ORDINANCE NO. 002-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO LATECOMER AGREEMENTS FOR WATER AND SEWER FACILITIES, ESTABLISHING THE PROCEDURES UNDER WHICH AN OWNER OF REAL PROPERTY MAY APPLY FOR A LATECOMER AGREEMENT IN ORDER TO OBTAIN REIMBURSEMENT OF A PRO RATA SHARE OF THE COST OF SUCH FACILITIES FROM OTHER OWNERS OF PROPERTY WHEN THE CITY'S ORDINANCES REQUIRE THAT THE SEWER AND WATER FACILITIES BE CONSTRUCTED OR IMPROVED AS A CONDITION OF DEVELOPMENT, AND OTHER CONDITIONS ARE SATISFIED, DESCRIBING THE CONDITIONS THAT MUST BE SATISFIED FOR THE CITY TO EXECUTE THE LATECOMER AGREEMENT AND THE ELEMENTS OF THE CONTRACT; ALLOWING PROPERTY OWNERS WITHIN THE AREA CHARGED WITH PAYMENT OF THE PRO RATA SHARE TO REQUEST AN APPEAL HEARING ON THE AREA BENEFITTED BY THE LATECOMER AGREEMENT, AND THE METHOD FOR CALCULATING THE PRO RATA SHARE, ADDING A NEW CHAPTER 13.08 TO THE PORT ORCHARD MUNICIPAL CODE AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature adopted chapter 35.91 RCW, which requires that the City contract with an owner of real property for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owners expense, as long as certain conditions are satisfied; and

WHEREAS, the City has no procedures in place for an owner of real property to request that the City enter into this contract, called a “latecomers’ agreement,” and

WHEREAS, the City desires to establish such procedures in a new chapter of the Port Orchard Municipal Code; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 13.08 is hereby added to the Port Orchard Municipal Code, which shall read as follows:
CHAPTER 13.08

LATECOMER AGREEMENTS

Sections:

13.08.010 Purpose.
13.08.020 Definitions.
13.08.030 Mandatory Requirements for Latecomer Agreements.
13.08.040 City or County Participation in Latecomer Agreements.
13.08.050 Effect, Duration, Reimbursement of Pro Rata Share.
13.08.060 Conditions Imposed on and Included in Latecomer Agreements.
13.08.070 Preliminary Determination of Latecomer Benefitted Area.
13.08.080 Notice – Hearing – Consideration by City Council.
13.08.090 Pro Rata Share Paid Within Latecomer Benefitted Area.
13.08.100 Approval and Acceptance of Facilities.
13.08.110 Contract Payment Made Prior to Hook-up.
13.08.120 No City Liability.

13.08.010 Purpose. The purpose of this chapter is to implement chapter 35.91 RCW and to describe the process for a developer, property owner, a county or the City of Port Orchard to obtain an latecomer agreement, in order so that the developer, property owner, county or City which constructs certain water and/or sewer facilities may be reimbursed by other property owners who subsequently hook up to the water and/or sewer facilities.

13.08.020 Definitions. The definitions set forth in this Section shall apply throughout this chapter:

A. “Cost of construction” means the cost incurred by the owner/developer for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), as required in order to install the water and/or sewer facilities in accordance with all applicable laws, ordinances and standards, including the City’s public works standards. The cost of construction shall be documented in writing by the developer on final invoices or other documents showing the amounts paid by the developer/owner. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City
and the developer/owner concerning the cost of the water and/or sewer facilities, the City Public Works Director's decision shall be final.

B. "Developer" or "owner" means a property owner or authorized agent of the property owner who may construct a water and/or sewer facility, and desires a latecomers agreement under the terms and conditions set forth in this chapter. The City or the County may be a "developer" or "owner" under this chapter.

C. "Latecomer Agreement" means a written contract between the City and a developer providing for the partial reimbursement of the cost of constructing the water and/or sewer facilities. The latecomer agreement shall be a standard contract approved as to form by the City Attorney. Where the City constructs water or sewer facilities under a latecomer agreement, the agreement may provide for the total reimbursement of the cost of construction of the water and/or sewer facilities.

