Ordinance No. 3284

(Amending or Repealing Ordinances)

CFN=961 – Growth Management Act
Passed 3/19/1996
Establishment of Standards and Procedures for Compliance with the State
Growth Management Act and Adding a New Ch. 12.11 entitled "Concurrency
Management"

Amended by Ord. 3960 (Sec. 12.11.090)
AN ORDINANCE of the City Council of the City of Kent, Washington, relating to the establishment of standards and procedures for providing compliance with the concurrency requirements of the State Growth Management Act; and adding a new Chapter 12.11 to the Kent City Code, entitled "Concurrency Management".

WHEREAS, the Growth Management Act provides that public facilities and services shall be adequate to serve development at the time development is available for occupancy and use without decreasing current levels of service below established minimum standards; and

WHEREAS, the Growth Management Act mandates that local governments adopt and enforce policies and regulations 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 or within six years; and follows:
WHEREAS, the Kent Planning Commission, after numerous meetings and public hearings, recommended a Comprehensive Plan, including a transportation element, to identify changes which would help improve the balance among land use, transportation investment and transportation capacity and a capital facilities element to identify appropriate levels of service standards and funding strategies for capital facilities; and

WHEREAS, the Kent City Council reviewed the Planning Commission's recommendations in the Comprehensive Plan, including the transportation element and capital facilities element; and

WHEREAS, the City Council desires to implement the requirements of the Growth Management Act and the Planning Commission's recommendations; and

WHEREAS, this ordinance is adopted pursuant to RCW 35A.11.020 and 35A.63.100(1), (4) and (5) for the purpose of complying with the Growth Management Act, RCW Chapter 36.70A, including the concurrency requirement of RCW 36.70A.070; and

WHEREAS, the City of Kent has complied with the State Environmental Policy Act and with the City's Environmental Procedures Code; NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 12.11 is hereby added to the Kent City Code, entitled "Concurrency Management", to read as follows:

CHAPTER 12.11. CONCURREN CY MANAGEMENT.

Sec. 12.11.010. Purpose.

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) and for consistency between city and countywide planning policies under the GMA. The GMA requires that adequate street capacity is provided concurrently with development to handle the increased traffic projected to result from growth and development in the city and region. The purpose of this chapter is to ensure that the City's transportation system shall be adequate to serve the future development at the time the development is available for occupancy, hereinafter referred to as "concurrency", without decreasing current service levels below established minimum standards. The intent of this chapter is to establish a Transportation Concurrency Management System (TCMS) to ensure that the necessary facilities and/or programs needed to maintain a minimum level of service can be provided simultaneous to, or
within a reasonable time of new development as required in the GMA.

The GMA requires that a specific set of standards be developed to measure and ensure compliance through the inclusion of:

A. Standards for roadways that balance congestion management with land use objectives.

B. Traffic zones tailored to area characteristics and needs.

C. Level of Service Standards for each traffic zone which include availability of other mobility options and use of an area-average method of evaluating roadway system adequacy.

Sec. 12.11.020. Definitions.

For purposes of this chapter, the following definitions apply:

A. **Affected Arterial.** Any street which can be identified as significant to the area in which it serves in terms of the nature and composition of travel and which will be impacted by new development. Arterials serve major centers of activity and carry the major portion of the traffic entering and leaving the city.

B. **Affected intersection.** A designated signalized intersection as set forth in Section 12.11.100 within a traffic zone (mobility management zone) in the city over which the city
has operational responsibility and which will be impacted by new development.

C. **Application.** Any development proposal and accompanying traffic analysis as required in this chapter used to determine the impact on each facility and/or mobility management zone it affects.

D. **Area-Average level-of-service.** The sum of volumes on critical arterials and at key intersections as defined in Highway Capacity Manual Special Report No. 209 dated December, 1985, divided by the sum of the capacity on critical arterials and at key intersections within a mobility management zone.

E. **Background traffic.** The volume of traffic that currently exists on the street system prior to date of occupancy of a proposed development. Background traffic includes all existing traffic and the anticipated traffic from all development proposals which have been approved under this chapter.

F. **Capacity.** The maximum traffic volume that can pass through an intersection or arterial during a given peak hour as measured by the sum of critical volumes as defined in the Highway Capacity Manual Special Report 209 dated December, 1985.

G. **Capital facilities plan (CFP).** The 6-year plan for capital improvements that support the City's current and future population and employment growth. It contains level of service (LOS) 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 CFP also contains broad goals and specific policies for all public facilities.

