

**Title 15**

**PUBLIC UTILITIES**

**Chapters:**

**15.04 Underground and Aerial Wiring**

**15.08 Latecomer's Agreements**



**Chapter 15.04****UNDERGROUND AND  
AERIAL WIRING**

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**15.04.010 Scope and exceptions.**

A. It is determined by the city that the general public necessity, convenience, health, safety and welfare require that electrical or communication facilities be constructed underground in an orderly manner in accordance with the requirements specified in this chapter.

B. This chapter applies to everyone who owns electric facilities or communication facilities, including but not limited to telephone, telegraph and cable television facilities

within the city limits; provided, however, the following facilities are excepted from the undergrounding requirements of this chapter:

1. Electric utility substations, pad-mounted transformers and switching facilities not located on the public right-of-way where site screening is or will be provided in accordance with PMC 15.04.160(2);

2. Electric transmission systems of a voltage of 55 kilovolts or more (including poles and wires), and equivalent communications facilities;

3. Telephone pedestals and other equivalent communication facilities;

4. Police and fire sirens, or any similar municipal equipment, including traffic-control equipment;

5. Temporary services for construction. (Ord. 478 § 1, 1972).

**15.04.020 Cost.**

The cost of constructing new facilities underground or relocating existing aerial facilities underground shall be borne by the serving utilities. (Ord. 484 § 1, 1972; Ord. 478 § 2, 1972).

**15.04.030 New facilities.**

All additions of new facilities shall be underground except minor additions of new facilities (100 feet or less) may be constructed aerially where the growth requirements are uncertain or where existing facilities are aerial. A right-of-way permit shall be required where new development meets existing rights-of-way. (Ord. 1505 § 3, 2001; Ord. 478 § 3(A), 1972).

**15.04.040 Rebuilds or replacements.**

A. A major rebuild or replacement of existing aerial facilities 300 feet or more shall be underground.

B. A minor rebuild or replacement of existing aerial facilities of 300 feet or less may be constructed aerially.

C. When there is casualty damage due to the elements or other major service outage, the facilities may be restored aerially. No right-of-way permit shall be required at the time of the emergency repair, but shall be applied for

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within 24 hours of the next working day. (Ord. 1505 § 3, 2001; Ord. 478 § 3(B), 1972).

### 15.04.050 Relocations or rearrangements.

A. Relocations or rearrangements of aerial facilities necessitated by, but not limited to, road widening, sewer, and water main projects shall be underground if replacement of poles and associated facilities is necessary to accommodate the improvement.

B. Relocations or rearrangements of aerial facilities not requiring extensive replacement of poles and associated facilities may be constructed aerially. (Ord. 478 § 3(C), 1972).

### 15.04.060 Service connections.

Service connections are facilities extending from a distribution system and terminating on private property to serve a customer or subscriber. Service connections:

A. Shall be underground if the distribution system serving the customer or subscriber is underground;

B. Shall be underground if the distribution system serving the customer or subscriber is aerial, but underground entrance facilities have been provided by the builder, customer, or subscriber in accordance with utility company requirements;

C. May be aerial if the distribution system serving the customer or subscriber is aerial, but underground entrance facilities have not been provided by the builder, customer, or subscriber in accordance with utility company requirements. (Ord. 478 § 3(D), 1972).

### 15.04.070 Specific program.

A. All areas zoned for commercial or industrial use shall be converted to underground facilities within 15 years from the date of the ordinance codified in this chapter.

B. Conversion to underground of existing aerial facilities shall be accomplished in an orderly manner and in conjunction with the city's street improvement program. (Ord. 1505 § 3, 2001; Ord. 478 § 3(E), 1972).

### 15.04.080 Street lighting.

Street lighting facilities or systems, conforming to current standards of the city, shall

be installed as an integral part of all undergrounding projects. (Ord. 1505 § 3, 2001; Ord. 478 § 3(F), 1972).

