



CITY OF BLACK DIAMOND
November 21, 2013 Workstudy Agenda
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

5:30 P.M. – CALL TO ORDER, ROLL CALL

- 1.) Concurrency Ordinance – Mr. Hoppen
- 2.) Adjournment

Note: This is a first rough draft for discussion purposes only and has not been reviewed by the Mayor, City Administrator, city staff or the planning commission. It has not been formatted or proofed and may contain omissions.

CDB, KD PLLC: November 13, 2013

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO LAND USE AND DEVELOPMENT; ADDING A NEW CHAPTER TO TITLE 12 OF THE BLACK DIAMOND MUNICIPAL CODE; ESTABLISHING TRANSPORTATION CONCURRENCY REQUIREMENTS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the legislature enacted the Growth Management Act ("GMA") to minimize threats that uncoordinated and unplanned growth pose to the environment, economic development, and public welfare and requires communities to coordinate comprehensive land use planning and to adopt comprehensive land use plans and development regulations in accordance with the GMA; and

WHEREAS, the legislature granted wide latitude to local governments to customize their comprehensive plans according to local growth patterns, resources, and needs; and

WHEREAS, the GMA requires cities planning under the act to include within their comprehensive plans a transportation element that, among other things, specifies "level of service" (LOS) standards for local streets and roads wherein each city determines its own acceptable level of traffic congestion; and

WHEREAS, the City has specified within its comprehensive plan the LOS standards for local streets and roads; and

WHEREAS, the GMA also requires that cities prohibit development that causes a decline in level of service below adopted standards unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development; such an action-forcing ordinance is known as a concurrency ordinance because its purpose is to assure that development permits are denied unless there is concurrent provision for transportation impacts; and

WHEREAS, "Concurrency" is the concept that an adequate level of service should be available concurrently with the impacts of the development or within a reasonable time thereafter; and

WHEREAS, the City has adopted requirements codified at BDMC Ch. 3.50 that condition land development approval upon consideration of adequacy of available facilities to serve new growth but has not formally adopted a transportation concurrency ordinance; and

WHEREAS, the planning commission conducted a public hearing commencing on XX, to review proposed amendments to BDMC Title 12; and

WHEREAS, the planning commission recommended that the City Council XX; and

WHEREAS, in accordance with WAC 365-196-630, a notice of intent to adopt the proposed Comprehensive Plan amendments was sent to the State of Washington Department of Community, Trade and Economic Development and to other state agencies to allow for a 60-day review and comment period, which comment period ended on XX; and

WHEREAS, an environmental review of the proposed Comprehensive Plan amendments has been conducted in accordance with the requirements of the State Environmental Policy Act ("SEPA"), and a SEPA threshold determination of non-significance and notice of adoption was issued on _____, 20____; and

WHEREAS, the City Council considered the recommendation of the Planning Commission at its regular meeting conducted on XX and determined that it is in the best interest of the public health, safety and welfare to amend BDMC Title 12 as set forth herein

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. Adding New Chapter BDMC 12.16 (Transportation Concurrency). Title 12 of the Black Diamond Municipal Code is hereby amended by the addition of a new Chapter, to be known and referred to as Chapter 12.16 Transportation Concurrency, reading as follows:

12.16.010 Authority.

This chapter is enacted pursuant to City of Black Diamond's powers as a non-charter code city, RCW Title 35A, the Growth Management Act, RCW 36.70A.070 and WAC Ch. 365-196.

12.16.020 Purpose.

The Growth Management Act requires that the City adopt and enforce ordinances which prohibit development approval if the development causes the Level of Service Standard on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with development. The purpose of this chapter is to provide the necessary regulatory mechanism to comply with the foregoing requirements of the Growth Management Act.

12.16.030 Application.

(1) Application in General. The requirements of this Chapter, and any rules and regulations issued by the Responsible Officials pursuant to this Chapter, shall apply to all applications for development permits and development approvals unless exempt under the provisions of this Chapter.

