

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Discussion of Ordinance No. 851 – Adopting a New Chapter 3.90 to the Shoreline Municipal Code Relating to Assessment Reimbursement Areas and Latecomer Agreements		
<b>DEPARTMENT:</b>	City Attorney Office		
<b>PRESENTED BY:</b>	Margaret King		
<b>ACTION:</b>	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

**PROBLEM/ISSUE STATEMENT:**

On September 10, 2018, the Council authorized the City Manager to execute a Right-of-Way Improvement Phasing Agreement (Phasing Agreement) with Trammell Crow Residential (TCR). The Phasing Agreement allows for the phasing of some of the necessary improvements in the Aurora Square Community Renewal Area (CRA) between the City and TCR. In addition to improvements in the CRA, the City has also been working with Shoreline Community College on its Master Plan and with Sound Transit for the light rail stations at 145<sup>th</sup> and 185<sup>th</sup>, all of which will result in necessary right-of-way improvements within the City.

At the time of the Phasing Agreement discussion, staff explained to the City Council that when other properties within the CRA redevelop, reimbursement could be made possible by either a “latecomer agreement” or a “development agreement.” Tonight, Council is discussing the use of assessment reimbursement areas and latecomer agreements.

Latecomer agreements are a way to share the cost of building infrastructure required by development and can be a helpful tool to spur development in certain areas where the upfront cost of infrastructure is a challenge to development. Latecomer agreements allow a property owner that extended street or utility improvements to request that the City contract with them for a latecomer agreement, thereby allowing the owner to recoup a portion of the costs to install the new facilities from others that will benefit from the infrastructure in the future. The City may also participate with a developer and share in subsequent reimbursements or create its own improvements and be solely reimbursed from subsequent owners that benefit.

To allow such reimbursement, the City must adopt an ordinance setting forth the regulations governing the creation of street or utility latecomers. Proposed Ordinance No. 851 (Attachment A), which Council will discuss tonight, provides for this. Council is scheduled to take action on proposed Ordinance No. 851 on October 14, 2019.

**RESOURCE/FINANCIAL IMPACT:**

No additional financial impact is anticipated as an applicant must fully reimburse the City if they seek to create a reimbursement area.

**RECOMMENDATION**

No action is required from the City Council tonight. Staff recommends that Council review proposed Ordinance No. 851 and ask questions of staff. Staff does recommend that Council adopt proposed Ordinance No. 851 when it is brought back to Council on October 14, 2019 for adoption.

Approved By:           City Manager ***DT***   City Attorney ***MK***

## **BACKGROUND**

To encourage economic growth and development in the Community Renewal Area (CRA) for Aurora Square, now called Shoreline Place, in 2015, the City Council adopted Ordinance No. 705 adopting a planned action ordinance (Planned Action) for the CRA pursuant to the State Environmental Policy Act (SEPA). Ordinance No. 705 can be found at the following link: <http://www.shorelinewa.gov/home/showdocument?id=21860>.

The Planned Action identified mitigation associated with development of the CRA, including 11 transportation projects to support redevelopment of the area. Of these projects, three (3) projects focused on the need to transform Westminster Way N between N 155<sup>th</sup> Street to N 160<sup>th</sup> Street into a more pedestrian-friendly street that provides for additional retail and residential frontage.

On September 10, 2018, the Council authorized the City Manager to execute a Right-of-Way Improvement Phasing Agreement (Phasing Agreement) with Trammell Crow Residential (TCR), the developer of the Alexan Shoreline apartment building currently being constructed on the eastern edge of the CRA. The Phasing Agreement allows for the phasing of some of the necessary improvements in the CRA between the City and TCR. At that time, staff explained to the City Council that when other properties within the CRA redevelop, the applicants would be required to contribute a proportional share of the cost of the improvement covered in the Phasing Agreement or other improvements defined in the CRA plan through either a “latecomer’s agreement” or a “development agreement.” The staff report for the adoption of the Phasing Agreement can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport091018-7e.pdf>.

The City has concurrently been working with Shoreline Community College on its Master Plan (approved in 2014), which includes required transportation improvements. In November 2018, the City Council discussed the College’s transportation mitigation. The staff report for this discussion can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport110518-7b.pdf>.

Lastly, the City has also been working with Sound Transit in regard to the two light rail stations located within the City and the redevelopment that will be occurring in and around the two subareas surrounding the stations.

To facilitate the improvements necessary for the CRA, Shoreline Community College, and additional development around and within the light rail subareas, staff concluded there would be a benefit to the City, the College, and other developers to receive reimbursement from future developers that will utilize and benefit from the right-of-way improvements.