### 15.04.090 Proposed rights-of-way.

All rights-of-way proposed to be dedicated to the city or easements for public facilities shall be subject to the provisions of this chapter. (Ord. 478 § 3(G), 1972).

### 15.04.100 Responsibility of property owner to convert from aerial to underground service.

The owner or owners of real property abutting an underground project shall be responsible, at his or their expense, for converting to underground service and disconnecting his or their aerial services within 90 days following notice in writing of availability of such underground service. Time in consummating such connection and disconnection is of the essence and such notice to the property owner, customer or subscriber may be mailed, postage prepaid, or delivered in person. (Ord. 478 § 3(H), 1972).

### 15.04.110 Site screening.

Prior to issuing right-of-way permits for any aboveground installation, the director shall, based on submitted plans, check the proposal for compliance with site screening and setback requirements. (Ord. 1505 § 3, 2001; Ord. 478 § 3(I), 1972).

### 15.04.120 Right-of-way permits.

A right-of-way permit shall be obtained pursuant to Chapter 13.12 PMC prior to constructing in the public right-of-way any underground facilities, pole line installations when variance for same has been granted, or minor new additions under PMC 15.04.030(B) or temporary aerial facilities under PMC 15.04.010(B)(5). (Ord. 1505 § 3, 2001).

### 15.04.130 Aerial permits.

*Repealed by Ord. 1505.* (Ord. 573 § 1, 1975; Ord. 478 § 4(B), 1972).

**15.04.140 Design standards – Conductors, switches, transformers, and regulating devices.**

All conductors, switches, transformers, and regulating devices shall be installed in accordance with the applicable national, state and local safety standards. All structural devices shall be designed in accordance with the provisions of the latest edition of the Uniform Building Code; provided, however, all underground facilities provided for in this chapter shall be installed in such manner as to coordinate with other underground facilities, e.g., water, sewer and gas pipelines, traffic control and other signal systems. Whenever such coordination requires installation practices more restrictive or demanding than the minimum standards required by applicable national, state and local codes and safety standards, the requirements of such coordination shall be governing and controlling. (Ord. 478 § 5(A), 1972).

**15.04.150 Design standards – Vaults, handholes, ventilation gratings and access covers and conduits.**

All vaults, handholes, ventilation gratings, and access covers and conduits in public rights-of-way shall be strong enough to withstand a 10,000-pound wheel load. The serving utility may, at its option, elect to restrict a 10,000-pound wheel load requirement while assuming the responsibility for upgrading facilities to traveled street areas beyond the original traveled street area should subsequent widening occur. (Ord. 478 § 5(B), 1972).

**15.04.160 Design standards – Equipment exceptions.**

Any equipment excepted from those underground requirements or otherwise permitted to be installed aboveground shall be:

- A. Placed within an enclosure or part of the building being served;
- B. Suitably screened with masonry or other decorative panels and/or evergreen trees, shrubs and landscaping planted in sufficient depth and height, within a period of five years, to form an effective sight barrier;

C. The utility shall be responsible for the installation, maintenance, repair, or replacement of the aforementioned screening materials when the real property, on which the aboveground facility is located, is owned by the utility. When the aboveground facility is located on nonutility owned real property, the owner(s) shall bear the expense of installation, maintenance, repair or replacement of screening materials outlined in this section. (Ord. 478 § 5(C), 1972).

**15.04.170 Design standards – Space frames and structural arrangements.**

Space frames and structural arrangements for holding equipment shall be designed to have an uncluttered and neat appearance. (Ord. 478 § 5(D), 1972).

**15.04.180 Grading streets.**

Streets shall be graded to subgrade prior to the installation of underground facilities. (Ord. 478 § 5(E), 1972).

**15.04.190 Variance – Application.**

*Repealed by Ord. 1505.* (Ord. 478 § 6(A), 1972).

