

**Chapter 20.180
CONCURRENCY**

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20.180.001 Purpose.

The purpose of this chapter is to implement the concurrency provisions of the transportation and utilities elements of the city's comprehensive plan and the water and sewer comprehensive plans, all in accordance with RCW 36.70A.070(6)(b). All applications that are not exempt under POMC 20.180.004 shall be processed under and shall comply with this chapter, which shall be cited as the city's "Concurrency Ordinance."

20.180.002 Authority.

The director of public works or his/her designee shall be responsible for implementing and enforcing this Concurrency Ordinance.

20.180.003 Definitions.

The following words and terms shall have the following meanings for the purpose of interpreting Chapters 20.180 and 20.182, unless the context clearly appears otherwise. Terms not defined herein shall be given the meaning set forth in Chapter 20.06, or RCW 82.02.090, or given their usual and customary meaning, in order of preference.

- (1) "Act" means the Growth Management Act, Chapter 36.70A RCW, or as hereafter amended.
- (2) "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).)
- (3) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. (WAC 365-196-210(4).)
- (4) "Approving authority" means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.
- (5) "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.
- (6) "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).)
- (7) "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," or school facility within the LOS standards for the facility, or fire flow, or sewer treatment plant capacity.
- (8) "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").
- (9) "Capacity, encumbered" means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.
- (10) "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.

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

(12) "Capacity, reserved" means capacity which has been reserved through use of the capacity reservation certificate process in POMC Chapter 20.180.

(13) "Capital facilities" means the facilities or improvements included in a capital facilities plan.

(14) "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, which may include by reference a capital facilities plan of the school district within the city.

(15) "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.

(16) "City" means the city of Port Orchard, Washington.

(17) "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.

(18) "Concurrency" or "concurrent with development" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above. For the purposes of transportation facilities, concurrent with development means that strategies or improvements 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).)

(19) "Council" means the city council of the city of Port Orchard, Washington.

(20) "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).

(21) "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: (a) shift demand outside of the peak travel time; (b) shift demand to other modes of transportation; (c) increase the number of occupants per vehicle; (d) decrease the length of trips; (e) avoid the need for vehicle trips. (WAC 365-196-210(12).)

(22) "Department" means the public works department of the city of Port Orchard.

(23) "Developer" means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

(24) “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).)

(25) “Development agreement” means the agreements authorized in RCW 36.70B.170.

(26) “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.

(27) “Director” means the director of the public works department.

(28) “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.

(29) “Encumbered” means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

(30) “Fair market value” means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each being prudently knowledgeable, and assuming the price is not affected by undue stimulus.

(31) “Feepayer” means a person, corporation, partnership, an incorporated association, or a department or bureau of any government entity, or any other similar entity, commencing a land development activity. “Feepayer” includes applicants for an impact fee credit.

(32) “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.

(33) “Growth-related” means a development activity as defined herein that utilizes the available capacity of a public facility.

(34) “Impact fee” means the amount of money determined necessary by the city or the school district and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. “Impact fee” does not include a reasonable permit or application fee. (RCW 82.02.090(3).)

(35) "Impact fee accounts" means the account(s) established for each type of public facilities for which impact fees are collected. The accounts shall be established pursuant to this chapter, and comply with the requirements of RCW 82.02.070.

(36) "Impact fee schedule" means the table of impact fees per unit of development, which is to be used by the director or the school district in computing impact fees.

(37) "Interest" means the interest rate earned by the city or the school district for the impact fee account, if not otherwise defined.

(38) "Interlocal agreement" means the transportation impact fee interlocal agreement by and between the city and county or the city and a neighboring city, or the city and the state of Washington, concerning the collection and allocation of road impact fees, or any other interlocal agreement entered by and between the city and another municipality, public agency or governmental body in order to implement an impact fee program.

(39) "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 as established by the city or district in its capital facilities plan. Level of service standards may be synonymous with locally established minimum standards. (WAC 365-196-210(19).)

(40) "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).)

(41) "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.

(42) "Project" means a system improvement, selected by the city council for joint private and public funding and which appears on the project list.

(43) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the city council shall be considered a project improvement. (RCW 82.02.090(5).)

(44) "Project list" means the list of projects described in the city's annual and six-year capital improvement program and as developed pursuant to this chapter.

(45) "Proportionate share" means that portion of the cost of public facility improvements that is reasonably related to demands and needs of new development. (RCW 82.02.090(6).)

(46) “Road” means a right-of-way which affords the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.¹

(47) “Road facilities” includes public facilities related to land transportation.

(48) “School district” means South Kitsap School District No. 402.

(49) “Service area” means the geographic area defined by the city, school district, or interlocal agreement, in which a defined set of public facilities provides service to development in the area. Service areas shall be designated on the basis of sound engineering or planning principles or by law. (RCW 82.02.090(8).)

(50) “School impact fee” means an impact fee in the city to pay for school capital facilities to serve new growth and development within a school district.

(51) “State” means the state of Washington.

(52) “Subdivision” means all subdivisions as defined in POMC 20.06 and Subtitle V POMC, and all short subdivisions as defined in that chapter.

(53) “Superintendent” means the superintendent or superintendent’s designee of the school district as approved by the board of directors of the school district.

(54) “System improvements” means public facilities that are included in the city’s capital facilities plan and are designed to provide service to areas within the city and community at large, in contrast to project or on-site improvements. (RCW 82.02.090(9).)

(55) “Traffic analysis zone” means the minimum geographic unit used for traffic analysis.

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

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

(58) “Transportation management area” means a geographically determined area that contains compact urban development patterns where a dense roadway network and extensive mass transit services are in place. The performance of these areas shall be based on the percentage of lane miles meeting the LOS standards as described in this chapter.

(59) “Traffic demand model” means the simulation through computer modeling of vehicle trip ends assigned on the roadway network.

(60) “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.

(61) "Trip end" means a single or one-directional vehicle movement.

(62) "Unit" or "dwelling unit" means a dwelling unit as defined in POMC 20.06.

20.180.004 Exempt development.

(1) No development activity 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, additional sewer capacity in the city's waste water treatment plant, or a need for more potable water from the city's water system:

- (a) Administrative interpretations;
- (b) Sign permit;
- (c) Street vacations;
- (d) Demolition permit;
- (e) Street use permit;
- (f) Interior alterations of a structure with no change in use;
- (g) Excavation/clearing permit;
- (h) Hydrant use permit;
- (i) Right-of-way permit;
- (j) Single-family remodeling with no change of use;
- (k) Plumbing permit;
- (l) Electrical permit;
- (m) Mechanical permit;
- (n) Excavation permit;
- (o) Sewer connection permit;
- (p) Driveway or street access permit;
- (q) Grading permit;
- (r) Tenant improvement permit;
- (s) Fire code permit;

(t) Design review.

Notwithstanding the above, if any of the above permit applications will generate any new p.m. peak hour trips, require additional sewer capacity, or increase water consumption, such application shall not be exempt from the requirements of this chapter.

(2) 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 capacity reservation certificate application. Developments or redevelopments that will generate one or more new projected 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 also be required to submit information for a traffic report pursuant to POMC 20.180.011(2)(b).

(3) Water. This chapter shall apply to all applications for development or redevelopment if the proposal or use requires water from the city's water system (not West Sound Utilities). In addition, this chapter shall apply to existing developments to the extent that the property owner requires water for a use not disclosed on a previously submitted water service application or a previously submitted application for a capacity reservation certificate.

(4) Sewer. This chapter shall apply to all applications for development or redevelopment if the proposal or use requires sewer from the city's sewer system (not West Sound Utilities). In addition, this chapter shall apply to existing developments to the extent that the property owner requires sewer for a use not disclosed on a previously approved request for sewer service or a previously approved application for a capacity reservation certificate.

20.180.005 Capacity evaluation required for a change in use.

Any nonexempt development activity shall require a capacity evaluation in accordance with this chapter.

(1) Increased Impact on Road Facilities, and/or the City's Water/Sewer System. If a change in use will have a greater impact on road facilities and/or the city's water/sewer system 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. Provided that: 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.

(2) Decreased Impact on Road Facilities and/or the City's Water/Sewer System. If a change in use will have an equal or lesser impact on road facilities and/or the city's water/sewer system 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.

(3) 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.

(4) 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 or the city's water or sewer system 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.

20.180.006 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) submitted by a property owner 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. The city's approval of any comprehensive plan or zoning map amendment shall not reserve any capacity in water, sewer or transportation facilities unless the property owner has applied for and is issued a CRC and a development agreement which includes a deadline for the property owner's submission of development permit application for the proposed development.

20.180.007 All capacity determinations and capacity reservation certificate applications exempt from project permit processing.

As allowed by RCW 36.70B.140, the processing of applications pursuant to the authority in this chapter shall be exempt from project permit processing procedures as described in POMC Subtitle II , unless otherwise specifically noted in this chapter. The city's processing of capacity reservation certificates 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.

20.180.008 Level of service standards.

(1) 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 water, sewer and/or 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(3), (7), (19).¹)

(a) Roads. The city has designated levels of service for road facilities in the transportation element of the city's comprehensive plan:

(i) To conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;

(ii) To reflect realistic expectations consistent with the achievement of growth aims;

(iii) 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.

(b) Water. The city has a permitted withdrawal volume of water issued by the Department of Ecology. "Level of service" as it relates to water is defined in the water element of the city's comprehensive plan as the ability to provide potable water to the consumer for use and fire protection. The ability to provide water supply is limited by the water permit from the Department of Ecology.

(c) Sewer. The city is required to obtain a permit from the Department of Ecology in order to discharge effluent into the waters of the state. This permit is limited by levels and volume. "Level of service" as it relates to sewer is defined in the city's sewer comprehensive plan as the ability to provide sanitary sewer services to the consumer for use, treatment at the city's wastewater treatment plant and discharge into Puget Sound. The city's ability to provide such service is limited by the physical capacity of the city's wastewater treatment plant as well as the NPDES permit issued by the Department of Ecology.

20.180.009 Effect of LOS standards.

(1) 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.

(2) Water. The director shall use the existing water rights as permitted by the Department of Ecology and as identified in the utilities element of the city's comprehensive plan to make concurrency evaluations as part of the review of any application for a water CRC issued pursuant to this chapter.

(3) Sewer. The director shall use the limits and levels established in the city's NPDES permit from the Department of Ecology, and evaluate the remaining capacity in the city's wastewater treatment plan as part of the review of any application for a sewer CRC issued pursuant to this chapter.

20.180.010 Capacity evaluations required prior to issuance of CRC.

(1) A capacity evaluation for transportation, water or sewer shall be required for any of the activities that are not exempt under POMC 20.180.004(1).

(2) The director shall utilize the method described in POMC 20.180.013 and this chapter to conduct a capacity evaluation prior to issuance of a CRC. In addition to these requirements, the director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency. 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.

(3) 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 and/or within the city's water or sewer system.

20.180.011 Application for capacity reservation certificate.

(1) 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 also submit the following information to the director, on a form provided by the director, together with the underlying development application:

- (a) Date of submittal;
- (b) Developer's name, address, telephone number and email;
- (c) Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
- (d) Proposed use(s) by land use category, square feet and number of units;
- (e) Phasing information by proposed uses, square feet and number of units, if applicable;
- (f) Existing use of property;
- (g) Acreage of property;
- (h) Proposed site design information, if applicable;
- (i) The applicant's proposed mitigation (if any) for the impact on the city's transportation facilities;
- (j) Written consent of the property owner, if different from the developer;
- (k) Proposed request for capacity by legal description, if applicable;
- (l) For water capacity reservation certificates only: Water hydraulic report prepared by a licensed professional engineer, which shall include the purpose for which water is required;
- (m) For sewer capacity only: Sewer hydraulic report prepared by a licensed professional engineer, which shall include the purpose for which the sewer capacity is required;
- (n) Stormwater drainage report prepared by a licensed professional engineer.

(2) Additional information for transportation capacity evaluations only:

- (a) 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;

(b) The applicant is not required to submit a traffic impact analysis from an independent traffic engineer. Instead, those applicants with a transportation CRC application that are required to have the city provide a traffic report in accordance with POMC 20.180.004(2) shall instead pay to the city a deposit equal to the estimated fee for the city's preparation of a traffic report. The amount of the fee shall be determined by city resolution and paid at the time the transportation CRC application is submitted. The fee shall vary based on the number of new p.m. peak-hour trips produced by the development. The applicant shall be subject to repayment of fees for any subsequent revisions to the original traffic report. Fees for revisions may be calculated in proportion to the original fee depending on the effort involved to revise the traffic report. Even if the traffic report is based on an estimate of the impact, the applicant will still be bound by the estimate of the impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: (i) a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; (ii) mitigation of the additional impact under SEPA; (iii) revocation of the CRC.

20.180.012 Submission and acceptance of a CRC application.

(1) 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 POMC Title 23. The notice of application shall state that an application for a concurrency determination has been received by the city.

(2) Determination of Completeness. The community development director shall immediately forward all CRC applications received with development applications to the public works/engineering staff. Within 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:

(a) That the concurrency application is complete; or

(b) That the concurrency application is incomplete and what is necessary to make the application complete.

(3) Additional Information. An application for a CRC is complete for purposes of initial processing when it meets the submission requirements in POMC 20.180.011. 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.

(4) Incomplete Applications.

(a) Whenever the city issues a determination that the CRC application is not complete, the CRC application shall be handled in the same manner as an incomplete project permit application under POMC chapter 20.24.

(b) 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.

20.180.013 Method of capacity evaluation.

(1) 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 (2), (3) and (4) of this section. The director may deem the development concurrent with transportation facilities or the city's water or sewer system, with the condition that the necessary facilities or services shall be available through a financial commitment in an enforceable development agreement (see Chapter 20.26 POMC). 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.

(2) Transportation.

(a) 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 POMC 20.180.004(2).

(b) 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:

(i) A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;

(ii) 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;

(iii) Calculation of the available capacity for the proposed development;

(iv) 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;

(v) Comparison of available capacity with proposed development impacts.

(c) 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.

(3) Water.

(a) In performing the capacity evaluation for water, and to prepare the water CRC, the director shall determine whether a proposed development can be accommodated within the existing or planned capacity of the city's water system. This shall involve the following:

(i) A determination of anticipated total capacity at the time the proposed impacts of development occur;

(ii) 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;

(iii) Calculation of the available capacity for the proposed development;

(iv) Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation provided by the applicant; and

(v) Comparison of available capacity with proposed development impacts.

(b) The director shall determine if the capacity of the city's water facility, less the capacity which is reserved, can be provided while remaining within the city's permitted water rights for withdrawal volume, and if so, shall provide the applicant with a water CRC.

(4) Sewer.

(a) In performing the capacity evaluation for sewer, and to prepare the sewer CRC determination, the director shall determine whether a proposed development can be accommodated within the existing or planned capacity of the city's sewer system. This shall involve the following:

(i) A determination of the anticipated total capacity at the time the proposed impacts of development occur;

(ii) 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;

(iii) Calculation of the available capacity for the proposed development;

(iv) Calculation of the impact on the available capacity for the proposed development, minus the effects of any mitigation provided by the applicant; and

(v) Comparison of available capacity with proposed development impacts.

(b) The director shall determine if the capacity in the city's wastewater treatment plant, less the capacity which is reserved, can be provided while remaining within the city's NPDES permit for discharge volumes and levels, and if so, shall provide the applicant with a sewer CRC.

(5) Lack of Concurrency.

(a) 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:

(i) Appeal the denial in accordance with POMC 20.180.021; or

(ii) 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 be in accordance with POMC 20.180.025; or

(iii) 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 reapply for capacity reservation certificate. Reapplication shall require repayment of the traffic report preparation fee in accordance with POMC 20.180.011(2)(b); or

(iv) Withdraw the CRC application.

(b) Water and Sewer. If the director determines that there is no capacity available in the city's water system to provide water and/or capacity in the city's wastewater treatment plant for a proposed project, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, the director shall deny the water and/or sewer CRC. The city has the discretion to deny the underlying development application for lack of potable water, depending on the applicant's ability to provide water for the proposed project from another source.

20.180.014 Purpose of capacity reservation certificate.

(1) A transportation CRC is a determination by the director that: (a) 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 (b) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six years. Upon issuance of a transportation CRC, the director will reserve transportation facility capacity for this application until the expiration of the underlying development permit or as otherwise provided in POMC 20.180.020. 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.

(2) A water CRC is a determination by the director that: (a) the proposed development identified in the CRC application does not exceed the city's existing water rights or the limits of any state-issued permit, or (b) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies prior to the submittal of complete building permit applications. Upon issuance of a water CRC, the director will reserve water capacity for the application until the expiration of the underlying development permit or as otherwise provided in POMC 20.180.020.

(3) A sewer CRC is a determination by the director that: (a) the proposed development identified in the CRC application does not exceed the city's existing NPDES permit limits or the existing capacity in the city's wastewater treatment plant, or (b) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies prior to the submittal of complete building permit applications. Upon issuance of a sewer CRC, the director will reserve sewer capacity for the application until the expiration of the underlying development permit.

(4) The factors affecting available water or sewer capacity or availability may, in some instances, lie outside the city's control. The city's adoption of this chapter relating to the manner in which the city will make its best attempt to allocate water or sewer capacity or availability does not create a duty in the city to provide water or sewer service to the public or any individual, regardless of whether a water or sewer CRC has issued. Every water availability certificate and water and sewer CRC shall state on its face that it is not a guarantee that water and/or sewer will be available to serve the proposed project.

20.180.015 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.

20.180.016 Use of reserved capacity.

When a CRC and a development permit issue 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.

20.180.017 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.

20.180.018 Denial letter.

If the director determines that there is a lack of capacity 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:

(1) For Roads.

(a) An estimate of the level of the deficiency on the transportation facilities; and

(b) The city may also include options available to the applicant such as the applicant's agreement to construct the necessary facilities at the applicant's cost.

(2) For Water.

(a) The options available to the applicant, such as private water supplies or other water purveyor services; and

(b) The city may also include options available to the applicant such as the applicant's agreement to construct the necessary facilities at the applicant's cost.

(3) For Sewer. The city may include the options available to the applicant such as a temporary septic system (if allowed by law) which the applicant would agree in a development agreement to install and remove at his/her own cost when sewer capacity became available.

(4) For All. A statement that the denial letter may be appealed pursuant to the procedures in POMC 20.180.020.

20.180.019 Notice of capacity reservation certificate or capacity evaluation.

Notice of the capacity reservation certificate or capacity evaluation 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 application or legislative action, 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).

20.180.020 Expiration of CRC and extensions of time.

(1) 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.

(2) 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 expiration of the transportation CRC or any subsequent extension.

(3) Extensions for Water or Sewer. The city shall not extend any water or sewer CRC. If the developer submits an application for an extension of the underlying permit, the applicant shall submit a new application for a concurrency determination for water or sewer under this chapter.

(4) If a CRC has been granted for a rezone or comprehensive plan amendment under POMC 20.180.006, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates.

20.180.021 Appeals.

(1) A denial letter may be appealed if the appeal is submitted to the public works director within 10 business days after issuance of the denial letter. The appeal must conform to the requirements in POMC 20.24. The denial letter must also be filed 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 city's final decision on the appeal of the denial letter.

(2) 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 14 days after the meeting, the director shall issue a written decision, which will list all of the materials he or she considered in making the decision. The director's decision shall either affirm, modify 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 director's decision shall be incorporated into the city's SEPA threshold decision on the application.

(d) The director's decision shall state that it may be appealed with any appeal of the underlying application or activity.

20.180.022 Concurrency administration and procedure.

(1) "Capacity" refers to the ability or availability of water in the city's water system. "Capacity" refers to the ability to treat effluent in the city's wastewater treatment plant to the levels and volume limits in the city's NPDES permit. "Capacity" also 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 city's water or sewer system or road facilities.

(2) There are two capacity accounts to be utilized by the director in the implementation of this chapter for water, sewer and transportation. These accounts are:

(a) The available capacity account; and

(b) 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.

20.180.023 Annual reporting and monitoring.

(1) The director is responsible for completion of annual transportation, water and sewer capacity availability reports. These reports shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity for road, sewer and water facilities. The evaluations shall report on capacity used for the previous period and capacity available for the six-year capital facilities and utilities element of the city’s comprehensive plan, six-year transportation plan for road facilities, based on LOS standards, and the sewer and water comprehensive plans. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, water rights, annual water withdrawal volumes, limits of the NPDES permit, public road facility inventories, and revenue projections, and shall, at a minimum, include:

- (a) A summary of development activity;
- (b) The status of each capacity account;
- (c) The six-year transportation plan;
- (d) Actual capacity of selected street segments and intersections and current LOS;
- (e) Recommendations on amendments to CIP and TIP and annual budget, to LOS standards, or other amendments to the transportation element of or to the comprehensive plan;
- (f) Existing water rights and annual withdrawal volumes; and
- (g) Limits in the city’s NPDES permit and finding of available capacity in the city’s wastewater treatment plant.

(2) 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.

(3) 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, utilities and/or water element of the comprehensive plan, and comprehensive plan. The director shall also report on the status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

20.180.024 Road LOS monitoring and modeling.

(1) The city shall monitor level of service standards through an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.

(2) A new trip allocation shall be assigned for each traffic analysis zone, based on the results from the traffic demand model used by the city, to ensure that the city is achieving the adopted LOS standards described in this chapter and the transportation element of the comprehensive plan.

(3) Amendments to the trip allocation program that exceed the total aggregate annual trip allocation per zone for any given year shall require an amendment to the comprehensive plan. Monitoring and modeling shall be required and must include anticipated capital improvements, growth projections, and all reserved and available capacity.

20.180.025 Traffic impact analysis scope and standardized format.

Attached to the ordinance codified in this chapter and incorporated herein by this reference are instructions for scoping a traffic impact analysis and standardized format required for the developer's independent traffic impact analysis. The impact analysis may be completed at the time of submittal of the original application or upon denial of a transportation CRC application.

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Please note that RCW 36.70A.070(6)(b) was amended, and the following is effective September 1, 2016: "If the collection of impact fees is delayed under RCW 82.02.050(3), the six year period required by this subsection (6)(b) must begin after full payment of all impact fees is due the county or city."

Chapter 20.182

IMPACT FEES

Sections:

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- 20.182.020 Applicability and definitions.**
- 20.182.030 Geographic scope.**
- 20.182.040 Imposition of impact fees.**
- 20.182.050 Approval of development.**
- 20.182.060 Fee schedules and establishment of service area.**
- 20.182.070 Calculation of impact fees.**
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- 20.182.180 Park and transportation facility requirements in adjoining municipalities/districts.**
- 20.182.190 Necessity of compliance.**

20.182.010 Authority and purpose.

(1) This chapter is enacted pursuant to the city's police powers, the Growth Management Act (Chapter 36.70A RCW), the impact fee statutes (RCW 82.02.050 through 82.02.100), the State Subdivision Act (Chapter 58.17 RCW) and the State Environmental Policy Act (SEPA, Chapter 43.21C RCW).

(2) The purpose of this chapter is to:

(a) Develop a program consistent with the city's parks, open space and recreation plan, six-year road plan and the city's comprehensive plan (parks and transportation elements) and capital improvement plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the city;

(b) Develop a program for financing of school facilities consistent with the capital improvement plan of the school district, as such public facilities are necessitated in whole or in part by development in the city;

(c) Ensure adequate levels of service in public facilities within the city and school district;

- (d) Create a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of off-site park, school and transportation facilities reasonably related to new development, in order to maintain adopted levels of park service, maintain adopted levels of service in the city's transportation facilities, and to ensure the availability of adequate school facilities at the time of new development;
- (e) Ensure that the city pays its fair share of the capital costs of parks and transportation facilities necessitated by public use of the parks and roadway system, and ensure that the school district pays its fair share of the capital costs of school facilities; and
- (f) Ensure fair collection and administration of such impact fees.

20.182.020 Applicability and definitions.

(1) Chapter 20.180 POMC includes the definitions for this chapter and Chapter 20.180 POMC on concurrency management. The requirements of this chapter apply to all development in the city as "development" or "development activity" is defined in POMC 20.180.

(2) Mitigation of impacts on parks and transportation facilities located in jurisdictions outside the city will be required when:

(a) The other affected jurisdiction has reviewed the development's impact under its adopted impact fee/mitigation regulations and has recommended to the city that there be a requirement to mitigate that impact; and

(b) There is an interlocal agreement between the city and the affected jurisdiction specifically addressing impact identification and mitigation.

20.182.030 Geographic scope.

The boundaries within which transportation and park impact fees shall be charged and collected are the same as the corporate city limits. The boundaries within which school impact fees shall be charged and collected are the same as the boundaries of the South Kitsap School District No. 402 lying within the corporate city limits. All unincorporated areas annexed to the city on and after the effective date of the ordinance codified in this chapter shall be subject to the provisions of this chapter. After the adoption of interlocal agreements with other local and regional governments, the geographic boundaries may be expanded consistent therewith.

20.182.040 Imposition of impact fees.

(1) The city is hereby authorized to impose impact fees on new development.

(2) Impact fees may be required pursuant to the impact fee schedule adopted through the process described herein, or mitigation may be provided through:

(a) The purchase, installation and/or improvement of park, school and transportation facilities pursuant to POMC 20.182.080; or

(b) The dedication of land pursuant to POMC 20.182.080.

(3) Impact fees:

(a) Shall only be imposed for park, school and transportation facilities that are reasonably related to new development;

(b) Shall not exceed a proportionate share of the costs of park, school and transportation facilities that are reasonably related to new development;

(c) Shall be used for park, school and transportation facilities that will reasonably benefit the new development;

(d) Shall not be used to correct existing deficiencies;

(e) Shall not be imposed to mitigate the same off-site park, school and transportation facility impacts that are being mitigated pursuant to any other law;

(f) Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an interlocal agreement to collect such fees has been executed between the state/county and the city;

(g) Shall not be collected for improvements to park and transportation facilities in other municipalities unless the affected municipality requests that such impact fees be collected on behalf of the affected municipality, and an interlocal agreement has been executed between the city and the affected municipality for the collection of such fees;

(h) Shall be collected only once for each development, unless changes or modifications to the development are proposed which result in greater direct impacts on park, school and/or transportation facilities than were considered when the development was first permitted;

(i) May be imposed for system improvement costs previously incurred by the city and school district, to the extent that new growth and development will be served by previously constructed improvements; and provided, that such fee shall not be imposed to make up for any system improvement deficiencies; and

(j) Shall only be imposed for park and school facilities on residential development.

20.182.050 Approval of development.

Prior to approving or permitting a development or development permit, the approving authority shall consult with the director and the superintendent of the school district concerning mitigation of a development's impacts and impact fees.

20.182.060 Fee schedules and establishment of service area.

- (1) Impact fee schedules setting forth the amount of the impact fees to be paid by developers are listed in the appendices attached to the ordinance adopting this chapter, and incorporated herein by this reference. The road or transportation impact fee schedule is in Appendix A, park impact fees are in Appendix B and school impact fees are in Appendix C.
- (2) For the purpose of road and park impact fees, the entire city shall be considered one service area.
- (3) For the purpose of school impact fees, the entire boundary of the school district shall be considered one service area.

20.182.070 Calculation of impact fees.

- (1) Director Calculates the Fees. The director shall calculate the impact fees set forth in Appendices A and B. The superintendent of the school district shall calculate the school impact fees set forth in Appendix C. The city council shall have the final decision on the calculation of the impact fees to be imposed under this chapter as set forth in Appendices A and B.
- (2) Factors Used in Impact Fee Calculations. The calculation of impact fees shall include the factors identified in RCW 82.02.040 through 82.02.070 and shall:
 - (a) Determine the standard fee for similar types of development, which shall be reasonably related to each development's proportionate share of the cost of projects described in the project list for each type of impact fee.
 - (b) Reduce the proportionate share by applying the benefit factors described in POMC 20.182.080.
- (3) Proportionate Share. In calculating proportionate share, the following factors shall be considered:
 - (a) Identification of all park, school and transportation facilities that will be impacted by users from development;
 - (b) Identification of the point at which the capacity of a park, school or transportation facility has been fully utilized;
 - (c) Updating of the data as often as practicable, but at least annually;
 - (d) Estimation of the cost of construction of the projects in the project list (see POMC 20.182.120) for roads at the time they are placed on the list; the cost of maintaining the city's level of park service as shown on Appendix B; and the costs relating to the construction of school facilities, and to then update the cost estimates at least annually, considering the:
 - (i) Availability of other means of funding park, school and transportation facilities;
 - (ii) Cost of existing park, school and transportation facility improvements;

- (iii) Methods by which park, school and transportation facility improvements were financed; and
- (iv) An adjustment to the cost of the park, school and transportation facilities for past or future payments or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes or other payments earmarked for or proratable to the particular system improvement.

20.182.080 Credits.

(1) Credit Allowed. The director, or, in the case of school impact fees, the superintendent, shall reduce the calculated proportionate share for a particular development by giving credit for the benefit factors described in this section.

(2) Procedure for Obtaining Credit, Time to Request Credit. Requests for credits against impact fees will not be considered unless the developer makes the request in writing, concurrent with the submission of the application for the underlying development permit triggering the impact fee.

(3) Benefit Factors. The director and/or superintendent will consider the following benefit factors when determining whether an impact fee credit is appropriate:

(a) Developer's dedication of land and/or construction of system improvements. The value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities required by the city that are identified in the capital facilities plan and that are required by the city as a condition of approving the development activity, as long as the following conditions are satisfied. For school impact fees, the superintendent shall consider the value of any dedication of land provided by the developer identified in the school district's capital facilities plan as long as the following conditions are satisfied to the extent applicable:

(i) The system improvements are located on land owned by the city; and

(ii) A designated public owner is responsible for permanent, continuing maintenance and operation of the system improvements; and

(iii) The director determines that the system improvements correspond to the type(s) of park and transportation system improvements that are reasonably related to the development as determined pursuant to this chapter;

(iv) The director determines, after consultation with the school district, as applicable, and after an analysis of supply and demand data, the parks, open space and recreation plan, the six-year road plan and the adopted park and transportation plan, that the proposed park and transportation system improvements better meet the city's need for park and transportation system improvements than would payment of funds to mitigate the park and transportation impacts of the development;

(v) In the determination of credit toward the impact fee, the director or the superintendent shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:

- (A) The land should result in an integral element of the city park/road system;
 - (B) The land is suitable for future park, school and/or transportation facilities;
 - (C) The land is of appropriate size and of an acceptable configuration;
 - (D) The land has public access via a public street or an easement of an equivalent width and accessibility;
 - (E) The land is located in or near areas designated by the city or county on land use plans for park, trail or recreational purposes, or, in the case of schools, is appropriately located for school facilities;
 - (F) The land provides linkage between county and/or other publicly owned recreation and transportation properties;
 - (G) The land has been surveyed or adequately marked with survey monuments, or is otherwise readily distinguishable from adjacent privately owned property;
 - (H) The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage erosion or flooding problems which the director or superintendent determines would cause inordinate demands on public resources for maintenance and operation;
 - (I) The land has no known safety hazards;
 - (J) The developer is able to provide documentation, as nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title;
 - (K) The developer is able to provide and fund a long-term method, acceptable to the director or superintendent, for the management and maintenance of the land, if applicable.
- (4) Requirement for System Improvement Plan by City. When the director has agreed to a developer's proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park and/or transportation facilities, the developer shall prepare and submit a system improvement plan to the director for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.
- (5) Statutory Benefit Factors. The director or superintendent may consider any applicable benefit factors, as described in RCW 82.02.060 (as it now exists or may hereafter be amended), that are demonstrated by the applicant not to be included in the calculation of the impact fee.
- (6) Amount of Credit. The credit against the impact fee shall be equal to the fair market value of the purchased/dedicated property or equal to the cost of the completed system improvements. In those situations in which a developer has not yet installed or constructed system improvements and requests a credit for the system improvement(s), the city engineer shall estimate the cost of the system improvements, which shall be the credit allowed to the developer in the decision on the amount of the impact fee. If a credit is granted for a system improvement that has not been constructed, the developer shall pay the full impact fee without the credit, at the time established in POMC 20.182.110. After

construction and/or installation of the system improvement, the developer may request the credit granted by the city engineer under this subsection, and the city shall refund the difference of the impact fee to reflect the credit; provided, that if the city and the property owner have entered into a development agreement on or before the effective date of the ordinance codified in this section, and the agreement requires the construction of such improvements, the city may allow a credit to be subtracted from the impact fee paid at the time established in POMC 20.182.110.

(7) PRDs, PUDs and Mobile Home Parks. A developer of a planned residential development, a planned unit development, or a mobile home park may receive credit only for park, school and transportation facilities provided in addition to those normally required under SEPA for such developments, pursuant to the city's SEPA ordinance (Chapter 20.160 POMC).

(8) Credit to Apply Proportionately to Units. The amount of credit determined pursuant to this section shall be credited proportionately among all the units in the development, and the impact fee for each unit for which a permit or approval is applied shall be reduced accordingly.

(9) Limits on Credit Requests. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development. Credit to be paid back by the city or the school district to a developer under this section shall not exceed the total amount of the impact fees paid by the developer.

(10) Local Improvement Districts. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related system improvements identified by the director as increasing transportation system capacity.

(11) Appeals of Credits. The director or superintendent shall issue a written decision on the developer's request for a credit of the impact fee calculation, which shall explain why the credit was granted or denied. The developer may request reconsideration and appeal the impact fee amount and credit pursuant to POMC 20.182.160. If the procedures in POMC 20.182.160 are not timely followed to request an appeal of the credit, the director or superintendent's decision on the impact fee credit shall be final.

20.182.090 Variation from impact fee schedule.

With respect to the transportation or park impact fee, if a developer submits information demonstrating a significant difference between the age, social activity or interest characteristics of the population of a proposed subdivision or development and the data used to calculate the impact fee schedule, the director may allow a special calculation of the impact fee requirements for the subdivision or development to be prepared by the developer's consultant, at the developer's cost; provided, that: the director shall have prior approval of the qualifications and methodology of the developer's consultant in making such calculation, and any time period mandated by statute or ordinance for the approving authority's final decision on the development shall not include the time spent in preparing the special calculation. Whether the director accepts the data provided by the special calculation shall be at the discretion of the director.

With respect to a school impact fee, if a developer submits evidence demonstrating that a development has obtained approval of an age-restricted development in accordance with applicable federal regulations or that a development has recorded a covenant against the development prohibiting occupancy of the development by a population who are not eligible to attend schools within the school district, the superintendent may allow a special calculation of the impact fee requirement for the development at the discretion of the superintendent of the school district.

20.182.100 Payment of fees.

(1) All applicants for development shall pay an impact fee in accordance with the provisions of this chapter which shall be calculated by the city or school district at the time that the building permit is ready for issuance. Applicants/developers may choose to pay impact fees or a portion thereof prior to the city's issuance of a building permit, but if the early payment is less than the fee calculated at the time the building permit is ready for issuance, the applicant/developer shall pay the difference. If the early payment is more than the fee calculated at the time the building permit is ready for issuance, the city or school district shall refund the difference.

(2) The impact fee shall be recalculated if the development is modified or conditioned in such a way as to alter park, school or transportation impacts for the development.

(3) A developer may obtain a preliminary determination of the impact fee before submitting an application for the development permit by providing the director or superintendent with the information needed for processing together with the applicable fee. Such determinations are provided to the developer as estimates only, and they are not binding on the city, given the limited information needed to calculate the preliminary impact fee amount and the fact that the city or school district annually updates the project list and impact fee schedule. In addition, impact fees are not subject to the vested rights doctrine, and the fee actually paid by the developer will be the impact fee in effect at the time of building permit issuance, regardless of any preliminary determinations.

20.182.110 Time of payment of impact fees.

(1) Payment of any required impact fees shall be made as a condition of the issuance of a building permit, except as provided in subsection (4) of this section. School impact fees shall be paid to the school district, and the developer shall present the receipt or proof of payment from the school district to the city for issuance of the building permit.

(2) Impact fees may be paid under protest in order to obtain the necessary permits/approvals until an appeal of the fee amount is finally resolved.

(3) When a subdivision or development is conditioned upon the dedication of land, or the purchase, installation or improvement of park and/or transportation facilities, a final plat or short plat shall not be recorded, and a building permit within such plat or development shall not be issued until:

(a) The director has determined in writing that the land to be dedicated is shown on the face of the final plat or short plat, or a deed conveying the land to the city, the school district or special purpose district, as appropriate, has been recorded with the county auditor; and

(b) The director has determined in writing, after consultation with the designated public owner responsible for permanent, continuing maintenance and operation of the facilities that the developer has satisfactorily undertaken or guaranteed to undertake in a manner acceptable to the director or superintendent, any required purchase, installation or improvement of school, park or transportation facilities.

(4) Deferral of Payment of Impact Fees. Payment of impact fees for single-family attached or single-family detached residential dwelling units may be deferred only until issuance of certificate of occupancy or equivalent certification, pursuant to RCW 82.02.050(3), subject to the following provisions:

(a) Each applicant, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this section for the first 20 single-family residential construction building permits per city. Any single-family residential building construction permits beyond 20 for the same applicant are subject to payment of impact fees at the time of building permit issuance as required by subsection (1) of this section.

(b) A request for deferral must be submitted prior to issuance of a building permit.

(c) Application for deferral must be made on a form provided by and acceptable to the city and must include the following information and fees:

(i) Name, address, telephone number and e-mail address of the applicant.

(ii) The specific address, legal description and tax identification number of the single-family dwelling for which deferral is being requested.

(iii) The building permit application number associated with the requested deferral.

(iv) The registration number or other unique identification number for the contractor that will be building the structure.

(v) A statement by the contractor describing how many deferrals have been granted during the current year for said contractor, describing how many have been requested during the current year, and attesting that the number provided and/or requested is less than 20 for the current calendar year.

(vi) Applicable fees for processing the application and for future monitoring of the deferred payment of impact fees are required in addition to fees required by this chapter. Deferral application fees shall include:

(A) Minimum of four hours base administration fee, at the hourly staff rate required by the development fee schedule adopted in the city's fee resolution, and payable at the time of application submittal.

(B) Minimum of four hours administration fee at the current hourly staff rate to cover additional time spent processing of final payment of impact fees, including but not limited to preparation of lien release documents, payable before the lien release document shall be released to the applicant.

(d) No more than one single-family dwelling may be included on a single application for impact fee deferral.

(e) Impact fees shall be calculated on the fees in place at the time that the applicant applies for a deferral.

(f) Impact fees deferred under this section are due no later than the following events, whichever occur first:

(i) Issuance of certificate of occupancy or equivalent certification for the single-family dwelling; or

(ii) Eighteen months from the date of the building permit issuance.

(g) An applicant seeking a deferral under this subsection must grant and record a deferred impact fee lien against the property in favor of the city of Port Orchard. The deferred impact fee lien must include the legal description, tax account number, and address of the property, and must also be:

(i) In a form approved by the city attorney which ensures that it is binding on all successors on the title to the property after recordation;

(ii) Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded with the Kitsap County auditor's office; and

(iii) Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(h) The city may withhold a certificate of occupancy or equivalent certification until the impact fees are paid in full. Upon receipt of final payment of all deferred impact fees for a property, and upon payment of all applicable administration fees in the city's fee resolution, the city must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at his or her expense, is responsible for recording the lien release.

(i) Foreclosure Proceedings. If impact fees are not paid in accordance with a deferral authorized by this section, the city may institute proceedings to enforce the lien in accordance with Chapter 61.12 RCW.

(j) Obligation to Pay. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of issuance of certificate of occupancy or equivalent certification.

(k) Deferral Process Not Subject to Review Proceedings. Per RCW 36.70B.140(2), the processing of an impact fee deferral application is not subject to the project permit review requirements of Chapter 36.70B RCW.

20.182.120 Project list.

(1) The director shall annually review the city's parks, open space and recreation plan, the six-year road plan and the projects listed in Appendices A and B and shall:

(a) Identify each project in the comprehensive plan that is growth-related and the proportion of each such project that is growth-related;

(b) Forecast the total money available from taxes and other public sources for park and transportation improvements for the next six years;

(c) Update the population, building activity and demand and supply data for park and transportation facilities and the impact fee schedule for the next six-year period;

(d) Calculate the amount of impact fees already paid;

(e) Identify those comprehensive plan projects that have been or are being built but whose performance capacity has not been fully utilized.

(2) The director shall use this information to prepare an annual draft amendment to the fee schedule in Appendices A and B, which shall comprise:

(a) The projects in the comprehensive plan that are growth-related and that should be funded with forecast public monies and the impact fees already paid; and

(b) The projects already built or funded pursuant to this chapter whose performance capacity has not been fully utilized.

(3) The city council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall, by separate ordinance, establish the annual project list by adopting, with or without modification, the director's draft amendment.

(4) Once a project is integrated into the Fee Schedule in Appendices A and B, a fee shall be imposed on every development until the project is removed from the project list by one of the following means:

(a) The city council by ordinance removes the project from the project list and Appendix A and/or B, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to the park and transportation impacts of development that have paid an impact fee; provided, that a refund shall not be necessary if the council transfers the fees to the budget of another project that the council determines will mitigate essentially the same park and transportation impacts;
or

(b) The capacity created by the project has been fully utilized, in which case the director shall remove the project from the project list.

(5) The school district shall annually review and update its capital facilities portion of the city's comprehensive plan and submit such updated plan to the city by July 1st of each year. The school

district's updated capital facilities plan shall identify projects that are growth-related, include the amount of school impact fees paid, calculate the impact fees as required by RCW 82.02.050 through 82.02.090, and may include a proposed school impact fee schedule adjustment to Appendix C, for adoption by the city council.

20.182.130 Funding of projects.

(1) An impact fee fund is hereby created for parks and transportation fees. Separate accounts shall be established for each fee type. The school district shall be responsible for the creation of its own impact fee fund and shall be solely responsible for the deposit of fees in such fund, and the calculation/use/refund of such fees. The director shall be the manager of the city's fund. The city shall place park and transportation impact fees in appropriate deposit accounts within the impact fee fund.

(2) The parks and transportation impact fees paid to the city shall be held and disbursed as follows:

(a) The fees collected for each project shall be placed in a deposit account within the impact fee fund, with the exception of school impact fees, which shall be collected by the school district;

(b) When the council appropriates capital improvement project (CIP) funds for a park or transportation project on the project list, the park or transportation fees held in the impact fee fund shall be transferred to the CIP fund. The nonimpact fee monies appropriated for the project shall comprise both the public share of the project cost and an advancement of that portion of the private share that has not yet been collected in park or transportation impact fees;

(c) The first money spent by the director on a project after a council appropriation shall be deemed to be the fees from the impact fee fund;

(d) Fees collected after a project has been fully funded by means of one or more council appropriations shall constitute reimbursement to the city of the funds advanced for the private share of the project. The public monies made available by such reimbursement shall be used to pay the public share of other projects;

(e) All interest earned on impact fees paid shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed.

(3) Projects shall be funded by a balance between impact fees and public funds, and shall not be funded solely by impact fees.

(4) Impact fees shall be expended or encumbered for a permissible use for 10 years after receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than 10 years. The director may recommend to the council that the city hold park or transportation fees beyond 10 years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the council. The superintendent of the school district shall prepare written findings evidencing such extraordinary or compelling reason for fees to be held longer than 10 years which findings shall be approved by the board of directors of the school district.

(5) The school district and the director shall prepare an annual report on the impact fee accounts showing the source and amount of all monies collected, earned or received and system improvements that were financed in whole or in part by impact fees. The school district shall be responsible for compliance with RCW 82.02.070.

20.182.140 Use and disposition of dedicated land.

All land dedicated or conveyed pursuant to this chapter shall be set aside for development of park, school and transportation facilities. The city or the school district to which land is dedicated or conveyed pursuant to this chapter shall make every effort to use, develop and maintain land dedicated or conveyed for park, school and transportation facilities. In the event that use of any such dedicated land is determined by the director or superintendent to be infeasible for development of park, school or transportation facilities, the dedicated land may be sold or traded for another parcel of land. The proceeds from such a sale shall be used to acquire land or develop park, school or transportation facilities.

20.182.150 Refunds.

(1) A developer may request and shall receive a refund from either the city (for parks and transportation impact fees) or the school district (for school impact fees) when the developer does not proceed with the development activity for which impact fees were paid, and the developer shows that no impact has resulted.

(2) If the city or school district fails to expend or encumber the impact fees within 10 years of the date the fees were paid or the date established by the findings adopted under POMC 20.182.130(4) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The city or school district shall notify potential claimants by first class mail, deposited with the U.S. Postal Service at the last known address of claimants. The request for a refund must be submitted to the city or school district in writing within one year of the date the right to claim the refund arises or the date notice is given, whichever is later. Any impact fees that are not expended within these time limitations and for which no application for refund has been made within the one-year period shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this section shall include interest earned on the impact fees. The school district shall be responsible for compliance with this section and RCW 82.02.080 for school impact fees.

(3) In the event that impact fees are refunded for any reason, they shall be refunded by the city with respect to park and transportation fees (and the school district with respect to school impact fees) and shall be returned with interest earned to the owners as they appear of record with the county assessor at the time of the refund.

(4) When the city seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the city shall place notice of such termination and the availability of

refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, or, if applicable, the school district, but must be expended on a project under the adopted plans of the city or school district. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated. The school district shall be responsible for compliance with this section for school impact fees under RCW 82.02.080.

20.182.160 Appeals.

(1) Decision of the Director or Superintendent, Reconsideration and Appeals. The director or the superintendent shall issue a written decision on the parks, school and/or transportation impact fee amount as described in this chapter. Because RCW 82.02.070(5) allows the appeal of an impact fee determination to be handled separately from the processing of the underlying permit application, this procedure is exempt from the permit processing requirements in POMC Title 23 (pursuant to RCW 36.70B.140).

(a) Director's Decision.

(i) Request for Reconsideration. In order to request reconsideration of the director's decision, the developer shall make a written request to the director for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall include the city's administrative fee, shall state in detail the grounds for the request, and shall be filed with the director within 15 days after issuance of the director's decision on the impact fees. At this meeting, the director shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The director shall issue a written decision on reconsideration within 10 working days of the director's receipt of the request for reconsideration or the meeting with the developer, whichever is later.

(ii) Appeal. A developer may appeal the amount of the impact fee established in the decision on reconsideration of the director to the hearing examiner. This appeal must be filed with the city planning department within 14 days of issuance of the decision on reconsideration. The hearing on the appeal of the decision on reconsideration shall be consolidated with the processing of the underlying permit application, if at all possible. An appeal of the decision on reconsideration may be filed even though there is no appeal of the underlying permit. The hearing examiner shall conduct an open record hearing on the appeal of the decision on reconsideration, and if it is not consolidated with the underlying permit, the examiner's decision shall issue within 10 working days of the hearing (unless a longer period is agreed to by the developer).

(b) Superintendent's Decision.

(i) Request for Reconsideration. In order to request reconsideration of the superintendent's decision, the developer shall make a written request to the superintendent for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall include the administrative fee, state in detail the grounds for the request, and shall be filed with the

superintendent within 15 days after issuance of the superintendent's decision on the impact fees. At this meeting, the superintendent shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The superintendent shall issue a written decision on reconsideration within 10 working days of the superintendent's receipt of the request for reconsideration or the meeting with the developer, whichever is later.

(ii) Appeal. A developer may appeal the amount of the impact fee established in the decision on reconsideration of the superintendent to the hearing examiner chosen by the district. This appeal must be filed with the superintendent within 14 days of issuance of the decision on reconsideration. The hearing on the appeal of the decision on reconsideration shall not be consolidated with the processing of the underlying permit application. An appeal of the decision on reconsideration may be filed even though there is no appeal of the underlying permit. The hearing examiner shall conduct an open record hearing on the appeal of the decision on reconsideration and issue a decision within 10 working days of the hearing (unless a longer period is agreed to by the developer).

(2) Burden of Proof in Appeals. In an appeal of the decision of the director or superintendent on reconsideration, the developer shall bear the burden of proving:

(a) That the director or superintendent committed error in calculating the developer's proportionate share, as determined by an individual fee calculation, or if relevant, as set forth in the impact fee schedule, or in granting credit for the benefit factors; or

(b) That the director or superintendent based their determination upon incorrect data.

(3) Appeals of Hearing Examiner's Decision.

(a) Appeals from the decision of the school district's hearing examiner on the superintendent's decision on reconsideration shall be to superior court as provided in Chapter 36.70C RCW.

(b) Appeals from the decision of the hearing examiner on the director's decision on reconsideration shall follow the process for the underlying permit (i.e., if the city's code provides that the hearing examiner's decision is a recommendation to the city council, then the city council shall make the final decision; or if the city's code provides that the hearing examiner's decision is final, then the hearing examiner's decision may be appealed to superior court as provided in Chapter 36.70C RCW).

20.182.170 Relationship to SEPA.

(1) As provided in RCW 82.02.100, a person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under this chapter for the same system improvements.

(2) Nothing in this chapter shall be construed to limit the city's authority to deny development permits when a proposal would result in probable significant adverse impacts identified in an environmental impact statement and reasonable mitigation measures are insufficient to mitigate the identified impact.

20.182.180 Park and transportation facility requirements in adjoining municipalities/districts.

Level of service requirements and demand standards different than those provided in the city's comprehensive park plan shall be applied to park and recreation facility impacts in adjoining municipalities/districts if such different standards are provided in an interlocal agreement between the city and the affected municipality. Otherwise, the standards contained in the city's comprehensive plan shall apply to park and transportation impacts in adjoining jurisdictions.

20.182.190 Necessity of compliance.

A development permit issued after the effective date of the ordinance codified in this chapter shall be null and void if issued without substantial compliance with this chapter by the director, the department and the approving authority.

PLACEHOLDER CHAPTER 20.184 SCHOOL IMPACT FEES