## **DISCUSSION**

State law - RCW 35.72 (Street Projects) and RCW 35.91 (Water and Sewer) - authorizes assessment reimbursement areas, sometimes referred to as “latecomer

agreements.” These tools enable a property owner who has installed street or utility improvements to recover a portion of the costs for any excess benefit created by those improvements from other property owners who later develop property in the vicinity and utilize the benefit from those improvements. Both of these RCW provisions also provide that the City may partner with a property owner to install and be reimbursed for its share of improvements or create a reimbursement area on its own initiative, without the participation of a private property owner, and be reimbursed by those that benefit when they develop.

A prerequisite to the latecomer agreements process is having in place a specific ordinance that requires the improvements as a condition of property development<sup>1</sup>. The requirements for street and/or utility improvements as a condition of property development are found in several existing provisions of Shoreline’s development regulations (SMC Title 20) and the Engineering Design Manual.

In addition, the adoption of an ordinance with certain mandatory elements as a prerequisite of utilizing an assessment reimbursement area is also required. The RCW requires all such ordinances to have the following components or restrictions:

1. Must define required water and sewer facilities.
2. Must honor a request for a utility assessment reimbursement area but may have the option not to enter into a street assessment reimbursement area with a developer.
3. Street assessment reimbursement areas can be up to 15 years and utility assessment reimbursement areas up to 20 years’ duration (both with possibilities for extension as noted in the statute).
4. Connection of the water or sewer facility to a municipality’s system must be conditioned upon:
  - Construction of the water or sewer facility according to plans and specifications approved by the municipality;
  - Inspection and approval of the water or sewer facility by the municipality;
  - Transfer to the municipality of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water or sewer facility;
  - Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;
  - Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;
  - Payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and
  - Verification and approval of all contracts and costs related to the water or sewer facility. Cost information must be furnished with 120 days of the completion of a water or sewer facility.
5. Use of a public hearing on request of an owner per chapter 35.72 RCW that applies to both street and utility assessment reimbursement areas.

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<sup>1</sup> RCW 35.72.010; 35.91.020(1)(a); 35.91.060(1)(a); *Woodcreek Land LP, et al v. City of Puyallup*, 69 Wn. App. 1 (1993).

Proposed Ordinance No. 851 (Attachment A) meets all of the above requirements.

In addition to the above requirements, the City's proposed ordinance sets out processes and procedures for the use of latecomer agreements. A brief overview of key provisions of proposed Chapter 3.90 SMC (Exhibit A to Ordinance No. 851) are set out below:

- SMC 3.90.050(A) and (B) sets forth the minimum application requirements and authorizes the Public Works Director to establish an application form. The application form, however, must include:
  - Subsection 1: A legal description of developer's property
  - Subsection 2: Legal descriptions of property in developers proposed assessment reimbursement area with addresses and names of owners
  - Subsection 3: Vicinity maps depicting the proposed improvements and reimbursement area
  - Subsection 4: A cost estimate from a licensed contractor or civil engineer of the total projected cost of construction.
  - Subsection 5: The developers proposed allocation of cost to the individual property within the proposed assessment reimbursement area and method use for the cost allocation
  
- SMC 3.90.050(D) and € require that an application for a latecomer agreement be received before the issuance of a Right of Way use or utility system improvement permit as well as the timing and process for the City to provide comments back to the developer regarding the application.
  
- SMC 3.90.060(A) sets forth the requirements for approval of a utility system latecomer agreement request, which state law requires that the City must approve if in compliance and requested by the developer. SMC 3.90.060(B) sets forth the requirements for a street latecomer request, with a street improvement latecomer approval being discretionary.
  
- SMC 3.90.070 provides for the Public Works Director's preliminary assessment of the area and amount of reimbursement for each parcel of property and the methodology to be used.
  
- SMC 3.90.080 sets forth the notice requirements and requires that the preliminary determination notice to be sent by certified mail to the developer and property owners within the reimbursement area and provides a process to request a hearing before the hearing examiner if within 20 days of mailing the notice, the developer or other property owner requests a hearing to be held before the hearing examiner to contest the preliminary assessment reimbursement area and/or preliminary assessment amounts.
  - The hearing before the hearing examiner shall be conducted as soon as is reasonably practical subject to the Hearing Examiner Rules of Procedures as adopted pursuant to Chapter 2.15 SMC. The report and recommendation of the hearing examiner is forwarded to the City Council and provides that the Council shall allow for public comment and may add to the record if a majority of the Council finds the record insufficient before

the hearing examiner. The Council will make the final decision on the reimbursement area and amount for each parcel.

