

ORDINANCE 1683

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, AMENDING NORTH BEND MUNICIPAL CODE CHAPTER 20.12, CONCURRENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of North Bend (“City”) performs concurrency analysis for public facilities, such as sewer, water, streets, and stormwater; and

WHEREAS, the City currently sets aside concurrency capacity for small residential projects; and

WHEREAS, commercial revenues and taxes currently provide almost 70% of the general fund budget for the City of North Bend; and

WHEREAS, the Growth Management Act (Chapter 36.70A RCW) and the City’s Comprehensive Plan requires that the City have an appropriate balance of jobs to housing ratio and currently the City has almost 1,000 single family residential units planned to be built in the City over the next two years; and

WHEREAS, conversely, over the last few years, the City has received few applications for new commercial development within the City; and

WHEREAS, the North Bend City Council received a report from Community Attributes at its September 25, 2018 Work Study and further considered various recommendations from North Bend Economic Development Manager Lynn Hyde to stimulate commercial development; and

WHEREAS, the City wishes to encourage commercial development within the City of North Bend in order to ensure that there are adequate commercial services available for City residents; and

WHEREAS, robust commercial development within the City is also vital to the financial viability of the City, to ensure that City expenses do not exceed revenues; and

WHEREAS, the City desires to amend North Bend Municipal Code Chapter 20.12 in order to adjust the current set-aside for small residential projects; and

WHEREAS, the City’s Community and Economic Development Council Committee discussed the proposed amendments to NBMC Ch. 20.12 relating to the concurrency set-aside at its February 19, 2019 meeting; and

WHEREAS, a public hearing on the proposed amendments to NBMC Chapter 20.12 Concurrency was held at the City Council meeting on March 5, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC 20.12.010 (Definitions), Amended: North Bend Municipal Code Section 20.12.010 (Definitions) is hereby amended to read as follows:

20.12.010 Definitions.

A. “Applicant” means a person who applies to the city for a development permit.

B. “Availability letter” means a letter from a purveyor of water or sewer facilities indicating that the purveyor has sufficient capacity to serve the development proposed by the recipient of the letter.

C. “Certificate of concurrency” means the document issued by the city indicating the location or other description of the property on which the development is proposed, the type of development permit for which the certificate is issued, the uses, densities, and intensities of the development approved for the property, and the public facilities that are available and reserved for the property described in the certificate.

D. “Commercial Development” means the development of an establishment involving an activity with goods, merchandise, or services for sale or involving a rental fee.

E. “Concurrency” means adequate public facilities that meet the level of service standard are or will be available no later than the impact of development.

F. “Concurrency test” means a comparison of an applicant’s impact on public facilities to the capacity of public facilities that are, or will be, available no later than the impacts of development.

G. “Concurrency test deferral affidavit” means a document signed by an applicant which defers the application for a certificate of concurrency and the concurrency test, acknowledges that future rights to develop the property are subject to the deferred concurrency test, and acknowledges that no vested rights concerning concurrency have been granted by the city or acquired by the applicant without such a test.

H. “Development” means improvements or changes in use designed or intended to permit a use of land which will contain more dwelling units or buildings than the existing use of the land, or to otherwise change the use of the land, buildings or improvements on the land in a manner that increases the impact on public facilities, and that requires a development permit from the city. Development includes redevelopment, remodeling, or refurbishment that increases the impact on public facilities.

I. “Development permit” means any order, permit or other official action of the city granting, or granting with conditions, an application for development, including specifically:

1. Redesignation in the comprehensive plan;
2. Rezone;
3. Planned action, as that term is defined in RCW 43.21C.030(2);
4. Subdivision, including preliminary plat, short plat, or binding site plan, or mobile home park;
5. Master site plan;
6. Building permit;
7. Grading permit;
8. Certificate of occupancy for a change in use which increases the demand for public facilities; and
9. Connection of existing development to city facilities.

J. “Dwelling unit” means a single unit providing complete and independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking, and sanitation needs.

K. “GFC” means general facilities charges which the city collects for water, sewer and stormwater, the purpose of which is to pay for a portion or all of the capital cost of public facilities.

L. “Impact fees” means impact fees charged by the city pursuant to RCW 82.02.050 et seq., the purpose of which is to pay for a portion or all of the capital cost of public facilities.

M. “Level of service standard” means the number of units of capacity per unit of demand, or similar objective measure of the extent or degree of service provided by a public facility.

N. “Public facilities” for the purpose of concurrency means roads and streets, sewer, stormwater, and water.

O. “Reserve” means to note in the city’s concurrency records in a manner that assigns the capacity or other measure of public facilities to the applicant and prevents the same capacity or other measure being assigned to any other applicant.

P. “Set aside” means a portion of the capacity of public facilities that is reserved by the city for certificates of concurrency for commercial development, special projects and small projects ~~and affordable housing~~.

Q. “Small projects” for the purpose of concurrency means a single development project of four or fewer less-dwelling units within a single structure, ~~or less than 4,000 square feet of all nonresidential uses~~.

