

ORDINANCE NO. 837

AN ORDINANCE OF THE CITY OF WARDEN REPEALING CHAPTER 16.36 TITLED “REIMBURSEMENT FOR UTILITY INSTALLATIONS” OF THE WARDEN MUNICIPAL CODE AND ADOPTING A NEW CHAPTER 3.76 TITLED “PRIVATE STREET AND UTILITY LATECOMER CONTRACTS”

THE CITY COUNCIL OF THE CITY OF WARDEN, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Repeal: Chapter 16.36 of the Warden Municipal Code titled “Reimbursement for Utility Installations” is hereby repealed in its entirety.

Section 2. Adopt: A new Chapter 3.76 of the Warden Municipal Code titled “Private Street and Utility Latecomer Contract” is adopted as follows:

CHAPTER 3.76

PRIVATE STREET AND UTILITY LATECOMER CONTRACTS

Sections:

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3.76.010 Purpose: The purpose of this Chapter is to provide a mechanism to reimburse a Developer for costs associated with the construction of municipal improvements. This Chapter is intended to implement and make available to the public the provisions of Chapters 35.72 and 35.91 RCW as presently adopted or as may be subsequently amended.

3.76.020 Definitions: The following terms, when used in this Chapter, shall have the following meaning:

- A. “Developer” shall mean the owner or applicant who is required by any

City code to construct municipal improvements as a prerequisite of property development.

B. “Benefitted Properties” shall mean real properties where the owner did not contribute to the original cost of the municipal improvements, but received a direct benefit from the municipal improvements, and are included in the latecomer contract.

C. “Latecomer Contract” shall mean a contract authorized by Chapters 35.72 and 35.91 RCW and this Chapter, between the City and the Developer.

D. “Latecomer Fee” shall mean a cost due from an owner of a benefitted property, collected by the City, and payable to a Developer, in accordance with a latecomer contract.

E. “Municipal Improvements” shall mean street improvements, utility improvements, or a combination of street and utility improvements, that are accepted by the City.

F. “Prerequisite of Property Development” shall mean municipal improvements that are required to be installed in accordance with the Warden Municipal Code.

G. “Reimbursement Area” shall mean the area that includes benefitted properties assigned to a latecomer contract.

H. “Street Improvements” shall mean municipal street transportation facilities including: clearing, grubbing, excavation, embankment, grading, compaction, monument and utility adjustments, top course, base course, asphalt, curb, gutter, sidewalks, curb ramps, centerline street monuments, barricades, planter areas, irrigation sleeves, curb paint, public utilities, signage, associated landscaping, striping, signals, concrete pavers, irrigation, tree planters, trees, tree grates, or any combination of these improvements.

I. “Utility Improvements” shall mean municipal water mains, wastewater mains, stormwater mains, pumping stations, disposal plants, treatment facilities, reservoirs, wells, controls, monitors, associated appurtenances, or any combination of these facilities.

3.76.030 Rights and Non-Liability of City: This Chapter shall not create a private right of action for damages against the City. The City shall not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional.

3.76.040 Latecomer Contract Term: The latecomer contract for utility improvements will expire twenty (20) years after the City Council accepts the improvements, and the latecomer contract for street improvements will expire fifteen (15) years after the City

Council accepts the improvements. Both terms may be extended as provided for by statute.

3.76.045 Limits of Reimbursement Areas: Reimbursement areas for street improvements are limited to the benefitted properties within the corporate limits of the City of Warden. Reimbursement areas for utility improvements are limited to benefitted properties within the corporate limits; and to benefitted properties outside the corporate limits, but within 10 miles from the corporate limits.

3.76.050 Contract - When Mandatory:

- A. The City Council reserves the right to refuse to enter into any latecomer contract for street improvements, and to reject any application for a latecomer contract for street improvements.
- B. The City shall enter into a latecomer contract for utility improvements at the Developer's request if the Developer meets all conditions in accordance with this Chapter and RCW 35.91.020(1)(a).

3.76.060 Mayor's Authority: The Mayor may establish administrative rules, regulations, policies, procedures, and forms necessary to implement the provisions of this Chapter. The Mayor is authorized to execute latecomer contracts upon the City Council's approval.

3.76.070 Application Submittal: The following steps are required to initiate the process of approving a latecomer contract.

- A. The Developer shall submit a completed application for a latecomer contract prior to the date when the City Council accepts the improvements. All applications for latecomer contracts shall be on City forms that are available at the City Hall, 121 S Main Street, Warden, WA.
- B. A nonrefundable application fee is due at the time of application in an amount of One Thousand Five Hundred Dollars (\$1,500). This application fee is for the City's costs associated with the preparation of the latecomer contract including engineering, legal, and administration.