- If no hearing is requested, the determination of the Public Works Director is final. It should be noted that many times the developer works with those in the area to come up with an agreement that all owners agree to and once approved by the Director the area is established.
- SMC 3.90.100 provides for the execution and recording of the latecomer agreement.
- SMC 3.90.110 provides that within 120 days of completion of construction, the developer is required to provide the City with documentation and certification of the costs and amounts paid for the improvements. The final costs are reviewed against the City's preliminary assessment and upon a showing of good for cost overruns the City will increase the reimbursement amounts up to a maximum of 10 percent over the preliminary assessment.
  - If the amount is less than the preliminary estimate by 10 percent or more the City is required to recalculate the charges and reduce the assessments accordingly.
  - If either of the adjustments are made, a new list of charges must be filed with the County auditor.
- SMC 3.90.210 provides that the City may participate with a developer in financing street and/or utility system improvement projects in which case the City has the same rights to reimbursement as other developers/owners based on the respective contribution of the owner(s) and the City. The City may also, on its own initiative, undertake street and/or utility system improvement projects. In such a situation, the City would need to enact an ordinance establishing the reimbursement area and reimbursement allocations which would allow the City to be reimbursed by properties that benefit from the improvements built by the City.

### **RESOURCE/FINANCIAL IMPACT**

No additional financial impact is anticipated as an applicant must fully reimburse the City if they seek to create a reimbursement area.

### **RECOMMENDATION**

No action is required from the City Council tonight. Staff recommends that Council review proposed Ordinance No. 851 and ask questions of staff. Staff does recommend that Council adopt proposed Ordinance No. 851 when it is brought back to Council on October 14, 2019 for adoption.

### **ATTACHMENTS**

Attachment A: Proposed Ordinance No. 851  
Attachment A, Exhibit A: New Chapter 3.90 SMC

**ORDINANCE NO. 851**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON ADOPTING A NEW CHAPTER 3.90 TO THE SHORELINE MUNICIPAL CODE RELATING TO ASSESSMENT REIMBURSEMENT AREAS AND LATECOMER AGREEMENTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR SUMMARY PUBLICATION.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington, and planning pursuant to the Growth Management Act, Chapter 36.70A RCW; and

WHEREAS, latecomer agreements, also referred to as recovery contracts or reimbursement agreements, are written contracts that allow a property owner who has installed public street or public utility improvements to recover a portion of the costs of those improvements from other property owners who later develop property in the vicinity of the improvements and use the improvements; and

WHEREAS, the Legislature has enacted two statutes for implementation of latecomer agreements by cities – chapter 35.72 RCW Contracts for Street, Road, and Highway Projects and chapter 35.91 RCW Water and Sewer Facilities Act; and

WHEREAS, RCW 35.72.010 authorizes the owners of real estate and the City to enter into a contract with owners of real estate for the construction or improvement of street projects that the owner elects to install as a result of ordinances that require the projects as a prerequisite to further property development; and

WHEREAS, RCW 35.72.050(1) provides that as an alternative to financing projects solely by owners of real estate, the City may join in the financing of street improvement projects and be reimbursed in the same manner as the owners of real estate who participate in the projects if the City has specified the condition of its participation in an ordinance; and

WHEREAS, RCW 35.72.050(1) further authorizes the City to create an assessment reimbursement area on its own initiative, without participation of a private property owner, to finance the costs of road or street improvements and to become the sole beneficiary of the reimbursements that are contributed; and

WHEREAS, RCW 35.91.020, at the owner's request, requires the City to enter into a contract with owners of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's expense; and

WHEREAS, RCW 35.91.060(1) authorizes the City to create an assessment reimbursement area on its own initiative, without participation of a private property owner, to finance the costs of water or sewer improvements and become the sole beneficiary of the reimbursements that are contributed; and

WHEREAS, *Woodcreek Land Ltd. Partnership, et al v. City of Puyallup*, 69 Wn. App. 1 (1993) states that a prerequisite to the latecomer agreement process is having in place a specific ordinance that requires the improvements as a condition of property development; and

WHEREAS, the City currently operates a Stormwater Utility and Ordinance No. 780, adopted on October 2, 2017, established SMC Chapter 13.05 Wastewater Utility and is effective upon the official assumption of the Ronald Wastewater District, and SMC 13.05.250 speaks to the creation of a latecomer agreement as provided in chapter 35.91 RCW; and

WHEREAS, on December 3, 2018, the City Council discussed the adoption of regulations for latecomer agreements initiated by property owners as well as by the City itself for both street and utility improvements; and

WHEREAS, the City Council has determined that the availability of latecomer agreements will be in the public interest;

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

**Section 1. Findings of Fact.** The City Council hereby adopts the recitals set forth above as the findings of the City Council.