**15.04.200 Variance – Undue hardship.**

Pursuant to Chapter 16.36 PMC, the city may grant a variance from underground requirements only if the owner or user of the electrical or communication facilities demonstrates that it would be an undue hardship to construct such facilities underground. “Undue hardship” means either:

- A. There is a technological difficulty associated with such facilities or with the real property involved;
- B. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction; or
- C. The growth pattern in the geographical area has not been sufficiently established to determine the ultimate service requirements or major service routes. (Ord. 1505 § 3, 2001; Ord. 478 § 6(B), 1972).

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### 15.04.210 Joint trenches.

Where several utilities are planned or required in the same corridor, every effort shall be made by the utilities to use joint trenches for such facilities. (Ord. 478 § 7, 1972).

### 15.04.220 Violation – Penalties.

Any person convicted of violating any of the provisions of this chapter shall be punished by a fine not to exceed \$1,000 or by imprisonment in the city jail for a period not to exceed six months, or by both such fine and imprisonment. (Ord. 1167 § 10, 1992; Ord. 478 § 8, 1972).

### 15.04.230 Enforcement officer.

The director shall be responsible for the investigation of violations. (Ord. 1505 § 3, 2001; Ord. 478 § 9, 1972).

## Chapter 15.08

### LATECOMER'S AGREEMENTS

#### Sections:

- 15.08.010 Authority.
- 15.08.020 Application.
- 15.08.030 Preliminary notice of latecomer's agreement and appeal rights.
- 15.08.040 Preliminary approval.
- 15.08.050 Final latecomer's agreement.
- 15.08.060 Execution, recording and notice.
- 15.08.070 Contract finality.
- 15.08.080 Title to improvement and assignment of benefit.
- 15.08.090 Tender of fee.
- 15.08.100 Release of assessment.
- 15.08.110 Term of life.
- 15.08.120 Fees.
- 15.08.130 City not responsible.
- 15.08.140 Improvements constructed by developer.
- 15.08.150 Interest.
- 15.08.160 Segregation and relief of latecomer fees.
- 15.08.170 Fee schedule.

#### 15.08.010 Authority.

The city has the discretionary power to grant latecomer's agreements to developers and owners for the reimbursement of a pro rata portion of the original costs of water systems, sanitary sewer systems, storm water drainage systems, and street improvements including signalization and lighting. The authority to approve a latecomer's agreement is vested in the Pacific city council. (Ord. 1468 § 1, 2000).

#### 15.08.020 Application.

Application for a latecomer's agreement shall be made 30 days prior to issuance of the construction permit. Application shall be by letter to the community development director requesting a latecomer's agreement, or upon forms prepared by the community development department. Any application for a latecomer's agreement shall contain the following information:

- A. Legal description of applicant's property.

B. Legal description of the proposed benefited properties.

C. Vicinity maps of applicant's property, proposed benefiting properties, and the location of the improvement.

D. Estimated cost data and inventory for the improvements.

E. Proposed pro rata share of the cost of the improvement to be borne by the benefiting properties, and a proposed method of assessment of that pro rata share to the individual benefiting properties.

F. Payment of full amount of non-refundable processing fee as set forth in PMC 15.08.170. (Ord. 1468 § 1, 2000).

#### **15.08.030 Preliminary notice of latecomer's agreement and appeal rights.**

The community development department shall determine the preliminary latecomer's area boundaries and draft the legal description of the latecomer boundary and a preliminary latecomer boundary map. The city shall mail a notice to all owners of record of property within the latecomer boundary and to the developer or holder of the latecomer agreement. The notice shall include an approximation of the preliminary assessment, the proposed latecomer boundary map, and the description of the property owners' rights and options to participate in the latecomer's agreement. This preliminary notice form will not be recorded with either King or Pierce County. The property owners may, upon payment of the appeal fee set forth in PMC 15.08.170, request an appeal hearing before the Pacific city council within 20 days of the mailing. Appeals must adhere to the criteria established under PMC 15.08.050(C) but will be limited to the issue of whether or not a specific property should be included in the latecomer's area. The city council, by ordinance or voice vote, may delegate the hearing examiner or other hearing officer to hold the requisite public hearing and establish a record, together with a recommendation for the Pacific city council. The city council's ruling is determinative and final. (Ord. 1468 § 1, 2000).

