

## **Title 18B**

### **TRAFFIC IMPACT FEES AND MITIGATION**

#### **Chapters:**

- 18B.02 Findings**
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- 18B.06 Relationship to Environmental Impacts**
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**Chapter 18B.02****FINDINGS**

Sections:

18B.02.010 Findings.

**18B.02.010 Findings.**

It is hereby found that the acquisition, construction, and improvement of roads to serve new developments in the city of Marysville is a major burden upon city government; that the city is experiencing a rapid, large-scale increase in intensity of land use and in population growth; that rapid growth creates large “front-end” demands for city services, including roads, and causes increased road usage; that existing and projected city funds are not adequate to meet the public’s projected road needs; that failure to ensure that road improvements are made as traffic increases causes severe safety problems, impedes commerce and interferes with the comfort and repose of the public; and that the provisions of this title are necessary to preserve the legislature’s intent that the city, in the exercise of reasonable discretion, retain ultimate responsibility for city services, and its financial integrity.

It is further found that the city has the power under existing law to condition development and require road improvements reasonably related to the traffic impact of a proposed development, and that it is appropriate and desirable to set out in this title what will be required of developments, and to establish hereby a uniform method of treatment for similar development impact on road systems.

It is further found that the state Growth Management Act (GMA) and RCW 36.70A.070(6)(e) require that “local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level-of-service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development” and that “For the purposes of this subsection [RCW 36.70A.070(6)], ‘concurrent with development’ shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.”

It is further found that this title is consistent with and implements the comprehensive plan adopted pursuant to Chapter 36.70A RCW.

It is further found that the total benefits of certain transportation demand management measures in reducing marginal trips are projected to significantly outweigh the total costs.

It is further found and declared that the regulations contained in this title are necessary for the protection and preservation of the public health, safety and general welfare. (Ord. 2279, 1999).

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impact of developments and determining necessary mitigation of such impacts. (Ord. 2279, 1999).

**DECLARATION OF PURPOSE**

Sections:

18B.04.010 Declaration of purpose.

**18B.04.010 Declaration of purpose.**

The purpose of this title is to ensure that public health, safety and welfare will be preserved by having safe and efficient roads serving new and existing developments by requiring all development, as defined in MMC 18B.08.020, to mitigate traffic impacts, which may include a proportionate share payment reasonably related to the traffic impact of the proposed development and construction of road improvements and dedication of rights-of-way reasonably necessary as a result of the direct traffic impact of proposed developments.

This title is intended to ensure that city policy for the provision of safe and adequate access and the allocation of responsibility for immediate or future road improvements necessitated by new development is fairly and consistently applied to all developments.

The requirements of this title apply to all developments and road systems meeting the definitions of Chapter 18B.08 MMC. Mitigation of impacts on state highways, city streets or county roads will be required in accordance with the provisions of this title when the WSDOT, city or county has reviewed the development's impact under its policies adopted pursuant to Chapter 36.70A RCW or its formally designated environmental policies, as applicable, and has recommended to the city that there be a requirement to mitigate the impact; and there is an agreement between the city and the other affected agency or jurisdiction which specifically addresses impact identification, documentation, and mitigation, and which references the policies adopted pursuant to Chapter 36.70A RCW and environmental policies formally designated by the agency or jurisdiction as possible bases for the exercise of authority under Chapter 36.70A or State Environmental Policy Act (SEPA).

This title requires the analysis and mitigation of a development's traffic impact on the public road system. In order to quantify the continuing need for road improvements on the public road system anticipated by projected growth, the public works department is authorized to develop and update a capital facilities element based on and consistent with the transportation element. The capital facilities element shall be used in evaluating the traffic

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## RELATIONSHIP TO ENVIRONMENTAL IMPACTS

## Sections:

18B.06.010 Relationship to environmental impacts.

**18B.06.010 Relationship to environmental impacts.**

The requirements of this title, together with the comprehensive plan adopted pursuant to Chapter 36.70A RCW; MMC Titles 18, 19 and 20; and other development regulations and policies that may be adopted, constitute the policy of the city under the GMA and SEPA for the review of development and the determination of significant adverse environmental impacts and imposition of mitigation requirements due to the impacts of development on the transportation system. Measures required by this title shall constitute adequate mitigation of adverse or significant adverse environmental impacts on the road system for the purposes of Chapter 19.22 MMC to the extent that the director determines the specific impacts of the development are adequately addressed by this title in accordance with Chapter 43.21C RCW as allowed by ESHB 1724, Section 202 of Chapter 347, Laws of 1995.