**Section 2. Amendment to Shoreline Municipal Code.** A new Chapter 3.90 Assessment Reimbursement Areas and Latecomer Agreements is added to Title 3 Revenue and Finance of the Shoreline Municipal Code, as set forth in Exhibit A.

**Section 3. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

**Section 4. Severability.** Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

**Section 5. Publication and Effective Date.** A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.



**PASSED BY THE CITY COUNCIL ON OCTOBER 14, 2019**

\_\_\_\_\_  
Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jessica Simulcik-Smith  
City Clerk

\_\_\_\_\_  
Margaret King  
City Attorney

Date of Publication: \_\_\_\_\_, 2019  
Effective Date: \_\_\_\_\_, 2019

**EXHIBIT A – Ordinance No. 851**

**New Chapter 3.90**

**Assessment Reimbursement Areas and Latecomer Agreements**

**3.90.010 Authority and purpose.**

The City is authorized to enter into latecomer agreements with owners of real estate pursuant to chapter 35.72 RCW Contracts for Street, Road, and Highway Projects and chapter 35.91 RCW Municipal Water and Sewer Facilities Act, as they now exist or are hereafter amended. This chapter prescribes the regulations for exercise of this authority granted to the City.

The purpose of this chapter is to provide for the prorated recovery of the costs of installation for private, private/public, and public construction of municipal street and utility system improvements through a charge to later users of the improvements who benefit from the improvements but who did not previously contribute to the costs of such improvements.

**3.90.020 Definitions.**

The following definitions control for purposes of this chapter. The Director may adopt additional definitions in the Administrative Procedures for processing applications that are not inconsistent with the definitions herein. If a word is not specifically defined, then that word shall be given its normal and customary meaning.

"Adjacent" means abutting on public roads, streets, right-of-way or easements in which street system improvements are installed or directly connecting to street system improvements through an interest in real property such as an easement or license.

"Assessment" means an equitable pro rata charge to be paid by an owner of property within the assessment reimbursement area for the cost of private construction of public street and/or utility system improvements made pursuant to a Right of Way Use permit or required utility permit.

"Assessment reimbursement area" means that area which includes all parcels of real property adjacent to street system improvements or likely to require connection to or service by utility system improvements constructed by a developer and/or the City.

"Construction interest" means the sum of money to be added to the direct construction cost and reimbursed to the developer for the use of the developer's monies during the construction term. The interest rate shall be one percent above the Federal Reserve Bank prime loan rate published most recently before the date of the Right of Way Use permit or required utility permit. Interest accrual begins on the date of execution of the permit and will continue throughout the construction term. Construction interest shall be computed utilizing the two-thirds rule; i.e., direct cost of construction x construction interest rate divided by 365 x the construction term expressed in days x 0.67 = construction interest.

"Construction term" means that period of time between the date of execution of the Right of Way Use permit or required utility permit and the date of acceptance of the project by the City or the construction completion date as set forth in the Right of Way Use permit or required utility permit, whichever occurs first.

“Cost of construction” is the sum of the Direct Construction Costs incurred to construct the street and/or utility system improvements plus indirect costs which are limited to the City’s latecomer administrative fees when not constructed by the City, construction interest, and developer administrative costs.

“Department” means the City of Shoreline’s Public Works Department.

“Developer” means the individual or entity that contracts with the City for the construction of street and/or utility system improvements, where such improvements are a prerequisite for further development of real property owned by such entity or individual.

“Developer administrative costs” means all indirect costs incurred by the developer in the creation and execution of a latecomer agreement and managing the project; such as office supplies, mailings, clerical services, telephone expenses, accounting expenses, project oversight, and the like. Administrative costs shall not exceed three percent of all direct construction costs.

“Direct construction costs” include but are not limited to all related design services, engineering, surveying, legal services, bonding costs, environment mitigation, relocation and/or new construction of private utilities as required by the City (i.e., power, telephone, cable and gas), relocation and/or installation of street lights, relocation and/or installation of signage, 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.

“Director” means the Public Works Director for the City of Shoreline or designee.

“Latecomer agreement” or "reimbursement agreement" means a written agreement between the City and one or more developers providing partial reimbursement of the cost of construction of street and/or utility system improvements to the developer by owners of property who connect to or use the improvements (benefit from) but who did not contribute to the original cost of construction.

“Street system improvements” means City public street and alley improvements made in existing or subsequently dedicated or granted rights-of-way or easements and any improvements associated therewith, including but not limited to, acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters, storm drainage, pedestrian facilities, street lighting, bike lanes, and traffic control devices, relocation and/or construction of private utilities as required by the City (i.e., power, telephone, cable and gas), relocation and/or construction of street lights, traffic control devices, signage, and other similar improvements.

