

ORDINANCE NO. 818

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AND TRANSPORTATION IMPACTS, IMPLEMENTING THE CONCURRENCY PROVISIONS OF THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AS REQUIRED BY RCW 36.70A.070(6), DESCRIBING THE PROCEDURE FOR THE CITY PUBLIC WORKS DIRECTOR'S EVALUATION OF CONCURRENCY OF THE CITY'S ROAD FACILITIES WITH PROPOSED DEVELOPMENT IN LIGHT OF ADOPTED LEVELS OF SERVICE, DESCRIBING THE PROCEDURE FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES, ESTABLISHING THE PROCESS FOR DENIALS AND APPEALS, ESTABLISHING CAPACITY ACCOUNTS, REQUIRING ANNUAL REPORTING AND MONITORING OF ROAD CAPACITY AS PART OF THE ANNUAL UPDATE OF THE CITY'S SIX-YEAR TRANSPORTATION PLAN, AMENDMENTS TO THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AND ADOPTING A NEW CHAPTER 19.10 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Growth Management Act requires that the City 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 City's Comprehensive Plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development" (RCW 36.70A.070(6)); and

WHEREAS, "concurrent with development," for the purposes of the above statute, means 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 (RCW 36.70A.070(6)); Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. A new chapter 19.10 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

CHAPTER 19.10

CONCURRENCY MANAGEMENT

I. OVERVIEW AND EXEMPTIONS

19.10.001. Purpose. The purpose of this Chapter is to implement the concurrency provisions of the Transportation Element of the City's Comprehensive Plan, in accordance with RCW 36.70A.070(6)(e), consistent with WAC 365-195-510 and 365-195-835. No development permit shall be issued except in accordance with this Chapter, which shall be cited as the Concurrency Management Ordinance.

19.10.002. Authority. The Director of Public Works, or his/her designee, shall be responsible for implementing and enforcing the Concurrency Management Ordinance.

19.10.003. Exempt Development.

A. **Development Permit issued prior to Effective Date of this Chapter.** All construction or change in use initiated pursuant to a development permit issued prior to the effective date of this Chapter shall be exempt from the requirements of this Chapter, PROVIDED, however, that no development permit shall be extended except in conformance with this Chapter. If the City determines that a previously issued development permit has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this Chapter.

B. **De Minimis Development.** After the effective date of this Chapter, no development activity (as defined in the definition section of this Chapter) shall be exempt from the requirements of this Chapter unless specifically exempted below in subsection C.

C. **Exempt Permits.**

1. The following types of permits are exempt from the Capacity Reservation Certificate (CRC) process because they do not create additional long-term impacts on road facilities :

Administrative interpretations	Plumbing permit
Sign permit	Electrical permit
Street vacation	Mechanical permit
Demolition permit	Excavation permit
Street Use Permit	Sewer connection permit
Interior alterations	Driveway or street
with no change of use	Access permit
Excavation/clearing permit	
Grading permit	Hydrant use permit
Right of Way Permit	Tenant improvement permit
Single family remodeling	Fire code permit
with no change of use	

Notwithstanding the above, if any of the above permit applications will generate more than 15 new p.m. peak hour trips, such application shall not be exempt from the requirements of this chapter.

2. The portion of any project used for any of the following purposes is exempt from the requirements of this Chapter:

Public transportation facilities
Public parks and recreational facilities
Public libraries

Notwithstanding the exemptions hereunder provided, the traffic resulting from an exempt use shall nonetheless be included in computing background traffic for any nonexempt project.

D. Other Exempt Building Permits. This Chapter shall apply to all development applications for development or re-development if the proposal or use will generate more than 15 new p.m. peak hour trips.

19.10.004. Capacity Evaluation Required for Change of Use. Except for development exempt under GHMC 19.10.003, any development activity, as defined in the definition section of this Chapter, shall require a capacity evaluation in accordance with this Chapter.

A. Increased Impact on Road Facilities. If a change of use will have a greater impact on road facilities than the previous use as determined by the Director based on review of information submitted by the Developer, and such supplemental information as available, a CRC shall be required for the net increase only, provided that the Developer shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five (5) year period prior to the date of application for the capacity evaluation.

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

C. No Capacity Credit. If no use existed on the site for the five (5) year period prior to the date of application, no capacity credit shall be issued pursuant to this section.

D. Demolition or Termination of Use. In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact 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 (5) years of the date of the issuance of the demolition permit.

19.10.005 All Capacity Determinations Exempt from Project Permit Processing. The determinations made by the Director pursuant to the authority in this Chapter shall be exempt from project permit processing procedures, as described in GHMC Title 19, except that the appeal procedures of GHMC Title 19 shall apply pursuant to Part VIII of this chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review

procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation of the comprehensive plan.