(2) Tenant Improvements. This chapter will apply to applications for tenant improvements if a proposed new use or an expanded existing use is not under the provisions of this Chapter.

(3) Rezoning. The city may approve a proposed rezone only if the full facility impacts of site development are disclosed at the time of application assuming full development of the property under the proposed zoning classification using the highest trip generating permitted uses. Lack of concurrency will not be a basis for denial of a rezone, however, any subsequent development is subject to the concurrency requirements of this chapter. Specific requirements for public facility improvements to mitigate the impacts of a proposed rezone and assure compliance with this chapter may be imposed as a condition of rezone.

Comment [CDB1]: Although the provisions of the draft code would apply to tenant improvements, this section is added to highlight this fact. Otherwise, tenants and owners may not be aware of the application of the concurrency requirements to a change in use.

Comment [CDB2]: This language is taken from the Kent City Code and identifies how concurrency fits within a proposed rezone.

12.16.040 Responsible Official.

The City Engineer shall be the Responsible Official. The Responsible Official shall have authority to conduct concurrency evaluations, make determinations regarding concurrency, including exemptions from concurrency, and issuing certificates of concurrency according to the procedures in this chapter, and shall have the authority to resolve questions of interpretation or conflicts between definitions and issue and publish regulations implementing the provisions of this Chapter.

12.16.050 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations have the following definitions. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory. The word "may" is permissive. If specific provisions of law, regulation or rule referred to herein are renumbered, amended, or recodified, then the reference shall be read to refer to the renumbered, amended or recodified provision.

"Adopted LOS standards" means the level of service (LOS) standards described in BDMC 12.16.090.

"Affected intersection" means any intersection within the City for which an LOS has been identified in this chapter.

"Applicant" means a person who applies for a certificate of concurrency (COC) under this chapter and who is the owner of the subject property or the authorized agent of the property owner.

"Adequate Road Facilities" means transportation facilities which have the capacity to serve development without decreasing levels of service below established minimums.

"Available road facilities" means that adequate transportation facilities are in place or that a financial commitment is in place to provide the road facilities within six years of the time of development (Chapter 365-196 WAC).

"Background traffic" means existing traffic levels and the anticipated traffic from all proposals for which capacity has been reserved under the provisions of this chapter.

"Capacity" means the availability of an affected intersection to accommodate increased traffic resulting from a development without causing the LOS to fall below the standards established in this chapter.

"Capacity, available" means capacity which can be encumbered, reserved, or committed to future users, expressed in an appropriate unit of measure, such as p.m. peak hour trips.

"Capacity, reserved" means capacity which has been allocated to a particular property through issuance of a Certificate of Concurrency reserving capacity for a set period of time.

"Certificate of Concurrency (COC)" means the certificate issued by the City pursuant to the terms and conditions of this chapter which constitutes the proof that adequate capacity for each affected intersection has been reserved to serve the densities and intensities of development within the time frame designated on the certificate. The COC indicates,

(a) The location or other description of the property on which the development is proposed;

(b) The number of development units and specific uses, densities, and intensities that were tested for concurrency and approved;

(c) The type of development approval for which the certificate of concurrency is issued;

(d) An effective date; and

(e) An expiration date.

COC's may be conditional, unconditional, or extended, according to Department administrative practices described in the public rules and regulations for the program.

"City" means the City of Black Diamond, Washington.

"Concurrency" means transportation improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years needed to maintain the City level of service standards, according to RCW 36.70A.070(6).

"Concurrency evaluation" means the evaluation by the Responsible Official based on adopted LOS standards to ensure that the road facilities needed to support development are concurrent, as defined by RCW 36.70A.040, and with the impacts of such development as defined in this chapter.

"Concurrency denial letter" means a letter issued by the Responsible Official which summarizes the results of the concurrency evaluation and the reason for denying the request for a Certificate of Concurrency.

"Concurrency management" means the process local jurisdictions use to ensure that necessary roadway improvements are made concurrent with proposed development activity, pursuant to RCW 36.70A.070.