“Utility system improvements” means City owned and operated water, sewer and storm/surface water drainage system improvements, including but not limited to, the acquisition of right-of-way and/or easements, design, engineering, surveying, inspection,

testing, connection fees, and installation of improvements as required by the City and includes but is not limited to the following:

- A. City water system improvements, including but not limited to, such things as treatment facilities, reservoirs, wells, mains, valves, fire hydrants, telemetry systems, pumping stations, and pressure reducing stations;
- B. City sewer system improvements including, but not limited to, such things as treatment plants, gravity mains, lift stations, force mains, and telemetry systems;
- C. City storm/surface water system improvements including but not limited to such things as water quality structures and systems, detention and retention facilities, and stormwater collection and conveyance facilities.

**3.90.030 Administrative procedures.**

The Director shall establish guidelines and rules, regulations, policies and procedures, collectively Administrative Procedures, to implement the requirements of this chapter and for all applications for a reimbursement area and/or a reimbursement contract and shall determine whether and when such application is complete.

**3.90.040 Applicability.**

This chapter applies to City Street System Improvements and City Utility System Improvements where the construction of such improvements is the result of City ordinances and/or regulations that require such improvements as a prerequisite to property development. Street system improvements constructed in order to comply with City’s Comprehensive Plan and SMC Title 20 Unified Development Code, including but not limited to, SMC 20.30 Procedures and Administration, SMC 20.60 Adequacy of Public Facilities, and SMC 20.70 Engineering and Utilities Development Standards, are hereby declared to be prerequisites to further property development for the purposes of this chapter.

**3.90.050 Application - contents – Requirements.**

A. Any developer or owner of real estate using private funds to construct street system improvements and/or utility system improvements in the City may apply to the City for a latecomer agreement in order to recover a pro rata share of the costs of construction from other property owners that will later connect to or use the street and/or utility system improvements made by developer or owner of real estate.

B. All applications for a latecomer agreement shall be on forms approved and established by the Director and be accompanied by the application fee of \$800.00 or such amount as subsequently set forth in SMC 3.01 Fee Schedule, along with a deposit for mailing costs and recording fees. The application shall contain, at a minimum, the following information, which shall be approved by a State of Washington licensed engineer:

1. A legal description of the developer’s property.
2. A legal description of the properties within the developer’s proposed assessment reimbursement area together with the name and address of the owners of each property as shown in the records of the Assessor’s Office of King County.

3. Vicinity maps, stamped by a State of Washington licensed civil engineer or surveyor, depicting the developer's property, the proposed improvements, and the proposed assessment reimbursement area.

4. Statement from a State of Washington licensed contractor or civil engineer containing an itemized estimate of the total projected cost of construction. Activities which may be included in the cost estimate are all costs solely associated with the design and construction of the water, drainage, or sewer facility. This includes elements that the City requires as part of installing the water, drainage, or sewer facility, such as concrete panel replacements in the roadway or ADA-compliant ramps and their companion ramps. These elements may only be included in the total cost, however, if they would not otherwise be required but for the installation of the water, drainage, or sewer facility.

5. The developer's proposed allocation of the cost of construction to the individual properties within the proposed assessment reimbursement area and the method used for such allocation.

C. In addition to the latecomer application, the applicant must apply for and obtain all necessary and required permits required for construction of the improvements and must meet all of the design standards and requirements applicable to street and utility improvements contained in the City's ordinances.

D. The application for a latecomer agreement shall be made before the street and/or utility system improvements proposed for construction are approved by the City through the issuance of a Right of Way Use or Wastewater Utility permit provided, that for street or utility improvements approved under a separate agreement between the city and a developer or property owner, prior to September 30, 2019, or street or utility improvements pursuant to development agreements entered into as part of the redevelopment in a City designated community renewal area prior to September 30, 2019, the application for a latecomer agreement may be made within 90 days after the date that such completed improvements have been accepted by the City. Acceptance by the City shall mean, for purposes of this section, the date the public facilities are conveyed to the City by a deed of conveyance or other equivalent written document

E. Within 30 days of the Department receiving the application for a latecomer agreement, the Department will provide the applicant written notice of whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The applicant will have no more than 30 days from the date of the written notice to respond to provide the information required to complete the application or, if the applicant cannot submit the required information within the 30-day period, the applicant shall provide the City a written explanation of why it cannot provide the information within the designated time period and a date that the requested information will be submitted. In its sole discretion, the Department may grant the applicant an extension of not more than 60 days to submit the required information. If the applicant fails to meet the foregoing time frame, the Department may, in its discretion, reject the application as untimely.

