



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
October 6, 2015 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) APPROVAL OF MINUTES: September 8, 2015 Special Meeting & Regular Meeting
- 3) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting's agenda may do so at this time.
- 4) NEW BUSINESS: Concurrency Ordinance Presentation, Seth Boettcher
- 5) UNFINISHED BUSINESS: MPD Rezone Recommendation
- 6) DEPARTMENT REPORT
- 7) PUBLIC COMMENTS
- 8) ADJOURN

**CITY OF BLACK DIAMOND PLANNING
COMMISSION SPECIAL MEETING MINUTES**

September 8, 2015

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER:

Commissioner (Chair) McCain called the special meeting to order at 6:34 p.m.

ROLL CALL:

PRESENT: Commissioners Pepper, Senecal, (Chair) McCain, Weber and Davis.

ABSENT: Commissioners Roth and Kuzaro

Staff present were: Barbara Kincaid, Community Development Director and Meri Jane Bohn, Deputy City Clerk

Work Session – MPD Properties Rezone

Chair McCain called for a staff report first.

Community Development Director Kincaid gave Commissioners packets with several items, a draft ordinance with a staff report and an attached map which is the subject of the workshop this evening. A power point presentation was presented of the parcels that are affected for an area wide rezone. Subject properties in the rezone are 8 parcels, 20 acres each, 160 acres total. The 8 parcels were not part of the MPD so there are no standards for those parcels yet. Moratorium has been on them since March 2014 and City Council just recently passed Ordinance 15-1055 to extend moratorium for the 3rd time until November 20th 2015. Planning Commission needs recommendation on or before 10/6/15 as City Council will be considering on 11/5/15. Staff recommendation is to zone some R4 single family residential, 4 units per 1 acre. Then propose R6 zoning which is 6 properties per acre for the rest. The zoning needs to be changed to be in line with our Comp Plan.

Commissioner Roth sent an email with questions since she couldn't be here tonight. She wanted to know how long a moratorium could be extended. Director Kincaid stated RCW 36 70A 390 does not state how long it can or can't be extended. It states you can't have a moratorium longer than 6 months or you must extend it.

Commissioner Weber asked how much acreage in each rezone section. Director Kincaid stated 26.26 would be R4 (4 units per acre) and the remainder would be R6 (6 units per acre).

Commissioner Senecal stated the change in zone has a lot to do with topography lines, the letter from Palmer Coking Coal Company already has entry/exit points to tie into the rest of the MPD. Does this change and make funny lot sizes which would screw up streets that have already been planned to tie into the rest of the plan? Were there any planned arterials? Director Kincaid answered it does apply. Bill Kombol, Palmer Coking Coal stated in his letter it would work and agrees with what they have for their connection plan. It won't affect their concept plan for the road connections. And it does not appear to her that there will be any conflict.

Commissioner Weber asked how does the topography lines plan into the roadway that Yarrow Bay wants to put thru the reserved wetlands.

Commissioner Senecal asked if we just take Bill Kombol's letter at face value or do we have any business to go back and dig deeper. Commissioner Weber feels like this is the Planning Commissioners job to look into further.

Director Kincaid said she looked at the letter. We have to zone this land something and this is the lowest density we can place/apply on this land. There are some wetlands out there also. Commissioner Weber asked if this is the only line out there to go by.

Chair McCain stated there are only 3 options in the city, and the property owner is opting for a down zone, this doesn't really happen in normal conditions. Consider all the other factors, as we aren't approving the plat use here. It's been a 6-8 month process. With the city going to the lowest density and medium density, it could be considered a good thing. This needs to be finished because it needs to fit into the new Comp Plan. Director Kincaid stated right now we need to address the moratorium imposed on these properties, it has to be zoned something.

Commissioner Weber said if we recommend the rezone as it is and take care of the moratorium, how will this fit into the Comp Plan down the road? Director Kincaid said this will make it consistent with the low density residential designation that the comp plan gives it now. As we go thru the Comp Plan update you will be considering if changes need to be made. It is consistent now, so that is what we want.

Commissioner Weber asked if we approve this for low density now, will we be forced to change that. Director Kincaid said not necessarily, for internal consistency on Comp plan chapters if it appears that the transportation system to these parcels doesn't exist or possibly private drives go in to get into the properties, it doesn't make sense to change the designation based on that. It will be consistent with current & future infrastructure. We won't uproot anything if we don't support it with infrastructure.

Commissioner Davis asked shouldn't we be seeing roads thru there, or proposed roads since the perimeters go to different roads that is out of our jurisdiction to zone or connect to county roads. Director Kincaid stated at a different point in the process we would have to look at the roads, but no issues for now.

