

ORDINANCE NO. 1553

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING CHAPTER 13.16 OF THE BONNEY LAKE MUNICIPAL CODE AND THE CORRESPONDING PORTIONS OF ORDINANCE NO. 1528 RELATED TO LATECOMER AGREEMENTS AND ASSESSMENT REIMBURSEMENT AREAS.

WHEREAS, the City Council wishes to simplify and streamline the municipal code provisions dealing with latecomer agreements and assessments, to allow for maximum flexibility while maintaining the goals of accuracy and fairness, and to incorporate changes to RCW 35.91.

NOW, THEREFORE, the City Council of the City of Bonney Lake does hereby ordain as follows:

Section 1. Chapter 13.16 of the Bonney Lake Municipal Code and the corresponding portion of Ordinance No. 1528 shall be amended to read as follows:

13.16.010 Purpose.

The purpose of this chapter is to establish regulations, as authorized by RCW 35.91.020, regarding the execution and administration of agreements for reimbursement, or “latecomer agreements,” under Chapter 35.91 RCW. (Ord. 1528 § 1, 2015; Ord. 1386 § 1, 2011; Ord. 1327 § 1, 2009; Ord. 898 § 1, 2001).

13.16.020 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

- A. “Benefitting party” means any parcel that can utilize a utility extension consistent with the Growth Management Act and the city’s public works standards.
- B. “City-initiated assessment reimbursement area” means an area of the city’s utility service area where city ordinances require water or sewer facilities to be improved or constructed as a prerequisite to further property development or redevelopment, which would require construction or improvement of water or sewer facilities upon development or redevelopment, or would be allowed connection to or usage of constructed or improved water or sewer facilities, for which the city has financed all of the costs associated with the construction or improvement and becomes the sole beneficiary of reimbursements.

C. "Construction costs" means the sum of all costs incurred to construct utility system improvements, including direct construction costs and preconstruction costs related to design and engineering. The cost of construction shall not include costs that will be reimbursed by other means, at the time of construction or development, such as credits or grants.

~~1. Direct construction costs include the costs to advertise, award, administer and construct the utility system.~~

~~2. Preconstruction costs include, but are not limited to, all related design services, engineering, surveying, legal services, bonding costs, environmental mitigation, acquisition of right of way and/or easements, government agency fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges.~~

D. "Developer extension" means an extension of existing city utility facilities to enable previously unserved properties to be served, which extension is undertaken and paid for by any person other than the city.

E. "Developer extension agreement" means an agreement setting the terms, conditions and standards by which a person agrees to undertake a developer extension.

F. "Person" means any individual person or any public or private entity or organization other than the city.

G. "Utility" means water, stormwater or sanitary sewer service.

H. "Utility latecomer agreement (ULA)" means a contract authorized by RCW 35.91.020 between the city and a developer who constructs or participates in the construction of a developer extension, whereby the city agrees to transmit pro rata share payments, made by persons seeking to connect to the developer extension, to the developer. Pursuant to RCW 35.91.020, if the city contributes to the financing of water, sanitary sewer or stormwater facility projects, it has the same rights to collect reimbursements as do private owners of real estate that enter into latecomer agreements with the city under this chapter. The reimbursement period is limited to a period not to exceed 20 years from the date the extension is dedicated to the city. (Ord. 1528 § 1, 2015; Ord. 1386 § 1, 2011; Ord. 1327 § 1, 2009; Ord. 898 § 2, 2001).

13.16.030 Developer extensions – Latecomer agreements.

A. No developer extension shall be undertaken without prior execution of a developer extension agreement. In any case where a latecomer agreement is contemplated in connection with a developer extension, the latecomer agreement shall be finalized, approved by the council and executed prior to or simultaneous with the city's acceptance of ownership of the developer extension.

~~B. No developer extension shall be undertaken without prior execution of a developer extension agreement. Where the person undertaking a developer extension wishes to be reimbursed pursuant to a latecomer agreement, such desire shall be made clear to the city in writing prior to the execution of the developer extension agreement relating to the developer extension. Where a latecomer agreement is contemplated, the city's standard form latecomer agreement should be made an exhibit to and included by reference in the developer extension agreement executed between the city and the developer of the extension, and the developer extension agreement should clearly provide that the latecomer agreement must be finalized and executed prior to the city accepting ownership of the extension. Should no request for a latecomer agreement made pursuant to this subsection be made prior to execution of a developer extension agreement, the person undertaking such developer extension shall be deemed to have waived any entitlement to a latecomer agreement, and no latecomer agreement shall subsequently be considered or executed with respect to such developer extension.~~

~~C. Should a developer extension be transferred to and accepted by the city without the execution of a latecomer agreement, the person undertaking such developer extension shall be deemed to have waived any entitlement to a latecomer agreement, and no latecomer agreement shall subsequently be considered or executed with respect to such developer extension.~~

~~D. Nothing in this chapter shall be deemed to preclude the city from initiating the latecomer agreement, or the city inclusion of further terms or conditions within any developer extension agreement or latecomer agreement, nor shall this chapter be deemed to preclude the city from applying further conditions to the approval of any developer extension agreement or latecomer agreement.~~

~~E.B. Project Size—Amount of City Participation. In order to be eligible for a latecomer agreement, the estimated cost of the proposed improvement must not be less than~~

~~\$10,000. The estimated cost of the improvement shall be determined by the public works director, based upon a construction contract for the project, bids, engineering or architectural estimates, or other information deemed by the director to be a reliable basis for estimating costs. The determination of the director shall be final. No latecomer agreement may be approved in which the city funds more than 95 percent of the direct construction cost, as defined in BLMC 13.16.020(C)(1); provided, that this shall not preclude the city from establishing a city-initiated assessment reimbursement area. Initially this cost will be as determined by the engineer's estimate for construction costs. The final amount will be based on the actual cost of construction. City participation amounts will be considered on a case-by-case basis in relation to the expected benefit the improvements will have on the city's rate base, the extent to which the improvements implement the comprehensive plan of the city, and the benefits to the utility's efficiency and economy of scale. Should the actual direct construction costs be less than the engineer's estimate, the developer's contribution amount shall be reduced accordingly. A refund of any reduced amount shall be provided to the developer(s) contributing to the financing of the improvement after final completion and project close-out. Should the actual direct construction costs be more than the engineer's estimate, the developer's contribution shall be no more than the amount calculated using the engineer's estimate, even though this may increase the city's contribution to more than 95 percent. (Ord. 1528 § 1, 2015; Ord. 1425 § 1, 2012; Ord. 1386 § 1, 2011; Ord. 1327 § 1, 2009; Ord. 898 § 3, 2001).~~

13.16.040 Administrative Fee.

The city's administrative fee for a latecomer agreement shall be five percent of the direct construction cost and shall be charged to each latecomer; provided, that the city shall not include administrative costs in reimbursements obtained through a city-initiated assessment reimbursement area. Engineering, design, and construction management costs are not considered "administrative" and may be included in the assessment.

In addition to any fee provisions which may be included with any latecomer agreement executed pursuant to this chapter to recover the city's administrative costs, there shall be charged to any person requesting a latecomer agreement pursuant to this chapter a fee of \$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 administrative fees shall be charged for city-initiated

assessment reimbursement areas. (Ord. 1528 § 1, 2015; Ord. 1386 § 1, 2011; Ord. 1327 § 1, 2009; Ord. 898 § 4, 2001).

13.16.050 Allowable costs — ~~Cost recovery methodology.~~

~~The following general guidance shall govern the cost recovery methodology for calculating the amount of the latecomer fee assessed to all benefitting properties covered by the latecomer agreement or city-initiated assessment reimbursement area; provided, that the city council may approve additional or different terms in any particular latecomer agreement:~~

~~A. The cost of extension of utility lines across the developer's property within public or private roadways may be required in both north-south and east-west roadways in order to complete the utility grid identified in the utility comprehensive plan. Construction of the utility grid(s) is the expected duty of the applicant and will not be cost recoverable through a latecomer agreement, except for beneficiaries directly across the road or adjacent to the utility extension. The city shall not be precluded from including the costs of constructing the utility grid in a city-initiated assessment reimbursement area.~~

~~B. Pipe size upgrades shall be required consistent with the future sizing identified in the utility comprehensive plan. Pipe size upgrades will be reimbursed by the city to the developer only when a planned capital improvement is contemplated within three years of the execution of a developer extension agreement.~~

~~C. Any developments or short plats that are connecting to a utility where a latecomer agreement applies shall pay the latecomer fees at final plat. Latecomer fees paid at final plat will be exempt from administration fees.~~

~~D. All lots of record identified in the latecomer agreement will pay the applicable latecomer fee when their building permit is issued or, for existing buildings, when the utility connection is made.~~

~~E. 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; provided, that the city shall not include administrative costs in reimbursements obtained through a city-initiated assessment reimbursement area. Engineering, design, and construction management costs are not considered "administrative" and may be included in the assessment.~~

~~F. Extension of the sewer, stormwater and water systems or addition of new facilities shall be designed according to the adopted water, sanitary sewer, and stormwater comprehensive plans or per the public works director's direction when unique site conditions exist.~~

~~G. The public works director or designee will make recommendations to the city council as to an appropriate pro rata share for latecomer fee assessment.~~

~~H. Recoverable costs may include all costs reasonably associated with the extension or improvement. These costs include but are not limited to both, including direct construction costs and pre-construction costs deemed appropriate by the city to establish complete cost compilation and assessment of costs on a fair, pro rata share of the extension, subject to such rules and regulations adopted by the city. The mayor or designee may develop policies for cost recovery methodology that accurately and fairly capture the reimbursable costs of improvements consistent with Chap. 35.91 RCW. Recoverable costs may include the cost of acquiring utility easements or rights-of-way only if said easement or ROW would not have been a required developer contribution under city development codes. If the developer would have been required to dedicate the easement or ROW as a condition to project approval, then the value of those contributions may not be included as a recoverable cost under a utility latecomer agreement.~~

~~I. An assessment reimbursement area shall be formulated by the city based upon a determination by the city of which parcels adjacent to the utility extension would require similar utility improvements upon development. Properties benefitting from the utility extension will be identified at the time the latecomer agreement is established. The latecomer fee will be assessed to and remain with each parcel. The terms of this agreement shall run with the land and bind subsequent owners of the properties affected.~~

~~1. The public works director shall prepare and recommend to the city council the method of cost allocation to be used for each latecomer agreement. This allocation of pro rata share costs will normally be based on total square feet of each benefitting parcel utilizing the parcel square footage identified in the Pierce County assessor's records. Other equitable methods of pro rata cost allocation may be considered and approved by the city council.~~

~~2. The preliminary determination of benefitting 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. If any property owner requests a hearing in writing within 20 days of the mailing of the preliminary determination, a hearing shall be held before the legislative body, notice of which shall be given to all affected property owners. Subsequent to all requested hearings and execution of the latecomer agreement, the city council's ruling is determinative and final.~~

~~3. The utility latecomer agreement, or in the case of a city-initiated assessment reimbursement area the final determination of the assessment reimbursement area boundaries and assessments, must be recorded in the Pierce County auditor's office within 30 days of the final execution of the agreement or determination of the assessment area. If the utility latecomer agreement or final determination is so filed, it shall be binding on owners of record within the assessment area who are not party to the latecomer agreement contract.~~

~~J. Annual Adjustment.~~ Initial latecomer fees established when all costs are finalized shall be updated annually at a rate adjusted in accordance with the Engineering News Record (ENR) Construction Cost Index (CCI) for the Seattle area, using a November through November annual measure to establish revised fee schedules effective January 1st of each year. (Ord. 1528 § 1, 2015; Ord. 1425 § 2, 2012; Ord. 1386 § 1, 2011; Ord. 1327 § 1, 2009; Ord. 898 § 5, 2001).

13.16.060 City's authority to collect reimbursement. Process for latecomer agreements and assessment reimbursement areas.

~~A. Pursuant to RCW 35.91.020, if the city contributes to the financing of water, sanitary sewer or stormwater facility projects, it has the same rights to collect reimbursements as do private owners of real estate that enter into latecomer agreements with the city under this chapter. The city may create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance all of the costs associated with the construction or improvement, and become the sole beneficiary of reimbursements. City-initiated assessment reimbursement areas shall follow the processes set forth in BLMC 13.16.050 and this section so far as they are applicable. For city-initiated assessment-reimbursement areas, a preliminary determination of benefitting 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. If any property owner requests a hearing in writing within 20 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. Subsequent to all requested hearings and execution of the latecomer agreement, the city council's ruling is determinative and final.

B. The mayor or designee shall review and approve latecomer agreements to which the city is not a party. The city council shall review and approve city-initiated assessment reimbursement areas and latecomer agreements to which the city is a party.

C. The utility latecomer agreement, or in the case of a city-initiated assessment reimbursement area the final determination of the assessment reimbursement area boundaries and assessments, must be recorded in the Pierce County auditor's office. If the utility latecomer agreement or final determination is so filed, it shall be binding on owners of record within the assessment area.

~~B. The city is authorized to enter into such contracts with private parties as are necessary to finance and construct the project and secure pro rata reimbursements. The amount of reimbursement received by each party to a latecomer agreement shall be a pro rata share of each latecomer assessment paid. The public works director, based on information submitted by the owner, will estimate pro rata share of costs. The public works director may require engineering costs or construction bids to be provided. The public works director will formulate an assessment reimbursement area (benefit area) based upon a determination of which parcels will benefit from the developer extension.~~

~~C. The city may not collect any additional reimbursement, assessment, charge or fee for the infrastructure or facilities for which the city collected pro rata reimbursement under this section.~~

~~D. Cost recovery methodology for the city's reimbursement shall be governed by BLMC 13.16.050; provided, that the city council, acting on the recommendation of the public works director or designee, may approve additional or different methodology in regard to any particular project.~~

~~E.-D.~~ The city shall record in the office of the Pierce County auditor, against every property in the reimbursement area, a notice of additional water, sanitary sewer, or stormwater connection charges pursuant to RCW 65.08.170.

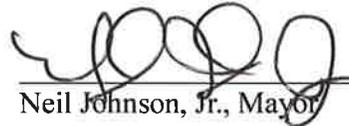
E. Any developments or short plats that are connecting to a utility where a latecomer agreement applies shall pay the latecomer fees at final plat. Latecomer fees paid at final plat will be exempt from administration fees. All lots of record identified in the latecomer agreement will pay the applicable latecomer fee when their building permit is issued or, for existing buildings, when the utility connection is made. (Ord. 1528 § 1, 2015; Ord. 1386 § 1, 2011; Ord. 1327 § 2, 2009).

13.16.070900 Severability.

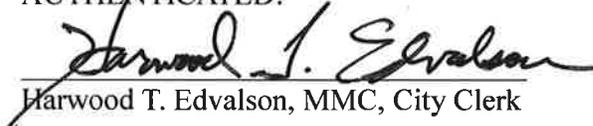
If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter. (Ord. 1386 § 2, 2011; Ord. 898 § 6, 2001).

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after its passage, approval and publication as required by law.

PASSED by the City Council and approved by the Mayor this 16th day of August, 2016.


Neil Johnson, Jr., Mayor

AUTHENTICATED:


Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:


Kathleen Haggard, City Attorney

Passed: 8/16/2016
Valid: 8/16/2016
Published: 8/24/2016
Effective Date: 9/15/2016
This Ordinance totals 9 page(s)

AB16-96

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Exec / Morrison; Haggard	Meeting/Workshop Date: 16 August 2016	Agenda Bill Number: AB16-96
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D16-96	Councilmember Sponsor: Donn Lewis

Agenda Subject: Amend BLMC 13.16 Related to Latecomer Agreements and Assessment Reimbursement Areas

Full Title/Motion: An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Chapter 13.16 of the Bonney Lake Municipal Code and the Corresponding Portions of Ordinance No. 1528 Related to Latecomer Agreements and Assessment Reimbursement Areas.

Administrative Recommendation: Recommend Approval

Background Summary: In 2013 RCW 35.91.020 (ESHB 1717) was amended relating to the financing and reimbursement of water or sewer facilities. RCW 55.91.060 was also adopted which added new provisions authorizing Assessment Reimbursement Areas. This ordinance incorporates those changes to state law and cleans up a number of issues with the prior ordinance.
Attachments: Ordinance

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
				<input type="checkbox"/> General <input type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation: NA				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Other	<i>Approvals:</i>	Yes No
	Date:	Chair/Councilmember	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember	<input type="checkbox"/> <input type="checkbox"/>
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 9 Aug, 2016	Tabled to Date:

APPROVALS		
Director:	Mayor: <i>Neil Johnson Jr.</i>	Date Reviewed by City Attorney: (if applicable)

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Exec / Morrison; Haggard	Meeting/Workshop Date: 16 August 2016	Agenda Bill Number: AB16-96
Agenda Item Type: Ordinance	Ordinance/Resolution Number: D16-96	Councilmember Sponsor: Donn Lewis

Agenda Subject: Amend BLMC 13.16 Related to Latecomer Agreements and Assessment Reimbursement Areas

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COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	Other	<i>Approvals:</i>	Yes No
	Date:	Chair/Councilmember	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember	<input type="checkbox"/> <input type="checkbox"/>
	Forward to:	Consent Agenda:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 9 Aug, 2016	Tabled to Date:

APPROVALS		
Director:	Mayor: <i>Neil Johnson Jr.</i>	Date Reviewed by City Attorney: (if applicable)