lines constructed in connection therewith, the amount required by the latecomer agreement. Whenever any hook-up or connection is made into a water, sewer and/or stormwater facility subject to a latecomer agreement, without such payment having first been made, the city may remove, or cause to be removed, such unauthorized hook-up 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.

14.14.050 Fees – Application.

A proposed latecomer agreement, including a description of the methodology and the pro rata share for each property, shall be submitted to the city, accompanied by:

(1) A nonrefundable application fee equal to \$500.00 to cover the cost of public notification, agreement review, development, and city council process time. No request for a latecomer agreement shall be processed unless such fee has been paid. No fee shall be charged for city-initiated latecomer agreements.

(2) Paper and digital copies of as-built plans stamped by a Washington state licensed engineer or land surveyor;

(3) Bill(s) of sale;

(4) Itemized and quantified list of costs of construction, prepared, stamped and signed by a Washington state licensed civil engineer;

(5) An 18-inch by 24-inch scaled drawing stamped by either a Washington state licensed civil engineer or land surveyor showing the water, sewer and/or stormwater facility size, location and the proposed areas potentially encumbered for this latecomer agreement, including dimensions, tax parcel numbers, sizes of parcels, useful elevations as needed 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 owner to determine the assessment, i.e., frontage square footage and zone end termini;

(6) An eight-and-one-half-inch by 11-inch vicinity map showing tax lot numbers and dollar amounts assessed on each lot.

14.14.060 Deadline for submittal of application.

Applications for latecomer agreements shall be submitted to the city for approval after the city notifies the owner that the water, sewer and/or stormwater facilities constructed are acceptable to the city for city operation and maintenance. For residential subdivisions, the application shall be

submitted prior to final plat approval. For other types of developments not requiring a final plat approval, the application shall be submitted within 30 days after the city notifies the owner that the utilities are acceptable. Failure by the owner 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.

14.14.070 Administrative fees and recording costs.

The city's administration fee for a latecomer agreement shall be five percent of the direct construction cost and shall be charged to each latecomer. The owner of the real estate with whom the latecomer agreement is executed shall pay all costs of recording the latecomer agreement with the Pierce County auditor's office, as required by law.

14.14.080 Assessment method.

The city may use any method of assessment permitted by law including, but not limited to, the front-foot method, the zone end termini method, and square footage method. At the discretion of the city administrator, the city may allow a proportionate payment if only a portion of a property is developed, with the balance to be paid when the rest of the property is developed.

14.14.090 Cost of construction to be examined by city engineer.

The cost of construction of the water, sewer and/or stormwater 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 to verify the examination of the cost of construction.

14.14.100 Approval and acceptance of water and/or sewer facilities by city.

All water, sewer and/or stormwater 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 dedication such that the city may operate, maintain, demolish, reconstruct, improve or expand the water, sewer and/or stormwater facilities in the future.

14.14.110 City council approval and notice.

The city council shall have approval authority over latecomer agreements. Approval shall only be given after a public hearing held by the council or the hearing examiner on the agreement. Proper notice shall be met if the hearing is published in an official city newspaper with due notice sent to the affected property owners 10 days prior to the hearing.

14.14.120 Property owner notification requirement.

Each latecomer agreement shall include a provision requiring that every two years from the date the latecomer agreement is executed a property owner entitled to reimbursement under this section 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 latecomer agreement. If the property owner fails to comply with the notification requirements of this subsection within 60 days of the specified time, then the city may collect any reimbursement funds owed to the property owner under the latecomer agreement. Such funds shall be deposited in the capital improvement fund of the city.

14.14.130 No requirement for execution of latecomer agreement.

Nothing in this chapter shall be construed as requiring the city to enter into such latecomer agreement. Nothing in this chapter requires the city to enter into a latecomer agreement on or after the timelines specified in BMC 14.14.060.

Section 3. This ordinance shall be in full force and effect five (5) days after proper posting and publication. A summary of this Ordinance may be published in lieu of publishing the ordinance in its entirety.

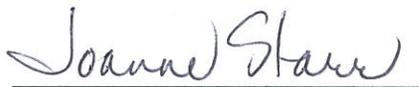
Section 4. If any provision of this ordinance, or ordinance modified by it is determined to be invalid or unenforceable for any reason, the remaining provision of this ordinance and ordinances and/or resolutions modified by it shall remain in force and effect.

Passed by the City Council on the 28th day of April, 2015.



Mayor Pat Johnson

Attest:



Joanne Starr, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

PUBLISHED: May 6, 2015

EFFECTIVE: May 11, 2015