CHAPTER 17.15
ADEQUATE PUBLIC FACILITY CONCURRENCY

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17.15.010 PURPOSE AND INTENT.

The purpose of this chapter is to set forth specific standards providing for City compliance with the concurrency requirements of the State Growth Management Act (GMA). The provisions of this chapter insure consistency between city and countywide planning policies under the GMA.

This chapter is intended to ensure that applicable public improvements or strategies to accommodate the impacts of development are made concurrent with the development. In short, the City must require that adequate facilities are available to meet the needs of persons who will work or reside where new development occurs, prior to occupation or use of the development.

The City of Lynden chose level of service standards for public facilities and services that are reflective of the high quality of life that members of the community have expressed a desire to establish and maintain. This concurrency management system was developed to assist the City in securing the needed capital facilities and/or capital improvements to maintain those minimum level of service standards.

Concurrency must exist simultaneous to, or within a reasonable time after, development occupancy or use. Goals, policies and implementation strategies for concurrency facilities are provided in the Capital Facilities Plan Element of the Lynden Comprehensive Plan, the City’s Capital Facilities Management Plan, the Transportation Plan Element, and other related Plans as may be hereafter adopted. Public facilities and services that require concurrency with development are water, sewer, stormwater, public safety, parks, transportation and other general government facilities. If concurrency cannot be achieved, mitigation by developers and/or reduction of the project scope may be required prior to development approval.
17.15.020 DEFINITIONS.

Adequate Public Facilities.
“Adequate public facilities” means public facilities that meet or exceed the adopted level of service standard set forth in the City’s Comprehensive Plan.

Application.
“Application” means any development proposal, accompanying traffic analysis or other documentation as required in this chapter to determine the impact on each facility and/or intersection affected.

Available Public Facilities.
“Available public facilities” means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time.

Capital Facility.
“Capital facility” means a structure, improvement, piece of equipment or other major asset including land that has a useful life of at least 10 years. Capital facilities are provided by or for public purposes and services including but not limited to the following: Airport, Fire and rescue, Government offices, Police, Libraries, Parks, Sanitary Sewer, Sidewalks, Stormwater facilities, Streets, Street lighting systems, Traffic signals and Transit. The capital facilities listed above include necessary ancillary and support facilities. (CP)

Capital Facilities Management Plan.
“Capital Facilities Management Plan” (CFMP). The 6-year plan (current year plus 5 years) for capital improvements that supports the City’s current and future population and employment growth. It contains level of service standards for each public facility, a financing plan for necessary facilities, and requires that new development is served by adequate facilities for which concurrency is required under this chapter. The CFMP also contains broad goals and specific policies for all public facilities. City departments are required to submit documentation for services rendered and/or provided in the form of invoices as specified in Policy F–2, the Purchasing Policy.

Capital Improvement.
“Capital improvement” means a project to create, expand or modify a capital facility. The project may include design, permitting, environmental analysis, land acquisition, construction, landscaping, site improvements, initial furnishings and equipment. The project cost must exceed $15,000. (CP)

Comprehensive Plan.
“Comprehensive Plan” means the City of Lynden Comprehensive Plan and any element or subplan thereof, as now exist or as may hereafter be adopted or amended.
Concurrency or Concurrent.
“Concurrency” or “Concurrent” 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. The City may not permit development approval if a development would cause level of service to fall below the City’s adopted standard, unless improvements or strategies to accommodate the impacts of development are made concurrent with the development. This definition includes the two concepts of “adequate public facilities” and “available public facilities” as defined above.

Concurrency Determination.
“Concurrency Determination” means a non-binding determination of what public facilities and services are available on the date of a concurrency inquiry by an individual to the City.

Concurrency Management System.
“Concurrency management system” means the procedures and processes utilized by the City to determine that development approvals, when issued, will not result in the reduction of the level of service standards set forth in the Comprehensive Plan.

Concurrency Test.
“Concurrency test” means the comparison of an applicant’s impact on concurrency facilities to the capacity, including available and planned capacity, of the concurrency facilities.

Development.
“Development” means any activity or use requiring or involving a land use permit, approval, or action regulated by Titles 16 through 19, LMC, including but not limited to subdivisions, short subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments, conditional use permits, special use permits, variances, design review approvals, building permits, shoreline substantial development permits, site plan review, approvals required by the critical areas ordinance, or site-specific rezones, but excluding the adoption or amendment of the comprehensive plan, subarea plan, or development regulations.

Development Permit or Approval.
“Development permit or approval” means the permit required prior to commencement of work on any development. (T17)

Financial Commitment.
“Financial commitment” means revenue sources forecast to be available and designated for public facilities or expansion strategies in the Comprehensive Plan or in the transportation element of the Comprehensive Plan, other unanticipated revenue from federal or state grants, or other sources for which the City has received a notice of commitment, and/or revenue that is assured by an applicant in a form approved by the City.

Finding of Concurrency.
“Finding of concurrency” means the finding that is a part of the permit approval issued by the City indicating that public facilities have adequate unused or uncommitted capacity, or will have adequate capacity, to accommodate the traffic and persons generated by the proposed development, without causing the level of service to decline below the adopted standards, at the time of development or within six years.

**Funded Project.**
“Funded project” means a project in the most recently adopted Capital Facilities Management Plan (CFMP) for the City or similar capital program of another jurisdiction which has sufficient revenues secured for construction, or which meets the facility concurrency requirements of Section 17.15.050.

**Impact Fees.**
“Impact fees” means a payment of money imposed pursuant to City ordinance or resolution upon development as a condition of development approval to pay for public facilities needed to serve new growth and development. (RCW 82.02.090)

**Level of Service Standard.**
“Level of Service (LOS) Standard” means a quantifiable measure of the amount of public facility that is provided. Typically, measures of levels of service are expressed as ratios of facility capacity to demand (i.e., actual or potential users). (CP)

**Mitigation.**
“Mitigation” means transportation demand management strategies and/or facility improvements constructed or financed by a developer which returns a degraded level of service to the standard established for that area. If an area is already exceeding the standard prior to the development proposal, mitigation shall mean transportation demand management strategies and/or facility improvements constructed or financed by a developer to return the degraded area-average level of service to at least the level-of-service established for that area.

**Mitigation Contribution.**
“Mitigation contribution” means a cash donation or other valuable consideration offered by the applicant in lieu of: (1) a required dedication of land for public park, recreation, open space, public facilities, or schools; or (2) road improvements needed to maintain adopted level of service or to ameliorate identified impacts and accepted on the public’s behalf as a condition of approval of a subdivision, plat, planned development, or binding site plan. Voluntary contributions may be accepted by the City. (T17)

**Phased Development.**
“Phased development” means any development involving multiple buildings or improvements where issuance of development permits would not occur at the same time, but phased over a period of time.
**Planned Capacity.**
“Planned capacity” means concurrency facility capacity that does not exist, but for which the necessary facility construction, expansion or modification project is contained in the Comprehensive Plan (e.g., Capital Facilities Element) and scheduled to be completed within six years.

**Planned Capacity, Transportation Facilities.**
“Planned capacity, transportation facilities,” means capacity that does not exist for transportation facilities, but for which the necessary facility construction expansion or modification project is contained in the Comprehensive Plan (e.g., Capital Facilities Management Plan) and financial commitment is in place to complete the improvements within six years.

**Public Facilities.**
“Public facilities and utilities” means land or structures owned by or operated for the benefit of the public use and necessity, including but not limited to storm and sanitary sewers, domestic water systems, streets and roads, street cleaning services, street lights, traffic signals, curbs, gutters and sidewalks, fire and police protection services, public transit, airport, government buildings, and other public utilities associated with urban areas.

**Service Area.**
“Service area” means a geographic area defined by the City in which a fixed set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

**Traffic Impact Analysis.**
“Traffic Impact Analysis” means a specialized study of the impacts that a certain type and size of development in a specific location will have on the surrounding transportation system. The scope of work for the study will be determined by the City.

**Transportation Demand Management.**
“Transportation Demand Management (TDM)” means public and/or private programs designed to increase the efficiency of existing capital transportation facilities, including, but not limited to, transit and ride sharing incentives, flexible working hours, parking management, and supporting non-motorized enhancements, and related systems and site specific improvements.

**Transportation Facility Capacity.**
“Transportation Facility Capacity” means the maximum traffic volume that can be accommodated at an intersection within the City while maintaining the level of service prescribed in the Comprehensive Plan (Transportation Element). Capacity will be calculated according to the methodology used in the most current Highway Capacity Manual. An alternative methodology may be used only if it is preapproved by the Planning Director or his/her designee.

**Under Construction.**
“Under construction” means that a construction contract for a project has been awarded or actual physical alteration or improvement has occurred on the site.

17.15.030 ADMINISTRATION AND APPLICATION.

A. Administration. The Planning Director shall be responsible for the administration of all activities relating to this chapter and shall coordinate with other departments, as appropriate, in implementation of the provisions of this chapter. Where there are technical matters concerning the calculation of available facilities and the terms for providing facilities, the decisions of the Planning Director shall be with the concurrence of the Public Works Director and other members of the Technical Review Committee. The Planning Director may, with the approval of the City Council, implement administrative policies deemed necessary and/or appropriate to implement the provisions of this chapter.

B. General Application. This chapter applies to all land use development applications including, but not limited to, the following types of development activities.
1. **Building permits** for constructions which will result in 10 or more peak hour trips.
2. **Subdivisions.** Any subdivision resulting in more than four units.
3. **Phased Development.** The requirements of this chapter shall be applied at the time of approval of the initial phase and shall be adjusted for each subsequent phase based on the cumulative impact of all the phases.
4. **Change in Occupancy.** This chapter will apply to applications for tenant improvements if a proposed new use or an expanded existing use will affect the LOS at public facilities and/or intersections of the City.
5. **Site Specific-Rezones.** The City may approve a proposed site-specific rezone only if the full facility impacts of site development are disclosed at the time of application assuming full development of the property under the proposed zoning classification using the highest trip generating permitted uses. Lack of concurrency will not be a basis for denial of a site-specific rezone; however, any subsequent development is subject to the concurrency requirements of this chapter. Specific requirements for public facility improvements to mitigate the impacts of a proposed site-specific rezone and assure compliance with this chapter may be imposed as a condition of said rezone.
6. **Reconstruction of Destroyed Buildings.** If a building to which this chapter did not apply at time of construction is destroyed by fire, explosion or Act of God or war, and is reconstructed in accordance with city code, it will not be required to comply with this chapter unless the reconstructed building produces public facility impacts in excess of those produced by the destroyed building.

C. SEPA. This chapter is not intended to limit the application of the State Environmental Policy Act to specific proposals. Each proposal shall be reviewed
and may be conditioned or denied under the authority of the State Environmental Policy Act and/or this chapter.

D. Traffic Impact Analysis. As part of the land use development application, the applicant may be required to submit a traffic impact analysis to identify all traffic impacts upon roadways, intersections and nonmotorized facilities within the affected service area.

17.15.040 EXEMPTIONS.

The portion of any facility used for any of the following purposes is exempt only from the concurrency requirements and not from the application and processing requirements of Title 17 or for the requirement to do site specific improvements. Impact fees required by City Code are not exempt from the requirements of this chapter.

A. No Impact. Development permits for development which creates no additional impacts on any concurrency facility are exempt from the requirements of this chapter. Such development includes, but is not limited to:
   1. Any addition, renovation or modification to the interior or exterior of a structure, residence or public facility that results in no change or increase in use, intensity of use, or number of dwelling units.
   2. Replacement structure with no change or increase in use or number of dwelling units;
   3. Temporary structures;
   4. Driveway resurfacing or parking lot paving;
   5. Landscaping, lighting or fencing;
   6. Signs;
   7. Demolitions;
   8. Conditional Use Permits or variances which do not allow an increase in use or number of new dwelling units above the intensity of use or number of dwelling units allowed by the existing zoning of the property;

B. Privately operated not for profit social service facilities recognized by the Internal Revenue Service under the Internal Revenue Code;

C. Low income housing, which is defined as housing which is affordable to persons whose income is below fifty percent of the median income for persons residing in the City of Lynden. Only the proportion of units designated for low income residents shall be exempt under this subsection;

D. Any development creating less than 10 peak hour trips as defined in this chapter.

E. Any project that is a component of another proposed development and that was included in a prior application for a finding of concurrency.

F. Exempt Permits. The following development permits are exempt from the requirements of this chapter:
   1. Lot line adjustment;
2. Administrative waiver;
3. Permits for construction of single family homes, duplexes, and accessory dwelling units, as defined in LMC Title 17; and,
4. Permits for development that had complete applications submitted before the effective date of this chapter.

Notwithstanding the exemptions provided herein, the traffic impacts on public facilities resulting from an exempt use shall nonetheless be included in computing available capacity.

17.15.050 ADEQUATE PUBLIC FACILITY CONCURRENCY.

The issuance of development permits shall be conditioned on a Finding of Concurrency to be determined in accordance with Section 17.15.060 and the following:

A. Adequate capacity shall exist concurrent with issuance of a development permit or approval; or

B. The City shall have in place binding financial commitments to complete the necessary public facilities or strategies within six years, provided that:
   1. The capital facilities plan as defined in the Lynden Comprehensive Plan must be financially feasible; and
   2. The City uses a realistic, financially feasible funding system based on revenue sources available according to laws adopted at the time the Capital Facilities Plan is adopted; and
   3. The Lynden Comprehensive Plan (Capital Facilities Element) must demonstrate that the actual construction of the roads, nonmotorized and transit facilities are scheduled to commence during or before the sixth year of the Capital Facilities Plan; and
   4. The Capital Facilities Management Plan must include facilities necessary to eliminate existing level of service deficiencies as well as those necessary to maintain adopted level of service standards to serve new development.

17.15.060 APPLICATION—PROCEDURES

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project’s ability to meet the requirements for concurrency.

A. Pre Application Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a non-binding concurrency determination (see subsection (C)(1) below) to learn whether adequate public facilities are available to serve new development.
B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the Planning Director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the Planning Director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications–Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements.

1. **Concurrency Inquiry.** An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the City Council may be charged for such “Concurrency Determination”.

2. **Concurrency Test.** Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the Comprehensive Plan and in Section 17.15.070. If the Planning Director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the City within 30 days of receipt of a complete application as set forth in Subsection (A) above. A “Finding of Concurrency” will be rendered only in conjunction with a complete development/concurrency application.

   a) If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.

   b) Transportation facilities: If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:

      i. Accept the City’s denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e).

      ii. Accept Mitigation for Transportation Facilities as provided in Section 17.15.080 of this Chapter.

      iii. Appeal the results of the concurrency test in accordance with Chapter 17.11 of the LMC.

   c) Other public facilities: If the capacity of concurrency facilities is less than the capacity required to maintain the level of service...
standard for the impact from the development application, the concurrency test is not passed. The applicant may:

i. Accept a 90-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist.

ii. Accept a 90-day reservation of the available, existing capacity and demonstrate to the City’s satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate.

iii. Accept a 90-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or

iv. Accept the City’s denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the City to investigate whether there is just cause or ability to amend or revise the Comprehensive Plan.

iv. Appeal the results of the concurrency test in accordance with Chapter 17.11 of the LMC.

3. Finding of Concurrency. The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the Planning Director. The finding of concurrency shall be binding on the City at such time as the City determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. Term of Capacity. A Finding of Concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The Planning Director may at his/her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the Finding of Concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. Unused Capacity. Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.

6. Level of Service Areas. The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. Funded Projects. The developer may rely on capacity provided by funded projects, including projects in the current Capital Facilities Plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that
the applicant must fully fund or mitigate any impacts as required herein. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. Development Approval. No final development permit shall be issued by the City unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. Non-Assignability of Determination. The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.070 APPLICATION—CAPITAL FACILITIES LOS STANDARDS.

A. Whenever the Planning Director is asked to consider the approval of any of the development activities specified under section 17.15.030 (B), he or she shall make a written Finding of Concurrency (see Section 17.15.060(C)(3)) in connection with facilities proposed or available for the project.

B. With respect to each of the public facilities identified in section 17.15.010, and the City’s Comprehensive Plan (Capital Facilities Management Plan (CFMP)), a concurrency test shall be conducted as specified in section 17.15.060(C)(2), and concurrency shall be established and determined according to the following level of service standards:

1. Wastewater System Utility (Sewer):
   a) The project is within an area approved for wastewater system utility pursuant to the adopted Comprehensive Wastewater Plan for the City of Lynden.
   b) The required developer improvements to provide facilities and services consistent with City standards are present, or are approved and funded, to assure availability in time to meet the needs of the development project. Standards for development of public utilities are provided in Title 13 of the Lynden Municipal Code and the City of Lynden Project Manual for Engineering Design and Development Standards.

2. Water System Utility:
   a) The project is within an area approved for municipal water service pursuant to the Comprehensive Water Plan for the City.
   b) The required developer improvements to provide facilities and services consistent with City standards are present, or are approved and funded, to assure availability in time to meet the needs of the development project. Standards for development of public utilities are provided in Title 13 of the Lynden Municipal Code and the
3. Stormwater Management Utility (Storm Drainage):
   a) The project is within an area approved for stormwater system
      utilities pursuant to the Stormwater Management Plan for the City.
   b) The required developer improvements to provide facilities and
      services consistent with City standards are present, or are approved
      and funded, to assure availability in time to meet the needs of the
      development project. Standards for development of public utilities
      are provided in Title 13 of the Lynden Municipal Code and the
      City of Lynden Project Manual for Engineering Design and
      Development Standards.

4. Parks
   The project meets the requirements of LMC Chapter 3.40, the Parks,
   Recreation and Open Space Mitigation Fund. Standards for dedication of
   properties for public parks, recreation facilities and open space, and
   formulas for use in mitigating the impacts of property development on
   public parks, and recreation facilities and open spaces are established by
   Ordinance 1197, and as may be hereafter amended.

5. General Government
   a) Library: Development is not currently required to achieve
      concurrency for library facilities
   b) City Hall: Development is not required to achieve concurrency for
      expansion or new construction of City Hall.

6. Public Safety
   a) Police Department. Currently there are no concurrency
      requirements for police facilities.
   b) Fire Facilities. The project meets the requirements of LMC
      Chapter 3.44, Fire Facilities Mitigation Fund. Standards for fire
      service facilities and formulas for use in mitigating the impacts of
      property development on fire facilities are established by ordinance
      960.

7. Transportation
   a) The project makes on-site and frontage improvements, consistent
      with City standards for utilities, curbs, gutters, sidewalks, bicycle
      lanes where appropriate, and roads necessary to serve the proposed
      project consistent with safety and public interest. Standards for streets,
      sidewalks and public places are provided in Title 12 of the
      Lynden Municipal Code and the Project Manual for Engineering
      Design and Development Standards.
   b) The project makes such off-site facility improvements, not listed
      on the capital facilities plan, as are necessary to meet City level of
      service standard for the safe movement of traffic and pedestrians
      attributable to the project. Where a developer is required to
      oversize an off-site facility by more than 10% of the need
generated by the proposed project, the City may consider a
developer reimbursement contract as authorized by state law.

c) The project makes a contribution to the off-site facilities identified
in the Transportation Element of the Comprehensive Plan.
Contributions required by SEPA mitigation and Developer
Contributions will be based upon the list of projects specified to be
constructed within the next six years. The project developer may,
with the approval of the code administrator, elect to construct a
portion of the six-year facility as partial credit against such charge,
in which case a credit shall be given for the reasonable cost
incurred therein, but not to exceed the extent of potential savings to
the City.

d) A development proposal will not be approved which causes
congestion that exceeds the level of service standard of LOS C for
peak-hour traffic conditions on City streets, and LOS D for
intersections of SR 539 and SR 546, and not mitigated by:
i. the existing street network;
ii. fully funded projects;
iii. street improvements under contract as part of other
   approved development proposals which are fully funded
   and/or;
iv. developer mitigation in accordance with Section 17.15.080.

e) Transit Services
Standards for transit service within the City of Lynden are
determined by Whatcom Transportation Authority (WTA). The
City can only indirectly promote transit ridership by encouraging
participation in Whatcom County trip reduction programs, TDM
programs and development of supportive land use policies. No
mitigation contributions will be required for maintaining adequate
transit facilities and services for the City.

17.15.080 MITIGATION FOR TRANSPORTATION FACILITIES.

A. General. If mitigation is required to meet the intersection level of service
standard, the applicant may instead choose to:
1. reduce the size of the development until the standard is met,
2. delay development schedule until City and/or others provide needed
   improvements, or
3. provide the mitigation as provided for in this chapter. Mitigation must be
   acceptable to the City in form and amount, to guarantee the applicant’s pro
   rata share of the financial obligation for capital improvements for the
   benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:
1. Transportation mitigation fees shall be based on the per peak hour trip
   rate.
2. City Standards shall include:
a) Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report – Trip Generation. The presumption is that rates used by the City are accurate unless proven otherwise.

b) For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.

3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.

4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of 500 trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the Planning Director for Council approval as follows:

1. Payment for and Timing of Improvements.

   Payment for developer-funded transportation improvements affecting streets and intersections within the City’s direct operational control necessary to meet the requirements for concurrency must be made as follows:

   a) For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.

   b) For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.

   c) For any project over 100 peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with 50% being paid at the issuance of the building permit and the balance paid within 24 months.

   d) Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.

   e) All improvements shall comply with construction standards provided in Title 12 of the LMC, and the City’s Project Manual for Engineering Design and Development Standards.
f) Furthermore, the City Administrator or his/her designee shall require an assurance device to guarantee completion of such improvements in accordance with said construction standards.

g) The finance director shall be responsible for maintaining all mitigation funds received under this chapter.

h) Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the City’s direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the Planning Director or his/her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the City Administrator may substitute for the payment required in this subsection.

i) The project proponent may provide funding in an amount equal to the cost estimate of the City Administrator or his/her designee, for necessary traffic improvements. The City Administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the City must be paid in full by the project proponent to the City prior to issuance of a development permit, final plat approval or such other approval for the project.

2. Transportation Demand Management. As a mitigation measure, the project proponent may establish Transportation Demand Management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subsection 3 below. The Planning Director or his/her designee must approve the strategies and shall monitor and enforce the performance of agreed upon TDM measures. The Planning Director will determine if performance measuring devices shall be imposed, and may require annual documentation of the continued effectiveness of such measures. The Planning Director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria-Acceptable Mitigation. Acceptable mitigation requires a finding by the Planning Director that:

a) The mitigation is consistent with the Comprehensive Plan.

b) The mitigation contributes to system performance.

c) Improvements to an intersection or roadway may not shift traffic to a residential area.
d) Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available.

e) Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction’s policies and regulations.

f) Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such.

g) The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes.

h) The adverse environmental impacts of the facilities improvement can be reasonably alleviated.

i) The improvement will not violate accepted engineering standards and practices.

Notwithstanding the foregoing, the Planning Director may require correction of a documented safety-related deficiency.

4. Mitigation denial-appeal process. If the Planning Director determines that the proposed mitigation does not meet the requirements of this chapter, the Planning Director may deny the proposed improvements and determine the project is inconsistent with this chapter. The Planning Director’s decision may be appealed by the applicant to the City Council pursuant to the provisions of Chapter 17.11.

17.15.090 ACCOUNTING AND APPEALS.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the City can justify a longer period.

B. Any person aggrieved by the action of the Planning Director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall be processed pursuant to the Appeals procedures set forth in Chapter 17.11 of the LMC.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of this ordinance, and (2) if for any reason the terms of this ordinance are found inappropriate, such fee as necessary to assure concurrency for all facilities identified herein, but not to exceed the fee collected pursuant to this ordinance.