As a policy of the city, the provisions of this title do not limit the ability of the approving authority to impose mitigation requirements for the direct impacts of development on state highways, or county streets, where the other affected jurisdiction lies outside the road system of a development, as defined by this title; provided, that there is an agreement between the city and another affected jurisdiction which specifically addresses level-of-service standards, impact identification, documentation, and mitigation, and which references the environmental policies formally designated by the agency or jurisdiction and it is determined that an adverse environmental impact would result from the approval of a development without the imposition of such additional mitigation measures.

In accordance with RCW 43.21C.065 and 82.02.100, a person required to make a proportionate share mitigating payment under a SEPA payment program or pay an impact fee under a GMA mandatory impact fee program shall not be required to make a payment or pay a fee pursuant to the other authority for the same system improvements. (Ord. 2279, 1999).

## Chapter 18B.08

## DEFINITIONS

## Sections:

18B.08.002 Approving authority.  
 18B.08.004 Arterial unit.  
 18B.08.006 Arterial unit in arrears.  
 18B.08.008 Capacity improvements.  
 18B.08.010 Capital facilities plan.  
 18B.08.012 Comprehensive plan.  
 18B.08.014 Dedication.  
 18B.08.016 Department.  
 18B.08.018 Developer.  
 18B.08.020 Development.  
 18B.08.022 Direct traffic impact.  
 18B.08.024 Director.  
 18B.08.026 Frontage improvements.  
 18B.08.028 Highway capacity manual.  
 18B.08.030 Inadequate road condition.  
 18B.08.032 Level-of-service (LOS).  
 18B.08.034 Off-site road improvement.  
 18B.08.036 Public agency.  
 18B.08.038 Road.  
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 18B.08.042 Transportation element.  
 18B.08.044 Transportation service area.  
 18B.08.046 WSDOT.

**18B.08.002 Approving authority.**

“Approving authority” means the city employee, agency or official having authority to issue the approval or permit for the development involved. (Ord. 2279, 1999).

**18B.08.004 Arterial unit.**

“Arterial unit” means a road, segment of a road, or portion of a road or a system of roads, consistent with the level-of-service methodology adopted in the city comprehensive plan and consistent with the criteria established by the director, for the purpose of making level-of-service concurrency determinations. (Ord. 2279, 1999).

**18B.08.006 Arterial unit in arrears.**

“Arterial unit in arrears” means any arterial unit operating below the adopted level-of-service standard adopted in the comprehensive plan, except where improvements to such a unit have been programmed in the city six-year transportation improvement program adopted pursuant to RCW 36.81.121 and funding identified that would remedy the deficiency within six years. (Ord. 2279, 1999).

## **18B.08.008**

### **18B.08.008 Capacity improvements.**

“Capacity improvements” means any improvements that increase the vehicle and/or people moving capacity of the road system. (Ord. 2279, 1999).

### **18B.08.010 Capital facilities plan.**

“Capital facilities plan” means all documents comprising the capital facilities element of the comprehensive plan that, for capital facilities, consists of an inventory of facilities owned by public entities, forecasts of future needs, new and expanded facilities and a multi-year financing plan, adopted pursuant to Chapter 36.70A RCW. (Ord. 2279, 1999).

### **18B.08.012 Comprehensive plan.**

“Comprehensive plan” means the generalized, coordinated land use policy statement of the city council adopted pursuant to Chapter 36.70A RCW which may include a land use plan, a capital facilities plan, a transportation element, subarea plans and any such other documents or portions of documents identified as constituting part of the comprehensive plan under Chapter 36.70A RCW. (Ord. 2279, 1999).

### **18B.08.014 Dedication.**

“Dedication” means conveyance of land to the city for road purposes by deed or some other instrument of conveyance or by dedication on a duly filed and recorded plat or short plat. (Ord. 2279, 1999).

### **18B.08.016 Department.**

“Department” means the city of Marysville public works department. (Ord. 2279, 1999).

### **18B.08.018 Developer.**

“Developer” means the person applying for or receiving a permit or approval for a development as defined in MMC 18B.08.020. (Ord. 2279, 1999).

### **18B.08.020 Development.**

“Development” means all the subdivisions, short subdivisions, industrial or commercial building permits, conditional use permits, binding site plans (including those associated with rezone applications), or building permits (including building permits for multifamily and duplex residential structures, and all similar uses), change in occupancy and other applications pertaining to land uses: (1) requiring land use permits or approval by the city of Marysville; or (2) which are located in areas of the county or other cities and which will

impact the city of Marysville’s public road system; provided, that “development” does not include building permits for single-family residential dwellings, attached or detached accessory apartments, or duplex conversions, on existing tax lots. (Ord. 2279, 1999).

