

**Title 25**  
**CONCURRENCY MANAGEMENT**

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**Chapter 25.02**  
**AUTHORITY AND PURPOSE**

**Sections:**

- [25.02.010](#) Authority and purpose.

**25.02.010 Authority and purpose.**

Pursuant to the State Growth Management Act, RCW Chapter 36.70A, after the adoption of its comprehensive plan, the city of Kirkland is required by RCW 36.70A.070(6)(e) to ensure that road improvements or strategies to accommodate the impacts of development are provided concurrent with the development. Similarly, the city is bound by the planning goals of RCW 36.70A.020 to ensure that public facilities necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established standards, referred to as “concurrency.”

This title furthers the goals, policies, implementation strategies, and objectives of the comprehensive plan.

The purpose of this title is to establish a concurrency management system to ensure that concurrency facilities needed to achieve level of service standards can be provided simultaneously to, or within a reasonable time after, occupancy or use. Concurrency facilities are roads, potable water, and sanitary sewer.

The concurrency management system provides the necessary regulatory mechanism for evaluating requests for development to ensure that adequate concurrency facilities are provided “concurrently” with development, as required by the Growth Management Act.

For water and sewer, the facilities must be in place at the time of development impact and for roads, the facilities must be in place within six years of the time of the development impact. Applicants having developments that would cause the level of service on concurrency facilities to decline below the city standards can have their developments approved by implementing measures that offset their impacts and would maintain the city's standard for level of service. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.04 COMPLETE COMPLIANCE REQUIRED**

### **Sections:**

**25.04.010 Complete compliance required.**

### **25.04.010 Complete compliance required.**

The applicant must comply with all aspects, including conditions and restrictions, of any approval granted under this title in order to do anything authorized by that approval. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.06 DEFINITIONS**

### **Sections:**

**25.06.010 Generally.**  
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**25.06.010 Generally.**

The definitions contained in this chapter apply throughout the title unless, from the context, another meaning is clearly intended. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.020 Accounted traffic impact.**

“Accounted traffic impact” means traffic impacts accounted for in the city’s concurrency records in a manner that accounts for the impact from the project and allows the impact to be accounted for by any other applicant preparing a traffic analysis for a concurrency application. The amount of accounted traffic impact for a project is documented in the certificate of concurrency. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.030 Adequate.**

“Adequate” means equal to or better than the level of service standards specified in the current adopted capital facilities element. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.040 Applicant.**

“Applicant” means a person who applies for any certificate of concurrency under this title and who is the owner of the subject property or the authorized agent of the property. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.050 Available sewer and water capacity.**

“Available sewer and water capacity” means there is adequate capacity, based on adopted level of service standards, for sewer and water facilities currently existing without requiring facility construction, expansion, or modification. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.060 Building permit.**

“Building permit” refers to any permit issued under the Uniform Building Code. Exempt building permits are set forth in Chapter 25.08 of this title. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.070 Certificate of concurrency.**

“Certificate of concurrency” means the statement accompanying the public works department’s development standards that are issued with an approved development permit or the public works department’s conditions of approval that are issued with an approved building permit. The statement shall state that a certificate of concurrency is issued and indicate:

- (1) For sewer and water, the capacity of the concurrency facilities that are available and reserved for the specific uses, densities and intensities as described in the development permit or building permit;
- (2) For road facilities, the accounted traffic impact assigned to the development for the specific uses, densities and intensities as described in the development permit or building permit;
- (3) Conditions of approval, if applicable;

- (4) An effective date; and
- (5) An expiration date. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.080 Concurrency.**

“Concurrency” means facilities or strategies that achieve the city’s level of service standards and that:

(1) For sewer, water and roads, exist at the time development is approved by the public works department; or

(2) For roads:

(a) Are planned in the comprehensive plan at the time development is approved by the public works department; or

(b) Will be available and complete no later than six years after completion of the development, and the applicant and/or the city provides a financial commitment which is in place at the time the development is approved by the public works department. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.090 Concurrency facilities.**

“Concurrency facilities” means facilities for which concurrency is required in accordance with the provision of this title. They are roads, potable water, and sanitary sewer. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.100 Concurrency test.**

“Concurrency test” means:

(1) For sewer and water, the comparison of a development’s demand to the available capacity of each concurrency facility;

(2) For roads, the comparison of the development’s impact on the level of service standards of each affected subarea.

A concurrency test must be passed for sewer, water and roads, and a notice issued by the public works department in order to obtain a certificate of concurrency.

The concurrency test notice shall be valid for one year. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.110 Development permit.**

“Development permit” means a land use permit. Development permits include short plat, preliminary or final rezone/reclassification, zoning permit, master plan, shoreline substantial development permit/conditional use permit, planned unit development, or any other permit or approval under the zoning code or subdivision ordinance or shoreline master program. Exempt development permits are set forth in Chapter 25.08 of this title. (Ord. 3830 § 1 (part), 2002: Ord. 3683A § 4 (part), 1999: Ord. 3552 § 1 (part), 1997)

**25.06.120 Financial commitment.**

“Financial commitment” means:

(1) Revenue sources anticipated to be available and designated for facilities in the comprehensive plan;

(2) Unanticipated revenue from federal and state grants for which the city has received notice of approval; or

(3) Funding that is assured by the applicant in a form approved by the public works department. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.130 Level of service standard.**

“Level of service standard” means those standards specified in the adopted capital facilities element of the comprehensive plan. For water and sewer, “level of service standard” also means those standards defined in Title 15 of this code. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.140 Noncity managed facilities.**

“Noncity managed facilities” include any noncity provider of water and sewer. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.150 Planned capacity.**

“Planned capacity” means road facilities that do not exist but for which the necessary facility construction, expansion, or modification project is contained in the current capital facilities element of the comprehensive plan. The improvements must be scheduled to be completed within six years and the financial commitment must be in place at the time of approval of the certificate of concurrency to complete the improvements within six years. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.160 Public works official.**

“Public works official” means public works department employees designated by the public works director to perform the concurrency test. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.170 Transportation strategies.**

“Transportation strategies” means transportation demand management strategies and other techniques or programs that reduce single occupant vehicle travel. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.06.180 Vested.**

“Vested” means the right to develop or continue development in accordance with the laws, rules, and other regulations in effect at the time vesting is achieved. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**Chapter 25.08  
EXEMPTIONS**

**Sections:**

[25.08.010](#) Exemptions.

[25.08.020](#) Applicability of concurrency requirements.

### **25.08.010 Exemptions.**

The following development permits or building permits are exempt from the requirements of this title:

- (1) Accessory dwelling units as defined in the zoning code Section 5.10.017;
- (2) Annexations;
- (3) Any addition or accessory structure to a residence with no change in use;
- (4) Business licenses;
- (5) Categorically exempt construction under [Sections 24.02.040](#) and 24.02.045 of Chapter 24.02, SEPA Procedures and Policies, in this code;
- (6) Categorically exempt construction or activities under [Sections 24.02.040](#) and 24.02.045 of Chapter 24.02, SEPA Procedures and Policies, in this code, even though they:
  - (a) Are undertaken wholly or partly on lands covered by water;
  - (b) Are undertaken wholly or partly on lands in a high landslide hazard area;
  - (c) Are undertaken wholly or partly on lands in a seismic hazard area;
  - (d) Contain structures or facilities with recognized historical significance;
  - (e) Exceed the limit of landfill or excavation; and/or
  - (f) Contain an off-premises commercial sign;
- (7) Cellular antennas and satellite dishes;
- (8) Demolitions;
- (9) Driveway, resurfacing, or parking lot paving; provided, that additional vehicular trips are not generated;
- (10) Electrical, plumbing, and mechanical permits;
- (11) Expansions or phases of development or building permits that were disclosed by the applicant and subject to a concurrency test as part of the original application; provided, that the certificate of concurrency was issued for the expansion or subsequent phase;
- (12) Final planned unit development (if a concurrency test was conducted and approved for the corresponding preliminary planned unit development);
- (13) Final plats (if a concurrency test was conducted for the corresponding preliminary plat permit);
- (14) Final rezone (if a concurrency test was conducted and approved for the corresponding intent to rezone);
- (15) Interior renovations or replacement structure with no change in use or increase in floor area;
- (16) Interior renovations of a structure for new use(s) with the same or less intensity as the existing use or a previously approved use and with no increase in floor area;
- (17) Land surface modification permits;
- (18) Lot line adjustments;
- (19) Outdoor cafe permits;
- (20) Reroofing of structures;
- (21) Side sewer permit for single-family residence;
- (22) Sign permits and master sign plans;
- (23) Street use permits and right-of-way permits;
- (24) Street vacations;

- (25) Subdivision vacations/alterations;
- (26) Subsequent building permit for an approved development permit if a concurrency test was approved for the development permit and there is no change in use, densities, and intensities;
- (27) Temporary construction trailers;
- (28) Temporary use permits;
- (29) Variances;
- (30) Design review;
- (31) Water service permit for single-family residence; and
- (32) Any other development permit or building permit which the public works department determines has no impact on the concurrency facility. (Ord. 3830 § 1 (part), 2002: Ord. 3683A § 4 (part), 1999: Ord. 3552 § 1 (part), 1997)

**25.08.020 Applicability of concurrency requirements.**

(1) Complete development permit or building permit applications that were submitted before March 12, 1997, are exempt from the requirements of this title.

(2) For master plans that are exempt from this title pursuant to subsection (1) of this section, building permits for structures that are submitted ten years or more after master plan approval are subject to the requirements of this title.

(3) For development permits that are exempt from this title pursuant to subsection (1) of this section, amendments to the development permits shall be subject to the requirements of this title.

(4) For amendments to development permits that were subject to this title, only the structures included in the amendments shall be subject to a new concurrency test. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.10 CONCURRENCY TEST**

**Sections:**

**[25.10.010](#) Timing.**

**[25.10.020](#) Procedures.**

**[25.10.030](#) Test.**

**[25.10.040](#) Concurrency for phased development.**

**[25.10.050](#) Public notice of concurrency test.**

**25.10.010 Timing.**

All applicants must apply for the concurrency test and receive notice of passing the test before the city will consider an application for any development permit or building permit to be complete. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.10.020 Procedures.**

(1) Applications for concurrency shall be submitted on forms provided by the public works department and shall be tested in the order that the public works department determines the application is complete.

(2) The applicant shall be responsible to provide to the public works department a certificate of availability for sewer and water with the concurrency application submittal if the property is serviced by a noncity managed utility.

(3) The applicant shall submit vehicular trip generation for and a detailed project description of the development, including location, vehicular circulation and gross floor area by use, with the concurrency application.

(4) A concurrency test shall be performed only for specific property, uses, densities, and intensities based on the information provided by the applicant. The applicant shall specify densities and intensities that are consistent with the uses allowed for the property. If the concurrency test is being requested in conjunction with a rezoning, the applicant shall specify densities and intensities that are consistent with the proposed zoning for the property. Changes to the uses, densities, and intensities that create additional impacts on concurrency facilities shall be subject to an additional concurrency test.

(5) The public works official will perform the concurrency test prior to approval of the development permit or building permit.

(6) The public works official will notify the applicant of the test results (approval or denial) in writing and will notify other city departments of the test results within the time period established in the department's administrative procedures for concurrency. The date of the written notification to the applicant shall be the date of issuance of the concurrency test notice.

(7) The concurrency test notice shall expire within ninety calendar days of its issuance unless the applicant submits a SEPA environmental checklist and all of its required documentation pursuant to [Sections 24.02.055](#) and 24.02.140 of Chapter 24.02 of this code, together with the site plan, the traffic impact analysis prepared in accordance with the city's traffic impact analysis guidelines and containing the traffic information derived from the concurrency test outcome and the SEPA review fee described in Chapter 5.74 of this code. No extensions may be granted for submitting a complete SEPA environmental checklist and all required documentation.

(8) If the deadline for submitting a complete SEPA environmental checklist and all required documentation is met as described above in subsection (7) of this section, the concurrency test notice shall be valid for one year from the date of issuance of the concurrency test notice.

(9) The concurrency test notice shall expire unless a certificate of concurrency is issued or an extension of the notice is granted within one year from the date of issuance of the notice.

(10) An applicant must apply for a new concurrency test if the notice expires or an extension is not granted.

(11) The public works official may approve an extension of up to one year if:

(a) The applicant submits a letter in writing requesting the extension before the expiration date, can show that he/she is not responsible for the delay in issuing the certificate of concurrency and has acted in good faith to obtain a certificate; and

(b) If the property is serviced by a noncity managed utility, then the applicant must submit a letter from the utility approving the extension before the expiration date.

(12) Once the associated development permit or building permit is approved, the public works department will issue a final certificate of concurrency as set forth in Chapter 25.12 of this title.

(13) The public works department shall be responsible for accumulating the impacts created by each application and removing any impacts from the city's concurrency records for an expired concurrency test notice, an expired development permit or building permit, a discontinued certificate of concurrency, or other action resulting in an applicant no longer causing impacts which have been accounted for in the city records.

(14) The public works department shall be responsible to coordinate with applicable noncity managed utility districts for maintaining and monitoring of available and planned capacity for noncity managed utilities. (Ord. 3830 § 1 (part), 2002; Ord. 3552 § 1 (part), 1997)

### **25.10.030 Test.**

Development applications that would result in a reduction of level of service below the established level of service standard shall not be approved. For potable water and sanitary sewer, only available capacity will be used in conducting the concurrency test. For roads, available and planned capacity will be used in conducting the concurrency test.

(1) For sewer and water, if the capacity of the concurrency facilities with the development application is equal to or better than the capacity required to maintain the established level of service standard, then the concurrency test is passed.

(2) For roads, the concurrency test consists of two steps:

(a) The comparison of average volume/capacity ratio for the impacted subarea(s) to the applicable level of service standard; and

(b) The comparison of the volume/capacity ratio at each appropriate intersection to the applicable level of service standard adopted in the comprehensive plan. The traffic test is passed if both comparisons meet the standard.

(3) If the concurrency test is not passed for water, sewer or roads, then the applicant may retest for concurrency after doing one or both of the following:

(a) Modify the application to reduce the need for the concurrency facilities that do not exist. Reduction of need can be through reduction of the size of the development, reduction of trips generated by original proposed development, or phasing of the development to match future concurrency facility construction; or

(b) Arrange with the public works department and fund the improvements for the additional capacity required for the concurrency facilities.

(4) If the concurrency test is not passed for water, sewer or roads, then the applicant may request reconsideration of the results of the concurrency test by the public works director in accordance with the provisions of Chapter 25.22 of this title. (Ord. 3830 § 1 (part), 2002; Ord. 3552 § 1 (part), 1997)

#### **25.10.040 Concurrency for phased development.**

(1) An applicant may request concurrency for a phased development if the public works official determines that the two criteria described below in subsection (2) of this section are met and the application for concurrency is accompanied by a schedule for construction of the buildings, parking and other improvements and by a written request for the development to be considered in phases.

(2) The public works official may approve concurrency for phased development if both of the following criteria are met:

(a) No associated development permit is required before building permit applications can be submitted; and

(b) The application is for an integrated development site plan with multiple buildings that are interdependent for vehicular and pedestrian access and parking.

(3) A concurrency application for phased development shall follow the same timing and procedure as set forth in Chapters 25.10, 25.12 and 25.20 of this title, except that:

(a) Only one concurrency test notice will be issued for all buildings proposed for phased development;

(b) Each building approved for phased development will be issued a certificate of concurrency at the same time as the building permit; and

(c) The concurrency test notice for an approved phased development shall be valid for five years from the date of its issuance; provided, that a certificate of concurrency is issued for a building within one year of the date of issuance of the concurrency test notice or within two years of the date of issuance of the concurrency test notice if an extension is timely requested request and granted.

(4) Pursuant to [Section 25.10.020](#), the public works official may approve an extension of up to one year for obtaining the first certificate of concurrency and the final certificate of concurrency for the phased development.

(5) In no case shall the concurrency test notice be valid for more than six years from the date of issuance of the notice. The applicant must apply for a new concurrency test for any buildings approved for phased development that have not been issued a building permit within six years from the date of issuance of the concurrency test notice. (Ord. 3830 § 1 (part), 2002)

#### **25.10.050 Public notice of concurrency test.**

(1) The public works official shall cause notice of issuance of the concurrency test notice to be given in the same manner and at the same time as the SEPA public notice of [Section 24.02.085](#) of this code.

(2) The notice shall include the name of the applicant, the city file number, the address and description of the development and the procedures for filing an appeal. (Ord. 3830 § 1 (part), 2002)

## **Chapter 25.12 CERTIFICATE OF CONCURRENCY**

**Sections:**

**25.12.010 Issuance.**

**25.12.020 Scope of certificate of concurrency.**

**25.12.030 Nontransferable.**

**25.12.040 Expiration.**

**25.12.050 Nonoccurring impacts.**

**25.12.010 Issuance.**

A certificate of concurrency shall be issued at the same time a development permit or building permit is issued; provided, that the applicant holds a valid concurrency test notice, and pays any fee and/or performs any condition required by the public works department. Each building within an approved phased development shall be issued a certificate of concurrency.

The public works department shall issue certificates of concurrency first for the earliest application reviewed and approved. Subsequent certificates will be issued in the order of review and approval. The purpose of this section is to enable applicants who are ready for approval to receive a certificate of concurrency, even if their application was submitted after an earlier applicant. If an applicant's concurrency test notice expires before a certificate of concurrency is issued, then the assigned impacts for that applicant can be reassigned to another applicant. It is the city's intent to treat applications on a "first-come first-served" basis and to use this section to avoid the delays in approval of development caused by applicants who are unable to complete the review process as a result of their own action. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.12.020 Scope of certificate of concurrency.**

A certificate of concurrency shall apply only to the specific land use, density and intensity described in the application for a development permit or building permit.

No development shall be required to obtain more than one certificate of concurrency for each building, unless the applicant or subsequent owner proposes changes or modifications to the property location, density, intensity, or land use that creates additional impacts on concurrency facilities. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.12.030 Nontransferable.**

A certificate of concurrency is not transferable to other land, but may be transferred to new owners of the original land. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.12.040 Expiration.**

Unless otherwise specified in the decision granting the certificate of concurrency, the certificate shall be valid for the period of the corresponding development or building permit, but in no case shall the certificate be valid for more than six years from the date of issuance of the concurrency test notice. If

the corresponding development or building permit expires, then the certificate of concurrency shall expire. If the certificate of concurrency expires while the development permit is valid and a building permit has not been issued, then the applicant shall submit a new application for concurrency and pass the concurrency test before a building permit is issued. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

#### **25.12.050 Nonoccurring impacts.**

Any traffic, sewer, or water impact that does not occur because a developer decides not to develop, a concurrency test notice or certificate of concurrency expires, or an accompanying development permit or building permit expires, shall be removed from the impact tracking system by the public works department. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

### **Chapter 25.14 PROVIDE NEEDED CONCURRENCY FACILITIES**

#### **Sections:**

**25.14.010 Improvements to the concurrency facilities.**

**25.14.020 Capital facilities plan and capital improvement program.**

#### **25.14.010 Improvements to the concurrency facilities.**

The city shall provide, or arrange for others to provide, adequate facilities by constructing needed capital improvements in implementing strategies which do the following:

- (1) Achieve level of service standards for anticipated future development and redevelopment caused by previously issued and new development and building permits; and
- (2) Repair or replace obsolete or worn out facilities.

Improvements to the facilities shall be consistent with the transportation element, utilities element, and capital facilities element of the comprehensive plan. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

#### **25.14.020 Capital facilities plan and capital improvement program.**

The city shall include in the capital appropriations of its budget for expenditure during the appropriate fiscal year financial commitments for all capital improvement projects required for level of service standards, except the city may omit from its budget any capital improvements for which a binding agreement has been executed with another party to provide the same project in the same fiscal year. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

### **Chapter 25.16 BONDS**

#### **Sections:**

**25.16.010 Bonds.**

**25.16.010 Bonds.**

(1) The public works department may require a bond, as applicable, under the Kirkland zoning code, Ordinance 2740, as amended, Chapter 175, to ensure compliance with any aspect of concurrency for the development permit or building permit approval.

(2) A governmental entity which will not be providing a bond due to RCW 35A.21.250 will be issued a permit after compliance with all of the capital improvement requirements. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**Chapter 25.18  
INTERGOVERNMENTAL COORDINATION**

**Sections:**

**25.18.010 Agreements.**

**25.18.020 Applications.**

**25.18.010 Agreements.**

The city may enter into agreements with other local governments, applicable noncity managed utilities, King County, the state of Washington, and other facility providers to coordinate the imposition of level of service standards and other mitigations for concurrency. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**25.18.020 Applications.**

The city may apply standards and mitigations to development in the city that impact other local governments in the state of Washington. Development permits or building permits issued by the city may include conditions and mitigations that will be imposed on behalf of and implemented by other local governments in the state of Washington. The city may agree to accept and implement conditions and mitigations that are imposed by other jurisdictions on development in their jurisdiction that impact the city. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

**Chapter 25.20  
ADMINISTRATIVE RULES  
AND PROCEDURES**

**Sections:**

**25.20.010 Administrative rules and procedures.**

**25.20.010 Administrative rules and procedures.**

The public works department shall be authorized to establish administrative rules and procedures for administering the concurrency test system. The

administrative rules and procedures shall include but not be limited to application forms, necessary submittal information, processing times, issuance of the concurrency test notice and the certificate of concurrency, and processing the request for reconsideration and appeal. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.22 REQUESTS FOR RECONSIDERATION**

### **Sections:**

**25.22.010 Decisions to be reconsidered.**

**25.22.020 Who may request a reconsideration.**

**25.22.030 Procedures.**

### **25.22.010 Decisions to be reconsidered.**

(1) A decision of the public works official to not approve an application for concurrency may be reconsidered for the following reasons:

- (a) A technical error was committed;
  - (b) Alternative data or a mitigation plan provided by the applicant was rejected;
- and
- (c) Unwarranted delay in review allowed capacity to be given to another applicant.

(2) Such decision may not be reconsidered for the following reasons:

- (a) The methodology of the concurrency test in the comprehensive plan and in this title is incorrect;
- (b) The adopted level of service established in the comprehensive plan is incorrect; and
- (c) A provision of this title is incorrect or invalid. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

### **25.22.020 Who may request a reconsideration.**

Only the applicant or authorized agent of the property owner may request reconsideration of the concurrency decision. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

### **25.22.030 Procedures.**

(1) The applicant or authorized agent must file a written request for reconsideration to the public works director within fourteen calendar days following the postmarked date of distribution of the public works official's written decision. The applicant or agent shall specify in the request what aspect of the decision he/she wishes to have reconsidered and the reason for the request.

(2) The burden of proof shall be on the applicant or agent to show that the public works official was in error.

(3) Within twenty-one working days of receiving the request for reconsideration, the public works director shall review the reconsideration request and send written notice of the final concurrency test decision to the

applicant or agent, and to the city planning, building and fire departments. (Ord. 3830 § 1 (part), 2002; Ord. 3552 § 1 (part), 1997)

## **Chapter 25.23 APPEALS**

### **Sections:**

- [25.23.010](#) **Decisions to be appealed.**
- [25.23.020](#) **Who may request an appeal.**
- [25.23.030](#) **Filing of appeal.**
- [25.23.040](#) **Hearing on appeal.**
- [25.23.050](#) **Notice of appeal hearing.**
- [25.23.060](#) **Participation in appeal.**
- [25.23.070](#) **Staff report.**
- [25.23.080](#) **Hearing and decision on appeal.**

### **25.23.010 Decisions to be appealed.**

The concurrency test decision of the public works official may be appealed under this chapter, except that the appeal cannot be for the following reasons:

- (1) The methodology of the concurrency test in the comprehensive plan and in this title is incorrect;
- (2) The adopted level of service established in the comprehensive plan is incorrect; and
- (3) A provision of this title is incorrect or invalid. (Ord. 3830 § 1 (part), 2002)

### **25.23.020 Who may request an appeal.**

Only the following may appeal:

- (1) The applicant or authorized agent of the property owner;
- (2) Any agency with jurisdiction; and
- (3) Any individual or other entity who is specifically and directly affected by the proposed development. (Ord. 3830 § 1 (part), 2002)

### **25.23.030 Filing of appeal.**

(1) The appeal must be filed with the public works official within fourteen calendar days of the date of issuance of a determination of nonsignificance (DNS) for the development or within seven calendar days of the date of publication of a determination of significance (DS) for the development under Title 24 of this code.

(2) The appeal must be in writing and designated as a “notice of appeal,” and must contain a brief and concise statement of the matter being appealed, the specific components or aspects of the decision that are being appealed, the basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.

(3) The notice of appeal shall be accompanied by the appeal and fee established in Chapter 5.74 of the code. (Ord. 3830 § 1 (part), 2002)

#### **25.23.040 Hearing on appeal.**

Appeals will be heard at the open record hearing for the underlying development or building permit and decided upon by the hearing body that will hear the underlying development or building permit using the provisions of [Sections 25.23.060](#) through 25.23.080 of this title. If a development or building permit does not include an open record public hearing, the appeal will be heard and decided upon by the hearing examiner using the provisions of [Sections 25.23.060](#) through 25.23.080 of this title. (Ord. 3830 § 1 (part), 2002)

#### **25.23.050 Notice of appeal hearing.**

(1) The public works official shall prepare a notice of the appeal containing the following:

(a) The file number and a brief written description of the matter being appealed;

(b) A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the notice of appeal;

(c) The time and place of the public hearing on the appeal before the hearing body;

(d) A statement of who may participate in the appeal; and

(e) A statement of how to participate in the appeal.