"Department" shall mean and refer to the Public Works Department of the City, or its successor.

"Development" means any proposed land use, zoning or rezoning, comprehensive plan amendment, annexation, subdivision, short subdivision, planned unit development, planned area development, building permit, site plan approval, binding site plan or any other property development action permitted or regulated by the Black Diamond Municipal Code.

"Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities; but does not include buildings or structures constructed by a regional transit authority.

"Development approval" means any written authorization from the City which authorizes the commencement of development activity.

Comment [CDB3]: Taken from definitions in BDMC Ch. 3.50.

"Development Permit" means any document required under the City of Black Diamond development regulations granting, or granting with conditions, an application for development activity or development approval.

"Development trips" or "new trips" means the total gross number of new p.m. peak hour trips generated by the development.

"Direct traffic impact" means any net increase in vehicle traffic generated by a proposed development.

"Development units" means the proposed quantity of development measured by dwelling units for residential development and square feet for nonresidential development, upon which are based the calculations for the determination of concurrency.

"Financial commitment" means that sources of public or private funds or combinations thereof have been identified which shall be sufficient to finance transportation improvements necessary to support development and that there is reasonable assurance that such funds shall be timely used. Grants, loans and bond funds shall be considered to be committed only if they have been fully approved by the appropriate body.

"Impact fee" or "transportation impact fee" means a payment of money imposed upon development approval to pay for public streets and roads needed to serve new growth and development and that is reasonably related to the new development that creates additional demand and need for public streets and roads, that is a proportionate share of the cost of the public streets and roads, and that is used for public streets and roads that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee otherwise established by City Council ordinance.

"Inadequate road condition" means any road condition, whether existing on the road system or created by a new development's access, that jeopardizes the safety of road users, including nonautomotive users, due to substandard sight distance, substandard geometric alignment, substandard roadway cross-section or insufficient traffic control as determined by applicable City design standards and specifications as defined in the Black Diamond Road Standards. Appropriate mitigation shall be required when a Certificate of Concurrency is issued.

"Level of Service Standard" or "LOS standard" shall mean the standard measures of the performance of an existing transportation system and the adequacy of the planned future

improvements. LOS standards establish the basis for the concurrency requirements in the GMA. LOS is both a qualitative and quantitative measure of roadway operations. LOS, as established by the Highway Capacity Manual prepared by the Transportation Research Board of the National Research Council, uses an "A" to "F" scale to define the operation of roadways and intersections as follows:

LOS A. Primarily free flow traffic operations at desired travel speeds. Vehicles are completely unimpeded in their ability to maneuver within the traffic stream. Control delays at signalized intersections are minimal.

LOS B. Reasonably unimpeded traffic flow operations at average travel speeds. The ability to maneuver within the traffic stream is only slightly restricted and control delays at signalized intersections are not significant.

LOS C. Stable traffic flow operations. However, ability to maneuver and change lanes may be more restricted than in LOS B, and longer queues, adverse signal coordination, or both may contribute to lower than average travel speeds.

LOS D. Small increases in traffic flow may cause substantial increases in approach delays and, hence decreases in speed. This may be due to adverse signal progression, inappropriate signal timing, high volumes or some combination of these factors.

LOS E. Significant delays in traffic flow operations and lower operating speeds. Conditions are caused by some combination of adverse progression, high signal density, high volumes, extensive delays at critical intersections, and inappropriate signal timing.

LOS F. Traffic flow operations at extremely low speeds. Intersection congestion is likely at critical signalized intersections, with high delays, high volumes, and extensive queuing.

"Black Diamond Road Standards" means those City road design standards and specifications promulgated from time to time by the public works director or as adopted by the City Council.

"Net new trips" means the trip generation of the development activity less any allowable credit for existing activity that will be replaced, demolished or abandoned as part of the proposal.

"Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser is considered the owner of the real property if the contract is recorded.

"Peak hour" or "peak period" means the one-hour weekday period during which the greatest volume of traffic uses the street system identified separately for each roadway section. For concurrency purposes, this period shall be in the afternoon of a typical weekday. At the

Responsible Official's discretion, a different time period may be analyzed for intersection standards evaluation purposes.

