

CITY OF SEATTLE
ORDINANCE _____

COUNCIL BILL 118120

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to enter into latecomer agreements, in accordance with the requirements of Chapter 35.91 of the Revised Code of Washington; and adding new Chapter 21.80 to Subtitle VII of Title 21 of the Seattle Municipal Code; and ratifying and confirming certain prior acts.

WHEREAS, Chapter 35.91 of the Revised Code of Washington has been amended to direct local governments to offer latecomer agreements when requested by owners of real property who are required to construct water or sewer facilities as a prerequisite to development; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subtitle VII of Title 21 of the Seattle Municipal Code is amended to add new Chapter 21.80 to read as follows:

SMC 21.80 Latecomer Agreements

SMC 21.80.010 Authority

In accordance with RCW Chapter 35.91 and the requirements of this chapter, the Director of Seattle Public Utilities is authorized to enter into latecomer agreements, on forms approved by the Law Department, for the construction or improvement of water or sewer facilities. Pursuant to the Administrative Code, SMC Chapter 3.02, the Director is further authorized to adopt rules to implement the requirements of this chapter, including rules governing the application, form, and processing of latecomer agreements.

SMC 21.80.020 Definitions

For purposes of this chapter, the following definitions apply.

1 A. "Benefitting parcels" means those parcels that benefit from but whose owners did
2 not contribute to the construction or improvement of the water or sewer facilities subject to a
3 latecomer agreement.

4 B. "Latecomer agreement" means a contract between the City and an owner of real
5 property for the construction or improvement of water or sewer facilities that the City requires be
6 constructed or improved as a prerequisite to further property development. Such latecomer
7 agreements provide for the transfer of the water or sewer facilities to the City and for the later
8 reimbursement of costs to the owner as benefiting parcels subsequently connect to or use the
9 facilities. The City may elect to participate in the financing of the water and sewer facilities, and
10 in such cases the latecomer agreement will provide for the City to retain its pro rata share of the
11 reimbursement.
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13 C. "Latecomer fee" means the charge collected by the City from real property
14 owners who connect to or use the water or sewer facilities that were constructed or improved
15 under the terms of a latecomer agreement and who did not contribute to the costs of the facilities.
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17 D. "Water or sewer facilities" means storm, sanitary, or combined sewers, pumping
18 stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances.
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20 SMC 21.80.030 Application

21 A. An owner of real property for which the City requires, as a prerequisite of further
22 property development, the construction or improvement of water or sewer facilities may apply to
23 the Director of Seattle Public Utilities to enter into a latecomer agreement. At a minimum, the
24 application must require the applicant to provide the following information:
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1 1. Proposed plans. Detailed construction drawings, prepared in accordance with
2 applicable City standards and guidelines, of the entire project prepared and stamped by a
3 licensed engineer.

4 2. Preliminary Engineers Estimate. Itemization of all costs related to the
5 construction of the improvement, including the water or sewer facility and the restoration of
6 pavement, curbs, gutters and sidewalks, plus the costs of engineering, construction and contract
7 administration.

8 3. Such other information as the Director determines is necessary to properly review
9 the application.
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11 B. Application Fee. All applications for latecomer agreements must be
12 accompanied by a nonrefundable application fee. The Director shall establish and collect the
13 application fee to recover the costs of processing the application.
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15 SMC 21.80.040 Required Provisions

16 At a minimum the latecomer agreement must provide for each of the following:

17 A. The construction or improvement of the water or sewer facilities in accordance
18 with the City's plans and specifications.

19 B. The inspection and approval of the water or sewer facilities by the City.

20 C. The transfer to the City of the water and sewer facilities, without cost to the City,
21 upon the City's acceptance of the facilities.
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23 D. The provision of sufficient security to the City to ensure the completion of the
24 facilities and other performance of the agreement.
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1 E. The payment by the owner to the City of all the City's costs associated with the
2 water or sewer facilities, including engineering, legal, and administrative costs.

3 F. The verification and approval of all contracts and costs related to the construction
4 or improvement of the water or sewer facilities.

5 G. The recording of the latecomer agreement with the King County Recorder's
6 Office.

7 H. The City's collection of latecomer fees and the reimbursement of the owner.

8 I. The owner's responsibility to provide the City with notice of any change in
9 contact information. At a minimum, this contact information shall be provided every two years
10 from the date of the latecomer agreement. If the owner fails to notify the City of current contact
11 information within 60 days of the due date for notification, then the owner will no longer be
12 entitled to reimbursement and the City will collect such fees and deposit them in the appropriate
13 utility capital fund.
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16 21.80.050 Reimbursement

17 A. The Director shall collect the applicable latecomer fee from the owners of
18 benefitting parcels who connect to or use water or sewer facilities that were constructed or
19 improved under the terms of a latecomer agreement.
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21 B. The Director shall reimburse the owner of real property who has entered into a
22 latecomer agreement, or the owner's assigns, the owner's pro rata share of the latecomer fees the
23 City collects, less its costs, within 60 days of receipt; provided that if the owner or the owner's
24 assigns fail to comply with the notification requirements of the latecomer agreement, then the
25 City will deposit the latecomer fees in the appropriate utility capital fund.
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1 C. As provided by RCW 35.91.040, no person or entity may be permitted to connect to
2 or use water or sewer facilities that were constructed or improved under the terms of a
3 latecomer agreement without first paying the applicable latecomer fee.

