

ORDINANCE NUMBER 67-14

AN ORDINANCE AMENDING TITLE 13 OF THE
MASON COUNTY CODE ADDING CHAPTER 13.32
"LATECOMER AGREEMENTS FOR UTILITY FACILITIES"

AN ORDINANCE amending Title 13 of the Mason County Code under the authority of Chapter 36.70 and 36.70A RCW.

WHEREAS, amendments to Title 13 as adopted add Chapter 13.32 titled Latecomer Agreements for Utility Facilities; and

WHEREAS, it is the County's intent to improve drinking water, sanitary sewer and stormwater utility systems through a program utilizing development financing; and


WHEREAS, the County's execution of a Latecomer Agreement in accordance with the adoption of Chapter 13.32 provides for Development reimbursement through a pro rata share of future connection fees; and

WHEREAS, the Mason County Planning Advisory Commission conducted a public hearing on June 2, 2014, continued to September 29, 2014, and recommends adoption of amendments by the Commissioners;

NOW THEREFORE, BE IT HEREBY ORDAINED, that the Board of Commissioners of Mason County hereby amends the Mason County Code Title 13 (Utilities), to include Chapter 13.32, Latecomer Agreements for Utility Facilities. (See Attachment A)

DATED this 18 day of NOV 2014.

ATTEST:


Julie Almanzor, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON


Terri Jeffreys, Chair

APPROVED AS TO FORM:


Tim Whitehead, Chief DPA


Tim Sheldon, Commissioner


Randy Neatherlin, Commissioner

ATTACHMENT A

TITLE 13, UTILITIES

CHAPTER 13.32 LATECOMER AGREEMENTS FOR UTILITY FACILITIES

Sections:

- 13.32.010** PURPOSE.
- 13.32.020** DEFINITIONS.
- 13.32.030** ELIGIBILITY FOR LATECOMER AGREEMENTS.
- 13.32.040** PROPOSALS FOR LATECOMER AGREEMENTS.
- 13.32.050** LATECOMER AGREEMENT – GENERAL TERMS.
- 13.32.060** PROCESSING OF LATECOMER AGREEMENT.
- 13.32.070** DENIAL OF LATECOMER AGREEMENT.
- 13.32.080** ELIGIBILITY FOR APPEALS.

13.32.010 PURPOSE.

The purpose of this Chapter is to allow Mason County (County), pursuant to Chapter 35.91 RCW, to enter into a Latecomer Agreement with an owner of real property (Applicant or Applicant's Authorized Agent) for the installation of public utility facilities (Improvements) as defined in Section 13.32.020 herein. In order for the County to execute a Latecomer Agreement, the Applicant must meet the eligibility requirements set forth herein in Section 13.32.030 "Eligibility for Latecomer Agreements". An Applicant entering into a Latecomer Agreement with the County shall be entitled to future reimbursement by the County of a portion of the connection charges received from other property owners who subsequently benefit from installation of the Improvements by the Applicant.

Upon an Applicant's request, the County shall execute a Latecomer Agreement with the Applicant to install Improvements of adequate size, depth and accessibility to serve both the Applicant's proposed or existing development (Development) and other properties within a County-approved utility improvement service area (Service Area). Per the terms of the Latecomer Agreement, a portion of the connection charges paid by property owners within the Service Area who subsequently connect to the Improvements will be reimbursed to the Applicant to compensate the Applicant for a portion of the cost of installing the Improvements.

The goal of the Latecomer Agreement is to provide a means to reimburse Applicants for costs that exceed their own pro rata share of installing the Improvements necessary to serve both the Development and the remainder of the Service Area without passing on any of the costs to the County or other property owners outside the Service Area. Latecomer Agreements shall be formulated so that the Applicant is not reimbursed for any portion of their own pro rata share of the costs of installing the Improvements.

13.32.020 DEFINITIONS.

The following definitions shall apply to terms used in this Chapter only. All other terms not defined in

this Section shall have the same meaning as set forth elsewhere in MCC Title 13 and any amendments thereto.