#### **15.08.040 Preliminary approval.**

The city council may grant preliminary approval for a latecomer's agreement based upon the information contained in the request for a latecomer's agreement and any input from the community development director, or the city council may request further information from the applicant and/or the director, or the city council may deny the preliminary latecomer's agreement. As part of any preliminary approval, the city council shall indicate the duration for which the latecomers will be approved, after completion of the improvements, which approval period shall not be more than seven years. No extensions will be granted beyond the period of time established by the city council.

Following preliminary approval by the city council, the holder of the latecomer agreement shall submit to the community development director any further information requested by the director or the city council, including final cost data and actual facilities installed (as-built drawing) with invoices, etc., supporting the costs incurred. (Ord. 1468 § 1, 2000).

#### **15.08.050 Final latecomer's agreement.**

A. Preparation of Proposed Final Assessment Roll. Following construction, the community development department shall prepare, or have prepared by a civil engineer, a final proposed latecomer's agreement, which will include a legal description and a map of the latecomer boundary. The cost of the improvements will be spread among the property owners based upon their pro rata share of said costs. The costs will become payable upon the issuance of a city permit authorizing the benefiting property owner(s) to construct improvements that would allow the user's (s') property to derive direct benefit from these facilities. The method of assessment to be used will be one or more of the following methods, unless otherwise approved or directed by the Pacific city council:

1. Front foot method;
2. Zone front foot method;
3. Square footage method;
4. Trip generation (traffic) method;

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5. Other equitable method, as determined by the city; or

6. Any combination of the above methods.

The method(s) used and the dollar amount(s) will be included in the final latecomer's agreement.

B. Final Notice of Latecomer's Agreement. Following city council approval of the final latecomer's agreement, the city shall mail a notice to all owners of record of property within the latecomer boundary and to the developer or holder of the latecomer's agreement. The notice shall include the final assessment per unit charge, the legal description and a map of the latecomer boundaries, and the description of the property owners' rights and options to participate in the latecomer's agreement.

C. Appeal. Within 20 days of the date of the mailing, any property owner may submit an appeal in writing to the Pacific city council. An appeal must include a statement of claimed errors concerning the proposed assessment, and must be accompanied by a nonrefundable fee as set forth in PMC 15.08.170. Errors must be set forth in writing and must be related to cost, methodology for cost distribution, or benefit to the property. Objections by a benefiting property owner to the recording of a potential assessment against their property do not constitute a valid appeal. If the benefiting property owner contests the costs of the assessment, the owner must provide a basis for the claimed discrepancy, such as an estimate from contractors or other reliable sources. If the benefiting property owner contests the cost methodology used, the owner must show why it is not equitable and provide a suggested alternate method of assessment and the justification for its use in place of the staff recommended method. If a benefiting property owner contests the benefit, the owner must provide a statement or documentation on why a particular parcel has no future potential benefit.

Upon receipt of an appeal and the required fee, the city clerk shall transmit the appeal and the official file to the city council. The city council may delegate to the hearing examiner

the responsibility to hold a public hearing, establish the record, and provide a written report containing a recommendation to the city council. The city council shall concur with, alter, or deny the hearing examiner's recommendation.

D. Council Action. Approval of a latecomer's agreement shall be by ordinance, which shall authorize the developer, mayor, and city clerk to sign the agreement. If no appeal is filed, the ordinance shall approve the preliminary latecomer's agreement. If an appeal is filed, the ordinance shall either amend the preliminary latecomer's agreement or approve it without amendment. (Ord. 1468 § 1, 2000).