4 Section 2. Any act taken after the passage but prior to the effective date of this ordinance
5 and consistent with its authority is hereby ratified and confirmed.
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1 Passed by the City Council the ____ day of _____, 2014, and
2 signed by me in open session in authentication of its passage this
3 ____ day of _____, 2014.

4 _____
5 _____
6 President _____ of the City Council
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9 Approved by me this ____ day of _____, 2014.

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11 _____
12 Edward B. Murray, Mayor
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15 Filed by me this ____ day of _____, 2014.

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17 _____
18 Monica Martinez Simmons, City Clerk
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20 (Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Mark Jaeger/4-7692	Aaron Blumenthal/3-2656

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to enter into latecomer agreements, in accordance with the requirements of Chapter 35.91 of the Revised Code of Washington; and adding new Chapter 21.80 to Subtitle VII of Title 21 of the Seattle Municipal Code; and ratifying and confirming certain prior acts.

Summary of the Legislation: This legislation authorizes the Director of SPU to enter into latecomer agreements in accordance with RCW chapter 35.91.

Background:

Within 10 miles of the City of Seattle developers may be required to construct and pay for system improvements to Seattle Public Utilities' infrastructure to connect to its water, sewer or drainage systems. Currently developers must construct facilities at their own expense and donate the assets to SPU upon their completion and approval from SPU engineers. This process allows later developers to directly benefit from this upgrade when they request to connect to it without bearing any of the additional cost borne by the first in developer.

The State Legislature deemed this process unfair and mandated that upon developer request, municipal utilities enter into agreements to help recover the costs of required utility improvements from development that subsequently connects to the improvements for a period of 20 years. These latecomer agreements will allocate pro-rata shares of the original developer's utility improvement costs to benefitting parcels. SPU will act as an intermediary between the original developer and subsequent development, collecting shares and remitting them back to the original developer. SPU may also participate financially in the construction of these improvements and if so is entitled to an equitable share of the subsequent payments when benefitting parcels wish to connect. This legislation also allows SPU to collect fees to cover the administrative costs of the program, through a Director's Rule, leaving the utility financially unaffected.

X **This legislation does not have any financial implications.**

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
This legislation provides developers a resource to recover some costs associated with their improvements to SPU infrastructure. SPU will act as an intermediary, maintaining records and transferring funds between parties. There will be some cost associated with

each transaction; however the legislation provides that SPU can recover administrative costs associated with running the program, leaving the utility with no net financial burden.

b) What is the financial cost of not implementing the legislation?

Not implementing this legislation is not an option. This legislation meets the requirement of state law to implement a latecomer program by July 1, 2014.

c) Does this legislation affect any departments besides the originating department?

DPD in its role of issuing side sewer permits on behalf of SPU will need to check side sewer applications to determine whether they are party to a Late Comer's agreement and if so ensure the amount owed is paid in full prior to issuing the side sewer permit.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

There are no alternatives to the legislation that would achieve the same or similar objectives.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

This legislation does not affect a specific piece of property but will encumber benefitting parcels with a requirement to pay a pro-rata share of the cost of the infrastructure should they connect to it.

h) Other Issues: N/A.

List attachments to the fiscal note below: None.



City of Seattle
Edward B. Murray
Mayor

May 27, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that would authorize the Director of Seattle Public Utilities to enter into "Latecomer Agreements" as required by recent changes to state law.

Under current law, it is common practice in most cities that when developers build a project in a location not served by water, drainage, and wastewater facilities, they are required to construct these improvements at their own expense and then donate them to the appropriate local utility. Last session, the Washington Legislature required utilities to, upon request, enter into agreements with the first developer to help them recover the costs of the mandated utility improvements from subsequent development that connects to it. These "Latecomer" agreements allocate pro-rata shares of the original developer's utility system improvement costs to subsequent benefitting parcels for a period of 20 years. The City, through SPU, would act as an intermediary between the original developer and subsequent developers. SPU would identify when connections are requested, collect the assigned pro-rata shares and remit them back to the original developer before allowing connection to the associated system improvement that is the subject of the agreement. The legislation also allows SPU to participate financially in the construction of improvements with the original developer and receive a fair share of the subsequent revenues collected as benefitting parcels later connect to the improvements built and to collect fees to cover its administrative costs of the program.

This legislation would address a perceived unfairness among many in the development community and to insure Seattle is in compliance with State law. If you have questions please feel free to contact Mark Jaeger from Seattle Public Utilities at 4-7692.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council