**3.90.060 Application for utility system improvement – Review.**

A. Utility System Improvement.

1. The Director shall review all applications and shall approve the application for a City utility system improvement if all of the following criteria are met:

- a. The application is for a City owned and operated utility or is for a utility that through and interlocal agreement with that utility specifically grants to the City the authority to administer a latecomer agreement for the utility;
- b. The application is timely, complete and the application fee has been paid;
- c. The City's or relevant ordinances require the proposed improvements to be constructed as a prerequisite to further property development;
- d. The proposed improvements fall within the definition of City utility system improvements as those terms are defined in this chapter;
- e. The proposed improvements are consistent with the City's design standards, development regulations, comprehensive plan, and the applicable utility plan.

2. In the event any of the above criteria are not met, the Director shall either condition approval as necessary in order for the application to conform to such criteria or deny the application. The final determination of the Director shall be in writing.

**B. Street System Improvement.**

1. The Director shall review all applications and may approve the application for a City street system improvement if, at a minimum, all of the following criteria are met:

- a. The application is timely, complete and the application fee has been paid;
- b. The City's ordinances require the proposed improvements to be constructed as a prerequisite to further property development;
- c. The proposed improvements fall within the definition of street system improvements as those terms are defined in this chapter;
- d. The proposed improvements are consistent with the City's design standards, development regulations, comprehensive plan, and transportation plan; and

2. In the event any of the above criteria are not met, the Director may either condition approval as necessary in order for the application to conform to such criteria or may deny the application. The final determination of the Director shall be in writing.

**3.90.070 Preliminary determinations.**

Upon approval of a latecomer application, the Department shall formulate a preliminary assessment reimbursement area and preliminary assessment amount for each real property included in the preliminary assessment reimbursement area as follows:

A. For street system improvements, the assessment reimbursement area shall be formulated based upon a determination of which parcels benefited by the street improvements would require similar street improvements upon development or redevelopment.

B. For utility system improvements, the assessment reimbursement area shall be formulated based upon a determination of which parcels in the proposed area would require similar utility system improvements upon development or redevelopment or would be allowed to connect to or use the utility system improvements.

C. A pro rata share of the cost of the improvements shall be allocated to each property included in the assessment reimbursement area based upon the benefit to the property owner. The method or methods used to calculate the allocation of the assessment may be either front footage, number of units, square footage, zone and termini method, or other equitable method, as determined by the City.

**3.90.080 Preliminary determination notice.**

- A. The preliminary assessment reimbursement area and the preliminary assessment amounts formulated by the Department shall be sent by *certified mail* to the developer and the property owners of record within the preliminary assessment reimbursement area.
- B. The developer or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the hearing examiner to contest the preliminary assessment reimbursement area and/or preliminary assessment amounts. Notice of such hearing shall be given to the developer and all property owners within the preliminary assessment reimbursement area. The hearing before the hearing examiner shall be conducted as soon as is reasonably practical subject to the Hearing Examiner Rules of Procedures as adopted pursuant to SMC 2.15 Hearing Examiner.
- C. After the hearing, if a hearing is held, the hearing examiner shall develop a report with findings of fact, conclusions of law and recommendations to the City Council regarding establishing the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The City Council shall consider the record developed before the hearing examiner and the hearing examiner's report. The City Council shall allow public comment on the hearing examiner's report and, if a majority of the City Council finds the record insufficient, may add to the record.
- D. After considering the record, the hearing examiner's report, and public comment thereon, if any, the City Council may adopt, modify, or reject the hearing examiner's recommendations in whole or in part or it may render its own findings and conclusions. The City Council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area.
- E. The City Council's determination of the assessment reimbursement area and the assessment shall be determinative and final. In the event no written request for a hearing is received within the allotted time, the determination of the Department shall be final.

**3.90.090 Latecomer agreement.**

Based upon the preliminary assessment reimbursement area and the preliminary assessment, if no hearing is requested, or based upon the City Council's determination of the assessment reimbursement area and assessment if a hearing is requested, the Department shall prepare and give to the applicant a latecomer agreement. A separate latecomer agreement shall be executed for each of the following categories of improvement, as applicable: water system, sewer system, stormwater/surface water system, and street system.

**3.90.100 Execution, notice, and recording.**

- A. The utility or street latecomer agreement shall be mailed to the developer by the City Clerk and must be signed, notarized, and returned to the City Clerk. If the agreement is not executed and returned to the City Clerk within 60 days of the date it was mailed to the developer, the utility or street latecomer agreement will become null and void. The Director can consider extending this period by a showing of hardship or excusable neglect on the part of the holder of the utility or street latecomer agreement.
- B. The City shall file the fully executed utility or street latecomer agreement in the official property records of King County, Washington within 30 days of final execution of the latecomer

agreement; provided, that the developer shall have an independent duty to review the King County Recorder's records to confirm that the latecomer agreement has been properly and timely recorded.

C. No latecomer agreement shall be effective as to any owner of real estate not a party to the agreement unless the latecomer agreement has been recorded in the records of the County where the real estate is located. For a utility latecomer agreement, recording must be prior to the time that the owner of the real estate taps into or connects to water or sewer facilities.

**3.90.110 Construction – Final costs – Conveyance.**

A. After the latecomer agreement has been signed by all parties and all necessary permits and approvals, including a Right of Way Use permit or required utility permit, have been obtained, the applicant shall construct the improvements and, upon completion, request final inspection and acceptance of the improvements by the City, subject to any required obligation to repair defects. All construction, inspection and testing shall conform to the City's design and construction standards.

B. Within 120 days of completion of construction, the developer shall provide the City with documentation of the actual costs of the improvements and a certification by the applicant that all of such costs have been paid. The final cost of the improvements shall be reviewed against the preliminary assessments established by the City. Upon a showing of good cause, the agreement shall be modified to include cost overruns up to a maximum of 10 percent. In the event that actual costs are less than the Director's estimate by 10 percent or more, the Director shall recalculate the charges, reducing them accordingly. For any revisions under this section, the Director shall cause a revised list of charges to be recorded with the King County Auditor, with a notice to title on each property within the assessment reimbursement area.

C. After the requirements of subsections (A) and (B) of this section have been satisfied, the developer shall provide the City with an appropriate deed of conveyance or other equivalent written document transferring ownership of the improvements to the City, together with any easements needed to ensure the City's right of access for maintenance of the improvements. Title to the improvements shall be conveyed to the City clear of all encumbrances.

D. No connection to, or other use of, the improvements will be allowed or permitted until the City has officially accepted the construction and title to the improvements has been conveyed to the City.

**3.90.120 Defective work.**

The developer shall be responsible for all work found to be defective within one year after the date of acceptance of the improvements by the City. Nothing in this chapter shall preclude the Director from requiring a performance bond for the street or utility system improvements as authorized for such improvements in other provisions of the SMC.

**3.90.130 Payment of latecomer assessments – Remittance to developer.**

A. Upon recording, the latecomer agreement and assessment shall be binding upon all properties located within the assessment reimbursement area. Assessments shall be paid to the City in one lump sum, including interest through the date of payment, as follows:

1. Assessments for street improvements shall be paid prior to the development or redevelopment of property if at the time of development or redevelopment the property owner



does not need to construct the otherwise city required similar street improvements because said improvements were already constructed by the developer.

2. Assessments for utility system improvements shall be paid prior to issuance of the first applicable permit which authorizes connection to or use of the utility system improvements. In the event that a benefitting parcel subdivides, consolidates, or otherwise adjusts its lot boundary, the pro rata share encumbrance will still apply to the entire parent parcel. The first connection from the parent parcel that triggers the reimbursement payment will be required to pay the full pro rata share.

B. The City shall remit to the developer the amounts due within 60 days of receipt.

C. When the assessment for any property has been paid in full, the Director shall record a certification of payment that will release the property from the latecomer agreement.

D. The latecomer charge shall be in addition to the usual and ordinary charges, including connection charges, system development charges, and any other fees or charges which must be paid by persons applying for City services.

**3.90.140 Segregation.**

The Department shall, upon the request of any property owner within the assessment reimbursement area, segregate the assessment. The segregation shall be based upon the same factors applied when the assessments were originally established. The property owner seeking segregation of the assessment shall pay an administrative fee to the City based upon a segregation fee schedule to be established by the Department.

**3.90.150 Term of developer reimbursement agreements.**

A. For street system improvements, no latecomer agreement shall provide for reimbursement for a period no longer than 15 years from the date of its recording, unless earlier terminated as provided in subsection (C) of this section.

B. For utility system improvements, each latecomer agreement shall provide for reimbursement for a period of no longer than 20 years from the date of its recording, unless earlier terminated as provided in subsection (C) of this section.

C. The City may terminate a latecomer agreement if the developer fails to commence or complete construction within the time and manner required in the Right of Way Use permit or required utility permit(s) for the improvements. In the event of termination, the City shall record a release of latecomer agreement in the King County Recorder's Office.

**3.90.160 Removal of unauthorized connections or taps.**

Whenever any tap or connection is made into any utility improvement without payment of the assessment being made as required by this chapter, the Department is authorized to remove and disconnect, or cause to be removed and disconnected, such unauthorized tap or connection including all connecting tile or pipe located in the Right of Way and to dispose of such unauthorized material without liability. The owner of the property where the unauthorized connection is located shall be liable for all costs and expenses of any type incurred to remove, disconnect, and dispose of the unauthorized tap or connection.