### **18B.08.022 Direct traffic impact.**

“Direct traffic impact” means any new vehicular trip added by new development to its road system as defined in MMC 18B.08.040. (Ord. 2279, 1999).

### **18B.08.024 Director.**

“Director” means the director of the city of Marysville department of public works or his authorized designee. (Ord. 2279, 1999).

### **18B.08.026 Frontage improvements.**

“Frontage improvements” means improvements on roadways abutting a development and tapers thereto required as a result of a development. Generally, frontage improvements shall consist of appropriate base materials; curb, gutter, sidewalk, storm drainage improvements; bus pullouts and waiting areas where necessary; bicycle lanes and bicycle paths where applicable; and lane improvements. (Ord. 2279, 1999).

### **18B.08.028 Highway capacity manual.**

“Highway capacity manual” means the Highway Capacity Manual, Special Report 209, Transportation Research Board, National Research Council, 1985, 2101 Constitution Avenue, Washington, D.C.; amendments thereto; and any supplemental editions or documents published by the Transportation Research Board adopted by the U.S. Department of Transportation, Federal Highway Administration. (Ord. 2279, 1999).

### **18B.08.030 Inadequate road condition.**

“Inadequate road condition” means any road condition, whether existing on the road system or created by a new development’s access or impact on the road system, which jeopardizes the safety of road users, including nonautomotive users, as determined by the city engineer in accordance with the department policy and procedure for the determination of inadequate road conditions. (Ord. 2279, 1999).

### **18B.08.032 Level-of-service (LOS).**

“Level-of-service” means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users.

Level-of-service standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst. For the purposes of this title, level-of-service will be measured only on arterial units. (Ord. 2279, 1999).

**18B.08.034 Off-site road improvement.**

“Off-site road improvement” means improvement, except a frontage improvement, to an existing or proposed city or county road outside the boundaries of a development, which improvement is required or recommended in accordance with this title. (Ord. 2279, 1999).

**18B.08.036 Public agency.**

“Public agency” means any school district, public water, sewer or utility district; fire district; airport district; public transportation benefit area; or local government agency seeking a land use permit or approval reviewed under this title. (Ord. 2279, 1999).

**18B.08.038 Road.**

“Road” means an open, public way for the passage of vehicles, that, where appropriate, may include pedestrian, equestrian and bicycle facilities. Limits include the outside edge of sidewalks, or curbs and gutters, paths, walkways, or side ditches, including the appertaining shoulder and all slopes, ditches, channels, waterways, and other features necessary for proper drainage and structural stability within the right-of-way or access easement. (Ord. 2279, 1999).

**18B.08.040 Road system.**

“Road system” means those existing or proposed public roads, whether state, county or city (including freeway interchanges with county roads or city streets and the ramps for those interchanges but excluding freeway mainlines), within the transportation service area. (Ord. 2279, 1999).

**18B.08.042 Transportation element.**

“Transportation element” means the element of the city comprehensive plan that for transportation consists of goals and policies, an inventory of facilities and services, adopted level-of-service standards, an analysis of deficiencies and needs,

system improvements and management strategies and a multi-year financial plan, adopted pursuant to Chapter 36.70A RCW. (Ord. 2279, 1999).

**18B.08.044 Transportation service area.**

“Transportation service area” means a geographic area of the city, as defined in the transportation element, identified for the purpose of evaluating the transportation impacts of development, determining proportionate shares of needed transportation improvements and allocating revenue to transportation improvement projects. (Ord. 2279, 1999).

**18B.08.046 WSDOT.**

“WSDOT” means the Washington State Department of Transportation. (Ord. 2279, 1999).

**Chapter 18B.10**

**ROAD POLICY – GENERAL PROVISIONS**

Sections:

- 18B.10.010 Applicability to development – General.
- 18B.10.020 Director’s recommendation, approval.
- 18B.10.030 Excessive expenditure of public funds.
- 18B.10.040 Development mitigation obligations.
- 18B.10.050 Road system capacity requirements.
- 18B.10.060 Level-of-service standards.
- 18B.10.070 Inadequate road conditions.
- 18B.10.080 Frontage improvements.
- 18B.10.090 Access and transportation circulation requirements.
- 18B.10.100 Right-of-way requirements.
- 18B.10.110 State highways, cities, and counties.
- 18B.10.120 Director authorization for administrative policies and technical procedures.
- 18B.10.130 Development permit application completeness.

**18B.10.010 Applicability to development – General.**

Any application for approval of a permit for a development in the city of Marysville is subject to the provisions of this title. (Ord. 2279, 1999).