Chair McCain closed the public hearing and called for department report & public testimony at this time.

Public testimony

Director Kincaid stated for the record to include the presentation she just gave you with the staff recommendations.

Justin Workman, 1515 18th Ave. on behalf of Yarrow Bay would like to submit written testimony for the record. (Please see the attached letter that was submitted & read)
Director Kincaid stated she received testimony from William Kombol (Palmer Coking Coal) September 3, 2015. (Please see the attached comments that were submitted & read)

Commissioner Senecal wanted clarification on how much the Commission is to follow the Comp Plan or how much they are bound to it. Are they to go against the current Comp Plan, is it just a guide line, or are they strictly supposed to follow it.
Director Kincaid said the Comp Plan is the frame work, the policy part where we implement the policies thru the official controls. In our comp plan it was designated to be low density residential. It was not amended when the Yarrow Bay development was adopted. What you heard in the letter is true about being an expansion area. The properties were not part of the developer agreement established. This needs to happen to have Yarrow Bay expand the MPD on those parcels according to our regulations. They would have to negotiate a developer agreement for Master plan development. At that time you would consider changing the Comp Plan designation from low density residential and doing the zoning at the same time to Master Planned Development.

Commissioner Senecal asked what happens when the owner from Palmer Coking Coal wants to develop this according to the Comp Plan. Does it have to comply with anything over 80 acres. If we agree to downsize to R-4 or R-6, and someone wants to develop that area would they have to apply for a permit thru the Comp Plan which means the whole zoning has to be reassessed to make it match the comp plan, or how would that work.
Director Kincaid stated the process is in place if a developer or property owner wanted to come in and build to higher density we would have them apply, submit and go thru the process that we established. We would need some development standards in place as we don't right now. Commissioner Senecal asked if development over 80 acres has to go thru the MPD process are we getting in the way of that process by downzoning.

Commissioner Chair McCain stated she needs to adjourn the meeting. Written testimony will stay open for 1 week, closes on September 15th, 2015 at 5pm.

ADJOURNMENT:

A **motion** was made by Commissioner Chair McCain to adjourn the meeting. Please submit comments to City of Black Diamond, City Clerk's Office or email mjbohn@ci.blackdiamond.wa.us. The meeting ended at 7:23 p.m.

Minutes Respectively Prepared By: Meri Jane Bohn, Deputy City Clerk

ATTEST:

Pam McCain, Chair

Barbara Kincaid, Comm Dev Director



**CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING MINUTES
September 8, 2015 7:00 PM**

Chair Pam McCain opened the meeting at 7:23 pm.

Present: Commissioners McCain (Chair), Pepper, Senecal, Kuzaro, Davis and Weber
(Co-Chair)
Absent: Commissioner Roth
Staff: Barbara Kincaid, Community Development Director and Meri Jane Bohn,
Deputy City Clerk

APPROVAL OF MINUTES

A MOTION WAS MADE BY COMMISSIONER SENECA TO ACCEPT THE JUNE 9, 2015 PLANNING COMMISSION MEETING MINUTES AND SECONDED BY COMMISSIONER MCCAIN. ISSUE PASSED 5-1.

A MOTION WAS MADE BY COMMISSIONER WEBER TO ACCEPT WITH AMENDMENTS AUGUST 11, 2015 PLANNING COMMISSION MEETING MINUTES AND SECONDED BY COMMISSIONER KUZARO. ISSUE PASSED 6-0.

Chair Commissioner Pam McCain introduced new employee Meri Jane Bohn Deputy City Clerk

PUBLIC COMMENTS

None

PUBLIC HEARINGS

MPD Properties Rezone

Community Development Director Kincaid stated at the next meeting staff will bring back any testimony that is received.

Commissioner Weber asked if there are questions before the next meeting, what's the best way to submit them.

Director Kincaid stated if you need any more information, please let her know so she can go back and get more in depth information for the Commissioners.

Commissioner Senecal said the letter from Palmer Coking Coal sounds very sure that there will never be anything else besides residential that is less than 60 acres. Can we go back over the Master Planned Development to see if there are any different uses proposed in there? Or is it not even mentioned about proposing a park, open space, school or anything.

Director Kincaid said she will bring back to the next meeting the onboard R-4 & R-6 zoning designation that was permitted along with residential and what is conditional use.

Commissioner Senecal asked what possibly is allowed with the current MPD zoning classification compared what would be allowed.

Commissioner McCain asked how the Development Agreement overlays with this rezone, and the pertinence to the 80 acre reservation would be reasonable. It should be considered since some of the Planning Commissioners have not been on the Planning Commission thru the original conversation with the Master Planned Developments & Development Agreements which are very complex issues. So if that portion of the depth element agreement which specifically speaks to this issue would be helpful. Director Kincaid said she will bring it back.

