

**CITY OF SNOHOMISH  
Snohomish, Washington**

**ORDINANCE 2202**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON  
ADDING A NEW CHAPTER 15.17 TO THE SNOHOMISH MUNICIPAL  
CODE IN REGARDS TO LATECOMER REIMBURSEMENT/COST  
RECOVERY AGREEMENTS FOR UTILITIES, AND PROVIDING FOR  
SEVERABILITY**

**WHEREAS**, RCW Chapter 35.91 authorizes the City of Snohomish (“City”) to enter into latecomer reimbursement agreements regarding utility improvements; and

**WHEREAS**, the City has entered such latecomer reimbursement agreements in the past; and

**WHEREAS**, the City’s insurer (Washington Cities Insurance Authority) recommends that the City enact legislation that would formalize the process for consideration and authorization of such latecomer reimbursement agreements for utility improvements; and

**WHEREAS**, the City Council finds that it is in the best interests of the City and its citizens to pass legislation that establishes a process for the consideration and authorization of latecomer reimbursement agreements for utility improvements;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH,  
WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1.** A new Chapter 15.17 is added to the Snohomish Municipal Code and shall read as follows:

**Chapter 15.17  
LATECOMER REIMBURSEMENT/COST RECOVERY  
AGREEMENTS FOR UTILITIES**

**Sections:**

- 15.17.005 Purpose
- 15.17.010 Definitions
- 15.17.020 Latecomer Reimbursement – Water, Sewer, and Stormwater
- 15.17.030 Applications for Latecomer Reimbursement
- 15.17.040 Submittal of Latecomer Reimbursement Information
- 15.17.050 Determination of Recommended Latecomer Reimbursement Charge and Area
- 15.17.060 Notice of Recommended Latecomer Reimbursement Charge and Area
- 15.17.070 Latecomer Reimbursement Agreement Form
- 15.17.080 Official Notice of Recommended Charge and Area – Fixing of Hearing
- 15.17.090 City Council Determination of Reimbursement Charge and Area
- 15.17.100 Recording of Latecomer Agreement – Amendment of City Records
- 15.17.110 Completion and Acceptance of Improvements

- 15.17.120 Payment of Reimbursement Charge
- 15.17.130 Segregation of Reimbursement Charges
- 15.17.140 Recording of Release
- 15.17.150 Multiple Connection Points

**15.17.005 Purpose.** The purpose of this chapter is to prescribe rules and regulations for exercise of the authority to enter into a latecomer reimbursement agreement granted to the City by RCW Chapter 35.91.

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

“Latecomer reimbursement agreement” means a written contract between the City of Snohomish and one or more parties providing both for construction of utility improvements and for reimbursement to the party or parties constructing the improvements for part of the costs of the facilities by owners of property benefitted by the improvements.

“Owner” means the Owner of real property or the Owner’s representative; provided that for the purposes of executing a latecomer reimbursement agreement, a bond, a bill of sale, and any instrument establishing real property rights, “Owner” means the legal Owner of the real property.

“Owner/Applicant” means an Owner who is in the process of applying for or has entered into a latecomer reimbursement agreement with the City.

“Public Works Director” or “Director” means the Public Works Director and the Director’s designee.

“Utility improvements” or “improvements” means City-owned water, sewer, and stormwater improvements and facilities, including but not limited to mains, valves, manholes, catch basins, pumping stations, hydrants, reservoirs, ponds, and appurtenances.

**15.17.020 Latecomer Reimbursement – Water, Sewer, and Stormwater.** Upon compliance with this chapter, an Owner/Applicant who constructs utility improvements may receive latecomer reimbursement from Owners of real property abutting the utility improvements who:

- A. Did not contribute, in whole or in part, to the original cost of the utility improvements;
- B. Are within the reimbursement area that is established under this chapter;
- C. Have been assessed a reimbursement charge under this chapter; and

- D. Within fifteen (15) years after the execution of the latecomer reimbursement agreement, either connect such real property to the water or sewer improvements or use the stormwater improvements.