D. "Latecomer Fee" means a charge collected by the City, whether separately stated or as part of a connection fee for providing access to the City's water and/or sewer system, against a real property owner who connects to, hooks up to or uses a water or sewer facility subject to a latecomer agreement created under this chapter and chapter 35.91 RCW.

E. "Latecomer" means a property owner not a party to a duly executed and recorded latecomer agreement, owning property in the area benefitted by such agreement, who seeks to connect to the water and/or sewer facilities constructed under the latecomer agreement within the timeframe established in the agreement, and who many only do so by making payment to the City of his/her pro rata share of the cost of construction.

F. "Water or sewer facilities" means storm, sanitary, or combination sewers, pumping stations and disposal plants, water mains, hydrants, reservoirs or appurtenances.

13.08.030 Mandatory Requirements for Latecomer Agreements. At the developer's request, the City must contract with the owner 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. However, the City is only required to enter into such a contract if all of the following conditions are satisfied:

A. The Latecomer Agreement must be for the construction of water and/or sewer facilities in locations where the City's ordinances require such facilities to be improved or constructed as a prerequisite to further property development; and
B. The water and/or sewer facilities to be improved or constructed must be located within the City's corporate limits or, within ten miles of the City's corporate limits; and

C. If Kitsap County is a party to the Latecomer Agreement, the water and/or sewer facilities may not be located outside the County; and

D. The Latecomer Agreement, shall meet the all of the conditions required by the City under this chapter, and shall be filed and recorded with the County Auditor; and

E. The water and/or sewer facilities must be consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve; and

F. The sewer and/or water facilities to be constructed or improved must be included in the City's comprehensive plan. Unless the City provides written notice to the owner of its intent to request comprehensive plan approval for the facilities, the owner must request comprehensive plan approval for the water and/or sewer facility; and

G. The owner shall submit the total cost of the water or sewer facility to the City, within one hundred-twenty (120) days of the completion of the water or sewer facility, so that the City may use this information as the basis for determining the reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

13.08.040 City or County Participation in Latecomer Agreements.

A. If authorized by ordinance or contract, the City or County may participate in financing water or sewer facilities development projects that are authorized and improved or constructed in accordance with Section 13.08.030 above. Unless otherwise provided by ordinance or contract, the City or the County participating in the financing of water or sewer facilities improved or constructed under this Chapter:

1. Shall have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and

2. Are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the City/County.

B. Except as otherwise provided in this Chapter, the City or County seeking reimbursement from an owner of real estate subsequently connecting to the water and/or sewer facilities constructed under this Section is limited to the dollar amount
authorized in Subsection C below. This does not prevent the City or County from collecting amounts for services or infrastructure that are additional expenditures not subject to the ordinance, contract or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the City or County in complying with this Section.

C. To the extent that it may require in the performance of the Latecomer Agreement, the City or County may install the water or sewer facilities in and along the City or County streets in the area to be served as hereinabove provided, subject to reasonable requirements as the manner of occupancy of the streets as the City or County may by resolution provide.

13.08.050 Effect, Duration, Reimbursement of Pro Rata Share.

A. The provisions of the latecomer agreement may not be effective as to any owner of real estate not a party thereto unless the latecomer agreement has been recorded in the office of the county auditor of the county in which the real estate of the owner is located, prior to the time the owner taps into or connects to the water or sewer facilities.

B. The latecomer agreement shall provide for the pro rata reimbursement to the owner or the owner's assigns for twenty (20) years. The agreement may provide for an extension of the twenty (20) year reimbursement period for a time not to exceed any moratorium, phasing ordinance, concurrency designation or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six (6) months or more. Upon the extension of the reimbursement period pursuant to this Section, the agreement must specify the duration of the contract extension and must be filed and recorded with the County auditor. Property owners who are subject to the reimbursement obligations in the latecomer agreement shall be notified by the contracting municipality of any extension filed under this Section.