Commissioner Weber wanted to know if there is any plan by the city to revise the municipal code 18.98 with regards to some of the comments that were brought up by Yarrow Bay. Would like to get city staffs take on Yarrow Bay's letter since there is obviously conflict between the two. He wants clarification in the letter that was presented under page one, number two it says any or all expansion parcels may be developed and how that plays into this. This plays into the issue he has with the Comp Plan update and conflict with that as well.

Commissioner McCain says understanding the Master Planned Development and its consideration of Public open space use, retail, industrial and residential component together, is there a reason why the city would not want this property to be down zoned in this matter? She would assume if it was maintained at the Master Planned Development designation that there could be more potential development and there by more potential for revenue from the city's perspective. She would like to have someone weigh in on that. McCain knows the property is probably not as appropriate for that specific use but would like to see an overall financial perspective what the city would be giving up for this down zone and what indeed the benefits could be from maintaining from part of the Master Planned Development properties. Director Kincaid said she will do her best in that; however she doesn't want to get into a situation trying to create discussion around speculation. But she will try and show a little more detail and why it is more important to down zone. Commissioner McCain said it was cited as an expansion parcel in the first place. With the amount of people living in this area, more services could be a benefit not only to the city but also to the people that live there if indeed this parcel was persevered as an expansion parcel. Director Kincaid stated that changing the zoning would be an option in the future.

NEW BUSINESS

Commissioner Weber asked if it would be in the Planning Commissioners benefit to have another Workstudy prior to our next meeting.

Commissioner McCain said it is overwhelming with the complex of these issues. We have to make sure we have time to do another Work study.

Director Kincaid stated that the October meeting could include or that they could dedicate their next meeting to this to finish deliberation and come up with recommendation for Council.

Commissioner Weber stated he would like the next meeting to be dedicated to this issue. He would like to make sure there is enough valid time to do their homework before making a recommendation for Council as well.

Commissioner Senecal also said he is more comfortable with a Workstudy and some time before we have to make a decision instead of doing both in the same night.

Commissioner Pepper feels the June 9th minutes were not sufficient and serious conversations were left out. She would like to have fuller minutes and not just what is on the agenda. She would like to have much more detail in them.

Commissioner McCain said August minutes look great and with the new Deputy City Clerk there will be better minutes moving forward.

UNFINISHED BUSINESS

Community Development Director Kincaid said the issue will be brought back with the Master Planned Development Moratorium. Information that was presented and any new testimony that is received will be added as well. Our hopes are for the Moratorium not to go on any longer.

DIRECTOR'S REPORT

Community Development Director Barbara Kincaid attended her 1st ever "Labor Days". Had a nice time, she set up a booth so public could have some input and spoke with about a dozen people about our Comp Plan update.

The Mayor and Director Kincaid will be meeting with consultants from "Berger Abam" on Friday. They have submitted all the first cut draft chapters of the Comp Plan which they will be reviewing. They are going to really look under the scope on where it is at in the process and how they will be getting it done.

PUBLIC COMMENTS

Commissioner Brian Weber 32510 McKay Ln Black Diamond, said the June 9th minutes state that the City Comp Plan had to have the Puget Sound Regional Council (PSRC). He does not believe it is 100% correct.

Director Kincaid said that Commissioner Weber is right on that. There was a recent court case that created some confusion about the PSRC role. Some people are actually thinking the court decision that PSRC has the authority and can approve Comp Plans. What they actually do is issue a consistency statement. If the PSRC review the Comp Plan and decide it is not consistent with the regional plan then the jurisdiction is at risk for the transportation funding. PSRC's main concern is the transportation portion of the Comp Plan.

Commissioner Weber stated obviously the City of Black Diamond's Master Planned Development isn't consistent with the vision, so how does that work?

Director Kincaid said that is why she needs to sit down with the consultants on Friday. They spent a lot of energy & money working with PSRC coming up with new population and job forecasts that would be consistent. So she needs to get some record on that which she would be glad to share with the Planning Commission. There are so many layers here; cities are required to be consistent with King County Planning Policy.

Commissioner Weber said so this is to do with Transportation Grants correct?

Director Kincaid said yes if the city is not consistent, we would not get Transportation Grants.

ADJOURN

A MOTION WAS MADE BY COMMISSIONER KUZARO AND SECONDED BY COMMISSIONER WEBER TO ADJOURN. THIS ISSUE PASSED 6-0. THE MEETING ADJOURNED AT 7:56 P.M.