II. LEVEL OF SERVICE STANDARDS

19.10.006. Introduction. The concept of concurrency is based on the maintenance of specified levels of service with respect to road facilities. Concurrency describes the situation in which road facilities are available when the impacts of development occur, or within six (6) years from the time of development. (See, WAC 365-195-210, definition of "available public facilities.") The City has designated levels of service for road facilities in its transportation comprehensive plan:

A. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;

B. to reflect realistic expectations consistent with the achievement of growth aims;

C. for road facilities according to WAC 365-195-325; and

D. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's Comprehensive Plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

19.10.007. Level of Service Standards. Level of Service (LOS) is the established minimum capacity of road facilities 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 road services are adequate to support a development's impact. The City's established LOS for roads within the city limits shall be as shown in the Transportation Element of the City's Comprehensive Plan.

19.10.008. Effect of LOS Standards. 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 CRC issued pursuant to this Chapter.

III. CAPACITY EVALUATIONS

19.10.009. Capacity Evaluations Required Prior to Issuance of CRC.

A. **When the Requirements of this Chapter Apply.** A capacity evaluation shall be required either in conjunction with or prior to the City's consideration of any development permit depending on the time that the applications are filed, unless specifically exempted by this Chapter. The Director shall utilize requirements set forth in Part V to conduct a capacity evaluation, prior to issuance of a CRC. In addition to the requirements set forth in Part V, and specifically in GHMC 19.10.012, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency which may be established from time to time by administrative

rule. In cases where LOS standards do not apply, the Director shall have the authority to utilize other factors in preparing capacity evaluations to include, but not be limited to, independent LOS analysis.

B. Capacity Reservation Certificates. A CRC will not be issued except after a capacity evaluation performed pursuant to Part V, indicating that capacity is available in all applicable road facilities.

19.10.010. Capacity Evaluations Required for Rezone Applications or Comprehensive Plan Amendments Requesting an Increase in Extent or Density of Development. A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment.

IV. SUBMISSION AND ACCEPTANCE OF APPLICATION

19.10.011. Application for Capacity Evaluation. (1) An application for a CRC and the application for the underlying development permit, shall be accompanied by the requisite fee, as determined by City Council Resolution. An applicant for a CRC shall submit the following information to the Director, on a form provided by the Director together with a development application:

- A. Date of submittal.
- B. Developer's name, address and telephone number.
- 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. Traffic report prepared by a licensed professional engineer who is practicing as a traffic engineer;
- J. Written consent of the property owner, if different from the developer;
- K. Proposed allocation of capacity by legal description, if applicable.

(2) Even if the traffic report is based on an estimation of impact, the applicant will still be bound by its estimation of impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; mitigation of the additional impact under SEPA; revocation of the CRC.

19.10.012. Submission and acceptance of an application for a CRC.

A. **Notice of Application.** Issuance of a Notice of Application for the underlying permit application shall follow the process in GHMC § 19.02.004. The Notice of Application required by GHMC § 19.02.004 shall state that an application for a concurrency determination has been received by the City.

B. **Determination of Completeness.** Within 28 days after receiving an application for a CRC, the City shall mail or personally deliver to the applicant a determination which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete.

C. **Additional Information.** An application for a CRC is complete for purposes of this section when it meets the submission requirements in GHMC 19.10.010. 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 whenever new information is required, or substantial changes are made to the proposed project.

D. **Incomplete Applications.**

1. Whenever the applicant receives a determination from the City that an application is not complete, the applicant shall have 90 days to submit the necessary information. Within 14 days after an applicant has submitted the requested additional information, the Director shall make a Determination of Completeness and notify the applicant in the manner provided in subsection A of this section.
2. If the applicant does not submit the additional information requested within the 90-day period, the Director shall make findings and issue a decision that the application has lapsed for lack of information necessary to complete the review, and the applicant may request a refund of the application fee remaining after the City's Determination of Completeness.

E. **Director's Failure to Provide Determination of Completeness.** An application for a CRC shall be deemed complete under this section if the Director does not provide a written determination to the applicant that the application is incomplete as provided in subsection (B) of this section.

F. **Date of Acceptance of Application.** An application for a CRC shall not be officially accepted until complete. When an application is determined complete, the Director shall accept it and note the date of acceptance.

V. PROCEDURE FOR DETERMINING CAPACITY

19.10.013. Method of Capacity Evaluation for Road Facilities.

A. In performing the concurrency evaluation for road facilities, and to prepare the CRC, the Director shall determine whether a proposed development can be accommodated within the existing or planned capacity of road facilities. This shall involve the following:

1. a determination of anticipated total capacity at the time the proposed impacts of development occur;
2. 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;
3. calculation of the available capacity for the proposed development;
4. calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation provided by the applicant; and
5. comparison of available capacity with proposed development impacts.