"Person" means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

"Phased Development" means any development involving multiple buildings or improvements where issuance of development permits would not occur at the same time, but be phased over a period of time.

"Preapplication meeting" is a meeting between the applicant for a transportation concurrency certificate or its extension and the staff of the Department and others, according to that Department's rules and administrative procedures held for the purpose of determining the requirements to file a development permit application.

"Project improvements" means transportation improvements that are planned and designed to provide service for a particular development that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements.

"Proportionate share" means that portion of the cost of transportation improvements that is reasonably related to the service demands and needs of new development.

"Reservation" and "reserve" means development units are set aside in the City's concurrency records in a manner that assigns the development units to the applicant and prevents the same units being assigned to any other applicant.

"Responsible Official" shall mean the public official, or his/her designee, responsible for implementing and enforcing the provisions of this Chapter.

"Six-Year Transportation Improvement Program (TIP)" means the annually updated transportation improvement program which identifies all the City's transportation needs over the next six years and beyond, including the total project costs.

"Standards" means the adopted Black Diamond Road Standards.

"Total project cost" means the total cost for the transportation improvement projects, as defined in the current TIP. This cost includes, but is not limited to, studies, design, right-of-way acquisition, utility relocation, grading, and construction.

"Traffic Impact Analysis" means a study prepared by a competent professional according to the format and content established by the Responsible Officials and meeting the requirements of this Chapter.

“Transportation facilities” means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, non-motorized enhancements, and related systems, infrastructure and site specific improvements, including State highways, freeways, intersections, transit and high occupancy vehicle facilities, and nonmotorized facilities (i.e., for bicycles or pedestrians).

"Transportation impact fee" means those fees authorized in BDMC Ch. 3.50

"Trip generation" means the number of peak hour trips estimated to be produced by the development activity using Institute of Traffic Engineers (ITE) Trip Generation Manual, current edition.

"Trip generation credit" means a reduction in the number of new p.m. peak hour trips attributed to an application, equal to the number of p.m. peak hour trips currently being generated on the site from uses that will not continue if the development permit is granted.

12.16.060 Requirement for certificate of concurrency.

Except as provided in BDMC 12.16.080, no development approval or development permit shall be approved unless a certificate of concurrency has been issued pursuant to the provisions of this Chapter.

12.16.070 Concurrency application and test.

(1) Timing of Application. Applications for certificates of concurrency, and the resulting concurrency test, shall be completed prior to, or contemporaneous with, the application for development approval. The provisions of this chapter shall be administered and implemented in conjunction with the provisions of BDMC Ch. 3.50 (Development Impact Mitigation Code). For an MPD permit, applications for certificates of concurrency, and the resulting concurrency test, shall be completed prior to issuance of a MPD permit and their certificates shall not need extensions; provided that, the subject developments are progressing towards completion and have not been terminated.

(2) Contiguous Ownership of Property; Phased Development; Cumulative Impacts. For the purposes of this Chapter, application for a development permit or development approval shall include consideration of the cumulative impacts of all development permit and development approval applications for contiguous properties that are owned or under the control of the same person, when one or more development permits or development approvals would be issued within two years of the date of issuance of a development permit or development approval for such contiguous property. The requirements of this chapter shall also be applied for all phases of a phased development at the time of approval of the initial phase and may be adjusted for each subsequent phase based on the cumulative impact of all the phases, except that the timing of application of the requirements of this chapter may be modified through a development agreement approved by the city council pursuant to Chapter 36.70B RCW and BDCM Ch. 18.66.

Comment [CDB4]: Covington requires concurrency to be completed prior to application for development approval while Maple Valley requires it to be contemporaneous. The later seems to be more consistent with GMA.

(3) Application Form. Applications for certificates of concurrency shall be submitted to the Department on forms provided by the Department. It is recommended that the applicant request and participate in pre-application meeting prior to submittal of an application for certificate of concurrency.