**15.17.030 Applications for Latecomer Reimbursement.** An Owner/Applicant desiring to enter into a latecomer reimbursement agreement, for utility improvements, shall submit to the Public Works Department an application for latecomer reimbursement on a form prepared by the Director. The Owner/Applicant also shall submit a latecomer application fee in an amount established by resolution. The Owner/Applicant also shall pay any processing charges established by resolution. The reimbursement application shall include but not be limited to the following:

- A. Preliminary utility improvements design drawing;
- B. A scaled vicinity drawing, stamped by a licensed professional engineer or licensed civil surveyor, depicting the proposed utility improvements, the location of same, the proposed benefitted area, dimensions and Snohomish County Assessor's numbers for each tax parcel within the proposed benefitted area, size of each parcel, and evaluations where necessary for determining benefits;
- C. A title report for all parcels within the proposed reimbursement area;
- D. The itemized estimate of the total costs for the utility improvements, prepared by a qualified licensed professional engineer, and the estimated percentage of the costs to be assessed to the parcels in the proposed reimbursement area; and
- E. The proposed method for calculating the pro rata reimbursement charges, which shall be consistent with SMC 15.17.070.

The Director may require additional information, or revisions to the maps and other documents described above, that are necessary to evaluate the reimbursement application. Before submitting the reimbursement latecomer application, the Owner/Applicant shall request and attend a pre-reimbursement application meeting with Public Works Department representatives.

**15.17.040 Submittal of Latecomer Reimbursement Information.** For improvements that are subject to latecomer reimbursement, the Director, after determining that the utility improvements are complete under SMC 15.17.030, shall send a letter to the Owner/Applicant by first class mail, and by certified mail, return receipt requested, requesting the submittal of all data and information in support of the cost of the improvements. The Owner/Applicant shall submit the data and information within twenty-one (21) calendar days of the date of the letter. If the Owner/Applicant fails to submit the data and information within twenty-one (21) calendar days, or fails to submit any additional data and information requested by the Director within twenty-one (21) calendar days of a request for additional data and information, the Owner/Applicant shall be deemed to have waived the right to reimbursement, and the application shall be null

and void and terminated. Upon written request filed with the Director within seven (7) calendar days after any deadline, and upon proof of hardship and/or excusable neglect, the Director may set aside the application termination and grant a period of up to twenty-one (21) calendar days for the Owner/Applicant to submit the data and information. The decision of the Director shall be final.

**15.17.050 Determination of Recommended Latecomer Reimbursement Charge and Area.** Based on information and data provided by the Owner/Applicant, and on other available information and data, the Director shall determine the estimated cost of the utility improvements, the recommended pro rata reimbursement charge, and the recommended reimbursement area. The estimated cost shall include but not be limited to design, engineering, construction, inspection, restoration, and legal review. To determine the recommended pro rata reimbursement charge, the Director may use any method or combination of methods, including but not limited to calculations based on the maximum number of developable lots under current zoning, length of front footage of the parcel along the improvements, or total square footage of the parcel subject to reimbursement.

**15.17.060 Notice of Recommended Latecomer Reimbursement Charge and Area.** The Director shall advise the Owner/Applicant of the recommended reimbursement charge and area by letter sent by first class mail and by certified mail, return receipt requested. The letter shall enclose an original latecomer reimbursement agreement for signature by the Owner/Applicant, who shall return the executed agreement within twenty-one (21) calendar days after the date of the letter. If the Owner/Applicant fails to return the executed agreement within said period, the application for latecomer reimbursement shall be deemed null and void and terminated. Upon written request filed with the Director within seven (7) calendar days after the deadline, and upon proof of hardship and/or excusable neglect, the Director may set aside the application termination and grant a period of up to twenty-one (21) calendar days for return of the executed agreement. The decision of the Director shall be final.