**18B.10.020 Director’s recommendation, approval.**

(1) In approving or permitting a development, the approving authority shall consider the director’s recommendations and act in conformity with this title.

(2) The director shall only recommend approval of a development, if, in the director’s opinion, adequate provisions for public roads, access, and mitigation of the transportation impacts of the development are made as provided in the city’s development regulations, SEPA, and this title.

(3) The director shall only recommend approval of a development if the development is deemed to be concurrent in accordance with MMC 18B.14.030. (Ord. 2279, 1999).

**18B.10.030 Excessive expenditure of public funds.**

If the location, nature, and/or timing of a proposed development necessitates the expenditure of public funds in excess of those currently available

for the necessary road improvement or inconsistent with priorities established to serve the general public benefit, and provision has not otherwise been made to meet the mitigation requirements as provided in this title, the city may refuse to approve or grant a permit for development. As an alternative, the city may allow the developer to alter the proposal so that the need for road improvement is lessened or may provide the developer with the option of bearing all or more than the development’s proportionate share of the required road improvement costs. (Ord. 2279, 1999).

**18B.10.040 Development mitigation obligations.**

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

- (1) Impact on road system capacity;
- (2) Impact on specific level-of-service deficiencies;
- (3) Impact on specific inadequate road condition locations;
- (4) Frontage improvements requirements;
- (5) Access and transportation system circulation requirements;
- (6) Dedication or deeding of rights-of-way requirements;
- (7) Impact on state highways, and other cities’ and counties’ roads;
- (8) Transportation demand management measures. (Ord. 2279, 1999).

**18B.10.050 Road system capacity requirements.**

The direct traffic impacts of any development on the capacity of all arterials and nonarterials in the road system identified as needing future capacity improvements in the currently adopted transportation element will be mitigated either by constructing road improvements which offset the traffic impact of the development or by paying the development’s share of the cost of the future capacity improvements. (Ord. 2279, 1999).

**18B.10.060 Level-of-service standards.**

(1) As required by RCW 36.70A.070(6)(b) standards for levels-of-service on city arterials have been adopted by the city in its comprehensive plan adopted pursuant to the state Growth Management Act. The department will plan, program and construct transportation system capacity improvements for the purpose of maintaining these adopted level-of-service standards in order to facilitate new

development that is consistent with the city's comprehensive plan.

(2) In accordance with RCW 36.70A.070(6)(e) no development will be approved which would cause the level-of-service on any arterial unit to fall below the adopted level-of-service standards unless improvements are programmed and funding identified which would remedy the deficiency within six years.

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

(4) Level-of-service standards for arterial units which have been designated by the city council as ultimate capacity arterial units, and that directly connect state routes with a city, may be determined jointly by the state, county and city through an interlocal agreement.

(5) In order to promote efficiency in the transportation system and to maximize the benefits received from public investment through increased use of transit, ridesharing, and nonmotorized transportation, all new developments in the urban area shall provide sufficient transportation demand management measures to indicate the potential for removing a minimum of five percent of a development's p.m. peak-hour trips from the road system. (Ord. 2279, 1999).

#### **18B.10.070 Inadequate road conditions.**

(1) Mitigation of impacts on inadequate road conditions is required in order to improve inadequate roads in accordance with adopted standards, prior to the impacts of traffic from new development. If such conditions are found to be existing in the road system at the time of development application review and the development will put three or more p.m. peak-hour trips through the identified locations, or if the development's traffic will cause an inadequate road condition at the time of full occupancy of the development, the development will be approved only if provisions are made in accordance with Chapter 18B.14 MMC for improving the inadequate road conditions.

(2) The public works director in accordance with the department policy and procedure will make determinations of road inadequacy for determination of inadequate road conditions. (Ord. 2279, 1999).

#### **18B.10.080 Frontage improvements.**

All developments will be required to make frontage improvements in accordance with MMC 12.02.170. (Ord. 2279, 1999).

#### **18B.10.090 Access and transportation circulation requirements.**

All developments shall be required to provide for access and transportation circulation in accordance with the comprehensive plan and the development regulations applicable to the particular development, to design and construct such access in accordance with the adopted engineering design and development standards, and to improve existing roads that provide access to the development in order to comply with adopted design standards. Access to state highways and city roads shall be in accordance with the applicable state or city standards and requirements. (Ord. 2279, 1999).

#### **18B.10.100 Right-of-way requirements.**

As provided for by RCW 82.02.020 all developments, as a condition of approval, will be required to deed or dedicate property, as appropriate pursuant to MMC 12.02.190, when to do so is found by the director or a city hearing body to be reasonably necessary as a direct result of the proposed development, for improvement, use or maintenance of the road system serving the proposed development. (Ord. 2279, 1999).