### **15.08.060 Execution, recording and notice.**

The latecomer's agreement is mailed to the developer by the city clerk and must be signed, notarized, and returned within 60 days of the date of city council approval for execution by the mayor and city clerk. If not consummated within the 60-day period, the latecomer's agreement will become null and void. The city council can give consideration to extending this period by a showing of hardship or excusable neglect on the part of the holder of the latecomer's agreement. The fully executed latecomer's agreement shall be recorded in the official property records of the county or counties in which the properties subject to the latecomer's agreement are located. (Ord. 1468 § 1, 2000).

### **15.08.070 Contract finality.**

Once the latecomer's agreement together with a legal description and a map of the latecomer boundary are recorded with the county or counties in which the properties subject to the agreement are located, it shall be binding on owners of record within the assessment area. Following receipt from the county or counties of the recorded latecomer's agreement, the city clerk will mail a copy of the recorded agreement to the holder of the latecomer's agreement. (Ord. 1468 § 1, 2000).



**15.08.080 Title to improvement and assignment of benefit.**

Before the city will collect any latecomer's fee, the holder of the latecomer's agreement will transfer title to all of the improvements under the latecomer's agreement to the city of Pacific. The holder of the latecomer's agreement will also assign to the city the benefit and right to the latecomer's fee should the city be unable to locate the holder of the latecomer's agreement to tender any latecomer's fee that the city has received. The holder of the latecomer's agreement shall be responsible for keeping the city informed of their correct mailing address. Should the city be unable to locate the holder of the latecomer's agreement in order to deliver a latecomer's fee, the city shall undertake an independent investigation to determine the location of the holder of the latecomer's agreement. Should the city, after a good faith attempt to locate the holder of the latecomer's agreement, be unable to do so, the latecomer's fee shall be placed in a separate fund for two years. At any time within the two-year period, the holder of the latecomer's agreement may receive the latecomer's fee, without interest, by applying to the city for that latecomer's fee. After the expiration of the two-year period, all rights of the holder of the latecomer's agreement to that fee shall expire, and the city shall be deemed to be the owner of those funds. (Ord. 1468 § 1, 2000).

**15.08.090 Tender of fee.**

When the city of Pacific has received the funds for a latecomer's fee, it will forward that fee, if possible, to the current holder of the latecomer's agreement at the current address of the holder of the latecomer's agreement on file with the city, within 30 days of receipt of the funds. It is the responsibility of the holder of the latecomer's agreement to keep his/her address current with the city. Funds received by negotiable instrument, such as a check, will be deemed received 10 days after delivery to the city. Should the city fail to forward the latecomer's fee to the holder of the latecomer's agreement through the city's sole negligence, then the city shall pay the holder of the latecomer's agreement interest on those moneys at

the rate paid by the Washington State Local Government Pool. However, should the holder of the latecomer's fee not keep the city informed of its current correct mailing address, or should the holder otherwise be negligent and thus contribute to the failure of the city to pay over the latecomer's fee, then no interest shall accrue on late payment of the latecomer's fee. (Ord. 1468 § 1, 2000).

**15.08.100 Release of assessment.**

When funds are received for a latecomer's fee, the city shall make an entry into the city's file for the real property owned by the party paying the latecomer's fee, within 30 days of receipt of the funds. An individual certificate of payment will not be recorded with the county or counties in which the properties subject to the latecomer's agreement are located. The city will record a certificate of payment and release of assessment for the entire latecomer area when all the property owners have paid their assessment. (Ord. 1468 § 1, 2000).

**15.08.110 Term of life.**

When authorized by the city council, a latecomer's agreement can be granted for a period of up to but not to exceed seven years. No extensions will be granted beyond the period of time established by the city council. The latecomer's agreement will expire at the end of the period of time established by the city council. (Ord. 1468 § 1, 2000).