3.76.080 Establishing Contract:

After the City has accepted an application for a latecomer contract and determined that the application is complete, the following steps are required to establish a latecomer contract:

- A. The Developer shall provide the following information to the City Engineer within one hundred twenty (120) days after the eligible municipal improvements are accepted by the City, (failure to do so within that time frame may result in a

determination by the City Council that a latecomer contract is not available for the improvements accepted):

1. All documentation to verify the total cost of the municipal improvements. The total cost may include engineering, construction, bonding, land acquisition, administration, and permit and development fees paid to the City and the State regulatory agencies. All costs associated with private improvements shall be excluded from the latecomer contract.
 2. In addition to the costs borne by the Developer, the City Council may provide for the reimbursement of all or part of the costs advanced by the city funds for such municipal improvements including any costs listed in Section 1 above, and including any costs of advertising, mailing, and publishing of notices; the cost of legal services and other expenses incurred by the City in connection with such construction or improvements and the financing thereof, including the issuance of bonds; the City's costs of administering the latecomer contract; and any outside professional services as applicable.
 3. A map and legal description identifying the proposed boundary of the reimbursement area, and the Grant County parcel number for each benefitted property within the reimbursement area. The map shall include the front footage, area, or both, for each benefitted property and for the Developer's property.
 4. A preliminary latecomer fee schedule showing the total project cost, the total front footage or area of the benefitted properties and the Developer's property, and the proposed reimbursement fee for each benefitted property. The reimbursement fee shall be calculated using the front foot assessment basis, area assessment basis, or a combination of these methods at the discretion of the City Engineer. The assessment roll shall be sent electronically to the City Engineer in Word or Word Perfect format.
 5. A complete list of owners of benefitted property as shown on the tax rolls of the Grant County Treasurer. The list shall include the name and mailing address for each benefitted property. The Developer shall be solely responsible for the correctness of the list, and shall defend and indemnify the City against any suit or claim that a person entitled to notice did not receive notice due to an error in the list. The list shall be sent electronically to the City Engineer in Word or Word Perfect format.
 6. As the items are submitted to and reviewed by the City Engineer, the Developer shall timely provide additional information at the discretion of the City Engineer for revisions or insufficiencies.
- B. The City will complete the following actions after the City Engineer determines that all documents required by the Developer for a latecomer contract are complete.

1. Send a notice to the owners of benefitted property by certified mail at least 20 days before the City Council meeting where the City Council will consider the latecomer contract. The notice will include the reimbursement map, the benefitted property assessment, the date of the City Council meeting, and notification that the property owner can request a hearing at the City Council meeting. Within twenty (20) days of the mailing, if any owner of benefitted property provides a written request to the City for a hearing, a hearing shall be held before the City Council; and a notice of hearing shall be given to all the owners of the benefitted properties.
2. The City Council will determine whether to accept or modify the preliminary latecomer contract. The City Council may only increase the reimbursement area upon new notice to the owners of the affected property.
3. Prepare the final latecomer contract and send the contract to the Developer by first class mail for their signature. The Developer shall return the signed latecomer contract no later than twenty (20) calendar days after date of mailing. The Mayor will then execute the latecomer contract. Failure to return the signed latecomer contract within the twenty (20) calendar shall result in the latecomer contract becoming null and void. The City Council may give consideration to extending this period upon a showing of hardship or excusable neglect on the part of the Developer.
4. File the executed latecomer contract at the Grant County Auditor's office within thirty (30) days after the final execution of the contract. Once the latecomer contract is recorded, it shall be binding on the owners of the benefitted properties of record.

3.76.090 Implementing Contract:

Before the City will collect any latecomer's fee, the Developer will transfer title to all the improvements under the latecomer contract to the City at no cost to the City. The Developer will also assign the City the benefit and right to the latecomer's fee should the City be unable to locate the Developer to tender any latecomer's fee that the City has received.

The City will collect latecomer fees due from the owners of benefitted properties before approving a plat, before issuing a building or other development permit on property not platted, and before issuing a building or other development permit on platted lots that are deemed insufficient. In addition, the City will collect latecomer fees due for utility improvements before benefitted properties are approved to connect to the utility improvement.

Latecomer fees that are collected by the City will be forwarded to the Developer at the Developer's address on file at the Mayor's office. Latecomer fees will be sent to the Developer within sixty (60) days of collection, except as noted in Section 3.76 .100.

3.76.100 Notification - Developer: The Developer shall provide a written notification to the City every two (2) years from the date the contract is executed, providing the Developer's name, current physical and mailing address, and telephone number. At any time during the term of the latecomer contract, if two (2) years and sixty (60) days lapse without written notification from the Developer, then the latecomer fees collected by the City under the latecomer contract will be deposited in the City's capital fund.

3.76.110 Relief - Similar Facilities: The City may relieve the owner of a benefitted property from paying one or more latecomer fees, if multiple similar facilities could be utilized by the benefitted property. Relief shall be based upon sound engineering and policy justifications as to which facility best serves the property. Absent such justifications, the City shall allow the owner of a benefitted property to choose which facility to utilize. The latecomer fee due, if any, shall be that associated with the municipal improvement.

3.76.120 Severability: If any section, subsection, sentence, clause, phrase, or word of this chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of the ordinance codified in this Chapter.

Section 2. Effective date. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

PASSED by the City Council of Warden, Washington this 27th day of June 2023.

By: _____
Tony Massa, Mayor

ATTEST:

By: _____
Kristine Shuler, City Clerk

APPROVED AS TO FORM:

By: _____
Katherine L. Kenison, City Attorney

PASSED the 27th day of June 2023
APPROVED the 27th day of June 2023
PUBLISHED the day of 2023