**15.17.070 Latecomer Reimbursement Agreement Form.** The form of the latecomer reimbursement agreement shall be prepared and approved by the Director. The form shall include, but not be limited to, the following information, terms, and conditions:

- A. Provide a fifteen (15) year reimbursement period, following the effective date of the agreement;
- B. State the approved total cost of the utility improvements, and the cost subject to reimbursement;
- C. State the method for determining the reimbursement charges;
- D. Provide the payment of the reimbursement charges is required after completion of the utility improvements and prior to City's final approval of any short plat or subdivision within the reimbursement area, or at the time a connection to the utility improvements is requested if the subject property is not within a short plat or

subdivision or is within a short plat or subdivision that received final approval prior to the date of execution of the latecomer reimbursement agreement;

- E. State that interest shall not accrue on the reimbursement charges;
- F. Provide that the City shall deduct from all reimbursement charges it collects an amount equal to six percent (6%) of each collected amount to cover its administrative collection costs;
- G. Provide that in the event that the actual costs of the utility improvements are less than the Director's estimate used in calculating the estimated reimbursement charges by ten percent (10%) or more, the Director is authorized to recalculate and reduce the reimbursement charges and cause a revised list of reimbursement charges to be filed with the Snohomish County Auditor;
- H. State that the Owner/Applicant shall be responsible for paying the cost of recording the agreement;
- I. Provide that the City shall mail the reimbursement to the Owner/Applicant, or to any other person/entity designated in writing by the Owner/Applicant to receive the reimbursement, at the address given to the Director by such persons/entities;
- J. Require that, every year from the date the agreement is executed, the Owner/Applicant or other person/entity designated to receive reimbursement shall provide the City with their current name, address, and phone number;
- K. Provide that in the event that after reasonable efforts by the City, the person/entity to whom/which reimbursement fees are to be paid cannot be located, and upon the expiration of one (1) year from the date reimbursement fees were collected by the City, the reimbursement fees shall become the property of the City and shall be deposited in the City sewer and water utility fund;
- L. Provide that the City may interplead any reimbursement sum into Snohomish County Superior Court if a dispute arises as to the proper person or entity to receive the reimbursement payment.

**15.17.080 Official Notice of Recommended Charge and Area – Fixing of Hearing.**

Upon receipt of an executed latecomer reimbursement agreement from the Owner/Applicant, the Director shall send an official notice of the recommended reimbursement charge and area by certified mail, return receipt requested, to the Owners of the real property subject to reimbursement, according to the title report submitted by the Owner/Applicant, updated by the Owner/Applicant if requested by the Director. The notice shall include but not be limited to the following:

- A. The amount of the pro rata reimbursement charge;

- B. A map showing the Owner/Applicant's property, the general location of the utility improvements, and the reimbursement area;
- C. The conditions under which the pro rata reimbursement charge would be due and owing, such as only upon connection to and use of the improvements;
- D. The time period for reimbursement;
- E. A statement that the cost information and data regarding the utility improvements may be reviewed at the Public Works Department;
- F. The date, time, and location of the hearing before the City Council; and
- G. A statement that written comments concerning the Director's recommended latecomer reimbursement charge and area must be submitted to the Director and the City Council at least seven (7) calendar days prior to the date of the hearing before the City Council.

Notice of the hearing shall be sent by first class mail and certified mail, return receipt requested, to the Owner/Applicant and the Owners of real property subject to recommended reimbursement charge and area, at least twenty one (21) calendar days before the date of the hearing.

**15.17.090 City Council Determination of Reimbursement Charge and Area.** After the hearing, the City Council shall by motion, approve, disapprove, or modify the recommended reimbursement charge and area. The motion approving or modifying the recommended reimbursement charge and area shall also authorize the City Manager to sign and execute the latecomer reimbursement agreement, including any amendment to or modifications of the agreement necessary to reflect the Council's decision. The City Council decision by motion shall be the final action of the City on the reimbursement charge and area.

**15.17.100 Recording of Latecomer Agreement – Amendment of City Records.** After final execution of the latecomer reimbursement agreement, the Director shall cause it to be recorded with the Snohomish County Auditor. The cost of recording shall be paid/reimbursed by the Owner/Applicant. After recording, the Director shall cause a copy of the recorded agreement to be mailed to the Owner/Applicant and the Owners of real property within the reimbursement area by first class mail and certified mail, return receipt requested, and shall cause City records for land use development and utility systems to indicate, if feasible, the latecomer reimbursement charges against the burdened parcels.