H. **Capital improvement.** Land, improvements to land, structures (including design, permitting, and construction), initial furnishings and selected equipment. Capital improvements have an expected useful life of at least 5 years and a cost of at least twenty-five thousand ($25,000) dollars. Other capital costs, such as motor vehicles and motorized equipment, computers and office equipment, office furnishings, and small tools are considered to be non-capacity capital expenses in the City's annual Capital Improvement Plan budget, and are not capacity capital improvements for the purposes of the Comprehensive Plan, or the issuance of development permits.

I. **Concurrency.** Requirement of the 1990 Growth Management Act (RCW 36.70A.070(6)) requiring that the City may only permit development approval if a development would not cause level of service to fall below the city's adopted standard, except for transportation facilities where revenues are or may be secured to complete mitigating transportation improvements or strategies within six years. When a development fails to meet the concurrency test, mitigation will require improvements or strategies to accommodate the impacts of the development. Demand management and other non-roadway strategies may be used for transportation mitigation. Concurrency is further defined in Section 12.11.050.
J. **Development.** Construction and/or substantial modification of structures or improvements to land which will alter, modify and/or expand a use of land in a manner that may cause adverse impacts.

K. **Development permit or approval.** Any document granting, or granting with conditions, a rezone, plat, planned unit development, conditional use permit, shoreline substantial development permit, building permit, or any other official action of the City having the effect of authorizing the development of land.

1. **Final development permit.** A building permit or any other development permit which results in an immediate and continuing impact upon public facilities.

2. **Preliminary development approval.** Including, but not limited to, a rezone, plat, planned unit development, or shoreline substantial development permit.

L. **Director.** The Public Works Director for the City of Kent, the Director's authorized representative or any representative authorized by the Mayor.

M. **Degradation.** An increase in the volume/capacity ratio (V/C ratio) above the area-wide level of service (LOS) standard for a mobility management zone as established in 12.11.060.

N. **Funded project.** A project in the most recently adopted capital facilities plan (CFP) 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 12.11.050.

O. **Level of Service (LOS) Standard.** For the purpose of this chapter, level of service (LOS) shall mean a qualitative estimate of the performance efficiency of the City's transportation facilities and is tailored for each of the City's (22) twenty-two mobility management zones (MMZ), reflecting distinct roadway conditions and multiple community objectives. LOS standards for arterials, transit and pedestrian/bicycles within each of the twenty-two zones are set forth in Section 12.11.100 below.

P. **Mitigation.** For the purposes of this chapter, mitigation shall mean transportation demand management strategies and/or facility improvements constructed or financed by a developer which return a degraded area-average 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.

Q. **Mobility management (MMZ) zones.** Distinct transportation areas within the city limits and the City's potential annexation area with boundaries based on certain criteria as set forth in the City's Comprehensive Transportation Plan, which is a supporting document to the City's Comprehensive
Plan. Mobility management zones are set forth in Section 12.11.100. Some mobility management zones include intersections and arterials outside the City's jurisdiction.

R. **Peak hour.** The consecutive sixty-minute period between the hours of 4 p.m. and 6 p.m. which experiences the highest sum of traffic volumes as determined by the city on a roadway segment or passing through an intersection. This is also referred to in this chapter as the "p.m. peak hour".

S. **Peak hour trips.** Total vehicular trips entering and leaving a project during the peak hour on adjacent streets, as defined in the most recent ITE Trip Generation Manual, published by the Institute of Transportation Engineers. Other trip generation sources subject to approval by the director may be used where ITE data is based on a limited survey sample or where there may be special trip-generating characteristics of the proposal.

T. **Phased Development.** Any development involving multiple buildings or improvements where issuance of development permits would not occur at the same time, but be phased over a period of time.

U. **Public facilities.** The capital improvements and systems of the transportation facilities and/or services requiring concurrency.

V. **Site specific improvements.** Improvements made to transportation systems, the need for which results directly from a development permit or decision made under the Kent Zoning Code
or other provisions of the Kent City Code relating to development permits. For transportation facilities, such improvements may include, but are not limited to, site access, turning lanes, traffic signals, changes in traffic signal operation and modification of intersection geometrics. Site specific improvements include right-of-way and related frontage improvements when they are required to be dedicated or constructed at the time of building permit issuance.

W. **Supplemental links and intersections.** An intersection or roadway link which contributes to the system function within each mobility management zone. System intersections within the mobility management zones are listed and mapped in Section 12.11.100 with levels of service for each zone.

