

CITY OF WINLOCK, WASHINGTON

ORDINANCE NO. 1181

AN ORDINANCE OF THE CITY OF WINLOCK, WASHINGTON, ADOPTING A NEW CHAPTER 18.50 TO THE WINLOCK MUNICIPAL CODE RELATING TO ASSESSMENT REIMBURSEMENT AREAS AND LATECOMER AGREEMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE; AND FOR SUMMARY PUBLICATION.

RECITALS:

WHEREAS, the City of Winlock, Washington (the "City") is a Code City under the laws of the State of Washington; and

WHEREAS, pursuant to RCW 35A.11.020, the City may adopt and enforce ordinances of all kinds relating to and regulating the City's local or municipal affairs and appropriate to the good government of the City; and

WHEREAS, all references herein to "WMC" shall mean the "Winlock Municipal Code," and

WHEREAS, the City is 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, the City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW); and

WHEREAS, the City Council desires to incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code; 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. 841, adopted in 2002; and

WHEREAS, the City adopted its Design Guidelines in 2007, amended and readopted in 2020 by Ordinance No. 1089, speaks to the creation of a latecomer agreement as provided in chapter 35.91 RCW; and

WHEREAS, the City Council has 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;

WHEREAS, the Council desires to create a new chapter 18.50 WMC as set forth herein.

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

The following sections of Chapter 18.50 of the Winlock Municipal Code, titled “ASSESSMENT REIMBURSEMENT AREAS AND LATECOMER AGREEMENTS”, is created as follows:

Section 1. Section 18.50.010 WMC is hereby created to state:

18.50.010 Authority and purpose.

- A. Authority. 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.
- B. Purpose. 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.

Section 2. Section 18.50.020 WMC is hereby created to state:

18.50.020 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 times construction interest rate divided by 365 times the construction term expressed in days times 0.67 equals 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 Winlock’s community development and building 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 community development director for the city of Winlock 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.

Section 3. Section 18.50.030 WMC is hereby created to state:

18.50.030 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.

Section 4. Section 18.50.040 WMC is hereby created to state:

18.50.040 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 the City's Development Code ("Winlock Development Code" or "WDC") and Design Guidelines ("Winlock Design Guidelines" or "WDG"), including but not limited to Titles 12, 13, 15, 16, and 18 WMC, as now enacted or hereafter amended, repealed, recodified, or otherwise changed, are hereby declared to be prerequisites to further property development for the purposes of this chapter.

Section 5. Section 18.50.050 WMC is hereby created to state:

18.50.050 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 \$1,000.00 or such amount as subsequently set forth in the City of Winlock Fee Schedule adopted pursuant to Chapter 3.115 WMC 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 Lewis 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, wastewater utility, civil construction, or other applicable permit; provided, that for street or utility improvements approved under a separate agreement between the city and a developer or property owner, prior to adoption of this ordinance, 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 with 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.

Section 6. Section 18.50.060 WMC is hereby created to state:

18.50.060 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 an 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; and
 - 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; and
 - 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.

Section 7. Section 18.50.070 WMC is hereby created to state:

18.50.070 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.

Section 8. Section 18.50.080 WMC is hereby created to state:

18.50.080 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 Chapter 18.25 WMC, 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.

Section 9. Section 18.50.090 WMC is hereby created to state:

18.50.090 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. The City is required to honor a request for a utility latecomer agreement, but still has the option not to enter into a street latecomer agreement.

Section 10. Section 18.50.100 WMC is hereby created to state:

18.50.100 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 Lewis County, Washington, within 30 days of final execution of the latecomer agreement; provided, that the developer shall have an independent duty to review the Lewis County auditor'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.

Section 11. Section 18.50.110 WMC is hereby created to state:

18.50.110 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 Lewis 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.

Section 12. Section 18.50.120 WMC is hereby created to state:

18.50.120 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 WMC.

Section 13. Section 18.50.130 WMC is hereby created to state:

18.50.130 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.

Section 14. Section 18.50.140 WMC is hereby created to state:

18.50.140 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.

Section 15. Section 18.50.150 WMC is hereby created to state:

18.50.150 Term of developer reimbursement agreements.

- A. For street system improvements, each 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 Lewis County auditor's office.

Section 16. Section 18.50.160 WMC is hereby created to state:

18.50.160 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.

Section 17. Section 18.50.170 WMC is hereby created to state:

18.50.170 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.

Section 18. Section 18.50.180 WMC is hereby created to state:

18.50.180 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 the City of Winlock Fee Schedule adopted pursuant to Chapter 3.115 WMC 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 \$500.00 per parcel. 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, Lewis county 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.
- D. 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.

Section 19. Section 18.50.190 WMC is hereby created to state:

18.50.190 Appeal.

With the exception of the determination of the preliminary assessment reimbursement area and preliminary assessment as provided by WMC 18.50.090, 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 adopted in the City of Winlock Fee Schedule adopted pursuant to Chapter 3.115 WMC. 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.

Section 20. Section 18.50.200 WMC is hereby created to state:

18.50.200 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.
- C. By instituting the utility or street latecomer's agreement the City does not agree to assume any responsibility to enforce the utility or street latecomer's agreement. Nothing in this Chapter shall create a private right of action for damages against the City for failing to comply with the

requirements herein. The final utility or street latecomer's agreement recorded with Lewis County will be a matter of public record and will serve as a notice to the owners of the potential assessment should connection to the improvements be made.

Section 21. Section 18.50.210 WMC is hereby created to state:

18.50.210 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.

Section 22. Section 18.50.220 WMC is hereby created to state:

18.50.220 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 and 35.91 RCW.

Section 23. Repealer. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Section 24. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional or unlawful 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 25. Effective Date. This ordinance shall take effect five (5) days after its publication, or publication of a summary thereof, in the City's official newspaper, or as otherwise provided by law.

Section 26. Corrections. Upon approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbers, section/subsection numbers, and any references thereto.

PASSED by the Council of the City of Winlock, Washington, and **APPROVED** by the Mayor of the City of Winlock at a regularly scheduled open public meeting thereof, this ___ day of March, 2025.




Brandon Svenson, Mayor

Attest:


Jill Davis, City Treasurer

Approved as to form:


Marissa Y. Jay, WSBA # 55593
City Attorney

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