C. The contracting municipality shall reimburse the developer/owner from Latecomer Fees received by the contracting municipality from property owners in the benefitted area who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities. The reimbursement of the pro rata share must be made by the contracting municipality within the period of time that the Latecomer Agreement is effective.

13.08.060 Conditions Imposed on and Included in Latecomers Agreements. Every Latecomer Agreement shall include the following conditions:
A. The water or sewer facility shall be constructed by the developer/owner according to plans and specifications approved by the City;

B. The water or sewer facility shall be inspected and approved for ownership and maintenance by the City;

C. The developer/owner shall transfer the water and/or sewer facility to the City with a bill of sale, without cost to the City, at the time the City approves the facility for ownership and maintenance;

D. The developer/owner shall comply with all of the owner’s obligations under the Latecomers Agreement and the applicable City rules and regulations;

E. The developer/owner shall provide sufficient security to the City to ensure completion of the water and/or sewer facility and compliance with other performance measures under the contract;

F. The developer/owner shall pay all of the City’s costs associated with the water or sewer facility including, but not limited to, engineering, legal and administrative costs;

G. The City shall verify and approve all contracts and cost of construction related to the water and/or sewer facility;

H. The Agreement shall include a provision requiring that every two years from the date the Agreement was executed, the developer/owner entitled to reimbursement shall provide the municipality 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 owner fails to comply with the notification requirements of this Subsection within sixty (60) days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the Agreement. The funds collected under this Subsection must be deposited in the capital fund of the municipality.

13.08.070 Preliminary Determination of Latecomer Benefitted Area. The City Public Works Director shall determine whether a request for a Latecomer Agreement satisfies the requirements in Section 13.08.030. If the request satisfies the requirements, the Director shall define the Latecomer Assessment Area, based upon a determination of the locations in which the City’s ordinances require the facilities to be improved or constructed as a prerequisite to further property development, as well as a review of the applicable comprehensive plan(s). The Director shall also review the owner’s calculations relating to the cost of construction, the amount of the proposed latecomer fee and the receipts and invoices relating to the construction of the water and
sewer facilities. The amount of the pro rata share to be paid under the Latecomer Agreement shall be recommended by the owner, so that each property within the Latecomer Benefitted Area. The methodology utilized in calculating the amount of the pro rata share shall be the responsibility of the owner.

13.08.080 Notice – Hearing – Consideration by City Council.

A. Upon the Public Works Director's recommendation that the request for the Latecomer Agreement meets the requirements of this Chapter, the City shall prepare a Latecomer Agreement for inclusion in the Council agenda after the time period established in Subsection D.

B. The preliminary determination of the benefitted area boundaries and the proposed pro rata share, along with the property owners’ rights and options, shall be forwarded by certified mail to the property owners of record within the proposed benefitted area shown on the records of the County Assessor.

C. If any property owner requests a hearing within twenty (20) days of the mailing date of the preliminary determination, a hearing shall be held before the City Council, notice of which shall be given to all affected property owners by mail not less than ten (10) days prior to the hearing. After considering public testimony at the hearing, the City Council shall make a final determination of the Latecomer Benefitted Area and the Pro Rata Share, based on the criteria set forth in this Chapter and as specified in Chapter 35.91 RCW. The Council may adopt, reject or modify the City Public Works Director's recommendation. The final determination of the Latecomer Benefitted Area and Pro Rata Share shall be established by ordinance.

D. In the event that no hearing is requested, the City Public Works Director's recommendation of the Latecomer Assessment Area and Pro Rata Share shall be final.

E. The Latecomer Agreement, request and supporting documents, along with the Public Works Director's determination of cost of construction, Latecomer Benefitted Area and Pro Rata Share shall be presented to the City Council for consideration. If the Latecomer Agreement meets the requirements of this Chapter, the City Council may modify or approve the Latecomer Agreement.