X. **Transportation Demand Management (TDM).** 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 to decrease single occupancy vehicle trips.

Y. **Transportation facilities.** Streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, non-motorized enhancements, and related systems and site specific improvements.

Z. **Under construction.** When a construction contract for a project has been awarded or actual physical alteration or improvement has occurred on the site.

Sec. 12.11.030. Administration and application.

A. Administration. The public works director shall be responsible for the administration of all activities relating to this chapter and shall coordinate with other departments, as appropriate, in implementing the provisions of this chapter. The public works director may 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 as defined in Section 12.11.020 including, but not limited to, the following types of development activities:

1. 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.

2. Change in Occupancy. This chapter will apply to applications for tenant improvements if a proposed new use or an expanded existing use will generate new p.m. peak hour trips.

3. Rezones. The city may approve a proposed 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 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 rezone and assure compliance with this chapter may be imposed as a condition of rezone.

4. **Concomitant Agreements.** Unless the agreement specifically provides otherwise, this chapter applies to any development application that is subject to an existing concomitant agreement.

5. **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 to 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.
D. **Traffic impact analysis.** As part of the land use development application, the applicant will be required to submit a traffic impact analysis to identify all traffic impacts upon key arterials, intersections and nonmotorized facilities within a particular zone. The traffic impact analysis shall be done consistent with the City of Kent's Administrative Guidelines for the Requirement of Traffic Impact Analysis of New Development.

**Sec. 12.11.040. 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 this chapter or for the requirement to do site specific improvements:

1. Day care facility for children, as defined in the Kent Zoning Code, if not operated for profit;
2. Privately operated not for profit social service facilities recognized by the Internal Revenue Service under Internal Revenue Code;
3. Low income housing, which is defined as housing which is affordable to persons whose income is below fifty percent of the median income for the persons residing in the Seattle Metropolitan Statistical Area. Not more than ten percent of the total number of units in a project shall be exempt under this subsection;
4. Development that is vested by RCW 19.27.095, RCW 58.17.033, RCW 58.17.170, or KCC 14.11.
5. Single family homes on legal lots of record.
6. Any development creating less than 10 peak hour trips as defined in 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.

Sec. 12.11.050. Adequate Public Facility Concurrency.

The issuance of development permits shall be conditioned on a determination that there is concurrency (sufficient capacity remaining on a public facility to meet the level of service standards for the impacts of existing development and impacts of the proposed new development), and shall be determined in accordance with the following:

1. Where adequate capacity exists at the time development permit or approval is issued; or
2. The City has in place binding financial commitments to complete the necessary public facilities or strategies within six years, provided that:
   a. The capital facilities plan as defined in the Kent Comprehensive Plan must be financially feasible; and
   b. 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
c. The Capital Facilities Plan in the Kent Comprehensive Plan 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

d. The Capital Facilities 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.

**Sec. 12.11.060. Application - transportation level of service standard.**

1. **Degradation limits of mobility management zones.** A development proposal will not be approved which causes the congestion to exceed the level of service (LOS) standard in a mobility management zone (MMZ) and not mitigated by: 1) the existing street network; 2) fully funded projects; 3) street improvements under contract as part of other approved development proposals which are fully funded and/or; 4) developer mitigation in accordance with Section 12.11.090.

2. **Area-average level-of-service standards.** Level of service standards are tailored for each mobility management zone, reflecting distinct conditions and multiple community objectives, with an area-average approach used to measure system adequacy. The area-average method measures the
average level of service on critical arterials and at key intersections within each mobility management zone.

Sec. 12.11.070 Development application procedures - approval/denial.

A. Application. Any application and accompanying traffic analysis which is subject to this chapter shall be reviewed by the Director and used to determine the impact on each mobility management zone it affects. A proposal will not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the director will determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if so, whether any mitigation proposed by the developer meets the requirements of 12.11.090.

B. Final Development Permit. 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 for existing development and for the proposed development as required in this chapter.

C. Preliminary Development Approval. Except for rezones, no preliminary development approval shall be issued by the City unless the applicant obtains a determination of the capacity of public facilities as part of the review and approval of the preliminary development approval.
D. **Processing of Applications - Approval/Denial.**

Issuance of final development permits and preliminary development approvals shall be subject to the concurrency requirements set forth in Section 12.11.050 and further subject to the following:

1. **Determination of Capacity - Expiration.** The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the director. The determination of capacity 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 12.11.090. The determination of capacity shall be valid for the same period of time as the underlying development permit or approval, including any extensions thereof. If the underlying development permit or approval does not have an expiration date, the capacity shall be valid for a period not to exceed one (1) year.