#### **18B.10.110 State highways, cities, and counties.**

(1) Any level-of-service standards and concurrency requirements established in accordance with RCW 36.70A.070 for state highways will be addressed by a letter of understanding or an interlocal agreement between the city and WSDOT. All developments will be required to mitigate impacts that are under the jurisdiction of the WSDOT that are part of the transportation study area. The mitigating measures recommended by WSDOT will be imposed as a condition of development approval to the extent that such requirements are reasonably related to the impact of the proposed development and consistent with the terms of an interlocal agreement between the city and WSDOT.

(2) Any level-of-service standards and concurrency requirements established in accordance with RCW 36.70A.070 for roads under the jurisdiction of other cities or the county will be addressed by an interlocal agreement between the city and the other city or county. The measures recommended by the county or other city will be imposed as a condition of development approval to the extent that such requirements are reasonably related to the impact

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of the proposed development and consistent with the terms of an interlocal agreement between the city and the other agency. (Ord. 2279, 1999).

### **18B.10.120 Director authorization for administrative policies and technical procedures.**

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

- A. Traffic studies: scoping, elements, processing;
- B. Level-of-service determination: methodology, data collection;
- C. Transit compatibility: transit supportive criteria;
- D. Inadequate road conditions: criteria for identification;
- E. Frontage improvements: standards, variables;
- F. Mitigation measures: extent, timing, agreements. (Ord. 2279, 1999).

### **18B.10.130 Development permit application completeness.**

For purposes of this title, permit applications for development shall be determined to be complete in accordance with the complete application provisions as defined in the applicable development regulations in accordance with RCW 36.70A.065 and 36.70A.440 as recodified by ESHB 1724, Chapter 347, Laws of 1995. A development permit application shall not be considered complete until all traffic studies or data required in accordance with Chapter 18B.12 MMC and/or specified in the pre-application meeting required by MMC 15.05.020 are received. Review periods and time limits shall be as established in MMC Title 15 in accordance with RCW 36.70A.065 and RCW 36.70A.440 as recodified by ESHB 1724, Chapter 347, Laws of 1995. (Ord. 2279, 1999).

## Chapter 18B.12

### TRAFFIC STUDY

Sections:

18B.12.010 When required.

#### **18B.12.010 When required.**

In order to provide sufficient information to assess a development's impact on the road system, developments adding three or more p.m. peak-hour trips will be required to provide a traffic study when it has been determined at the presubmittal meeting that there is not sufficient information existing in the department's database to adequately assess the traffic impacts of the development. The traffic study will consist of at least a traffic generation and distribution analysis but may need as extensive analyzing as all arterial units on the road system wherever three or more p.m. peak-hour trips from the development are added. The director may require that additional information be provided on impacts of the development to level-of-service of affected streets, inadequate road conditions, adequacy of the proportionate share calculations of any voluntary payments required under this title to reasonably or adequately mitigate for impacts of the proposed development, and conformance with the adopted transportation element. The director shall determine at the preapplication conference the need for a study and the scope of analysis of any needed study.

If, in the opinion of the director, there is sufficient information known about a development's road system from previous traffic studies, the director may waive the requirement for a traffic study and so state the finding in the preapplication meeting. In such cases, the existing information will be used to establish any necessary traffic mitigation requirements to be recommended in the review of the development. (Ord. 2279, 1999).

## Chapter 18B.14

### DETERMINATION AND FULFILLMENT OF ROAD SYSTEM OBLIGATIONS

#### Sections:

- 18B.14.010 Determination of developer obligations.
- 18B.14.020 Road system capacity requirements.
- 18B.14.030 Traffic impact fee.
- 18B.14.040 Level-of-service requirements – Concurrency determinations.
- 18B.14.050 Inadequate road condition requirements.
- 18B.14.060 Special circumstances.
- 18B.14.070 Administration of proportionate share mitigating payments.

#### **18B.14.010 Determination of developer obligations.**

(1) Applications which have a prior SEPA threshold determination establishing developer obligation for the transportation impacts at time of enactment of the ordinance codified in this title shall be vested under the development obligation identified under SEPA.

(2) A determination of developer obligation shall be made by the city before approval of preliminary plats, short subdivisions, and conditional use permits. For binding site plans (including those associated with rezone applications), and commercial permits, the determination of developer obligation shall be made prior to issuance of a building permit.