(4) Traffic Impact Analysis. A Traffic Impact Analysis (“TIA”) shall be required for development activity that are proposed in the City limits that generate ten (10) or more vehicle trips in the PM peak hour or are otherwise determined by the Responsible Official to have the potential for an adverse impact upon the City’s transportation system. The TIA should include site access points, arterial and collector roadways and intersections of arterials and collector roadways and intersections of arterials and collectors that are impacted by ten (10) or more PM peak hours trips, and may not be limited to intersections located within the City of Black Diamond. The TIA shall be prepared by a licensed traffic engineer and will be accepted after approval by the Responsible Official. The applicant shall be responsible for the costs of the TIA and shall submit three (3) copies of the TIA to the City.

Comment [CDB5]: This language is taken from the City's comprehensive plan.

(5) Integration with Development Approval. The Responsible Official's concurrency evaluation and determination of concurrency and the issuance or non-issuance of a Certificate of Concurrency shall be integrated, insofar as possible, with any applicable decision making processes on permits, applications, and proposals submitted to the City for review and decision. For each application subject to concurrency evaluation and the requirement for a certificate of concurrency, the Responsible Official shall determine how the review can be best integrated with the decision making process.

(6) Order of Precedence. The City shall conduct the concurrency test first for the earliest completed application received. Subsequent applicants will be tested in the same order as the City receives completed applications.

(7) Standard for Issuance. The City shall not issue a certificate of concurrency unless there are available road facilities to meet the level of service standards for existing and approved uses and the impacts of the proposed development or that a financial commitment is in place to complete the improvements or strategies within 6 years of development.

(8) Concurrency Test. In conducting the concurrency test, the City shall use standard trip generation rates, such as those reported by the Institute of Transportation Engineers (“ITE”). An applicant may submit as a part of the application for certification of concurrency a calculation of alternative trip generation rates for the proposed development. The Responsible Official shall review the alternate calculations and make a written determination within 15 business days of submittal as to whether such calculation will be used in lieu of the standard trip generation rates. The Responsible Official shall adjust the trip generation forecast of proposed development to account for allowances determined pursuant to the mitigation payment system’s procedures for transportation strategies, including transportation demand management reductions.

(9) Trip Generation Credit. In the case of a demolition or termination of an existing structure or use, a trip generation credit shall apply to the calculated trip generation for the use prior to the demolition or termination for a period of one year from the date of demolition or termination of use. The number of trips allowed in the credit shall be as estimated using the ITE Trip Generation Manual, or equivalent.

(10) Entitlement to Certificate of Concurrency. If the Responsible Official determines that the level of service is equal to or better than the adopted standards, the concurrency test is passed, and the applicant shall receive a certificate of concurrency.

(11) Options when LOS Standard is not met. If the level of service is worse than the adopted standards, the concurrency test is not passed, the Responsible Official shall issue a concurrency denial letter and the applicant shall select one of the following options:

(a) Propose, for review and approval by the Responsible Official pursuant to BDMC 3.5.070, mitigation alternatives that will be reasonably sufficient to reduce traffic to a level which meets the concurrency standard or threshold and that meet the requirements of BDMC 12.16.130 (Provision of needed transportation facilities); or

(b) Accept a 90-day reservation of transportation facilities that are available, and within the same 90-day period amend the application to reduce the need for transportation facilities to the units that are available, or voluntarily arrange for the transportation facilities or strategies needed to achieve concurrency. The 90-day period shall begin no later than 14 days after receipt of the notification of denial. Reduction of the need for transportation facilities may be achieved through one or a combination of the following: reducing the size of the development (so long as minimum density requirements continue to be met); reducing trip generation by the original proposed development; phasing of the development to match future transportation facility construction; providing transportation strategies, when the Department determines that such strategies will be reasonably sufficient as to reduce traffic to a level which meets the concurrency standard or threshold; or

(c) Accept the denial of an application for a certificate of concurrency; or

(d) Appeal the denial of the application for a certificate of concurrency, pursuant to the provisions of BDMC Ch. 2.30. The City shall reserve any available development units during the appeal.

