ORDINANCE NO. 14-

AN ORDINANCE OF THE CITY COUNCIL OF PORT ORCHARD, WASHINGTON, ESTABLISHING DEFINITIONS FOR POMC 16.70 IMPACT FEES AND FOR POMC 16.71 CONCURRENCE, ADOPTING A NEW CHAPTER 16.69 IMPACT FEE AND CONCURRENCE DEFINITIONS TO THE PORT ORCHARD MUNICIPAL CODE.

WHEREAS, the City desires to adopt new impact fee and concurrency ordinances to be consistent with State Law; and

WHEREAS, the City SEPA Responsible Official made a threshold determination that this ordinance was exempt under WAC 197-11-800(19); and

WHEREAS, these two chapters, POMC 16.70 and 16.71, share common definitions; and

WHEREAS, the City Council considered this Ordinance during its regular meeting of __________. 2015; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 16.69 of the Port Orchard Municipal Code is hereby created.

Section 2. A new Chapter 16.69 is hereby added, which shall read as follows:

Chapter 16.69
IMPACT FEE AND CONCURRENCE DEFINITIONS

Sections:

16.69.010 Definitions.

16.69.010 Definitions. The following words and terms shall have the following meanings for the purpose of this interpreting POMC Section 16.70 and 16.71, unless the context clearly appears otherwise. Terms not defined herein shall be given the meaning set forth in RCW 82.02.090, or given their usual and customary meaning.

A. “Act” means the Growth Management Act, chapter 36.70A RCW, or as hereafter amended.

B. “Adequate public facilities” means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums. (WAC 365-196-210(3).)

C. “Affordable housing” means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty
percent of the household’s monthly income. (WAC 365-196-210(4).)

D. “Approving Authority” means the city employee, agency or official having the authority to issue the approval or permit for the development activity involved.

E. “Annual capacity availability report” means the report prepared each year to include available and reserved capacity for each public facility and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service, a summary of development activity, a summary of current levels of service and recommendations.

F. “Available public facilities” means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, “concurrent with development means” that the 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. (RCW 36.70A.070(6)(b).)

G. “Capacity” means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, or “peak p.m. trips,” within the LOS standards for the facility.

H. “Capacity, available” means capacity in excess of current demand (“used capacity”) for a specific public facility which can be encumbered, reserved or committed or the difference between capacity and current demand (“used capacity”).

I. “Capacity, encumbered” means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.

J. “Capacity evaluation” means the evaluation by the Director based on adopted Level of Service (LOS) standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in the City’s concurrency ordinance.

K. “Capacity reservation certificate” or “CRC” means a determination made by the Director that: (1) a proposed development activity of development phase will be concurrent with the applicable facilities at the time the CRC is issued, and (2) the Director has reserved capacity for an application for a period that corresponds to the respective development permit.

L. “Capacity, reserved” means capacity which has been reserved through use of the capacity reservation certificate process in Section 16.71.013-016.

M. “Capital facilities” means the facilities or improvements included in a capital facilities plan.

N. “Capital facilities plan” means the capital facilities plan element of the City’s comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

O. “Change of use” means, for the purposes of this Chapter, any change, redevelopment or modification of use of an existing building or site which meets the definition of “development activity” herein.
P. “City” means the City of Port Orchard, Washington.

Q. “Comprehensive land use plan” or “comprehensive plan” means a generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

R. “Concurrency” or “concurrent with development” means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of “adequate public facilities” as defined above. For the purposes of transportation facilities, concurrent with development means that strategies or improvements 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. (RCW 36.70A.070(6)(b).)

S. “Council” means the City Council of the City of Port Orchard, Washington.

T. “Dedication” means the conveyance of land or facilities to the City for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat (or short plat).

U. “Demand management strategies” means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that: (1) shift demand outside of the peak travel time; (2) shift demand to other modes of transportation; (3) increase the number of occupants per vehicle; (4) decrease the length of trips; (5) avoid the need for vehicle trips. (WAC 365-196-210(12).)

