

ORDINANCE NO. 3552

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CONCURRENCY MANAGEMENT, (FILE CC-95-71).

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. There is hereby created a new Title 25 of the Kirkland Municipal Code entitled "Concurrency Management" and to read as follows:


As set forth in Attachment A which by this reference is incorporated herein.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 3. This Ordinance shall be in force and effect 30 days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code, in the summary form attached to the original of this Ordinance and by this reference approved by the City Council.


PASSED by majority vote of the Kirkland City Council in regular, open meeting this 4th day of February, 1997.

SIGNED IN AUTHENTICATION thereof this 4th day of February, 1997.



Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

Title 25

CONCURRENCY MANAGEMENT SYSTEM

Chapters:

- 25.02 Authority and Purpose**
- 25.04 Complete Compliance Required**
- 25.06 Definitions**
- 25.08 Exemptions**
- 25.10 Concurrency Test**
- 25.12 Certificate of Concurrency**
- 25.14 Provide Needed Transportation Facilities**
- 25.16 Bonds**
- 25.18 Intergovernmental Coordination**
- 25.20 Administrative Rules and Procedures**
- 25.22 Requests for Reconsideration**
- 25.24 Fees**
- 25.26 SEPA Exemption**
- 25.28 Severability**

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, Chapter 36.70A RCW, 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.

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.

Chapter 25.06

DEFINITIONS

Sections:

25.06.010	Generally.
25.06.020	Accounted Traffic Impact.
25.06.030	Adequate.
25.06.040	Applicant.
25.06.050	Available Sewer and Water Capacity.
25.06.060	Building Permit.
25.06.070	Certificate of Concurrency.
25.06.080	Concurrency.
25.06.090	Concurrency Facilities.
25.06.100	Concurrency Test.
25.06.110	Development Permit.
25.06.120	Financial Commitment.
25.06.130	Level of Service Standard.
25.06.140	Non-City Managed Facilities.
25.06.150	Planned Capacity.
25.06.160	Public Works Official.
25.06.170	Transportation Strategies.
25.06.180	Vested.

25.06.010 Generally.

The definitions contained in this Chapter apply throughout the title, unless, from the context, another meaning is clearly intended.

25.06.120 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.

25.06.030 Adequate.

"Adequate" means equal to or better than the level of service standards specified in the current adopted Capital Facilities Element.

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.

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.

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.

25.06.070 Certificate of Concurrency.

"Certificate of Concurrency" means that document issued by the Public Works Department indicating:

(1) The location or other description of the property on which the development is proposed,

(2) The type of development permit or building permit for which the Certificate of Concurrency is issued,

(3) The specific uses, densities, and intensities that were tested for concurrency and which are authorized for development of the property,

(4) For sewer and water, the capacity of the concurrency facilities that are available and reserved for the development as described in the certificate,

(5) For road facilities, the accounted traffic impact assigned to the development as described in the certificate,

(6) Conditions of approval, if applicable,

(7) An effective date, and

(8) An expiration date.

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.

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.

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 sub-area.

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 (1) year.

25.06.110 Development Permit.

"Development permit" means a land use permit. Development permits include short plat, preliminary or final plat, rezone/reclassification, zoning permit, shoreline substantial development permit/conditional use permit, planned unit development, administrative design review, or any other permit or approval under the Zoning Code or Subdivision Ordinance. Exempt development permits are set forth in Chapter 25.08.

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.

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 the Kirkland Municipal Code.

25.06.140 Non-City Managed Facilities.

"Non-City managed facilities" include any non-City provider of water and sewer.

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.

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.

25.06.170 Transportation Strategies.

"Transportation strategies" means transportation demand management strategies and other techniques or programs that reduce single occupant vehicle travel.

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.

Chapter 25.08

EXEMPTIONS

Sections:

- 25.08.010 Exemptions.**
**25.08.020 Applications Filed Before
March 12, 1997.**

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 5.10.20;
- (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 the Kirkland Municipal Code;
- (6) Cellular antennas and satellite dishes;
- (7) Demolitions;
- (8) Driveway, resurfacing, or parking lot paving, provided that additional vehicular trips are not generated;
- (9) Electrical, plumbing, and mechanical permits;
- (10) Expansions or phases of projects 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;
- (11) Final Planned Unit Development (if a concurrency test was conducted and approved for the corresponding preliminary Planned Unit Development);
- (12) Final plats (if a concurrency test was conducted for the corresponding preliminary plat permit);
- (13) Final rezone (if a concurrency test was conducted and approved for the corresponding Intent to Rezone);
- (14) Interior renovations or replacement structure with no change in use or increase in floor area;
- (15) 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;
- (16) Land surface modification permits;
- (17) Lot line adjustments;
- (18) Outdoor cafe permits;

- (19) Reroofing of structures;
- (20) Side sewer permit for single-family residence;
- (21) Sign permits and master sign plans;
- (22) Street use permits and right-of-way permits;
- (23) Street vacations;
- (24) Subdivision vacations/alterations;
- (25) 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;
- (26) Temporary construction trailers;
- (27) Temporary use permits;
- (28) Variances;
- (29) Water service permit for single-family residence; and
- (30) Any other development permit or building permit which the Public Works Department determines has no impact on the concurrency facility.

25.08.020 Applications Filed Before March 12, 1997.

Complete development permit or building permit applications that have been submitted before the effective date of the ordinance codified in this title are exempt from the requirements of this title.

Chapter 25.10

CONCURRENCY TEST

Sections:

- 25.10.010 Timing.
- 25.10.020 Procedures.
- 25.10.030 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.

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 non-City managed utility.