Minutes Respectively Prepared By: Meri Jane Bohn, Deputy City Clerk

ATTEST:

Pam McCain, Chairperson

Barbara Kincaid, Comm Dev Director

Sept 22, 2015

ORDINANCE NO. 15__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, RELATING TO COMPREHENSIVE PLANNING UNDER THE GROWTH MANAGEMENT ACT, ADOPTING CONCURRENCY REGULATIONS FOR THE REVIEW OF LEGISLATIVE AND QUASI-JUDICIAL APPLICATIONS, AS MANDATED BY THE GMA FOR TRANSPORTATION FACILITIES, ADOPTING A NEW CHAPTER 11.11 IN THE BLACK DIAMOND MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Growth Management Act (“GMA,” chapter 36.70A RCW) requires that cities planning under GMA “adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned 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 the development (RCW 36.70A.070(6)(b));” and

WHEREAS, the City has no concurrency regulations; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, on _____, 2015, the City Council considered this Ordinance, together with the Planning Commission’s recommendation, during a regular Council meeting;
Now, Therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON,
ORDAINS AS FOLLOWS:

Section 1. A new Chapter 11.11 is hereby added to the Black Diamond Municipal Code,

which shall read as follows:

**CHAPTER 11.11
CONCURRENCY MANAGEMENT**

Sections:

- 11.11.001 Purpose.
- 11.11.002 Authority.
- 11.11.003 Definitions
- 11.11.004 Exempt development.
- 11.11.005 Applicability
- 11.11.006 Capacity evaluation required for a change of use.
- 11.11.007 Capacity evaluations required for certain rezones or comprehensive plan amendments.
- 11.11.008 All capacity determinations exempt from project permit processing.
- 11.11.009 Level of Service standards.
- 11.11.010 Effect of LOS standards.
- 11.11.011 Capacity evaluations required prior to issuance of CRC.
- 11.11.012 Transportation– Application for capacity evaluation.
- 11.11.013 Submission and acceptance of an application for a CRC.
- 11.11.014 Method of capacity evaluation.
- 11.11.015 Purpose of capacity reservation certificate.
- 11.11.016 Procedure for capacity reservation certificates.
- 11.11.017 Use of reserved capacity.
- 11.11.018 Transfer of reserved capacity.
- 11.11.019 Denial letter.
- 11.11.020 Notice of concurrency determination.
- 11.11.021 Expiration and extensions of time.
- 11.11.022 Appeals.
- 11.11.023 Purpose and procedure for administration.
- 11.11.024 Capacity classifications.
- 11.11.025 Annual reporting and monitoring.
- 11.11.026 Road LOS monitoring and modeling.
- 11.11.027 Traffic impact analysis standardized format.

11.11.001 Purpose. The purpose of this Chapter is to implement the concurrency provisions of the transportation and utilities elements of the City’s comprehensive plan, the water and sewer comprehensive plans, all in accordance with RCW 36.70A.070(6)(b), consistent with WAC 365-195-510 and 365-195-835. All applications that are not exempt (as defined herein) shall be processed under and shall comply with this Chapter, which shall be cited as the City’s “concurrency management ordinance.”

11.11.002 Authority. The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance.

11.11.003 Definitions. The following words and terms shall have the following meanings for the purpose of Chapter 11.11 unless the context clearly appears otherwise. Terms not defined herein shall be given their usual and customary meaning.

A. “Act” means the Growth Management Act, chapter 36.70A RCW, or as hereafter amended.

B. “Adequate public facilities” means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums. (WAC 365-196-210(3).)

C. “Approving Authority” means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.

D. “Annual capacity availability report” means the report prepared each year to include available and reserved capacity for each public facility and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service, a summary of development activity, a summary of current levels of service and recommendations.

E. “Available public facilities” means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, “concurrent with development means” that the 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. (RCW 36.70A.070(6)(b).)

F. “Capacity” means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, or “peak p.m. trips,” within the LOS standards for the facility.

G. “Capacity, available” means capacity in excess of current demand (“used capacity”) for a specific public facility which can be encumbered, reserved or committed or the difference between capacity and current demand (“used capacity”).

H. “Capacity, encumbered” means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.

I. “Capacity evaluation” means the evaluation by the Director based on adopted Level of Service (LOS) standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in the City’s concurrency ordinance.

J. “Capacity reservation certificate” or “CRC” means a determination made by the Director that: (1) a proposed development activity of development phase will be concurrent with the applicable facilities at the time the CRC is issued, and (2) the Director has reserved capacity for an application for a period that corresponds to the respective development permit.

K. “Capacity, reserved” means capacity which has been reserved through use of the capacity reservation certificate process in Section 11.11.016

L. “Capital facilities” means the facilities or improvements included in a capital facilities plan.

M. “Capital facilities plan” means the capital facilities plan element of the City’s comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

N. “Change of use” means, for the purposes of this Chapter, any change, redevelopment or modification of use of an existing building or site which meets the definition of “development activity” herein.