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

(4) The director, following review of any required traffic study and any other pertinent data, shall inform the developer in writing what the development's impacts and mitigation obligations are under this title. The developer shall make a

written proposal for mitigation of the development's traffic impact, except when such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). When the developer's written proposal has been reviewed for accuracy and completeness by the director, the director shall make a recommendation to the planning department, as to the concurrency determination and conditions of approval or reasons for recommending denial of the land use application, citing the requirements of this title.

(5) In cases which require a public hearing, a developer must submit a written proposal to the director for mitigation of the development's traffic impact, except where such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). The written proposal must be submitted after any required traffic study has been reviewed and the director has stated the mitigation requirements pursuant this chapter.

(6) Any request to amend a proposed development, following the determination of developer obligations and approval of the development, which causes an increase in the traffic generated by the development, or a change in points of access, shall be processed in the same manner as an original application and determined to be a substantial project revision, except where written concurrence is provided by the planning director that such request may be administratively approved. (Ord. 2279, 1999).

#### **18B.14.020 Road system capacity requirements.**

(1) All developments must mitigate their impact upon the future capacity of the road system either by constructing off-site road improvements which offset the traffic impact of the development or by paying the development's proportionate share cost of the future capacity improvements.

##### (2) Construction Option – Requirements.

(a) If a developer chooses to mitigate the development's impact to the road system capacity by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

(b) In cases where two or more developers have agreed to fully fund a certain improvement the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrange-

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ment, the terms of the agreement shall be binding on each development as conditions of approval.

(c) Any developer who volunteers to construct more than the development’s share of the cost of off-site improvements may apply for a reimbursement contract.

**(3) Payment Option – Requirements.**

(a) If a developer chooses to mitigate the development’s impact by making a proportionate share mitigating payment, the development’s share of the cost of future capacity improvements will be equal to the development’s peak-hour traffic (PHT) times the per-trip amount as identified in the transportation element of the comprehensive plan, as codified below.

(b) If a developer chooses to mitigate the development’s impact by making a proportionate share mitigating payment, the payment is required prior to building permit issuance unless the development is a subdivision or short subdivision, wherein the payment is required prior to the recording of the subdivision or short subdivision.

(c) Any developer who volunteers to pay more than the development’s share of the cost of off-site improvements may apply for a reimbursement contract. (Ord. 2279, 1999).

**18B.14.030 Traffic impact fee.**

(1) The proportionate share fee amount shall be calculated in accordance with the formula established in Table I below:

**Table I**

**A. Formula**

- Step 1. Calculate total transportation plan costs (20-year).
- Step 2. Subtract costs assigned to other agencies = total city of Marysville costs.
- Step 3. Subtract city-funded noncapacity projects from total city of Marysville costs.
- Step 4. Subtract LID or other separate developer funding sources = capacity added projects.
- Step 5. Subtract city share for external capacity added traffic.

The fee amount resulting from Step 5 is the impact fee payment.

Data needed for calculation of the fee amount shall be provided in the adopted transportation element and street capital facility plan contained within the adopted city comprehensive plan. (Ord. 2343 § 1, 2000; Ord. 2279, 1999).

**18B.14.040 Level-of-service requirements – Concurrency determinations.**

(1) The department shall make a concurrency determination for each development application to ensure that the development will not impact an arterial unit where the level-of-service is below the adopted level-of-service standard, or cause the level-of-service on an arterial unit to fall below the adopted level-of-service standard, unless improvements are programmed and funding identified which would remedy the deficiency within six years. The approving authority shall not approve any development that is not deemed concurrent under this section. Building permit applications for development within an approved rezone with binding site plan, nonresidential subdivision or short subdivision, for which a concurrency determination has been made in accordance with this section, shall be deemed concurrent; provided, that the certificate of concurrency for the rezone with binding site plan, nonresidential subdivision or short subdivision has not expired, the building permit will not cause the approved traffic generation of the prior approval to be exceeded, there is no change in points of access, and mitigation required pursuant to the rezone with binding site plan, subdivision or short subdivision approval is performed as a condition of building permit issuance.

(a) A concurrency determination which verifies that a development has been deemed concurrent shall be documented by a “certificate of concurrency” which shall be included as part of the director’s recommendation under MMC 18B.12.010. Such certificate shall state when the concurrency determination was made and whether the concurrency certificate is conditioned upon satisfaction of conditions to enable the development to be deemed concurrent and shall indicate the expiration date of the certificate of concurrency.

(b) The department shall make a concurrency determination upon receipt of a development’s preapplication submittal. The determination may change based upon revisions in the application. Any change in the development after approval will be resubmitted to the director, and the development will be reevaluated for concurrency purposes.