Acceptance of the 90-day period shall not impair the applicant's future right to a formal appeal at a later time.

(12) The concurrency test shall be performed only for the specific property, uses, densities and intensities based on information provided by the applicant and included in the certificate of concurrency. Changes to the uses, densities, and intensities that create additional impacts on transportation facilities shall be subject to an additional concurrency test.

12.16.080 Exemptions from concurrency/Appeal.

(1) An application for development approval or a development permit may be exempted from the concurrency application and testing requirements of this chapter if the development activity or development permit is determined by the Responsible Official to, (a) generate fewer than 10 net new trips in the peak hour, or (b) have no transportation impact, and will not change the traffic volumes and flow patterns in the p.m. peak travel period; and, the Responsible Official determines that the proposed development activity does not have the potential for an adverse impact upon the City's transportation system. If the application includes a change in use, for purposes of the determination by the Responsible Official regarding whether or not the application is exempt from this chapter, the previous use shall mean, the use existing on the site when a concurrency evaluation is applied for; or the most recent use on the site, within the one-year period prior to the date of application for development activity.

The following types of development permits typically meet the standards for exemption pursuant to (a) or (b) above because they generally do not create additional long-term impacts on road facilities:

1. Access Permit;
2. Demolition Permit;
3. Driveway or Street Permit;
4. Excavation/Clearing Permit;
5. Excavation Permit;
6. Fire Code Permit;
7. Grading Permit;
8. Interior alterations with no change of use;
9. Mechanical Permit;
10. Plumbing Permit;
11. Right-of-Way Permit;
12. Sign Permit;
13. Single-family remodeling with no change of use;
14. Street Use Permit;
15. Utility Connection Permit (waste, sewer, storm).

(2) The following development activity is exempt from the application and concurrency testing requirements of this Chapter, and may commence development without application for and issuance of a certificate of concurrency:

(a) Any development activity that is categorically exempt from environmental review, except short plats;

(b) Renewals of previously issued, unexpired development permits or development approvals;

(c) Expansions or phases of projects that were disclosed by the applicant and subject to a concurrency test, or the equivalent, as part of the original application (i.e., phased development); provided, that a certificate of concurrency, or the equivalent was issued for the expansion or subsequent phase;

(d) Development activity pursuant to development approvals and development permits that are vested by RCW 19.27.095, RCW 58.17.033, RCW 58.17.170, BDMC Ch. 18.14, or are otherwise vested as a matter of law, prior to the effective date of this Chapter;

(e) The portion of any project used for any of the following purposes is exempt from the application and concurrency testing requirements of this chapter:

1. *Public transportation facilities;*
2. *Public parks and recreational facilities;*
3. *Public libraries;*
4. *Day-care facility for children, if not operated for profit;*
5. *Privately operated not for profit social service facilities recognized by the Internal Revenue Service under Internal Revenue Code;*
6. *Low-income housing, which is defined as housing which is affordable to persons whose income is below fifty (50) percent of the median income for the persons residing in the Seattle Metropolitan Statistical Area. Not more than ten (10) percent of the total number of units in a project shall be exempt under this subsection;*
7. *Publicly funded educational institutions;*
8. *Hospitals, if not operated for profit*

(3) An applicant may seek a written administrative determination by the Responsible Official of an exemption pursuant to BDMC 12.16.080(1) or (2) at, or prior to, the time of submittal of an application for a development permit or development approval. If the Responsible Official determines that the development approval or development permit is not exempt from the application and concurrency testing requirements of this Chapter, the applicant shall submit an application for concurrency, or may appeal the administrative denial pursuant to the provisions of BDMC Ch. 2.30.