O. “City” means the City of Black Diamond, Washington.

P. “Comprehensive land use plan” or “comprehensive plan” means a generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

Q. “Concurrency” or “concurrent with development” means that adequate public facilities are available or improvements/strategies are in place when the impacts of development occur, or that a financial commitment is in place to complete the improvements or strategies within six years.. This definition includes the concept of “adequate public facilities’ as defined above. (RCW 36.70A.070(6)(b).)

R. “Council” means the City Council of the City of Black Diamond, Washington.

S. “Dedication” means the conveyance of land or facilities to the City for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat (or short plat).

T. “Demand management strategies” means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that: (1) shift demand outside of the peak travel time; (2) shift demand to other modes of transportation; (3) increase the number of occupants per vehicle; (4) decrease the length of trips; (5) avoid the need for vehicle trips. (WAC 365-196-210(12).)

U. “Department” means the public works department of the City of Black Diamond

V. “Developer” means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

W. “Development activity” or “development” means any construction or expansion of a building, structure, or use, and change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City. (RCW 82.02.090(1)).

X. “Development agreement” means the agreements authorized in RCW 36.70B.170 and chapter 17 of this Code.

Y. “Development permit” or “project permit” means any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site-specific rezones, and for purposes of the City’s concurrency ordinance, shall include applications for amendments to the City’s comprehensive plan which request an increase in the extent or density of development on the subject property.

AA. “Director” means the director of the public works department.

BB. “Existing use” means development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this Chapter.

CC. “Encumbered” means to reserve or set aside capacity,

DD. “Financial commitment” means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

EE. “Growth-related” means a development activity as defined herein that decreases the Level of Service (LOS) below the City’s established minimum LOS of a transportation facility in the City’s Comprehensive Plan.

FF. “Level of Service” or “LOS” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards. (WAC 365-196-210(19).)

GG. “Owner” means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property, if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds 25 years, and the lessee is the developer of the real property. (RCW 82.02.090(4).)

HH. “Previous use” means (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five-year period prior to the date of application for the development.

II. “Public/Private Project” means a system improvement, selected by the City Council for joint private and public funding and which appears on the Project List.

TT. “Right of Way” means a public property dedicated for the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley. Secondarily public road right of way provides properties with a corridor for access to various utilities.

UU. “Road facilities” includes public facilities related to land transportation.

WW. “State” means the State of Washington.

XX. “Subdivision” means all subdivisions as defined in Chapter 17.08, and all short subdivisions as defined in Chapter 17.32.

ZZ. “Traffic analysis zone” means the minimum geographic unit used for traffic analysis.

AAA. “Transportation primary impact area” means a geographically determined area that delineates the impacted area of a deficient roadway link.

BBB. “Transportation level of service standards” means a measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

CCC. “Traffic demand model” means the simulation through the City’s traffic model of vehicle trip ends assigned on the roadway network.

DDD. “Trip allocation program” means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

EEE. “Trip end” means a single or one-directional vehicle movement.

FFF. “Unit” or “Dwelling unit” means a dwelling unit as defined in 18.100.280 of this code.

11.11.004 Exempt development.

A. No development activity (as defined in Section 18.08 BDMC) shall be exempt from the requirements of this chapter, unless the permit is listed below. The following types of permits are not subject to the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on transportation facilities:

1. Administrative interpretations;
2. Sign permit;
3. Street vacations;
4. Demolition permit;
5. Street use permit;
6. Interior alterations of a structure with no change in use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire code permit;
20. Design review approval.

11.11.005 Applicability Notwithstanding the exemptions noted in section 11.11.004, if any of the above permit applications will generate any new p.m. peak hour trips such application shall not be exempt from the requirements of this Chapter.

B. Transportation. This Chapter shall apply to all applications for development or redevelopment if the proposal or use will generate any new p.m. peak-hour trips. Every application for development shall be accompanied by a concurrency application. Developments or redevelopments, excluding an individual single-family residence, that will generate one or more new projected p.m. peak-hour vehicle trips that will pass through an intersection or roadway section identified with a level of service below the acceptable level noted in the transportation element in the City's comprehensive plan, or that will generate 15 or more new p.m. peak hour trips shall be required to have the City prepare a traffic impact analysis report to determine the full impact of the proposal and appropriate mitigation.

11.11.006 Capacity evaluation required for a change in use. Any non-exempt development activity shall require a capacity evaluation in accordance with this Chapter.