**15.08.120 Fees.**

There shall be paid to the city of Pacific a nonrefundable processing fee in the amount as set forth in PMC 15.08.170. Payment of the full amount of the nonrefundable processing fee is due at the time of application. There shall be a fee for the administration processing and collecting of a latecomer's agreement, which fee shall be in an amount set forth in PMC 15.08.170. The administrative fee will be collected by deduction from each individual latecomer fee payment and the balance forwarded to the current holder of the latecomer's agreement pursuant to PMC 15.08.090. (Ord. 1468 § 1, 2000).

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### 15.08.130 City not responsible.

By instituting the latecomer's agreement, the city of Pacific does not agree to assume any responsibility to enforce the latecomer's agreement. The final latecomer agreement recorded with the county or counties in which the properties subject to the latecomer's agreement are located 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. The holder of the latecomer's agreement has responsibility to monitor those parties connecting to the improvement. Should the city become aware of such a connection, it will use its best efforts to collect the latecomer's fee, but shall not incur any liability should it inadvertently fail to collect the latecomer's fee. (Ord. 1468 § 1, 2000).

### 15.08.140 Improvements constructed by developer.

Improvements may be installed by developer per approved plans following issuance of the construction permit and payment of applicable permit and development fees. The notification and appeal process established by this chapter may result in a decision by the city council that would alter the potential payment to the beneficiary of the latecomer's agreement. If the beneficiary proceeds to construction prior to either the preliminary or city council approval of the latecomer agreement following all appeals, the beneficiary does so at the beneficiary's own risk. (Ord. 1468 § 1, 2000).

### 15.08.150 Interest.

No interest rates are added to fees collected under private developer held latecomer agreements. (Ord. 1468 § 1, 2000).

### 15.08.160 Segregation and relief of latecomer fees.

A. Segregation of Fees. The city shall grant a segregation of private developer held latecomer's fees if the property fronting the improvements legally subdivides by plat, short plat, binding site plan, etc. The burden of establishing the segregation by legal descrip-

tion, number of units, and map would be on the party owing the fee and not the city. The subdivider or petitioner of the segregation is required to pay a processing fee for staff work as set forth in PMC 15.08.170.

B. Relief Due to Two Similar Facilities. The community development director or the director's designee, who shall be a licensed engineer, will consider relieving a parcel of a latecomer's fee/assessment if the property has a benefit from either (but not both) of two similar facilities. The community development director or designee will decide which facility benefits and/or is utilized by the parcel, based on sound engineering practices and policy considerations. The property's assessment will be that associated with the utilized facility. If there are no engineering or policy reasons that support the selection of one facility over the other, the city shall give the applicant the choice of facilities to utilize.

C. Relief Due to Future Subdivision. At the time the latecomer's agreement is formed, and as a condition of the latecomer's agreement, the city may require that the assessment against a parcel be divided such that a single family residential connection will be assessed based upon the size of a typical single-family residential lot in that area. The remainder of the cost attributed to said site will be due at such time as the parcel develops further by either subdivision or increased density.

D. Partial Release of Properties Due to Subdivision. The community development director or designee will consider relieving a parcel of the latecomer assessment if a subdivision of the property severed a linkage between a resulting lot and the street frontage containing the latecomer improvement(s). Relief may be granted so long as a proposed lot does not have direct access to, or front footage on, the street right-of-way containing improvement(s) and will not and cannot benefit from the improvements. (Ord. 1468 § 1, 2000).

**15.08.170 Fee schedule.**

A. Nonrefundable Latecomer's Processing Fee.

1. Five hundred dollars if the value of the improvements covered by the latecomer's agreement is less than \$20,000.

2. One thousand dollars if the value of the improvements covered by the latecomer's agreement is at least \$20,000 and less than \$100,000.

3. Two thousand dollars if the value of the improvements covered by the latecomer's agreement is \$100,000 or more.

B. Latecomer's administration fee: 15 percent of total reimbursable amount to be recovered by developer, but not less than \$250.00.

C. Nonrefundable appeal fee: \$500.00 for each protest.

D. Recording fees: as expended by the city.

E. Segregation fee: \$750.00. (Ord. 1468 § 1, 2000).