2. **LOS Service Areas.** The standards for levels of service of transportation facilities shall be applied to the issuance of development permits on the following geographical basis:

   a. Transportation facilities which serve less than the entire city shall achieve and maintain the standard for levels of service within their assigned mobility management zones. No development permit shall be issued in an assigned mobility management zone if the standard for level of service is not achieved and maintained throughout the assigned mobility...
management zone and other applicable mobility management zones impacted by the proposed development;

b. No further determination of capacity for the subject property shall be required prior to the expiration of the determination of capacity for the proposed development provided that the capacity has been reserved for the proposed development. Any change in the density, intensity, or land use that requires additional public facilities or capacity is subject to review and approval or denial by the city.

3. 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.

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.
Sec. 12.11.080. Appeal of Director's Decision - Hearing.

A. Any person aggrieved by the action of the director based on a determination of capacity issued under this chapter shall have the right to appeal such action to the hearing examiner by filing a notice of appeal with the director within ten (10) days of notice of the refusal to issue or renew. Such appeal shall be processed pursuant to the hearing procedures set forth in Chapter 2.32 of the Kent City Code. The hearing examiner shall set a date for hearing such appeal. At such hearing the appellant and other interested persons may appear and be heard, subject to rules and regulations of the hearing examiner.

B. Appeal to the hearing examiner shall constitute final administrative review.

C. An appeal of the decision of the hearing examiner must be filed with Superior Court within twenty-one (21) calendar days from the date of issuance of the hearing examiner's decision as provided in RCW 36.70C.040, or is thereafter barred.

Sec. 12.11.090. Mitigation.

A. General. If mitigation is required to meet the area-average 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. **Mitigation approval.** If concurrency does not exist as set forth in Section 12.11.050, to obtain concurrency, the applicant may provide mitigation to the satisfaction and approval of the director as follows:

1. **Payment for and Timing of Improvements.**
   a. Payment for developer-funded transportation improvements affecting critical arterials and key intersections within the City's direct operational control necessary to meet the requirements for concurrency must be made prior to issuance of a development permit, final plat approval or other approval requiring improvements under this chapter. 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. All improvements shall comply with the City's construction standards, as adopted pursuant to Ordinance No. 3117, and as thereafter amended. Furthermore, the director shall require an assurance device to guarantee completion of such improvements in accordance with said construction standards. The finance manager shall be responsible for maintaining all mitigation funds received under this chapter.
b. 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 director 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 director may substitute for the payment required in this subsection.

c. The project proponent may provide funding in an amount equal to the cost estimate of the director, for necessary traffic improvements. The director 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 director must approve the strategies and shall monitor and enforce the performance of agreed upon TDM measures. The director will determine if performance measuring devices shall be imposed, and may require annual documentation of the continued effectiveness of such measures. The 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 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 another mobility management zone and violate that zone's objectives and standards.

g. The effect of the improvement would not result in a reduction or the loss of another transportation objective, including but not limited to maintaining high occupancy vehicle 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 director has the authority, in the director's sole discretion, to require correction of a documented safety-related deficiency.

C. Mitigation denial-appeal process. If the director determines that the proposed mitigation does not meet the requirements of this chapter, the director may deny the proposed improvements and determine the project is inconsistent with this chapter. The director's decision may be appealed by the applicant to the hearing examiner pursuant to the provisions of Section 12.11.080.

Sec. 12.11.100. Mobility management zones and standards.

Mobility management zones and the system standards are set forth in Table 1 as follows:
SECTION 2. Adoption of this ordinance shall not invalidate or otherwise have any effect on any development permit application vested on the effective date of this ordinance.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 4. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.

ATTEST:

[Signature]
BRENDA JACOBER, CITY CLERK, DEPUTY
DONNA SWAU
APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED 19 day of March, 1996.
APPROVED 26th day of March, 1996.
PUBLISHED 22nd day of March, 1996.

I hereby certify that this is a true copy of Ordinance No. 3284, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK, DEPUTY

DONNA SWAAL
## Table 1: Mobility Management Zone Standards

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<th>Supplemental Intersections</th>
<th>Arterial Threshold</th>
<th>Transit Service (Peak/Midday) Minutes</th>
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