13.08.090 Method for Determining Pro Rata Share. The developer/owner may propose any method for determining the pro rata share. For example, the method of assessment permitted for local improvement district assessment, including, but not limited to, the front-foot method, the zone and termini method, and square footage method, may be proposed. The City may, in its discretion, determine the method for determining the pro rata share used to calculate the latecomer fee and the City's decision on the method shall be final. The fair pro rata share of the cost of the water
and/or sewer facilities attributable to the developer/owner’s property shall be deducted from the cost of construction.

13.08.100 Approval and Acceptance of Facilities. Upon the completion of water or sewer facilities pursuant to a Latecomer Agreement, the City Council shall be authorized to approve their construction and accept the water and/or sewer facilities for ownership and maintenance. The City may then charge for their use such water or sewer rates that the City is authorized by law to establish. All further maintenance and operation costs shall be borne by the City.

13.08.110 Contract Payment Made Prior to Hook-Up. A person, firm or corporation may not be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions subject to a latecomer agreement during the period of time prescribed in the Latecomer Agreement without first paying to the City, in addition to any and all other costs and charges made or assessed for such tap or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the applicable Latecomers Agreement. All amounts so received by the City shall be paid out by it under the terms of the Latecomers Agreement to the developer/owner within sixty (60) days after the receipt thereof. Whenever any tap or connection is made into any water or sewer facilities subject to a latecomer agreement without such payment having first been made, the City Council may authorize the removal or cause to be removed, such unauthorized tap or connection and all connecting tile or pipe located in the facility right-of-way, and dispose of unauthorized material so removed, without any liability whatsoever.

13.08.120 No City Liability. Nothing in this chapter is intended to create a private right of action for damages against the City or any municipality for failing to comply with the requirements of this Chapter. The City, its officials, employees or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of the City to comply with the requirements of this Chapter does not relieve the City of any future requirements to comply with this Chapter.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional 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 5. Effective Date. This Ordinance shall become effective five days after publication as provided by law.
PASSED by the Council and approved by the Mayor of the City of Port Orchard, this 10th day of February, 2015.

CITY OF PORT ORCHARD

Timothy C. Matthes, Mayor

ATTEST/AUTHENTICATED:

Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM:

Carol Morris, Interim City Attorney

SPONSORED BY:

Rob Putaansuu, Councilmember
NOTICE OF CITY OF PORT ORCHARD
ORDINANCE

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held February 10, 2015.

ORDINANCE NO. 002-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO LATECOMER AGREEMENTS FOR WATER AND SEWER FACILITIES, ESTABLISHING THE PROCEDURES UNDER WHICH AN OWNER OF REAL PROPERTY MAY APPLY FOR A LATECOMER AGREEMENT IN ORDER TO OBTAIN REIMBURSEMENT OF A PRO RATA SHARE OF THE COST OF SUCH FACILITIES FROM OTHER OWNERS OF PROPERTY WHEN THE CITY’S ORDINANCES REQUIRE THAT THE SEWER AND WATER FACILITIES BE CONSTRUCTED OR IMPROVED AS A CONDITION OF DEVELOPMENT, AND OTHER CONDITIONS ARE SATISFIED, DESCRIBING THE CONDITIONS THAT MUST BE SATISFIED FOR THE CITY TO EXECUTE THE LATECOMER AGREEMENT AND THE ELEMENTS OF THE CONTRACT; ALLOWING PROPERTY OWNERS WITHIN THE AREA CHARGED WITH PAYMENT OF THE PRO RATA SHARE TO REQUEST AN APPEAL HEARING ON THE AREA BENEFITTED BY THE LATECOMER AGREEMENT, AND THE METHOD FOR CALCULATING THE PRO RATA SHARE, ADDING A NEW CHAPTER 13.08 TO THE PORT ORCHARD MUNICIPAL CODE AND SETTING AN EFFECTIVE DATE.

Copies of Ordinance No. 002-15 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 002-15 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson
City Clerk