(4) In order to monitor the cumulative effect of exempt development approvals and development permits on the level of service of transportation facilities, the City shall add the impacts of exempt development approvals and development permits to the transportation adequacy measure and all other relevant concurrency monitoring records. Unless otherwise provided in a development agreement, development units shall be allocated to vested development based on the amount such vested developments are likely to need on an annual basis. The allocation shall be based on each vested development's historical building patterns over recent years. If no such historical record or pattern can be determined for a vested development, then the allocation to each year of the first six years shall be one-sixth of the construction activity remaining to be built in the development. All allocations of facility capacity to vested development shall be subtracted from the remaining capacity available for development that is not vested.

Comment [CDB6]: Placeholder. This standard can be changed.

Comment [CDB7]: Examples of Development that has been exempted from concurrency review in other cities.

12.16.090 LOS Standards.

The transportation LOS Standards as set forth in the City of Black Diamond Comprehensive Plan, as now or hereinafter amended, are incorporated as though fully set forth herein, and shall be the transportation LOS Standards for purposes of transportation concurrency review are required by this Chapter.

12.16.100 Update of LOS Standards.

Levels of service shall be monitored and the traffic model for the transportation adequacy measure shall be updated in accordance with the policies set forth in the Comprehensive transportation plan. The monitoring and update process shall include traffic volumes, approval of additional development, completion of previously approved development, improvements to transportation facilities, and the effect of transportation strategies.

12.16.110 Certificate of concurrency.

(1) A certificate of concurrency shall be issued by the Responsible Official or the Responsible Official's designee. Issuance of a certificate creates a rebuttable presumption that the proposed development satisfies the concurrency requirements of this chapter. The determination of concurrency shall be final at the time of development approval or issuance of the development permit. The issue of concurrency may be raised as part of the review process for the development application for which the certificate of concurrency was issued.

(2) Upon issuance of a certificate of concurrency, the City shall reserve development units on behalf of the applicant, and indicate the reservation on the certificate of concurrency.

(3) A certificate of concurrency shall expire if the development permit for which the concurrency is reserved is not applied for within 180 days of issuance or extension of the certificate of concurrency.

(4) A certificate of concurrency shall be valid for the development permit application period and subsequently for the same period of time as the development approval which is issued pursuant to the certificate of concurrency. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for five years from the date of issuance.

Comment [CDB8]: This is a placeholder. The Certificate could be longer or shorter.

(5) A certificate of concurrency shall be valid for an initial 180-day period and may be extended one time for an additional 180 days by the Responsible Official; provided, that the holder of the original certificate or his agent has, before the time of expiration of the original certificate, scheduled a pre-application meeting with the Community Development Department, has requested such extension in writing to the Responsible Official and has paid the extension fee. A further 90-day extension of a certificate of concurrency by the Responsible Official shall be made only under extraordinary circumstances, and shall require the receipt of a current

certificate of water availability. An extension may also be granted pending final determination of an appeal of the underlying development permit or development approval.

(6) A certificate of concurrency can be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains the subsequent development approval prior to the expiration of the earlier development approval. No development shall be required to hold more than one valid certificate of concurrency, unless the applicant or subsequent owner proposes changes or modifications to the property location, density, intensity or land use that creates additional impacts on transportation facilities.

(7) A certificate of concurrency runs with the land and is valid only for subsequent development approvals for the same parcel, and to new owners of the original parcel for which it was issued. A certificate of concurrency cannot be transferred to a different parcel and shall be limited to uses and intensities for which it was originally issued.

(8) Upon subdivision of a parcel that has obtained a certificate of concurrency, the City may replace the certificate of concurrency by issuing a separate certificate of concurrency to each subdivided parcel, assigning to each a pro rata portion of the development units of the original certificate. The Responsible Official may modify such assignment upon petition of the owner.

(9) A certificate of concurrency shall expire if the underlying development approval expires or is revoked or denied by the City.

(10) All development approvals that voluntarily provide funding for one or more transportation facilities by the development or entities other than the City shall be conditioned to require that prior to the issuance of any final development approval the availability of such transportation facilities or financial arrangements has been confirmed.

(11) Upon annexation of any development, the provisions for the certificate of concurrency shall be enforced by interlocal agreement with the County.