A. Increased Impact on Road Facilities. If a change in use will have a greater impact on road facilities than the previous use, as determined by the Director, based on review of information submitted by the applicant and such supplemental information as available, a CRC shall be required for the net increase only. The applicant shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five-year period prior to the date of application for the capacity evaluation.

B. Decreased Impact on Road Facilities. If a change in use will have an equal or lesser impact on road facilities than the previous use as determined by the Director, based on review of information submitted by the applicant and supplemental information as available, a CRC will not be required.

C. No Capacity Credit. If no use existed on the site for the five-year period prior to the date of application, no capacity credit shall be issued pursuant to this Section.

D. Demolition or Termination of Use. In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact on road facilities for the new or proposed land use, as compared to the land use existing prior to demolition. Provided, that such credit is utilized through a CRC within five years of the date of the issuance of the demolition permit.

11.11.007. Capacity evaluations required for certain rezones and comprehensive plan amendments. A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment.

11.11.008 All capacity determinations exempt from project permit processing. The processing of applications pursuant to the authority in this Chapter shall be exempt from project permit processing procedures as described in Chapter 18.08 of the Zoning Code, except that the appeal procedures of Chapter 11.11.020 shall apply as indicated in this Chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation and utilities elements of the comprehensive plan.

11.11.009 Level of Service Standards.

A. Generally. Level of Service (LOS) is the established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of

need, as mandated by chapter 36.70A RCW. LOS standards shall be used to determine if public facilities or services are adequate to support a development's impact. The concept of concurrency is based on the maintenance of specified levels of service through capacity monitoring, allocation and reservation procedures. Concurrency describes the situation in which road facilities are available when the impacts of development occur. For road facilities, this time period is statutorily established as within six years from the time of development. (See, RCW 36.70A.070(6)(b) and WAC 365-195-210.)

1. *Roads.* The City has designated levels of service for road facilities in the transportation element of the City's comprehensive plan:
 - a. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;
 - b. to reflect realistic expectations consistent with the achievement of growth aims;
 - c. for road facilities according to WAC 365-195-325; and
 - d. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's comprehensive plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

11.11.010 Effect of LOS standards.

Roads. The Director shall use the LOS standards set forth in the transportation element of the City's comprehensive plan to make concurrency evaluations as part of the review of any application for a transportation concurrency reservation certificate (CRC) issued pursuant to this chapter.

11.11.011 Capacity evaluations required prior to issuance of CRC.

A. A capacity evaluation for transportation shall be required for any of the nonexempt activities identified in Section 11.11.004 of this chapter.

B. The Director shall utilize the requirements in Sections 11.11.011 through 11.11.016 to conduct a capacity evaluation prior to issuance of a CRC. In addition to the requirements set forth in these sections, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency, which may be established from time to time by administrative rule. In cases where LOS standards do not apply, the Director shall have the authority to utilize other factors in preparing capacity evaluations to include, but not be limited to, independent LOS analysis.

C. A capacity reservation certificate (CRC) will not be issued except after a capacity evaluation performed pursuant to this Chapter, indicating that capacity is available in all applicable road facilities.

11.11.012 Application for capacity evaluation.

A. An application for a CRC and the application for the underlying development permit, or other activity, shall be accompanied by the requisite fee, as determined by City Council resolution. An applicant for the CRC shall submit the following information to the Director, on a form provided by the Director, together with the underlying development application:

1. Date of submittal;
2. Developer's name, address, telephone number and e-mail;
3. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
4. Proposed use(s) by land use category, square feet and number of units;
5. Phasing information by proposed uses, square feet and number of units, if applicable;
6. Existing use of property;
7. Acreage of property;
8. Proposed site design information, if applicable;
9. The applicant's proposed mitigation (if any) for the impact on the City's transportation facilities;
10. Written consent of the property owner, if different from the developer;
11. Proposed request of capacity by legal description, if applicable;

B. Additional information for transportation capacity evaluations only:

1. A preliminary site plan, which is a plan showing the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use codes per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways;

2. Developers applying for a CRC application that are required to have the City provide a traffic report in accordance with 11.11.005 shall cover the cost for the City to complete a Traffic Impact Analysis for the project and the City's traffic model can be kept up to date. The applicant shall pay the estimated amount for the City's preparation of a traffic report upfront from which the City will pay the City's traffic consultant. Even though the traffic report is based on an estimate of the traffic impact, the applicant may still be responsible for increase in actual traffic impacts that exceed traffic studies and shall be required to address the deficiency in at least one of the following ways: (a) a finding that the additional concurrency sought by the developer through a revised

application is available to be reserved by the project; (b) mitigation of the additional impact under SEPA or additional impact fees; (c) revocation of the CRC.