**15.17.110 Completion and Acceptance of Improvements.**

- A. After the latecomer reimbursement agreement has been fully executed by the parties, and all necessary permits and approvals have been obtained, the Owner/Applicant shall construct the utility improvements, and upon completion, request final

inspection and acceptance of the improvements by the City, subject to any required obligation to repair defects. An appropriate bill of sale, easement, and any other documents needed to convey the improvements to the City, and to insure the City's right of access for maintenance and replacement, shall be provided to the City. The form of these instruments shall be approved by the Director.

- B. Prior to acceptance of the utility improvements by the City, the Owner/Applicant shall provide the Director with adequate and appropriate documentation of the actual costs of the improvements and a certification by the Owner/Applicant that all such costs have been paid. In the event that the actual costs of the improvements are less than the Director's estimate used in calculating the estimated reimbursement charges by an amount of ten percent (10%) or more, the Director shall recalculate and reduce the reimbursement charges and cause a revised list of reimbursement charges to be filed with the Snohomish County Auditor.

**15.17.120 Payment of Reimbursement Charge.**

- A. After full completion of the utility improvements subject to the reimbursement agreement, the Owner of real property that is part of a proposed short plat or subdivision and that is subject to a reimbursement charge shall pay the charge prior to the City's final approval of any short plat or subdivision.
- B. After full completion of the utility improvements subject to the reimbursement agreement, the Owner of real property that is not within a short plat or subdivision, or is within a short plat or subdivision that received final approval prior to the date of execution of the latecomer reimbursement agreement, shall pay the reimbursement charge at the time a connection to the utility improvements is requested. If a building permit is issued concurrently with the connection, the reimbursement charge shall be paid prior to issuance of the building permit.

**15.17.130 Segregation of Reimbursement Charges.** Following a division of a reimbursement parcel by subdivision, City approval or permit or court order, the owner of the original parcel subject to the reimbursement agreement shall apply for segregation to the Director by written application, in a form approved by the Director. The City shall have no duty or responsibility to notify the Owner of the original parcel of this requirement, and shall not be liable for any damages, claims, or liabilities resulting from the failure to segregate. The application shall include a copy of the latecomer reimbursement agreement imposing the reimbursement charge, and a copy of the ordinance, resolution, or other action legally dividing the property. The segregation shall be made as nearly as possible on the same basis as the original reimbursement, and the total of the segregated parts of the reimbursement shall equal the reimbursement before segregation. Upon verification of the legal division, the Director shall approve the segregation. The Director shall cause a notice of segregated reimbursement charge to be recorded with the Snohomish County Auditor. The cost of recording shall be paid by the Owner. After recording, the Director shall cause a copy of the recorded notice to be mailed to the Owner by first class mail and certified mail, return receipt requested.

**15.17.140 Recording of Release.** When the reimbursement charge against a parcel has been paid in full, or the fifteen (15) year period for the reimbursement charge has elapsed, the Director shall cause a notice of payment and release, or a notice of release, as applicable, to be recorded with the Snohomish County Auditor.

**15.17.150 Multiple Connection Points.** If the real property abuts more than one utility improvement for which there is a reimbursement charge, the Director shall select the improvement to which connection shall be made, based on engineering, safety, and topographical considerations.

**Section 2. Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval, and publication as provided by law.

**Section 3. Severability.** If any sentence, clause, phrase, or provision of this ordinance is ultimately invalidated by a court of competent jurisdiction, such invalidation shall not affect any other sentence, clause, phrase, or provision hereof.

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 19<sup>th</sup> day of October, 2010.

CITY OF SNOHOMISH

By \_\_\_\_\_  
Karen Guzak, Mayor

Attest:

Approved as to form:

By \_\_\_\_\_  
Torchie Corey, City Clerk

By \_\_\_\_\_  
Grant K. Weed, City Attorney

Date of Publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_