~~R.~~ “Vested” means having the right to develop or continue development notwithstanding the concurrency test because of vested rights ~~to obtain a~~ relating to a building permit application pursuant to RCW 19.27.095, or an application to subdivide land pursuant to RCW 58.17.033, or under the terms of a development agreement pursuant to RCW 36.70B.180.

Section 2. NBMC 20.12.050 (Concurrency Test), Amended: North Bend Municipal Code Section 20.12.050 (Concurrency Test) is hereby amended to read as follows:

20.12.050 Concurrency test.

A. The city shall perform a concurrency test for each application for a certificate of concurrency, except as provided in NBMC 20.12.040. For each applicant requiring concurrency per NBMC 20.12.030, the City will not process applications for a certificate of concurrency until such time as the potential applicant has applied for an underlying development permit (if applicable) and the City is in receipt of all information necessary to perform the relevant concurrency analysis. Should an applicant who has previously applied for concurrency fail to apply for an underlying development permit within 90 days of submittal of the concurrency application, the concurrency application will become void and the applicant will need to submit a new application for concurrency after those 90 days. The public works director, or his/her designee, shall determine which of the following methods shall be used to conduct the concurrency test for each type of public facility:

1. If capacity has been established for the year then the public works director shall use the annual certification to determine that the capacity of public facilities is sufficient to maintain the city’s level of service standard for development that is estimated to occur during the following year; or

2. Case-by-case review of the application compared to the capacity of the public facility.

B. The city may enter into an agreement with each public or private entity that provides public facilities in the city to establish the responsibilities of the city and the provider of public facilities in providing data for, or conducting, a concurrency test.

C. If the capacity of available public facilities is equal to or greater than the capacity required to maintain the level of service standard for the impact of the development, the concurrency test is passed, and the applicant shall receive a certificate of concurrency. If the level of service standard is determined by means other than the capacity of public facilities, the concurrency test is passed if the impact of the development will not cause the level of service to decline below the standard set forth in NBMC 20.12.060.

D. In conducting the concurrency test, the city shall determine that public facilities that are needed to achieve the level of service standards are available if:

1. The public facilities have already been constructed; or

2. The public facilities are included in the capital facilities plan element of the city's comprehensive plan (or comparable plan adopted by the governing board of other providers of public facilities) and planned to be constructed on or before the impact of development occurs as determined by NBMC 20.12.060(C); and

3. The public facilities needed to achieve the level of service standard and planned for construction are underwritten by one or more of the following financial commitments specific to the additional public facility:

a. Grants from federal, state or private sources if the grant has been awarded for specific projects;

b. Appropriations in state biennial budget for specific projects;

c. Revenues that can be imposed or expended at the discretion of the city of North Bend, including, but not limited to, impact fees, general facilities charges, SEPA mitigation payments, property taxes, real estate excise taxes, user fees, charges, intergovernmental entitlements, and bonds;

d. Revenue from special assessment districts created by the city;

e. Irrevocable commitments from developers in a form acceptable to the city:

i. Performance or surety bonds from Washington financial institutions;

ii. Letters of credit from Washington financial institutions; or

iii. Assignments of assets in Washington (i.e., interests in real property, savings certificates, bank accounts, or negotiable securities);

f. Payments by special districts, including sewer, water, and schools, if such payments are similar in character and reliability to those listed in subsections (D)(3)(a) through (e) of this section; and

4. If the financial commitments that underwrite the planned public facilities include impact fees, the applicant has paid all impact fees when due under the applicable provisions of the North Bend Municipal Code and the taxes, rates and fees schedule adopted by ordinance for the proposed development.

E. If the capacity of available public facilities is less than the capacity required to maintain the level of service standard for the impact of the development, or the impact of the development will cause the level of service to decline below the standard set forth in NBMC 20.12.060, the concurrency test is not passed, and the applicant may select one of the following options:

1. Accept a 90-day encumbrance of public facilities that are available, and within the same 90-day period amend the application to reduce the need for public facilities to not exceed the capacity that is available, or arrange to provide for public facilities that are not otherwise available; or

2. Reapply for a certificate of concurrency following the denial of an application for a certificate of concurrency; or

3. Appeal the denial of the application for a certificate of concurrency, pursuant to the provisions of NBMC 20.12.090.

F. The city shall conduct the concurrency test first for the earliest complete concurrency application received. The City will issue concurrency simultaneously for all facilities for which concurrency is required and for which the City issues concurrency. The City will not issue separate concurrency certifications for separate facilities (i.e. water,

sewer, transportation, etc.) A complete concurrency application shall consist of the ~~completed~~~~filled-out~~ concurrency application form and supporting information as submitted for the transportation and utilities elements of the SEPA checklist. If a checklist is not required for the proposal, the supporting information shall consist of relevant transportation and utilities information as ~~would~~~~might~~ be submitted if a SEPA checklist were required. Subsequent applications will be tested in the same order as the city receives applications and determines them complete. A complete application ready for final disposition may move ahead of another complete application that preceded it if:

1. The later application has been in line at least 180 calendar days; and
2. The earlier applicant has received notice by the city to complete the process within 14 calendar days or lose his/her place in line.