11.11.013 Submission and acceptance of a CRC application.

A. Notice of application. Issuance of a notice of application for the underlying permit application shall be handled by the Community Development Director or designee, following the process in Section 18.08.120. The notice of application required by Section 18.08.120 shall state that an application for a concurrency determination has been received by the City.

B. Determination of Completeness. The planning director shall immediately forward all CRC applications received with development applications to the public works/engineering staff. Within twenty-eight (28) days after receiving an application for a CRC, the public works/engineering staff shall mail or personally deliver to the applicant a determination which states either:

1. That the concurrency application is complete; or
2. That the concurrency application is incomplete and what is necessary to make the application complete.

C. Additional information. An application for a CRC is complete for purposes of initial processing when it meets the submission requirements in Section 11.11.012. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The Director's determination of completeness shall not preclude the Director's ability to request additional information or studies.

D. Incomplete applications.

1. Whenever the City issues a determination that the CRC is not complete, the CRC application shall be handled in the same manner as a project permit application under Section 18.14.020 (G)

2. Date of Acceptance of Application. An application for a CRC shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When an application is determined complete, the Director shall accept it and note the date of acceptance.

11.11.014 Method of capacity evaluation.

A. Generally. In order to determine concurrency for the purposes of issuance of a transportation, water or sewer CRC, the Director shall make the determination described in subsections B, C and D of this Section. The Director may deem the development concurrent with transportation facilities, if capacity is available. Additionally the Director may deem the

development concurrent with transportation facilities with the condition that the necessary facilities or strategies to accommodate the impacts of development shall be available through a financial commitment in an enforceable development agreement (*see*, chapter 18.66) so that the necessary mitigation improvements or strategies are in place within 6 years of the impact of the development. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying application.

B. Transportation.

1. Upon submission and acceptance of a complete transportation CRC application, the Director shall conduct a traffic impact analysis and issue a traffic report for those applications meeting the requirements of Section 16.60.003(B)(1).

2. In performing the concurrency evaluation for transportation facilities, and to prepare the transportation CRC, the Director shall determine, based on the conclusions of the traffic report, whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities. This shall involve the following:

a. A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;

b. Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;

c. Calculation of the available capacity for the proposed development;

d. Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation identified by the applicant to be provided by the applicant at the applicant's cost;

e. Comparison of available capacity with proposed development impacts.

3. The Director shall determine if the capacity of the City's transportation facilities, less the capacity which is reserved, can be provided while meeting the level of service performance standards set forth in the City's comprehensive plan, and if so, shall provide the applicant with a transportation CRC. The Director's determination will be based on the application materials provided by the applicant, which must include the applicant's proposed mitigation for the impact on the City's transportation facilities.

E. Lack of Concurrency.

1. Transportation. If the director determines that the proposed development will cause the LOS of a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a transportation CRC and the underlying development permit, if such an application has been made, shall be denied. Upon denial, the applicant may perform one of the following:

a. Appeal the findings of the traffic report in accordance with Section 11.11.020; or

b. Offer alternative data and/or perform an independent traffic impact analysis at the applicant's sole expense in support of alternative conclusions. Any study shall meet the requirements of the Public Works Director

c. Modify the development proposal to lessen the traffic impacts and/or identify voluntary transportation improvements as mitigation to be provided by the applicant at the applicant's cost and re-apply for capacity review. Re-application shall require repayment of the traffic report preparation fee in accordance with Section 11.11.012 ; or

d. Withdraw the CRC application.

11.11.015 Purpose of Capacity Reservation Certificate.

A transportation CRC is a determination by the Director that: (1) the proposed development identified in the CRC application does not cause the level of service on a City-owned transportation facility to decline below the standards adopted in the transportation element of the City's comprehensive plan; or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six (6) years. Upon issuance of a transportation CRC, the Director will reserve transportation facility capacity for this application until the expiration of the underlying development. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this Chapter (including the trip transfer procedures) shall imply that the applicant "owns" or has any ownership interest in the projected trips.

11.11.016 Procedure for capacity reservation certificates. After receipt of a complete application for a CRC, the Director shall process the application in accordance with this Chapter and issue the CRC or a denial letter.

11.11.017 Use of reserved capacity. When a CRC and a development permit issues for a project, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without issuance of a certificate of occupancy.