(c) The certificate of concurrency shall expire if the development for which the concurrency is reserved is not applied for within 120 days of issuance of a certificate of concurrency. This certificate is a prerequisite for a complete development application. The expiration date of the certificate of concurrency for a filed development application shall be six years after the date of the

concurrency determination, except where the application is later withdrawn or approval is allowed to lapse.

(d) Building permits for a development must be issued prior to expiration of the certificate of concurrency for the development, except when the development is a residential subdivision or short subdivision, in which case the subdivision or short subdivision must be recorded prior to expiration of the certificate of concurrency for the development, and except where no building permit will be associated with a conditional use permit, in which case the conditional use permit must be issued prior to expiration of the certificate of concurrency of the development. No additional concurrency determination shall apply to residential dwellings within a subdivision or short subdivisions recorded in compliance with this section.

(e) If a certificate of concurrency expires prior to building permit issuance, except when the development is a residential subdivision or short subdivision, then prior to the recording of the subdivision or short subdivision, and except where no building permit will be associated with a conditional use permit, then prior to issuance of the conditional use permit, the director shall at the request of the developer consider evidence that conditions have not significantly changed and make a new concurrency determination in accordance with subsection (1)(c) of this section.

(2) In determining whether or not to deem a proposed development as concurrent, the department shall analyze likely road system impacts on arterial units based on the size and location of the development. A development shall be deemed concurrent for the period prior to the expiration date of the certificate of concurrency for the development.

(a) A development's forecast trip generation at full occupancy shall be the basis for determining the impacts of the development on the road system. The city will accept valid data from a traffic study prepared under Chapter 18B.12 MMC.

(3) A concurrency determination made for a proposed development under this section will evaluate the development's impacts on any arterial units in arrears.

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

(i) If the trip distribution indicates that the development will not place three or more p.m. peak-hour trips on any arterial units in arrears, then the development shall be deemed concurrent.

(ii) If the trip distribution indicates that the development will place three or more p.m. peak-hour trips on any arterial unit in arrears, then the development shall not be deemed concurrent except where the development is deemed concurrent in accordance with the options under subsection (5) of this section.

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

(5) Any development not deemed concurrent shall have options available to enable the development to be deemed concurrent as follows:

(a) A development which meets the department's criteria for transit compatibility, in accordance with the director's policy and procedure for transit compatibility under MMC 18B.10.120, shall be deemed concurrent if the impacted arterial unit in arrears meets the criteria for transit supportive design in accordance with the director's policy and procedure for transit compatibility, and if the level-of-service on the impacted arterial unit in arrears meets the LOS standards adopted within the comprehensive plan; and provided, that the development can be deemed concurrent in accordance with all other provisions of MMC 18B.14.030(3).

(b) A development may modify its proposal to lessen its impacts on the road system in such a way as to allow the city to deem the development concurrent under this section.

(c) The city may deem such development concurrent based upon a written proposal signed by the proponent of the development and attached to the director's recommendation under MMC 18B.10.020, and referenced in the concurrency determination, as a condition of approval.

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

(ii) Such proposals may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the developer constructs capacity

## 18B.14.050

improvements which would remedy any arterial units in arrears.

(A) If a developer chooses to mitigate the development's impact by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements. Construction of improvements shall be in accordance with the engineering design and development standards.

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

(C) Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads may apply for a reimbursement contract.

(D) Any developer who chooses to mitigate a development's impact by constructing off-site improvements may propose to the council that a joint public/private partnership be established to jointly fund and/or construct the proposed improvements. The director will determine whether or not such a partnership is to be established.

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

(6) Adopted Level-of-Service.

(a) The level-of-service for principal, minor, and collector arterials at signalized intersections shall be LOS D or better using the operational method as a standard of review.

(b) The following intersections are exempt from the level-of-service standard: 88th Street NE/State Avenue, I-5 Southbound and Northbound ramps/4th Street, and I-5 Southbound Ramps/4th Street. State highways are also exempt from the level-of-service standard. (Ord. 2279, 1999).

### **18B.14.050 Inadequate road condition requirements.**

(1) Regardless of the existing level-of-service, development which adds three or more p.m. peak-

hour trips to an inadequate road condition existing on the road system, at the time of determination in accordance with MMC 18B.14.010, or development whose traffic will cause an inadequate road condition at the time of full occupancy of the development, will only be approved for occupancy or final inspection when provisions are made in accordance with this chapter for elimination of the inadequate road condition. The improvements removing the inadequate road condition must be complete or under contract before a building permit on the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued; provided, that where no building permit will be associated with a conditional use permit, then the improvements removing the inadequate road condition must be complete as a precondition to approval.