12.16.120 Fees.

(1) The City shall charge an administrative fee to help defray costs associated with the review and determinations to a traffic concurrency application for conducting the concurrency test in accordance with this Chapter and an additional fee for the extension of a valid certificate. Such fees shall be set forth in the current fee resolution and shall not be refundable.

(2) The following types of development are exempt from the concurrency test fee:

(a) All applications that are exempt from the concurrency test pursuant to BDMC 12.16.080; and

(b) Development by municipal, County, State, and Federal governments, and special districts (as that term is defined by State law).

12.16.130 Provision of needed transportation facilities.

(1) The City shall determine that transportation facilities are available to support development at adopted transportation LOS standards within six years of the impacts of such development. The City shall require at the time the certificate of concurrency is issued that:

(a) The necessary facilities and services are in place at the time a development approval is issued; or

(b) The necessary facilities will be complete within six years of development approval:

(i) The necessary facilities are under construction at the time a development approval is issued, and financial commitment is in place to complete the necessary facilities within six years of issuance of development approval; or

(ii) The necessary facilities are the subject of a binding executed contract of development agreement which provides for the actual construction or financial commitment of the required facilities, guarantees that the necessary facilities will be in place within six years of issuance of development approval, and provides that the capital project is included in, or will be added to, the committed network for the transportation adequacy measure, the transportation element of the comprehensive plan, and the six-year capital improvements program; or

(iii) The City has in place financial commitments to complete the necessary public facilities or strategies within six years of issuance of development approval; or

(c) Development approvals are issued subject to a binding executed contract, development agreement or other binding condition which provides that any facilities and strategies necessary to meet concurrency requirements after issuance of development approval will be in place within six years of occupancy and use of the development.

(2) The certificate of concurrency shall be binding on the City at such time as the applicant provides financial assurances, acceptable to the City in form and amount, to guarantee the applicant's proportionate share of the cost of transportation facility improvements needed for concurrency.

(3) The Responsible Official may make adjustments to the committed network for LOS standards for corrections, updates, and modifications concerning costs, revenue sources, acceptance of facilities pursuant to dedications which are consistent with the adopted comprehensive plan, or the date of construction (so long as it is completed within the six-year period) of any facility enumerated in the capital improvements program.

(4) The City shall identify projects in the adopted six-year CIP required for the committed network for the transportation adequacy measure and any capital improvements for which a binding agreement has been executed with another party.

12.16.140 Intergovernmental coordination.

The City may enter into agreements and continue existing agreements with other local governments and the State of Washington to coordinate the imposition of LOS standards, impact fees and other mitigation for transportation concurrency. Existing agreements shall continue in force until modified or completed.

(1) The City may apply transportation standards, fees and mitigations to development in the City that impacts other local governments and the State of Washington. Development approvals by the City may include conditions and mitigations that will be imposed on behalf of, and implemented by other local governments and the State of Washington.

(2) The City may receive impact fees or other mitigations based on or as a result of development proposed in other jurisdictions that impacts the City. The City may agree to accept and implement conditions and mitigations that are imposed by other jurisdictions on development in their jurisdiction.

(3) No fees or mitigations for transportation facilities of other agencies will be required by the City unless an agreement has been executed between the City and the affected agency. The agreement shall specify the fee schedule and level of service standards to be used by the City and the affected agency, which standards shall be consistent with the City's comprehensive plan and, if different than the standards adopted pursuant to this title, shall be adopted by ordinance.

12.16.150 Relationship to SEPA.

A concurrency evaluation determination of concurrency, or exemption from concurrency, shall be an administrative action of the City of Black Diamond that is categorically exempt from the State Environmental Policy Act. Provided that, this chapter is not intended to limit the application of the State Environmental Policy Act to specific proposals. Each proposal shall be reviewed and may be conditioned or denied under the authority of the State Environmental Policy Act.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE ____ DAY OF _____, 20__.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:

Brenda Martinez, City Clerk

DRAFT

Approved as to form:

City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

DRAFT