(2) At least fourteen calendar days before the hearing on the appeal, the public works official shall send a copy of the notice to the applicant or authorized agent and the person filing the notice of appeal.

(3) The notice of appeal may be combined with the hearing notice for the underlying development permit or SEPA appeal, if applicable. (Ord. 3830 § 1 (part), 2002)

#### **25.23.060 Participation in appeal.**

Only those persons entitled to appeal the concurrency test decision under [Section 25.23.020](#) may participate in the appeal in the following ways:

(1) The applicant or authorized agent may submit a response letter to the hearing body at least fourteen calendar days before the hearing; and

(2) The applicant and any person or any agency entitled to appeal the concurrency test decision may appear in person or through a representative at the appeal hearing and submit oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing. (Ord. 3830 § 1 (part), 2002)

#### **25.23.070 Staff report.**

(1) The public works official shall prepare a staff report containing the following:

(a) The concurrency test decision;

(b) The notice of appeal;

(c) The applicant's written response, if submitted; and

(d) An analysis of the specific factual findings and conclusions disputed in the notice of appeal.

(2) The staff report may be combined with the staff report on the underlying development permit, building permit or SEPA appeal, if applicable.

(3) At least seven calendar days before the hearing, the public works official shall send copies of the staff report as follows:

(a) To the hearing body;

(b) To the applicant; and

(c) To the appellant. (Ord. 3830 § 1 (part), 2002)

### **25.23.080 Hearing and decision on appeal.**

(1) The hearing body shall hold a public hearing on the appeal, which shall be limited to the matters raised in the notice of appeal.

(2) All testimony shall be taken under oath.

(3) The hearing body shall make a complete electronic sound recording of the hearing.

(4) The hearing body may continue the hearing if, for any reason, it has not heard all testimony or needs more information within the scope of the appeal. If, during the hearing, the hearing body announces the time and place of the continued hearing on the matter, no further notice of that hearing need be given.

(5) The hearing body shall consider all information and material within the scope of the appeal submitted and testified to by persons entitled to participate in the appeal. Based on the findings and conclusions, the hearing body shall, within eight calendar days after the public hearing, issue a written decision either:

(a) Affirming the decision;

(b) Reversing the decision; or

(c) Modifying the decision.

(6) The decision of the public works official shall accord substantial weight. If the hearing body reverses or modifies the decision, it shall provide new findings and conclusions to support the reversed or modified decision.

(7) If the hearing body concludes that the record compiled by the public works official is incomplete or inadequate for the hearing body to make a decision on the appeal, the hearing body may remand the matter to the public works official with direction to provide more information and supplemental findings and conclusions on the matter or matters specified in the remand. The remand shall be limited to the scope of the issues to be considered. The public works official shall respond to the remand in writing within twenty-eight calendar days of the date of issuance of the remand. The time limits and other pertinent requirements of this section shall apply to the remand and final decision of the hearing body.

(8) The decision of the hearing body shall be the final decision on any appeal of a concurrency test decision.

(9) The hearing body shall send the decision within four calendar days of its issuance:

(a) To the applicant;

(b) To the appellant;

(c) To all other persons or agencies who provided oral or written testimony at the hearing; and

(d) To the public works official. (Ord. 3830 § 1 (part), 2002)

## **Chapter 25.24 FEES**

### **Sections:**

**25.24.010 Concurrency test review fee and appeals.**

#### **25.24.010 Concurrency test review fee and appeals.**

The concurrency test review fee and appeal fee are set forth in Chapter 5.74 of this code. All such concurrency review fees are to be paid in full with applications for a development permit or building permit. All concurrency appeal fees shall be paid in full when the appeals are submitted. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.26 SEPA EXEMPTION**

### **Sections:**

**25.26.010 Relationship to SEPA.**

#### **25.26.010 Relationship to SEPA.**

A determination of concurrency shall be an administrative action of the city of Kirkland that is categorically exempt from the State Environmental Policy Act. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)

## **Chapter 25.28 SEVERABILITY**

### **Sections:**

**25.28.010 Severability.**

#### **25.28.010 Severability.**

If any part of this chapter is found to be invalid, that finding shall not affect the validity of any remaining part of this chapter. (Ord. 3830 § 1 (part), 2002: Ord. 3552 § 1 (part), 1997)