(2) The director shall determine whether or not a location constitutes an inadequate road condition. Any known inadequate road condition to which the development adds three or more p.m. peak-hour trips shall be identified as part of the director's recommendation under 18B.14.040.

(3) A development's access onto a public road shall be designed so as not to create an inadequate road condition. Developments shall be designed so that inadequate road conditions are not created.

(4) Construction Option – Requirements.

(a) If a developer chooses to eliminate an inadequate road condition by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

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

(c) Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, which are contained within the cost basis, contained within the transportation element, or which are not part of the cost basis of any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against any proportionate share mitigating pay-

ment, may apply for a reimbursement contract. (Ord. 2279, 1999).

#### **18B.14.060 Special circumstances.**

Where the only remedy to an arterial unit in arrears is the installation of a traffic signal, but signalization warrants contained in the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) are not met at present, developments impacting the arterial unit will be allowed to proceed without the installation of the traffic signal; provided, that all other warranted level-of-service and transit-related improvements are made on the arterial unit within the deficient level-of service. Developments impacting such arterial units will not be issued building permits or occupancies (whichever comes first) until the improvements (not including the traffic signal) to the level-of-service deficient arterial unit are under contract or being performed. Such developments will be subject to all other obligations as specified in this title. (Ord. 2279, 1999).

#### **18B.14.070 Administration of proportionate share mitigating payments.**

(1) Any proportionate share mitigating payment made pursuant to this title shall be subject to the following provisions:

(a) The payment is required prior to building permit issuance unless the development is a subdivision or short subdivision, in which case the payment shall be made prior to the recording of the subdivision or short subdivision; provided, that where no building permit will be associated with a change in occupancy or conditional use permit then payment is required prior to approval of occupancy.

(b) The payment shall be held in a reserve account and shall be expended to fund improvements on the road system.

(c) An appropriate and reasonable portion of payments collected may be used for administration of this title.

(d) The fee payer may receive a refund of such fees if the city fails to expend or encumber the impact fees within six years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3), on transportation facilities intended to benefit the development for which the transportation impact fees were paid, unless the city council finds that there exists an extraordinary and compelling reason for fees to be held longer than six years. These findings shall be set forth in writing and approved by the city council. In determining whether transportation impact fees have

been encumbered, impact fees shall be considered encumbered on a first-in/first-out basis. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants.

(e) The request for a refund must be submitted by the applicant to the city in writing within 90 days of the date the right to claim the refund arises, or the date that notice is given, whichever is later. Any transportation impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this 90-day period, shall be retained and expended on projects identified in the adopted transportation element. Refunds of transportation impact fees under this subsection shall include interest earned on the impact fees.

(2) Off-site improvements include construction of improvements to mitigate an arterial unit in arrears and/or specific inadequate road condition locations. If a developer chooses to construct improvements to mitigate an arterial unit in arrears or inadequate road condition problem, and the improvements constructed are part of the cost basis of any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, the cost of these improvements will be credited against the proportionate share mitigating payment amount. Any developer who volunteers to pay for and/or construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title, to mitigate the development's impact on the future capacity of city roads, based on the cost basis contained within the transportation element, or which are not part of the cost basis of any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against the proportionate share mitigating payment, may apply for a reimbursement contract. (Ord. 2279, 1999).

**Chapter 18B.20**

**APPEALS**

Sections:

18B.20.010 Administrative appeals.

**18B.20.010 Administrative appeals.**

Administrative interpretations and administrative approvals made pursuant to this chapter may be appealed to the hearing examiner pursuant to Chapter 15.11 MMC. (Ord. 2279, 1999).

**Chapter 18B.22**

**SEVERABILITY AND DUTY**

Sections:

18B.22.010 Severability.

18B.22.020 No special duty.

18B.22.030 Emergency.

**18B.22.010 Severability.**

If any section, subsection, sentence, clause, phrase or word of this title should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this title. (Ord. 2279, 1999).

**18B.22.020 No special duty.**

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

Nothing contained in this chapter is intended to be, nor shall be construed to create or form the basis for, any liability on the part of the city or its officers, agents and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this chapter, or by reason of any action of the city related in any manner to enforcement of this chapter by its officers, agents or employees. (Ord. 2279, 1999).

**18B.22.030 Emergency.**

In light of the rapid rate of development in the city of Marysville and Snohomish County and the need to provide adequate streets and transportation facilities to serve development, an emergency is hereby declared to exist due to the fiscal impacts of delay on the city and in order to preserve the public health, safety and welfare. (Ord. 2279, 1999).