B. The Director shall determine if the capacity on the City's road 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 CRC.

C. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination described in Subsections (A)(1) through (5) above. The Director may deem the development concurrent with road facilities, with the condition that the necessary facilities shall be available when the impacts of the development occur or shall be guaranteed to be available through a financial commitment in an enforceable development agreement.

D. If the Director determines that the proposed development will cause the LOS of a road 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 CRC and the underlying development permit, if such an application has been made, shall be denied, pursuant to GHMC Section 19.10.018 and any other provisions of Title 19 that may be applicable to denial of the underlying development permit. Appeals may be filed pursuant to Part VIII of this chapter.

VI. CAPACITY RESERVATION CERTIFICATES (CRCs)

19.10.014. Purpose of Capacity Reservation Certificate. A CRC is a determination by the Director that: (1) the proposed development activity or development phase will be concurrent with the applicable road facilities at the time the CRC is issued; and (2) the Director has reserved road facility capacity for this application until the expiration of the underlying development permit. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying permit application.

19.10.015. Procedure for Capacity Reservation Certificates. Within ninety (90) days 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.

19.10.016. Use of Reserved Capacity. When a valid development permit is issued for a project possessing a CRC, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without the issuance of a Certificate of Occupancy.

19.10.017. Transfer of Reserved Capacity. Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the developer in the application for a CRC. The developer 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.

19.10.018. Denial Letter. If the Director determines that one or more road facilities are not concurrent, the Director shall issue a denial letter, which shall advise the developer that capacity is not available. If the developer 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) an estimate of the level of the deficiency on the road facilities; and (2) the options available to the applicant such as the applicant=s agreement to construct the necessary facilities at the applicant=s cost. In order to appeal from the issuance of a Denial Letter, the developer shall appeal both the Denial Letter and the development permit denial pursuant to Part VIII of this chapter.

19.10.019. Notice of Concurrency Determination. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the underlying development permit=s SEPA threshold determination, 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.

VII. CAPACITY RESERVATION CERTIFICATE (CRC)

19.10.020. Expiration and Extensions of Time.

A. **Expiration.** If a Certificate of Occupancy has not been requested during the time frame set forth in the CRC, the Director shall convert the reserved capacity to available capacity for the use of other developments. 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.

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

VIII. APPEALS OF CONCURRENCY DETERMINATION

19.10.021. Concurrency Determination to be Appealed with Underlying Permit. Any appeal of the denial of a concurrency determination shall include appeal of the denial of the underlying development permit application. The appeal shall follow the procedure for the underlying permit as set forth in Title 19 GHMC. If there is no administrative appeal procedure in Title 19 GHMC for the underlying permit, the appeal shall follow the process for an appeal of a Type II permit. The appeal procedure as set forth in Chapter 19.06 GHMC shall be followed.

19.10.022. Time limit to bring appeal. An appeal of a denial letter and the underlying development application shall be brought within the time period set forth in GHMC §19.06.004.

IX. CONCURRENCY ADMINISTRATION

19.10.023. Purpose and Procedure. The purpose of this Part is to describe the process for administering the Concurrency Ordinance. Capacity accounts will be established, to allow capacity to be transferred to various categories in the application process. Capacity refers to the ability or availability of road facilities to accommodate users, expressed in an appropriate 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 road facilities.

19.10.024. Capacity Classifications. There are hereby established two capacity accounts, to be utilized by the Director in the implementation of this Chapter. 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 permit 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.

19.10.025. Annual Reporting and Monitoring. The Director is responsible for completion of an Annual Capacity Availability Report. This report shall evaluate reserved capacity and permitted development activity for the previous twelve month period, and determine existing conditions with regard to available capacity for road facilities. The evaluation shall report on capacity used for the previous period and capacity available for the Six-Year Capital Facilities Element of the City's Comprehensive Plan and the Six-year Transportation Plan, for road facilities, based upon LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections and shall, at a minimum, include:

- 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; and
- E. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element of or to the Comprehensive Plan.

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.

Based upon the analysis included in the Annual Capacity Availability Report, the Director shall recommend to the City Council each year, any necessary amendments to the CIP, TIP and Comprehensive Plan. The Director shall also report on the status of all capacity accounts when public hearings for Comprehensive Plan amendments are heard.

19.10.026. Road LOS Monitoring and Modeling.

A. 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. The City's Traffic Demand Model will be recalibrated annually based on traffic count information, obtained from at a minimum, the City's Public Works Department.

B. 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.

C. 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.

Section 2. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

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