(3) The applicant shall submit a Traffic Impact Analysis, prepared in accordance with the City's Traffic Impact Analysis Guidelines, 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 Department will perform the concurrency test prior to approval of the development permit or building permit. The Public Works Department will notify the applicant of the test results (approval or denial) and notify other City departments of the final outcome of the concurrency test within the time period established in the administrative procedures.

(6) If an applicant passes the concurrency test, the Public Works Department shall issue a

notice to the applicant. The concurrency test notice shall be valid for one (1) year from the date of issuance of the notice. The notice will expire in one year unless a Certificate of Concurrency is issued or an extension is granted. An applicant must apply for a new concurrency test if the notice expires or an extension is not granted.

(7) The Public Works Department may approve an extension of up to one (1) 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 non-City managed utility, then the applicant must submit a letter from the utility approving the extension before the expiration date.

(8) 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

(9) 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.

(10) The Public Works Department shall be responsible to coordinate with applicable non-City managed utility districts for maintaining and monitoring of available and planned capacity for non-City managed utilities.

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 sub-area(s) to the applicable Level of Service Standard, and

(b) The comparison of the number of traffic signals that exceed the sub-area(s) average volume/capacity ratio to the number allowed in the applicable Level of Service standard. 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 apply for a reconsideration of the results of the concurrency test to the Public Works Director in accordance with the provisions of Chapter 25.22.

Chapter 25.12

CERTIFICATE OF CONCURRENCY

Sections:

- 25.12.010 Issuance.
- 25.12.020 Scope of Certificate of Concurrency.
- 25.12.030 Non-Transferable.
- 25.12.040 Expiration.
- 25.12.050 Non-Occurring 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 permit has been issued a Concurrency Test Notice, and upon payment of any fee and/or performance of any condition required by the Public Works Department.

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.

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, 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.

25.12.030 Non-Transferable.

A Certificate of Concurrency is not transferable to other land, but may be transferred to new owners of the original land.

25.12.040 Expiration.

Unless otherwise specified in the decision granting the Certificate of Concurrency, the Certificate shall be valid for the lifespan of the corresponding development or building permit. If the corresponding development or building permit expires, then the Certificate of Concurrency shall expire.

25.12.050 Non-Occurring 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.

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 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.

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.

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 2540, 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.

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 non-City 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.

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.

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.

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.

Only the following decisions of the Public Works Official may be reconsidered under this chapter.

- (1) A technical error;
- (2) Alternative data or a mitigation plan provided by the applicant that was rejected by the Public Works Official; or
- (3) Unwarranted delay in review that allowed capacity to be given to another applicant.

25.22.020 Who May Request a Reconsideration.

Only the applicant or authorized agent of the property may request reconsideration of the concurrency decision.

25.22.030 Procedures.

(1) The applicant must file a written Request for Reconsideration to the Public Works Director within ten (10) calendar days following the postmarked date of distribution of the Public Works Official's written decision. The applicant 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 to show by preponderance of evidence that the Public Works Official was in error.

(3) Within ten (10) calendar days after receiving a request for reconsideration, the Public Works Director shall notify the applicant in writing whether or not the Public Works Director will reconsider the decision. The Public Works Director may reconsider the decision only if he/she concludes that there is substantial merit in the request.

(4) If the Public Works Director reconsiders the decision, the Public Works Director shall send written notice of the final Certificate of Concurrency decision to the applicant and to the City Planning, Building and Fire Departments.

Chapter 25.24

FEES

Sections:

25.24.010 Concurrency Test Review Fee.

25.24.010 Concurrency Test Review Fee.

The Concurrency Test Review fee is set forth in the Municipal Code, Section 5.74.080. All such concurrency review fees are to be paid in full with applications for a development permit or building permit submittal.

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.

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.

PUBLICATION SUMMARY OF ORDINANCE NO. 3552

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO
CONCURRENCY MANAGEMENT (FILE CC-95-71).

Section 1. Adds a new Title 25, Concurrency Management,
to the Kirkland Municipal Code as follows

Chapter 25.02	Authority and Purpose
Chapter 25.04	Complete Compliance Required
Chapter 25.06	Definitions
25.06.010	Generally.
25.06.020	Accounted Traffic Impact.
25.06.030	Adequate.
25.06.040	Applicant.
25.06.050	Available Sewer and Water Capacity.
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25.06.110	Development Permit.
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25.06.150	Planned Capacity.
25.06.160	Public Works Official.
25.06.170	Transportation Strategies.
25.06.180	Vested.
Chapter 25.08	Exemptions
25.08.010	Exemptions.
25.08.020	Applications Filed Before November 16, 1996.
Chapter 25.10	Concurrency Test
25.10.010	Timing.
25.10.020	Procedures.
25.10.030	Test.
Chapter 25.12	Certificate of Concurrency
25.12.010	Issuance.
25.12.020	Scope of Certificate of Concurrency.
25.12.030	Non-Transferable.
25.12.040	Expiration.
25.12.050	Non-occurring Impacts.
Chapter 25.14	Provide Needed Concurrency Facilities
24.14.010	Improvements to the Currency Facilities.
24.14.020	Capital Facilities Plan and Capital Improvement Program.

Chapter 25.16	Bonds
Chapter 25.18	Intergovernmental Coordination
25.18.010	Agreements.
25.18.020	Applications.
Chapter 25.20	Administrative Rules and Procedures
Chapter 25.22	Requests for Reconsideration
25.22.010	Decisions to be Reconsidered.
25.22.020	Who May Request A Reconsideration.
25.22.030	Procedures.
Chapter 25.24	Fees
Chapter 25.26	SEPA Exemption
Chapter 25.28	Severability

Section 2. Provides a savings clause.

Section 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as 30 days after publication of summary.

The full text of this ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the 4th day of February, 1997.

I certify that the foregoing is a summary of Ordinance 3552 approved by the Kirkland City Council for summary publication.


City Clerk