**3.90.170 Interest on assessment.**

Each assessment established under this chapter shall bear interest from the date of recording of the latecomer agreement or notice of assessment at an interest rate fixed at the federal reserve rate for a two-year treasury note, as determined on the date of recording the latecomer agreement or notice of assessment.

**3.90.180 City fees.**

The developer shall pay the following fees:

- A. Application Fee. The Developer shall be responsible for payment of the application fee as set forth in this chapter or as subsequently set forth in SMC 3.01 Fee Schedule for each latecomer agreement.
- B. Administrative Fee. The City shall charge a fee for administering the latecomer process equal to one percent of the estimated cost of construction.
- C. Recording Fee. For every separate parcel of property within the developer's proposed assessment reimbursement area, the City shall charge a recording fee of \$250.00 per parcel.
- D. The recording fee shall be adjusted annually to reflect inflationary costs. The adjusted fees shall be calculated by adjusting upwards or downwards in accordance with the change in the Consumer Price Index for All Urban Consumers, Seattle-Tacoma-Bremerton, Washington, based on the report released prior to January 1st of each year. The fees established by this formula shall be rounded up or down to the next \$10.00.
- E. The application fee shall be paid upon application for a latecomer agreement with all remaining fees paid prior to, and as a condition of, the City's mailing of the preliminary determination notices.

**3.90.190 Appeal.**

With the exception of the determination of the preliminary assessment reimbursement area and preliminary assessment as provided by SMC 3.90.080, a developer or owner of record of property located within the assessment reimbursement area may appeal the interpretation, implementation, and/or decisions of the Department concerning any aspect of this chapter to the hearing examiner. The appeal must be filed within 20 days of the date of the action or decision being appealed, include a statement of claimed errors concerning the proposed assessment, and be accompanied by an appeal fee as set forth in SMC 3.01 Fee Schedule. Errors which are not set forth in writing and which do not adhere to the criteria listed below will not be considered.

A. Appeal Criteria. Objections by a benefiting property owner to the recording of a potential assessment against their property does not constitute a valid appeal. Errors identified in an appeal must be related to cost, methodology for cost distribution, or benefit to the property as described below:

1. Cost: If the benefiting property owner contests these costs, they must provide a basis for the claimed discrepancy, such as an estimate from a contractor or other reliable source.
2. Costs Methodology: If the benefiting property owner contests the cost methodology used, they have to show why it is not equitable and provide their suggested alternate method of assessment and the justification for its use in place of the staff recommended method.

3. Benefit: If a benefiting property owner contests benefit, they must provide a statement or documentation on why a particular parcel has no future potential benefit.

**3.90.200 Enforcement of latecomer obligations.**

A. In processing and imposing obligations in this chapter for reimbursement of developers, the City in no way guarantees payment of assessments by latecomers, or enforceability of assessments, or enforceability of the latecomer agreement, or the amount(s) thereof against such persons or property. Nor will the offices or finances of the City be used for enforcement or collection of latecomer obligations beyond those duties specifically undertaken by the City herein. The City shall not be responsible for locating any beneficiary or survivor entitled to any benefits by or through a developer reimbursement agreement.

B. Every two years from the date the latecomer agreement is executed, a developer entitled to reimbursement under this chapter shall provide the Department with information regarding the current contact name, address, and telephone number of the person, company, or partnership that originally entered into the latecomer agreement. If the developer fails to comply with the notification requirements of this subsection within 60 days of the specified time, then the City may collect any reimbursement funds owed to the developer under the latecomer agreement. Such funds must be deposited in the capital fund of the City.

**3.90.210 City participation authorized.**

A. The City may participate in financing street and/or utility system improvement projects authorized, improved, or constructed in accordance with this chapter as authorized under RCW 35.72.050. In that event, the City shall have the same rights to reimbursement as owners of real estate who make such improvements as authorized in this chapter, and the City will be entitled to a pro rata share of the reimbursement assessment based on the respective contribution of the owner(s) and the City.

B. The City on its own initiative may solely perform street and/or utility system improvement projects authorized, improved, or constructed in accordance with this chapter as authorized under RCW 35.72.050, and shall have the right to reimbursement as described therein. In such situations, the City shall take action by ordinance to establish the reimbursement area and reimbursement allocations.

**3.90.220 Interpretation and consistency with state law.**

This chapter shall be interpreted according to its terms, provided that if an inconsistency between this chapter and state law arises, this chapter shall be interpreted in a manner that renders it not inconsistent with chapters 35.72 RCW and 35.91 RCW.