G. The city shall set aside 9 percent of the capacity of public facilities that is available as of the effective date of the ordinance codified in this section, and 9 percent of any future increases of system capacity of public facilities. Of ~~that~~~~those~~ 9 percentage points of set-aside capacity, 6 percentage points shall be reserved for Commercial Development. Of ~~that~~~~those~~ 6 percentage points, 2 percentage points shall be reserved for Commercial Development in the Downtown Commercial Zone of the City. 2 percentage points of the initial 9 percentage points of set-aside capacity shall be reserved for special projects ~~as determined to be a public benefit by the~~ City Council and may only be utilized pursuant to as regulated through a Development Agreement. The final 1 percentage point of the initial 9 percentage points of set-aside shall be reserved for single-family residential (non-subdivision, non-short plat) housing projects of only one residence or projects which meets the definition of a small project. The City shall determine which single-family residential housing projects or small projects are eligible for the set-aside program taking into account the following criteria:

1. The small project is not owned by the same person or organization, or a related individual or organization, as any other small project;
2. The small project is not part of a development permit application for any other small project, or any project that is not a small project;
3. ~~The small project is not adjacent to any other small project;~~
4. Other criteria that the city determines to be reasonable and equitable in preventing abuse of the small project set-aside program.

Should any vested residential development fail to proceed to construction prior to the expiration of any vested rights provided for by state statute or within the statutory or the North Bend Municipal Code, provided vesting time period, the public facilities capacity associated with that development shall be added pro rata to the aforementioned percentages set aside ~~for Commercial Development~~.

H. The city shall condition all development permits requiring one or more public facilities provided by entities other than the city on the availability of the public facilities to be provided by those other entities. The city may enter into an agreement with each public or private entity that provides public facilities in the city to establish the responsibilities of the city and the provider of public facilities in providing data for, or conducting, a concurrency test.

I. A concurrency test, and any resulting certificate of concurrency, shall be administrative actions of the city that are categorically exempt from the State Environmental Policy Act.

Section 3. NBMC 20.12.070 (Certificate of Concurrency), Amended: North Bend Municipal Code Section 20.12.070 (Certificate of Concurrency) is hereby amended to read as follows:

A. A certificate of concurrency shall be issued by the ~~community services~~ Public Works director or his/her designee, no later than the issuance of the permit for the underlying development action. ~~In the event an applicant does not submit a development application at the same time a concurrency review is requested, the city shall issue the concurrency certificate within 90 calendar days of making a complete application.~~

B. Upon issuance of a certificate of concurrency, the city shall reserve capacity on behalf of the applicant, and indicate the reservation on the certificate of concurrency.

C. A certificate of concurrency issued for a project with an underlying development permit shall be valid for the same period of time as the development permit with which it was issued. A certificate of concurrency shall not be issued in the absence of an underlying development permit application. ~~Concurrency certificates permit shall expire one year in time from the date of issuance unless extended by submittal of a complete development application for said project and property approval of an active underlying development permit prior to the end of the one-year period of validity. In the event a certificate issued in the absence of an underlying development permit is extended beyond the one-year deadline, it shall remain in effect until a permit decision is issued for the underlying permit action. In the event the permit is approved, the certificate shall be transferred to the underlying development permit and shall be valid for the same period of time as the~~

development permit. If the underlying development permit expires, the related concurrency certificate shall become void. In the event the underlying development permit is denied, the concurrency certificate shall become null and void.

D. A certificate of concurrency may not be extended according to the same terms and conditions as the underlying development permit. If a development permit is granted an extension, the applicant shall submit a new application for a concurrency test and certificate under this chapter. Certificates of concurrency shall not be extended beyond the expiration of the underlying development permit, or any extensions thereof.

E. A certificate of concurrency is valid only for the uses and intensities authorized for the development permit with which it is issued. Any change in use or intensity that increases the impact of development on public facilities is subject to an additional concurrency test of the incremental increase in impact on public facilities.

F. A certificate of concurrency is valid only for the development permit with which it is issued.

G. A certificate of concurrency runs with the land, and cannot be transferred to a different parcel. A certificate of concurrency transfers automatically with ownership of the parcel for which the certificate was issued. Upon final subdivision of a parcel that has obtained a certificate of concurrency, the city shall replace the certificate of concurrency by issuing a separate certificate of concurrency to each subdivided parcel, assigning to each a pro rata portion of the public facility capacity or other measure that was reserved for the original certificate.

H. A certificate of concurrency shall expire if the underlying development permit expires or is revoked or denied by the city and the certificate has not been extended to a subsequent development permit for the same parcel.

I. A certificate of concurrency for water supply or sewage treatment, which has been issued to a property that is eligible to transfer development rights under the city of North Bend transfer of development rights (TDR) program, may transfer valid certificates for water supply or sewage treatment with the transferred property development rights, provided the transferred certificates for water supply or sewage treatment must be applied to a new development on the TDR receiving site within five years or returned to the city for refund or the certificates shall be void.

Section 4. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 5. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 5TH DAY OF MARCH, 2019.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Eileen M. Keiffer, City Attorney

Published: March 15, 2019
Effective: March 20, 2019

ATTEST/AUTHENTICATED:

Susie Oppedal, City Clerk