

ORDINANCE NO. 1494

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY RELATED TO STREET LATECOMERS AGREEMENTS, ADOPTING A NEW CHAPTER 12.30 OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, Latecomer agreements, also referred to as recovery contract or reimbursement agreements, allow a property owner who has installed street or utility improvements to recover a portion of the costs of those improvements from other property owners who later develop property in the vicinity and benefit from the improvements, and

WHEREAS, The Lacey Municipal Code has provisions specifically related to utility latecomer agreements but not street latecomer agreements, and

WHEREAS, Chapter 35.72 RCW authorizes Cities to execute Latecomer agreements for street projects, and

WHEREAS, In *Woodcreek Partnerships. v. City of Puyallup*, 69 Wn.App. 1, 847 P.2d 501, (1993), the court held that a prerequisite to the street latecomer agreement process is having in place a specific ordinance that requires the street improvements as a condition of property development, and

WHEREAS, the City Council finds that the availability of street latecomer's agreements will be in the public interest, NOW, THEREFORE,

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. There is hereby added to the Lacey Municipal Code a new Chapter 12.30, to read as follows:

**12.30.005 Street projects as prerequisite to property development.**

Chapters 12.24, 12.28, 14.21, 14.24, 15.01, 15.06, 15.08, 15.10, and 16.84 of the Lacey Municipal Code constitute ordinances of the city requiring certain street projects as a prerequisite to further property development. Owners of real estate constructing or improving streets pursuant to such authority may enter into reimbursement contracts with the city, consistent with Chapter 35.72 RCW and this chapter.

**12.30.010 Reimbursement agreements authorized.**

(1) The City Council of the city of Lacey may, by ordinance, direct the director of public works ("director") to enter into a reimbursement agreement with an applicant for a development or

building permit. The agreement shall provide for partial reimbursement of the cost of making public street improvements by assessments against other property owners who:

(a) Are determined to be within the assessment reimbursement area pursuant to LMC 12.30.020;

(b) Are determined to have a reimbursement share based upon a benefit to the property owner pursuant to LMC 12.30.030;

(c) Did not contribute a proportionate share of the original cost of the public street improvement; and

(d) Subsequently develop their property within the 15-year period and at the time of development are not required to install similar street improvements because the improvements were already constructed by the applicant in accordance with this chapter.

(2) No agreement may encompass a period greater than 15 years.

(3) Street improvements, and associated costs, which may be subjects of reimbursement agreements are set forth as follows:

(a) Paved roadways;

(b) Street lighting systems;

(c) Sidewalks and walkways;

(d) Curbs and gutters;

(e) Storm drainage systems;

(f) Traffic controls;

(g) Utilities within or adjacent to street right-of-way not provided for in other agreements or methods of finance;

(h) Streetscape, i.e., landscaping associated with street improvements; and

(i) Easements, rights-of-way, fee interests, access authorizations, and other rights and interests for street improvements.

#### **12.30.020 Reimbursement costs – Determination.**

Reimbursement amounts shall be a pro rata share of construction and contract administration costs including, but not limited to, design and engineering costs, of the project. The director shall determine the reimbursement share by using a method of cost apportionment which is based upon the benefits to the property owner from such project.

#### **12.30.030 Reimbursement assessment – Procedures.**

The procedures for assessment reimbursement contracts shall be as follows:

- (1) An assessment reimbursement area shall be formulated by the director based upon a determination as to which parcels adjacent to or in the vicinity of the improvements would require similar street improvements upon development.
- (2) The preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by registered mail to the property owners of record within the proposed assessment area. This notice shall advise them of the hearing to be conducted before the city council within 20 days of the mailing of the preliminary determination.
- (3) The city council's ruling is determinative and final.
- (4) The council's ruling rejecting an assessment reimbursement area and program shall be by resolution or by minute entry in the official council minutes. The council's ruling establishing an assessment area and program shall be by ordinance.
- (5) The contract may be formulated prior to or after the determination of the assessment reimbursement area, but shall not become final until after the council's determination under subsection (4), above.
- (6) The contract must be recorded in the Thurston County auditor's office within 30 days of the final execution of the agreement.
- (7) If the contract is so filed, it shall be binding on owners of record within the assessment area who are not party to the contract.

**12.30.040 Provisions not exclusive.**

The authority to enter into agreements as provided in this chapter shall be in addition to the authority of the city pursuant to the police power and other statutes, laws, rules and ordinances and shall not be deemed exclusive.

**12.30.050 Property owner participation in street projects.**

Development proposals located within a designated assessment reimbursement area that will benefit from a pre-established street improvement constructed pursuant to the creation of an assessment reimbursement area shall as a prerequisite and condition to approval contribute the appropriate reimbursement share designated by the formula set forth in the applicable reimbursement agreement. This requirement shall be based upon the terms of the applicable reimbursement agreement, and the applicable sections of the city's SEPA Ordinance (LMC 14.24) and the terms and requirements of the policies referred to therein.

**12.30.060 City participation.**

Pursuant to RCW 35.72.050, as now or hereafter amended, the city may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects. The terms and conditions of the city's participation shall be specified in the ordinance adopting the assessment reimbursement area and program under LMC 12.30.030(4).

Section 2. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid 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 ordinance.

Section 3. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make corrections to this ordinance including, but not limited to, the corrections of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 4. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, at a regularly-called meeting thereof, held this 11<sup>th</sup> day of  
August, 2016.

CITY COUNCIL

By:   
Mayor

Approved as to form:

  
City Attorney

Attest:

  
City Clerk

**SUMMARY FOR PUBLICATION  
ORDINANCE NO 1494  
CITY OF LACEY**

The City Council of the City of Lacey, Washington, passed on August 11, 2016, Ordinance No. 1494, entitled "AN ORDINANCE OF THE CITY OF LACEY RELATED TO STREET LATECOMERS AGREEMENTS, ADOPTING A NEW CHAPTER 12.30 OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The Ordinance adopts a new chapter 12.30 of the Lacey Municipal Code related to Street Latecomers Agreements.
2. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

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Published: August 15, 2016.