11.11.018 Transfer of reserved capacity. Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the CRC application. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

11.11.019 Denial letter. If the Director determines that there is a lack of concurrency under the above provisions, the Director shall issue a denial letter, which shall advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter shall also be sent to the property owner. At a minimum, the denial letter shall identify the application and include the following information:

- A. An estimate of the level of the deficiency on the transportation facilities; and
- B. The options available to the applicant such as 1) the applicant's agreement to construct the necessary facilities at the applicant's cost or 2) if the deficient facility has a scheduled and planned improvement or 3) the payment of the applicable traffic impact fee or appropriate traffic mitigation fee through SEPA.
- C. A statement that the denial letter may be appealed if the appeal is submitted to the Director within ten (10) days after issuance of the denial letter, and that the appeal must conform to the requirements in Section 11.11.022. Any appeal of a denial letter must be filed according to this section, prior to issuance of the City's decision on the underlying development application. If an appeal is filed, processing of the underlying development application shall be stayed until the final decision on the appeal of the denial letter.

11.11.020 Notice of concurrency determination.

A. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the SEPA threshold determination for the underlying development permit, unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination. In the case of an approved CRC, any mitigation identified by the applicant to be provided by the applicant at the applicant's cost shall be included in the SEPA threshold determination or underlying permit decision (if categorically exempt from SEPA).

B. If a denial letter is not timely appealed, the underlying permit application will be processed and in most instances, will result in a denial. If a denial letter is appealed, any

mitigation or conditions included in the appeal decision shall be included in the SEPA threshold decision or underlying permit decision (if categorically exempt from SEPA).

11.11.021 Expiration of CRC and extensions of time.

A. Expiration. If a certificate of occupancy has not been requested prior to the expiration of the underlying permit or termination of the associated development agreement, the Director shall convert the reserved capacity to available capacity for the use of other developments. The act of requesting a certificate of occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes. If a complete underlying project permit application is expired as provided for in Section ____, the Director shall convert any reserved capacity allocated to the underlying project permit for use by other developments.

B. Extensions for Road Facilities. The City shall assume that the developer requests an extension of transportation capacity reservation when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the transportation CRC or any subsequent extension.

C. If a CRC has been granted for a rezone or comprehensive plan amendment, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates. If there is no associated development agreement, the CRC shall expire within five years after the CRC approval anniversary date.

11.11.022 Appeals. Upon receipt of an appeal of the denial letter, the Director shall handle the appeal as follows:

A. A meeting shall be scheduled with the applicant to review the denial letter and the application materials, together with the appeal statement.

B. Within fourteen (14) days after the meeting, the Director shall issue a written appeal decision, which will list all of the materials considered in making the decision. The appeal decision shall either affirm or reverse the denial letter. If the denial letter is reversed, the Director shall identify the mitigation that the applicant proposes to provide at the applicant's cost, which will be imposed on the application approval in order to achieve concurrency.

C. The mitigation identified in the appeal decision shall be incorporated into the City's SEPA threshold decision on the application.

D. The appeal decision shall state that it may be appealed with any appeal of the underlying application or activity, pursuant to Section 18.08.200.

11.11.023 Concurrency administration and procedure.

A. "Capacity" refers to the ability or availability of road facilities to accommodate users, expressed in an approximate unit of measure, such as LOS for road facilities. "Available

capacity” represents a specific amount of capacity that may be reserved by or committed to future users of the road facilities.

B. There are two transportation capacity accounts to be utilized by the Director in the implementation of this Chapter. These accounts are:

1. The available capacity account; and
2. The reserved capacity account.

Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an occupancy certificate is issued, the capacity is considered “used.” Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

11.11.024 Annual reporting and monitoring.

A. The Director is responsible for completion of annual transportation, availability reports. The report shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity of road facilities for additional traffic loading. The evaluations shall report on capacity used for the previous period, capacity added from new project, and capacity that will be available upon implementation of transportation projects on the City’s six-year capital facilities element of the City’s comprehensive plan and six-year transportation plan for road facilities, based on LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections, and shall, at a minimum, include:

1. A summary of development activity;
2. The status of each capacity account;
3. The six-year transportation plan;
4. Actual capacity of selected street segments and intersections and current LOS;
5. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element or to the comprehensive plan;
- 6.

B. The findings of the annual capacity availability report shall be considered by the Council in preparing the annual update to the capital improvement element, any proposed amendments to the CIP and six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

C. Based upon the analysis included in the annual capacity availability reports, the Director shall recommend to the City Council each year any necessary amendments to the CIP, TIP, or transportation element of the comprehensive plan. The Director shall also report on the

status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

11.11.025 Intersection LOS monitoring and modeling.

A. The City shall monitor level of service at all major collector and arterial intersections through the keeping of an updated traffic model and an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.

B. New trip generation numbers shall be assigned to the appropriate traffic analysis zone for each new project approved. The City will use the updated traffic demand model, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the comprehensive plan.

Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. 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 4. 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 _____, this ____th day of _____, 2015.

CITY OF

Mayor

ATTEST/AUTHENTICATED:

City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO: