

Chapter 14.295

TRAFFIC IMPACT FEES AND MITIGATION

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14.295.010 Findings.

The City Council finds as follows:

A. The acquisition, construction, and improvement of streets to serve new developments in the City of Snohomish is a major burden upon City government; the City is experiencing a rapid, large-scale increase in intensity of land use and in population growth; rapid growth creates

large "front-end" demands for City services, including streets, and causes increased street usage; existing and projected City funds are not adequate to meet the public's projected street needs; failure to ensure that street improvements are made as traffic increases cause severe safety problems, impedes commerce, and interferes with the comfort and repose of the public; and the provisions of this Chapter are necessary to preserve the State Legislature's intent that the City, in the exercise of reasonable discretion, retains ultimate responsibility for City services and the City's financial integrity.

- B. The City has the power under existing law to condition development and require street improvements reasonably related to the traffic impact of a proposed development, and it is appropriate and desirable to set out in this Chapter what will be required of developments and to establish a uniform method of treatment for similar development impacts on the City street system.
- C. The Growth Management Act (GMA), RCW 36.70A.070(6)(b), requires that "local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level-of-service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development" and that: "For the purposes of this subsection (6) 'concurrent with development' shall mean that 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."

- D. This Chapter is consistent with and implements the City's Comprehensive Plan adopted pursuant to Chapter 36.70A RCW.
- E. The total benefits of certain transportation demand management measures in reducing marginal trips are projected to significantly outweigh the total costs.
- F. The regulations contained in this Chapter are necessary for the protection and preservation of the public health, safety and general welfare.

14.295.020 Declaration of Purpose.

- A. The purpose of this Chapter is to ensure that the public health, safety and welfare will be preserved by having safe and efficient streets serving new and existing developments by requiring development to mitigate traffic impacts, which may include a proportionate share payment reasonably related to the traffic impact of the proposed development and construction of street improvements and dedication of right-of-way reasonably necessary as a result of the direct traffic impact of proposed developments.
- B. Chapter 14.295 SMC is intended to ensure that City policy for the provision of safe and adequate access and the allocation of responsibility for immediate or future street improvements necessitated by new development is fairly and consistently applied to all developments.
- C. This Chapter requires the analysis and mitigation of a development's traffic impact on the City street system. In order to quantify the continuing need for street improvements on the City street system

anticipated by projected growth, the Public Works Department is authorized to develop and update the Transportation Facilities Plan based on and consistent with the Comprehensive Plan's Transportation Element. The Transportation Facilities Plan shall be used in evaluating the traffic impact of developments and determining necessary mitigation of such impacts.

14.295.030 Relationship to Environmental Impacts.

- A. The requirements of this Chapter, together with the Comprehensive Plan and the City's other development regulations and policies adopted pursuant thereto, shall constitute the policies of the City under the GMA and the State Environmental Policy Act, Ch. 43.21C RCW, (SEPA) for the review of development and the determination of significant adverse environmental impacts and imposition of mitigation requirements due to the impacts of development on the transportation system.
- B. Measures required by this Chapter shall constitute adequate mitigation of adverse or significant adverse environmental impacts on the street system for the purposes of SEPA, to the extent that the City determines the specific impacts of the development are adequately addressed by this Chapter in accordance with SEPA.
- C. In accordance with RCW 43.21C.065 and RCW 82.02.100, a person required to make a proportionate share mitigating payment under a SEPA payment program or pay a traffic impact fee under this Chapter shall be required to make a payment or pay a fee pursuant to either SEPA or the GMA, but not both, for the same system improvements.

14.295.040 Definitions.

- A. Approving authority. "Approving authority" means the City employee, agency or official having authority to issue the approval or permit for the development involved.
- B. Arterial unit. "Arterial unit" means a street, segment of a street, or portion of a street or a system of streets, including an intersection, consistent with the level-of-service methodology adopted in the City Comprehensive Plan and consistent with the criteria established by the Director, for the purpose of making level-of-service concurrency determinations.
- C. Arterial Unit in arrears. "Arterial unit in arrears" means any arterial unit operating below the adopted level-of-service standard adopted in the Comprehensive Plan, except where improvements to such a unit have been programmed in the City six-year Transportation Improvement Program adopted pursuant to RCW 36.81.121. with funding identified that would remedy the deficiency within six years.
- D. Capacity improvements. "Capacity improvements" means any improvements that increase the vehicle and/or people moving capacity of the street system.
- E. Comprehensive Plan. "Comprehensive Plan" means the generalized, coordinated land use policy statement of the City adopted pursuant to Chapter 36.70A RCW, which may include a land use plan, a capital facilities plan, a Transportation Element, subarea plans, and any such other documents or portions of documents identified as constituting part of the Comprehensive Plan under Chapter 36.70A RCW.
- F. Dedication. "Dedication" means conveyance of land to the City for street purposes by deed or some other instrument of conveyance or by dedication on a duly filed and recorded plat or short plat.
- G. Department. "Department" means the City of Snohomish Public Works Department.
- H. Developer. "Developer" means the person applying for or receiving a permit or approval for a development.
- I. Development. "Development" means all activities that require the following types of City permits or approvals: subdivisions, short subdivisions, industrial or commercial building permits, conditional use permits, recorded development plans, or building permits (including building permits for multi-family and duplex residential structures, and all similar uses), changes in occupancy and other applications pertaining to land uses; provided that "development" does not include building permits for single-family residential dwellings, attached or detached accessory apartments, or duplex conversions, on existing tax lots.
- J. Direct traffic impact. "Direct traffic impact" means any new vehicular trip added by new development to the City street system.
- K. Director. "Director" means the City of Snohomish Department of Public Works Director or his/her authorized designee.
- L. Frontage improvements. "Frontage improvements" means improvements on streets abutting a development and tapers thereto required as a result of a development. Generally, frontage improvements shall consist of appropriate

base materials, curb, gutter, sidewalk, storm drainage improvements, bus pullouts and waiting areas where necessary, bicycle lanes and bicycle paths where applicable, and lane improvements.

M. Highway capacity manual. "Highway capacity manual" means the Highway Capacity Manual, Special Report 209, Transportation Research Board, National Research Council, 1985, 2101 Constitution Avenue, Washington, D.C., amendments thereto, and any supplemental editions or documents published by the transportation research board adopted by the U.S. Department of Transportation, Federal Highway Administration.

N. Inadequate street condition. "Inadequate street condition" means any street condition, whether existing on the street system or created by a new development's access or impact on the street system, which jeopardizes the safety of street users, including no automotive users, as determined by the City engineer in accordance with the Department policy and procedure for the determination of inadequate street conditions.

O. Level-of-service. "Level-of-service" or "LOS" means a qualitative measure describing operational conditions within a traffic stream and the perception thereof by street users. Level-of-service standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, LOS A to F, with LOS A representing the best operating condition,

and LOS F the worst. For the purposes of this Chapter, level-of-service will be measured only on arterial units.

P. Offsite street or street improvement. "Offsite street or street improvement" means an improvement, except a frontage improvement, to an existing or proposed City street, which improvement is required or recommended in accordance with this Chapter.

Q. Public agency. "Public agency" means any school district, public water, sewer or utility district, fire district, airport district, public transportation benefit area, or local government agency, seeking a land use permit or approval reviewed under this Chapter.

R. Street. "Street" means an open, public way for the passage of vehicles, that where appropriate, may include pedestrian, equestrian and bicycle facilities. Limits include the outside edge of sidewalks, or curbs and gutters, paths, walkways, or side ditches, including the appertaining shoulder and all slopes, ditches, channels, waterways, and other features necessary for proper drainage and structural stability within the right-of-way or access easement.

S. Street system. "Street system" means those existing or proposed City streets within the transportation service area.

T. Transportation Element. "Transportation Element" means the element of the City's Comprehensive Plan that consists of transportation goals and policies, an inventory of transportation facilities and services, adopted level of service standards for the street system, an analysis of the street system's deficiencies and needs, prioritized street system

improvements and management strategies, and a multiyear financial plan, adopted pursuant to Ch. 36.70A RCW.

U. Transportation Facilities Plan. "Transportation Facilities Plan" means the City approved document containing the prioritized improvements and projects designated by the City to implement the six-year Transportation Improvement Program.

V. Transportation service area. "Transportation service area" means the entire geographic area of the City, as identified and utilized in the Transportation Element for the purpose of evaluating the transportation impacts of development, determining proportionate shares of needed transportation improvements, and allocating revenue to transportation improvement projects.

14.295.050 Street System Policy-General Provisions.

A. Applicability to development. Any application for approval of a permit for a development in the City of Snohomish is subject to the provisions of this Chapter.

- B. Director's recommendation: approval.
1. In approving or permitting a development, the approval authority shall consider the Director's recommendations and act in conformity with this Chapter.
 2. The Director shall only recommend approval of a development, if, in the Director's opinion, adequate provisions for City streets, access, and mitigation of the transportation impacts of the development are made

as provided in the City's development regulations, SEPA, and this Chapter.

3. The Director shall only recommend approval of a development if the development is deemed to be concurrent in accordance with this Chapter.

C. Excessive expenditure of public funds. If the location, nature, and/or timing of a proposed development necessitates the expenditure of public funds in excess of those currently available for the necessary street improvement or is inconsistent with priorities established to serve the general public benefit, and if provision has not otherwise been made to meet the mitigation requirements as provided in this Chapter, the City may refuse to approve or grant a permit for development. As an alternative, the City may allow the developer to alter the proposal so that the need for street improvement is lessened or may provide the developer with the option of bearing all or more than the development's proportionate share of the required street improvement costs.

D. Development mitigation obligations. Any application for approval of a permit for a development shall be reviewed to determine any requirements or mitigation obligations that may be applicable for the following:

1. Impact on street system capacity;
2. Impact on specific level-of-service deficiencies;
3. Impact on specific inadequate street condition locations;
4. Frontage improvements requirements;

5. Access and transportation system circulation requirements;
6. Dedication or deeding of right-of-way requirements;
7. Transportation demand management measures.

E. Street system capacity requirements.

The direct traffic impacts of any development on the capacity of all intersections, arterials and non-arterials in the street system identified as needing future capacity improvements in the currently adopted Transportation Element will be mitigated either by constructing street improvements which offset the traffic impact of the development or by paying the development's share of the cost of the future capacity improvements.

F. Level-of service standards.

1. As required by RCW 36.70A.070(6)(a), standards for levels of service on City arterials have been adopted by the City in the Comprehensive Plan. The Department will plan, program and construct transportation system capacity improvements for the purpose of maintaining these adopted level-of-service standards in order to facilitate new development that is consistent with the Comprehensive Plan.
2. In accordance with RCW 36.70A.070(6)(b), no development will be approved which would cause the level-of-service on any arterial unit or intersection to fall below the adopted level-of-service standards unless improvements are programmed and funding identified which would

remedy the deficiency within six years.

3. When the City Council determines that excessive expenditure of public funds is not warranted for the purpose of maintaining adopted level-of-service standards on an intersection or arterial unit, the City Council may designate by motion such intersection or arterial unit as being at ultimate capacity. Improvements needed to address operational and safety issues may be identified in conjunction with such ultimate capacity designation.

G. Inadequate pre-existing street condition.

1. Mitigation of impacts on inadequate pre-existing street conditions is required in order to improve inadequate streets in accordance with adopted standards, prior to dealing with the impacts of traffic from new development. If such inadequate conditions are found to be existing in the street system at the time of development application review and the development will put three or more p.m. peak-hour trips through the identified locations, the development may be approved only if provisions are made in accordance with this Chapter for improving the inadequate street conditions.
2. The Public Works Director shall make determinations of street inadequacy in accordance with Department policies, standards, and procedures, as adopted pursuant to this Chapter.

H. Frontage improvements.

All developments will be required to make frontage improvements in accordance with City standards, except where determined

untimely by the City Engineer due to the absence of street frontage improvements in the vicinity or to scheduled public improvement projects. (Ord. 2290, 2016)

I. Access and transportation circulation requirements.

All developments shall be required to provide for access and transportation circulation in accordance with the Comprehensive Plan and the development regulations applicable to the particular development, to design and construct such access in accordance with the adopted engineering design and development standards, and to improve existing streets that provide access to the development in order to comply with adopted design standards.

J. Right-of-way requirements.

As provided for by RCW 82.02.020, all developments, as a condition of approval, will be required to deed or dedicate property, as appropriate pursuant to City standards, when to do so is found by the Director or a City approval authority to be reasonably necessary as a direct result of the proposed development for improvement, use, or maintenance of the street system serving the proposed development.

K. Development permit application completeness.

For purposes of this Chapter, permit applications for development shall be determined to be complete in accordance with the complete application provisions as defined in the applicable development regulations in accordance with Chapter 36.70B RCW. A development permit application shall not be considered complete until all traffic studies or data required in accordance with this Chapter and/or as specified in a preapplication

meeting conducted pursuant to Title 14 SMC are received. Review periods and time limits shall be established in Title 14 SMC in accordance with Chapter 36.70B RCW.

L. Director authorization for administrative policies and technical standards and procedures.

The Director is hereby authorized to produce and maintain administrative policies and technical standards and procedures in order to administer this Chapter. The policies, standards, and procedures shall cover the transportation-related aspects of processing land use applications and shall set forth any necessary procedural requirements for developers to follow in order for their applications to be processed by staff in an efficient manner. The Director shall produce administrative policies and technical standards and procedures on at least the following topics:

1. Traffic studies: scoping, elements, processing.
2. Level-of-service determination: methodology, data collection.
3. Transit compatibility: transit supportive criteria.
4. Inadequate street conditions: criteria for identification.
5. Frontage improvements: standards, variables.
6. Mitigation measures: extent, timing, agreements.

14.295.060 Traffic Study.

A. When required.

In order to provide sufficient information to assess a development's impact on the street system, developments adding three or more p.m. peak-hour trips will be required to provide a traffic study when it has been determined that there is not sufficient information existing in the Department's database to adequately assess the traffic impacts of the development. The traffic study will consist of at least a traffic generation and distribution analysis. The Director may require that additional information be provided on impacts of the development to level-of-service of affected streets, inadequate street conditions, adequacy of the proportionate share calculations of any voluntary payments required under this Chapter to reasonably or adequately mitigate impacts of the proposed development, and conformance with the Comprehensive Plan's Transportation Element. The Director may determine at a pre-application conference the need for a study and the scope of analysis of any needed study.

B. Waiver.

If, in the opinion of the Director, there is sufficient information known about a development's street system impacts from previous traffic studies, the Director may waive the requirement for a traffic study and so state the waiver determination in the preapplication meeting. In such cases, the existing information will be used to establish any necessary traffic mitigation requirements to be recommended in the review of the development.

14.295.070 Determination of Street System Obligations.

A. Applications which have a prior SEPA threshold determination establishing developer obligation for the transportation

impacts prior to the enactment of this Chapter shall be vested under the development obligation identified under SEPA.

B. A determination of developer obligation shall be made by the City before approval of preliminary plats, short subdivisions, and conditional use permits. For other development approvals, the determination of developer obligation shall be made prior to issuance of a building permit.

C. Mitigation measures imposed as conditions of a development approval shall remain valid until the expiration date of the concurrency determination for the development. Any building permit application submitted after the expiration date shall be subject to full reinvestigation of traffic impacts under this Chapter before the building permit can be issued. Determination of new or additional impact mitigation measures shall take into consideration, and may allow credit for, mitigation measures fully accomplished in connection with approval of the development or prior building permits pursuant to a recorded development plan, only where those mitigation measures addressed impacts of the current building permit application.

D. The Director, following review of any required traffic study and any other pertinent data, shall inform the developer in writing what the development's impacts and mitigation obligations are under this Chapter. The developer shall make a written proposal for mitigation of the development's traffic impact, except when such mitigation is by payment of any impact fee under the authority provided to the City under RCW 82.02.050(2). When the developer's written proposal has been reviewed for accuracy and completeness

by the Director, the Director shall make a recommendation to the City approval authority, as to the concurrency determination and conditions of approval or reasons for recommending denial of the development application, citing the requirements of this Chapter.

- E. Any request to revise a proposed development, following the determination of developer obligations and approval of the development, which causes an increase in the traffic generated by the development, or a change in points of access, shall be processed in the same manner as an original application except where the Director determines that such revision may be administratively approved.

14.295.080 Street System Capacity Requirements.

- A. All developments must mitigate their impact upon the future capacity of the street system either by constructing offsite street improvements, which offset the traffic impacts of the development, or by paying the development's proportionate share cost of the future capacity improvements.
- B. Construction option.
 - 1. If a developer chooses to mitigate the development's impact to the street system capacity by constructing offsite street improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the Director for construction of the offsite improvements.
 - 2. When two or more developers have agreed to fully fund a certain

improvement, the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as a condition of approval.

- 3. Any developer who volunteers to construct more than the development's share of the cost of offsite improvements may apply for a reimbursement contract.

C. Payment option.

- 1. If a developer chooses to mitigate the development's impact by making a proportionate share mitigating payment, the development's share of the cost of future capacity improvements will be calculated as set forth in SMC 14.295.090.
- 2. Any developer who volunteers to pay more than the development's share of the cost of offsite improvements may apply for a reimbursement contract.

14.295.090 Traffic Impact Fee.

- A. The impact fee rate per net new PM peak hour trip, as calculated according to the provisions of this chapter, shall be as adopted in the most recent fee schedule resolution. The initial traffic impact fee rate shall be \$1,603, which may be adjusted annually as described in Subsection B of this Section.
- B. Commencing on the first anniversary of the effective date of the impact fee rate established in Subsection A of this Section, and at subsequent intervals of at least one year, the City Engineer may

propose adjustment of the impact fee rate set out in the most recent fee schedule resolution by the same percentage change as in the most recent annual change of the Construction Cost Index published in the Engineering News-Record. The City Council and may adopt such increase in the impact fee rate or a reduced amount as an amendment to the fee resolution. In addition to published notice as required for the City Council resolution, the City Engineer shall cause notice of the adjusted impact fee to be posted at City Hall and the Public Works Engineering office. In all cases, the maximum amount of the impact fee shall be the initial traffic impact fee rate plus an amount equal to the initial impact fee rate multiplied times the change in Construction Cost Index since the effective date of the initial traffic impact fee rate. (Ord. 2290, 2016)

14.295.095 Traffic Impact Fee Exemption.

A. Application For Traffic Impact Fee Exemption.

Any developer applying for or receiving a building permit, which meets the criteria set forth in Subsection B below, may apply to the City Planner for an exemption from the traffic impact fee established pursuant to SMC 14.295.090. Said application shall be on forms provided by the City and shall be accompanied by all information and data the City deems necessary to process the application. To the extent it is authorized by law, the City shall endeavor to keep all proprietary information submitted with said application confidential, provided, however, that this ordinance shall not create or establish a special duty to do so.

B. Exemption Criteria.

To be eligible for the traffic impact fee exemption, the applicant shall meet each of the following criteria:

1. The applicant must be a new commercial retail business within the Snohomish city limits that applies for a building permit or must be an existing commercial business that applies for a building permit for a major expansion of an existing building. For the purposes of this Section, “commercial retail business” shall mean any business, which sells retail goods and services that are subject to the retail sales tax provisions of Chapter 3.27 SMC and which is subject to payment of traffic impact fees pursuant to this Chapter.
2. Based on similar retail business sales or other reliable data, as determined by the City, the applicant must demonstrate that it is likely to generate to the City of Snohomish the City’s portion of sales and use tax revenue in the average annual amount of at least \$100,000, based upon the three year period commencing from the date of the applicant’s certificate of occupancy. In the case of a major expansion of an existing business, the applicant must demonstrate that the expansion is likely to generate an increase of at least \$100,000 more in average annual sales and use tax to the City than is generated by the applicant’s existing business.
3. The applicant must be a new retail business located within one of the following land use designations: Commercial, Historic Business District, Business Park, Industry, Airport Industry, and Mixed Use.
4. For the purposes of this Section, the applicant shall not be allowed to aggregate sales and use tax revenue from more than one business that the

applicant owns or operates within the City.

5. At the time of application for the traffic impact fee exemption, the applicant shall not have paid, or have been obligated to have paid, the traffic impact fee required under this Chapter.

C. Administration of Traffic Impact Fee Exemption.

1. Upon the City's acceptance of an application for exemption from traffic impact fees pursuant to Subsection A above, the applicant shall pay to the City the full amount of the traffic impact fees required pursuant to SMC 14.295.090. Following receipt of the traffic impact fees, the City shall deposit the fees in the Traffic Impact Fee Fund (124) and shall manage the traffic impact fees as set forth in this Chapter.
2. At the expiration of a three year period commencing from the date of the applicant's certificate of occupancy, the City Treasurer shall determine if the average annual amount of the City's portion of sales and use tax revenue received from the applicant's business by the City meets the minimum amount stated in Subsection B2 above. The determination shall be based upon the administration and collection requirements of Chapter 3.27 SMC as now or hereafter amended.
3. In the event that the three year average annual amount of the City's portion of sales and use tax revenue from the applicant's business is at least \$100,000, or in the case of a major expansion of an existing business the three year annual average is at least

\$100,000 more than the prior year, there shall be an exemption of 25% from the traffic impact fees otherwise due pursuant to SMC 14.295.090. In such case, 25% of the amount paid to the City pursuant to Subsection C1 above shall be refunded to the applicant, plus any accrued interest. The remainder of the funds deposited pursuant to Subsection C1 above shall belong to the City.

4. In the event that the applicant's three year annual average sales and use tax revenue to the City is at least \$200,000, or in the case of a major expansion of an existing business the three year annual average is at least \$200,000 more than the prior year, the applicant shall receive an exemption, which shall result in a refund of 50% of the amount paid to the City pursuant to Section C1 above, plus any accrued interest. The remainder of the funds deposited pursuant to Section C1 above shall belong to the City.
5. In the event that the applicant's three year annual average sales and use tax revenue to the City is at least \$300,000, or in the case of a major expansion of an existing business the three year annual average is at least \$300,000 more than the prior year, the applicant shall receive an exemption, which shall result in a refund of 75% of the amount paid to the City pursuant to Section C1 above, plus any accrued interest. The remainder of the funds deposited pursuant to Section C1 above shall belong to the City.
6. In the event that the applicant does not generate at least a three year average annual sales and use tax revenue of \$100,000, or in the case of a major

expansion of an existing business at least a three year annual average of \$100,000, the entire traffic impact fee required under SMC 14.295.090 shall belong to the City.

7. Determinations of the amounts set forth in this Section shall be made by the City Treasurer, which determinations shall be appealable as set forth in Subsection E.

D. Deposits and Refunds of Sales and Use Tax Revenue.

1. Sales and use tax revenues in the amount annually required to meet the traffic impact fee exemption level for which the applicant qualifies under this Section shall be deposited in the Reserve for Traffic Impact Fee Fund (125), which is hereby created. All sales and use tax revenues in excess of the amount annually required to meet the traffic impact fee exemption level for which the applicant qualifies under this Section shall remain in the City's General Fund (001) and may be expended for any lawful purpose as directed by the City Council.
2. At the end of an applicant's three year period, or in the case of a major expansion of an existing business at the end of an applicant's three year period, the City Treasurer shall determine the amount of refund to be paid the applicant. Refunds shall be paid from the Reserve for Traffic Impact Fee Fund (125).

- E. Appeals. Any applicant aggrieved by the determination of the City as to whether the exemption criteria of Subsection B have been met or as to the amount of a refund to which an applicant is entitled pursuant to

Subsections C and D, may file a written appeal to the City's Land Use Hearing Examiner, in the same manner as appeals of City Planner determinations as set forth in Chapters 14.75 and 14.95 SMC. The City Examiner is hereby specifically authorized to hear and decide such appeals, and the decision of the Hearing Examiner shall be final action of the City and shall be subject to appeal pursuant to Chapter 14.75 SMC. (Ord 2085, 2005)

14.295.100 Level-of-Service Requirements and Concurrency Determinations.

- A. The Department shall make a concurrency determination for each development application to ensure that the development will not impact an arterial unit where the level-of-service is below the adopted level-of-service standard or will not cause the level-of-service on an arterial unit to fall below the adopted level-of-service standard, unless improvements are programmed and funding identified which would remedy the deficiency within six years. The approval authority shall not approve any development that is not deemed concurrent under this section.

1. The Department shall make a concurrency determination upon receipt of a development's pre-application submittal. The determination may change based upon revisions in the application. Any change in the development after approval will be resubmitted to the Director, and the development will be reevaluated for concurrency purposes.
2. The concurrency determination shall expire if the development for which the concurrency is reserved is not applied for within one hundred twenty (120) days of the concurrency

determination. This determination is a prerequisite for a complete development application. The expiration date of the concurrency determination for a filed development application shall be six years after the date of the determination, except where the application is later withdrawn or approval is allowed to lapse.

3. Building permits for a development must be issued prior to expiration of the concurrency determination for the development, except when the development is a residential subdivision or short subdivision in which case the subdivision or short subdivision must be recorded prior to expiration of the concurrency determination for the development, and except where no building permit will be associated with a conditional use permit, in which case the conditional use permit must be issued prior to expiration of the concurrency determination. No additional concurrency determination shall apply to residential dwellings within a subdivision or short subdivisions recorded in compliance with this section.
4. If the concurrency determination expires prior to building permit issuance, except when the development is a residential subdivision or short subdivision, then prior to the recording of the subdivision or short subdivision, and except where no building permit will be associated with a conditional use permit, then prior to issuance of the conditional use permit, the Director shall at the request of the developer consider evidence that conditions have

not significantly changed and make a new concurrency determination in accordance with this section.

5. Building permit applications for development within a recorded development plan, non-residential subdivision or short subdivision, for which a concurrency determination has been made in accordance with this section shall be deemed concurrent, provided that the concurrency determination has not expired, the building permit will not cause the approved traffic generation of the prior approval to be exceeded, there is no change in points of access, and mitigation required pursuant to the recorded development plan, non-residential subdivision or short subdivision approval is performed as a condition of building permit issuance.
- B. In determining whether or not to deem a proposed development as concurrent, the Department shall analyze likely street system impacts on arterial units based on the size and location of the development.
 1. A development shall be deemed concurrent for the period prior to the expiration date of the concurrency determination for the development.
 2. A development's forecasted trip generation at full occupancy shall be the basis for determining the impacts of the development on the street system. The City will accept valid data from a traffic study prepared under this Chapter.
 - C. A concurrency determination made for a proposed development under this section will evaluate the development's impacts on any intersections or arterial units in

arrears. If a development which generates seven or more p.m. peak-hour trips, or a nonresidential development which generates five or more p.m. peak-hour trips, is proposed to affect an intersection or arterial unit in arrears, then the development may only be deemed concurrent based on a trip distribution analysis to determine the impacts of the development. Impacts shall be determined based on each of the following:

1. If the trip distribution analysis indicates that the development will not place three or more p.m. peak-hour trips on any intersection or arterial units in arrears, then the development shall be deemed concurrent.
2. If the trip distribution analysis indicates that the development will place three or more p.m. peak-hour trips on any intersection or arterial unit in arrears, then the development shall not be deemed concurrent except where the development is deemed concurrent in accordance with the options under SMC 14.295.100E.

D. Any residential development that generates less than seven p.m. peak-hour trips or any nonresidential development that generates less than five p.m. peak-hour trips shall be considered to have only minor impact on City arterials for purposes of a concurrency determination on impacts to level-of-service on intersections and arterial units and shall accordingly be deemed concurrent.

E. Any development not deemed concurrent shall have options available to enable the development to be deemed concurrent as follows:

1. A development which meets the

Department's criteria for transit compatibility, in accordance with the Director's policy and procedure for transit compatibility, shall be deemed concurrent if the impacted intersection or arterial unit in arrears meets the criteria for transit supportive design in accordance with the Director's policy and procedure for transit compatibility, and if the level-of-service on the impacted intersection or arterial unit in arrears meets the City's adopted LOS standards, and provided that the development can be deemed concurrent in accordance with all other provisions of this section.

2. A development may modify its proposal to lessen its impacts on the street system in such a way as to allow the City to deem the development concurrent under this section.

3. The City may deem such development concurrent based upon a written proposal signed by the proponent of the development and attached to the Director's recommendation under SMC 14.295.050B, and referenced in the concurrency determination, as a condition of approval.

- a. Such proposal may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the City has made or programmed capacity improvements which would remedy any intersection or arterial units in arrears.

- b. Such proposals may include conditions which would defer construction of all or identified subsequent phases of a

development until such time as the developer constructs capacity improvements which would remedy any intersection or arterial units in arrears.

i. If a developer chooses to mitigate the development's impact by constructing offsite street improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the Director for construction of the offsite improvements. Construction of improvements shall be in accordance with the City's engineering design and development standards.

ii. In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the cost shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

iii. Any developer who chooses to mitigate a development's impact by constructing offsite improvements may propose to the City that a joint public/private partnership be established to jointly fund and/or construct the proposed improvements. The Director will determine whether or not such a partnership is to be established.

iv. Construction of capacity improvements under this section must be complete or under contract prior to the issuance of any building permits and must be complete prior to approval for occupancy or final inspection; provided that where no building permit will be associated with a change in occupancy, then construction of improvements is required as a precondition to approval.

F. Adopted Level-of-Service.

1. The level of service for intersections shall be LOS E or better.
2. The Transportation Element may designate intersections that are exempt from the level-of-service standard set forth in this subsection.

(Ord. 2290, 2016)

14.295.110 Inadequate Street Condition Requirements.

A. Regardless of the existing level-of-service, development which adds three or more p.m. peak-hour trips to an inadequate street condition existing on the street system, at the time of determination under this Chapter, or development whose traffic will cause an inadequate street condition at the time of full occupancy of the development, will only be approved for occupancy or final inspection when provisions are made in accordance with this Chapter for elimination of the inadequate street condition. The improvements removing the inadequate street condition must be complete or under contract before a building permit on the development will be issued and the street

improvement must be complete before any certificate of occupancy or final inspection will be issued; provided that where no building permit will be associated with a conditional use permit, then the improvements removing the inadequate street condition must be complete as a precondition to approval.

- B. The Director shall determine whether or not a location constitutes an inadequate street condition. Any known inadequate street condition to which the development adds three or more p.m. peak-hour trips shall be identified as part of the Director's recommendation under SMC 14.295.050B.
- C. A development's access onto a City street shall be designed so as not to create an inadequate street condition. Developments shall be designed so that inadequate street conditions are not created.
- D. Construction option – requirements.
 - 1. If a developer chooses to eliminate an inadequate street condition by constructing offsite street improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the Director for construction of the offsite improvements.
 - 2. When two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

14.295.120 Special Circumstances.

Where the only remedy to an arterial unit in arrears is the installation of a traffic signal, but signalization warrants contained in the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) are not met at present, developments impacting the arterial unit may be allowed to proceed without the installation of the traffic signal; provided that all other warranted level-of-service and transit related improvements are made on the arterial unit within the deficient level-of-service. Developments impacting such arterial units will not be issued building permits or occupancies (whichever comes first) until the improvements (not including the traffic signal) to the level-of-service deficient arterial unit are under contract or being performed. Such developments will be subject to all other obligations as specified in this Chapter.

14.295.130 Administration of Traffic Impact Fee Payments.

- A. Any traffic impact fee payment made pursuant to this Chapter shall be subject to the following provisions:
 - 1. The payment is required prior to building permit issuance unless the project proponent elects to defer payment utilizing the process outlined in 14.295.135. Payment for a subdivision or short subdivision shall be made prior to the recording of the final plat, provided that if no building permit will be associated with a change in occupancy or conditional use permit, then payment is required prior to approval of occupancy.
 - 2. The payment shall be held in a reserve account and shall be expended to fund improvements on the street system.

3. An appropriate and reasonable portion of payments collected may be used for administration of this Chapter.
4. The fee payer may receive a refund of such fees, if the City fails to expend or encumber the impact fees within six (6) years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3), for transportation facilities intended to benefit the development for which the transportation impact fees were paid, unless the City Council finds that there exists an extraordinary and compelling reason for fees to be held longer than six (6) years. Such findings shall be set forth in writing and approved by the City Council. In determining whether traffic impact fees have been encumbered, impact fees shall be considered encumbered on a first in/first out basis. The City shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants.
5. A request for a refund must be submitted by the applicant to the City in writing within ninety (90) days of the date the right to claim the refund arises, or the date that notice is given, whichever is later. Any traffic impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this ninety (90) day period, shall be retained and expended on projects identified in the Transportation Facilities Plan. Refunds of traffic impact fee payments under this subsection shall include interest earned on the impact fees.

B. Credit for offsite improvements.

1. Offsite improvements include construction of improvements to mitigate an arterial unit in arrears and/or specific inadequate street condition locations.
2. If a developer chooses to construct improvements to mitigate an arterial unit in arrears or inadequate street condition problem, and the improvements constructed are part of the cost basis of any traffic impact fee imposed under this Chapter to mitigate the development's impact on the future capacity of City streets, the cost of these improvements will be credited against the traffic impact fee amount.

14.295.135 Single-Family Residential Deferral Program. An applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment until final inspection or 18 months from the date of original building permit issuance, whichever occurs first. Deferral of impact fees are considered under the following conditions:

1. Submit a deferred impact fee application and acknowledgment form for each single-family attached or detached residence for which the applicant wishes to defer payment of the impact fees on a form to be provided by the city;
2. Pay the applicable administrative fee as established by resolution or ordinance of the city;
3. Grant and record at the applicant's expense a deferred impact fee lien in a form approved by the city against the

property in favor of the city in the amount of the deferred impact fee that:

- a. Includes the legal description, tax account number, and address of the property;
 - b. Requires payment of the impact fees to the city prior to final inspection or 18 months from the date of original building permit issuance, whichever occurs first;
 - c. Is signed by all owners of the property, with all signatures acknowledged as required for a deed recorded in Snohomish County;
 - d. Binds all successors in title after the recordation; and
 - e. Is 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.
4. The amount of impact fees deferred shall be determined by the fees in effect at the time the applicant applies for a deferral.
5. The city shall withhold final inspection until the impact fees have been paid in full. Upon receipt of final payment of impact fees deferred under this subsection, the city shall execute a release of deferred impact fee lien for each single-family attached or detached residence for which the impact fees have been received. The applicant, or property owner at the

time of release, shall be responsible for recording the lien release at his or her expense.

6. 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 final inspection.
7. If impact fees are not paid in accordance with the provisions of this chapter and in accordance with the term provisions established herein, the city may institute foreclosure proceedings in accordance with RCW 61.12.
8. Each applicant for a single-family attached or detached residential construction permit, 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. (Ord. 2313, 2016)

14.295.140 Administrative Appeals.

Administrative interpretations and administrative approvals made pursuant to this Chapter may be appealed to the Hearing Examiner pursuant to Title 14 SMC.

14.295.150 Severability

If any section, subsection, sentence, clause, phrase or word of this Chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Chapter.

14.295.160 No Special Duty.

It is the purpose of this Chapter to provide for the health, welfare and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Chapter. No provision or term used in this Chapter is intended to impose any duty whatsoever upon the City or any of its officers, agents or employees for whom the implementation or enforcement of this Chapter shall be discretionary and not mandatory.

Nothing contained in this Chapter is intended to be, nor shall be construed to create or form the basis for, any liability on the part of the City or its officers, agents and employees for any injury or damage resulting from the failure to comply with the provisions of this Chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this Chapter, or by reason of any action of the City related in any manner to enforcement of this Chapter by its officer, agents or employees. (Ord. 2067, 2005)