- A. Administrative Fee shall mean the charge imposed by the County to administer the Latecomer Agreement Program. The Administrative Fee shall be calculated as stated in Section 13.32.050.B herein.
- B. Applicant's Pro Rata Share shall mean the equitable share of the cost of the Improvements to be paid for by the Applicant.
- C. Department shall mean the Mason County Department of Public Works and Utilities.
- D. Development shall mean the Applicant's proposal for development and/or subdivision or short subdivision of the Property as depicted/described by an approved Mason County land use or building permit application.
- E. Director shall mean the Director of the Mason County Department of Public Works and Utilities or their designee.
- F. Improvements shall mean the public utility facilities installed by the Applicant that are eligible for reimbursement in accordance with this Chapter. Such improvements can include but are not limited to the following: main utility lines, transmission lines, interceptor lines, distribution lines, force mains, service lines, valves, manholes, cleanouts, fire hydrants, pumping or pressure reducing stations, telemetering facilities, reservoirs, disposal plants, side sewer laterals, lift stations, necessary appurtenances, system design, right of way and/or easement acquisition, etc. To be eligible for inclusion in the Latecomer Agreement, such facilities must be installed in accordance with the County's utility planning strategies and utility design & construction standards & specifications and be considered permanent by the Department.
- G. Pro Rata Share shall mean the Total Eligible Construction Cost equitably divided among the properties within the Service Area including the Development. The Pro Rata Share per property within the Service Area shall be calculated by one of the following methods:
 - 1. Front foot method;
 - 2. Square foot method;
 - 3. Zone foot method;
 - 4. Percent of capacity method;
 - 5. Percent of flow method;
 - 6. Equivalent residential units per parcel method;
 - 7. Zoning density method;
 - 8. Other equitable method(s) as determined by the County;
 - 9. Any combination of the above methods.
- H. Total Eligible Construction Cost shall mean the actual cost incurred by the Applicant to install the Improvements subject to the limitations set forth in Section 13.32.050.F herein.
- I. Total Reimbursable Construction Cost shall mean the Total Eligible Construction Cost minus the Applicant's Pro Rata Share of the cost of the Improvements. Costs associated with installation of temporary sanitary sewer facilities shall not be eligible for reimbursement except as noted in Section 13.32.050.G herein.
- J. Tributary Properties shall mean all properties within the Service Area except property within the Development.
- K. Service Area shall mean the utility facility sub-basin, as approved by the Department, used to determine the appropriate size, depth and location of the Improvements that are necessary to serve the properties within the utility facility service area, as defined by the Department, including the Development. The Department may require the Service Area to include rural properties that are located within the County's utility facility service area. Rural properties will only be considered pursuant to RCW 36.70A.110(4).

13.32.030 ELIGIBILITY FOR LATECOMER AGREEMENTS.

- A. To be eligible to enter into a Latecomer Agreement, an Applicant must:
 - 1. Have submitted a complete Utility Facilities Extension (UFE) application to the Department for a proposal to install public utility facilities which provide utility line capacity in excess of that required for the Applicant's Development proposal, and which have adequate size, depth and accessibility to serve the Development and all other properties within a County approved utility facility Service Area; and
 - 2. Either own the real property referred to as the "Property" herein, or be a designee of the owner(s) of the Property. If the Applicant is a designee of the owner(s) of the Property, the Applicant must provide notarized authorization to the Department from the owner(s) of the Property indicating approval of the application and forfeiting all rights of eligibility as an Applicant to enter into a Latecomer Agreement for development of the Property in accordance with this Chapter. The Department will not consider the application as fully completed until and unless such notarized authorization is provided.
- B. All Latecomer Agreements must be executed by the Applicant and the County prior to the issuance of utility line extension permits for construction of the Improvements.
- C. The Director is authorized to negotiate, on behalf of the County, with eligible Applicants to formulate Latecomer Agreements and to recommend such Agreements to the Mason County Board of Commissioners for approval.

13.32.040 PROPOSALS FOR LATECOMER AGREEMENTS.

- A. A proposal for a Latecomer Agreement shall be submitted to the Director or their authorized designee for review.
- B. A complete proposal for a Latecomer Agreement shall, at a minimum, include:
 - 1. A complete submittal for a Utilities Facilities Extension application including, but not limited to, a proposed design plan for the Improvements;
 - 2. An Engineer's Estimate of the construction costs for the Improvements;
 - 3. A proposed Service Area map; and
 - 4. A Conceptual Utility Service Plan for the Service Area.
- C. The Engineer's Estimate shall include an estimate of the Total Eligible Construction Costs as defined in Section 13.32.050 herein. The Engineer's Estimate must be prepared and stamped by a Washington State Registered Professional Engineer.
- D. The Applicant's proposed Service Area shall include all properties which may subsequently use or require service from the Improvements, including the Development, and including property that will receive service from lateral or branch lines connected to the Improvements. The feasibility of a property to receive service from the Improvements does not in and of itself prescribe inclusion in the Service Area. The size and limits of the Service Area must be reviewed and approved by the Director prior to Utility Facilities Plan approval. The Service Area map must be prepared and stamped by a Washington State Registered Professional Engineer.
- E. The Applicant's Conceptual Utility Facilities Plan shall include the proposed design to serve all of the proposed lots within the Development as well as a conceptual design to serve the rest of the property in the Service Area. For sanitary and storm sewer facility improvements, at a minimum, the Conceptual Utility Facilities Plan must include the proposed utility alignment, manhole locations, rim and invert elevations, pipe diameter, pipe slope, flow calculations for design capacity and flow velocities, topography, and parcel numbers and current zoning of all the properties within the Service Area. Approval of the Applicant's Conceptual Utility Facilities Plan for the purpose of determining the eligibility of the Improvements for reimbursement shall

not be construed to be an approval of all the design elements associated with said Plan as they pertain to permanent utility service for the Service Area. The Conceptual Utility Facilities Plan must be prepared and stamped by a Washington State Registered Professional Engineer.

- F. The Director may require additional plans, specifications, easements, and legal documents as deemed necessary to evaluate and administer the Latecomer Agreement.

13.32.050 LATECOMER AGREEMENT – GENERAL TERMS.

The following general terms and conditions shall apply to Latecomer Agreements entered into pursuant to this Chapter:

- A. Installation of the Improvements shall be at the Applicant's expense.
- B. All construction shall be in accordance with an engineering plan approved by the Director, and in accordance with all other applicable County, State, and Federal ordinances, statutes, standards, specifications and/or regulations.
- C. Applicant shall furnish a performance bond satisfactory to the County Prosecuting Attorney, in which assurance is given to the County that the improvements will be carried out as provided herein. To assure the County that this work will be completed and lien holders paid, a bond shall be furnished guaranteeing faithful performance and guaranteeing payment for labor and materials
- D. Each and every parcel along the alignment of the proposed Improvements must be provided with an opportunity to have a utility side lateral stub for future connection installed as a part of the proposed improvements. Prior to Utility Facilities Plan approval, the Applicant will be required to contact the property owners located adjacent to the utility facilities to determine if the adjacent property owners desire that a utility side lateral stub be installed with the proposed improvement and if so, where the adjacent property owners prefer to have their utility side lateral stubs located. Contact shall be, at a minimum, through a certified letter to the owner of record of the properties, as indicated by the Mason County Assessor/Treasurer's records. The Applicant shall maintain a record of contacts with adjacent property owners and submit a listing summarizing the results of the Applicant's efforts to contact adjacent property owners including the property owner's preferred location of the utility side lateral stub. The preferred stub locations must be included on the Utility Facilities Plans prior to approval. Written waivers may be granted at the Director's discretion in instances where a utility side lateral stub is not likely to be utilized. Utility side lateral stubs shall be installed at the applicants expense at those locations indicated on the Department approved improvement plans. All utility side lateral stub installations shall comply with the County's adopted utility development codes, regulations and standards. This provision shall not apply to utility side lateral stubs or sanitary sewer or storm sewer main stubs extending out of manholes. In the case of manholes, the Department reserves the right to require the Applicant to provide, without direct compensation, side sewer stubs or sewer main stubs from manholes. The costs of installing side sewer stubs and sewer main stubs shall be included in the costs subject to reimbursement under the Latecomer Agreement.
- E. Where a Latecomer Agreement is in force, the County shall not allow any property owner within the Service Area to connect to the Improvements without prior payment to the County of the connection charges required by County Code, in addition to all other costs and charges assessed for such use or connection including their Pro Rata Share of the Total Eligible Construction Cost. In addition, connection charges for properties located within the Service Area shall include an Administrative Fee equal to 5 percent of their total Pro Rata Share to cover the costs of administering the Latecomer Agreement with the exception that an Administrative Fee shall not be added to the Applicant's Area Charge that is associated with the Development and paid prior

to approval of the Utility Facilities Plan for the Improvements. No charges or fees collected from the property within the Service Area other than their Pro Rata Share of the Total Eligible Construction Cost shall be utilized to reimburse the Applicant.

- F. The Total Eligible Construction Cost shall only include the following items:
1. Actual utility facilities design work limited to a maximum of 10 percent of the Total Eligible Construction Cost. Utility facilities design work shall include the following:
 - (a) Preparation of conceptual utility design plan and proposed Service Area map, including the engineering report and costs associated with a comprehensive plan amendment, if required.
 - (b) Survey work, including 2-foot interval topography, boundary, and right-of-way determination.
 - (c) Engineering design of utility facilities to the required specifications.
 - (d) Coordination of utility facilities design approval with other Mason County departments and outside agencies (including franchise holders), including permits or approvals for wetlands, shoreline, steep slope, and/or other sensitive-critical areas.
 - (e) Coordination with the appropriate agency for right-of-way access, easement, or permitting requirements.
 - (f) Costs associated with contacting potential users of the utility facilities system for the purpose of locating utility side lateral connections.
 - (g) Preparation of construction cost estimate.
 2. Property acquisition done in accordance with County guidelines, including reasonable costs associated with collateral agreements whereby improvements to property are performed in exchange for granting of easement rights. The Department reserves the right to require the Applicant to obtain an appraisal of the easement property in question at the Applicant's expense.
 3. Legal fees associated with easement or property acquisition for the actual utility facilities, including preparation of the legal description in support of the easement or property acquisition.
 4. Construction costs including labor, materials, construction management, construction staking, and sales tax.
 5. Construction testing related to installation of the utility facility.
 6. Preparation of as-built drawings, and operations and maintenance manuals.
- G. At the Department's discretion, the construction of temporary utility facilities that are not in accordance with the County approved Utility Facilities Plan, utility strategies, plans, design standards or specifications may be allowed. If the Department permits the Applicant to install temporary utility facilities which are sized smaller or at depths higher than those required to provide permanent utility service to all the properties in the Service Area, then the cost associated with the installation of the temporary utility facilities shall not be eligible for reimbursement unless the Department requires that the temporary utility facilities be upsized or installed at a depth lower than that required to serve the Property in accordance with the County approved Utility Facilities Plan and the County's standard utility plans, details and specifications. Only construction costs that are associated with the additional capacity and depth can be included in the Total Eligible Construction Cost.
- H. All Latecomer Agreements and amendments thereto shall be recorded at the Mason County Auditor's Office against all properties that are subject to payment of a Pro Rata Share of the Total Reimbursable Construction Cost under the terms of the Latecomer Agreement for the respective Service Area. The applicant is responsible for all fees and costs required to record

the documents and records.

13.32.060 PROCESSING OF LATECOMER AGREEMENT.

The following general process shall apply to Latecomer Agreements entered into pursuant to this Chapter:

- A. Upon receipt of the Applicant's fully completed Latecomer Agreement proposal, the Department staff will review and provide comment on the application. If the Director determines that a Latecomer Agreement is compliant, negotiations regarding the specific terms of the Agreement in accordance with this Chapter will continue until they have been completed and the Utility Facilities Plans for the Improvements have been approved.
- B. The Applicant shall agree to pay in full all applicable connection charges due to the County for the connection of the Development to the County's public utility system and all other applicable fees required by law, which may include but not be limited to, plan review fees, inspection fees, contract administration fees, utility side lateral stub charges, area charges, front footage charges, pro rata share costs of downstream Latecomer Agreements, recording fees and other administrative fees, prior to approval of the Utility Facilities Plan for the Improvements.
- C. The Department staff shall not forward the final draft of the Latecomer Agreement for approval by the Director, the County's Prosecuting Attorney's Office, the Applicant and the County Commissioners until the Utility Facilities Plan for the Improvements have been approved by the Director.
- D. The permit for the construction of the Improvements shall not be issued by the County until the Latecomer Agreement has been approved by all signatories and executed by the Mason County Board of County Commissioners.
- E. Upon execution of the Latecomer Agreement, the Applicant must proceed with obtaining the permit for the installation of the Improvements and commence construction prior to the expiration of the approved Utility Facilities Plan. Unless extended by mutual agreement between the County and the Applicant, should the Applicant's approved Utility Facilities Plans expire prior to the initiation of construction of the Improvements, then the Latecomer Agreement shall be null and void. Should the Applicant's approved Utilities Facilities Plan expire due to inactivity for 1 year then the Latecomer Agreement shall be null and void.
- F. Upon completion of construction and final acceptance of the Improvements by the Director, the Applicant shall transfer by Bill of Sale, the newly installed utility facilities to the County, free and clear of all liens and debts, for inclusion into the County's utility systems as a public facility.
- G. Within 120 days following the completion of construction of the facilities and acceptance by the County, the Applicant shall provide complete and itemized copies of all invoices for costs related to construction of the facilities. The cost information provided by the Applicant shall be reviewed by the Director to determine the Total Eligible Construction Cost. Certification of the costs and authentication of the copies shall be made by the party providing the services and the Applicant. Costs not evidenced by an invoice shall not be included in the Total Eligible Construction Cost. Any costs not previously identified in the approved Engineer's Estimate shall not be included in the Total Eligible Construction Cost unless written authorization is received from the Director. Construction costs which exceed those identified in the approved Engineer's Estimate shall not be included in the Total Eligible Construction Cost unless written authorization is received from the Director.
- H. Once the Total Eligible Construction Cost has been finalized, Department staff will draft an amendment to the executed Latecomer Agreement which will finalize the Total Eligible

Construction Cost, the Pro Rata Share, and the Total Reimbursable Construction Cost. No reimbursement toward the Applicant's Total Reimbursable Construction Cost shall be made by the County until the Improvements are accepted by the Director and the Latecomer Agreement has been amended to reflect the actual construction costs.

- I. The Director agrees to reimburse the Applicant up to the Total Reimbursable Construction Cost from the eligible portion of connection charges collected from the properties within the Service Area until the Total Reimbursable Construction Cost has been paid in full or until the term of the Agreement expires. Reimbursement payments made from the eligible portion of the connection charges collected from the Properties within the Service Area shall be made to the Applicant within 60 days following collection of the connection charges by the County or within 60 days following the execution of the amended Latecomer Agreement, whichever is later.
- J. No interest shall be paid on any unpaid balances of the Total Reimbursable Construction Cost for the life of the Latecomer Agreement.
- K. Latecomer Agreements shall be for a period of 20 years from the date of final acceptance of the Improvements by the County. Extension of Agreements may be provided 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 6 months or more.
- L. Every 2 years the Applicant shall be responsible for providing the County with his/her current address during the term of the Latecomer Agreement. Any change of address notice submitted by the Applicant shall be sent by means of certified mail, return receipt requested to the Department. Failure to comply with notification requirements within 60 days of the specified time may result in the County collecting any reimbursement of funds owed to the property owner under the contract.

13.32.070 DENIAL OF LATECOMER AGREEMENT.

Constructing excess capacity for utility facilities within County approved Utility Service Areas can be an efficient way to provide public facilities and can provide a public benefit if the Applicant makes a good faith effort to work within County Code regulations. However, the County may deny a request for a Latecomer Agreement if the Applicant proposing the agreement is ineligible, insists on terms that are unlawful or inequitable, or negotiates in bad faith.

13.32.080 ELIGIBILITY FOR APPEALS.

Administrative determinations of the Director made in conjunction with this Mason County Code Chapter may be appealed to the Mason County Hearings Examiner in accordance with Title 15, Development Code, under Section 15.11.010 "Appeal of Administrative Determinations and Decisions" of the Mason County Code.