V. “Department” means the public works department of the City of Port Orchard.

W. “Developer” means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

X. “Development activity” or “development” means any construction or expansion of a building, structure, or use, and change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City. (RCW 82.02.090(1).

Y. “Development agreement” means the agreements authorized in RCW 36.70B.170.

Z. “Development permit” or “project permit” means any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site-specific rezones, and for purposes of the City’s concurrency ordinance, shall include applications for amendments to the City’s comprehensive plan which request an increase in the extent or density of development on the subject property.

AA. “Director” means the director of the public works department.

BB. “Existing use” means development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this Chapter.
CC. “Encumbered” means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

DD. “Fair market value” means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each being prudently knowledgeable, and assuming the price is not affected by undue stimulus.

EE. “Feepayer” means a person, corporation, partnership, an incorporated association, or a department or bureau of any government entity, or any other similar entity, commencing a land development activity. “Feepayer” includes applicants for an impact fee credit.

FF. “Financial commitment” means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

GG. “Growth-related” means a development activity as defined herein that utilizes the available capacity of a public facility.

HH. “Impact fee” means the amount of money determined necessary by the City and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. “Impact fee” does not include a reasonable permit or application fee. (RCW 82.02.090(3).)

II. “Impact fee accounts” means the account(s) established for each type of public facilities for which impact fees are collected. The accounts shall be established pursuant to this Chapter, and comply with the requirements of RCW 82.02.070.

JJ. “Impact fee schedule” means the table of impact fees per unit of development, which is to be used by the Director in computing impact fees.

KK. “Interest” means the interest rate earned by the City for the impact fee account, if not otherwise defined.

LL. “Interlocal agreement” means the transportation impact fee interlocal agreement by and between the City and county or the City and a neighboring city, or the City and the State of Washington, concerning the collection and allocation of road impact fees, or any other interlocal agreement entered by and between the City and another municipality, public agency or governmental body in order to implement an impact fee program.

MM. “Level of Service” or “LOS” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards. (WAC 365-196-210(19).)

NN. “Owner” means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real
property, if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds 25 years, and the lessee is the developer of the real property. (RCW 82.02.090(4).)

OO. “Previous use” means (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five-year period prior to the date of application for the development.

PP. “Project” means a system improvement, selected by the City Council for joint private and public funding and which appears on the Project List.

QQ. “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the City Council shall be considered a project improvement. (RCW 82.02.090(5).)

RR. “Project List” means the list of projects described in the City’s annual and six-year capital improvement program and as developed pursuant to this Chapter.

SS. “Proportionate Share” means that portion of the cost of public facility improvements that is reasonably related to demands and needs of new development. (RCW 82.02.090(6).)

TT. “Road” means a right-of-way which affords the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.

UU. “Road facilities” includes public facilities related to land transportation.

VV. “Service Area” means the geographic area defined by the City or interlocal agreement, in which a defined set of public facilities provide service to development in the area. Service areas shall be designated on the basis of sound engineering or planning principles. (RCW 82.02.090(8).)

WW. “State” means the State of Washington.

XX. “Subdivision” means all subdivisions as defined in Chapter16.72, and all short subdivisions as defined in that Chapter.

YY. “System improvements” means public facilities that are included in the City’s capital facilities plan and are designed to provide service to areas within the City and community at large, in contrast to project or on-site improvements. (RCW 82.02.090(9).)

ZZ. “Traffic analysis zone” means the minimum geographic unit used for traffic analysis.

AAA. “Transportation primary impact area” means a geographically determined area that delineates the impacted area of a deficient roadway link.

BBB. “Transportation level of service standards” means a measure which describes the

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1 This definition should be consistent with the City’s definition of “road” in the City’s Public Works Standards.
operational condition of the travel stream and acceptable adequacy requirement.

CCC. “Transportation management area” means a geographically determined area that contains compact urban development patterns where a dense roadway network and extensive mass transit services are in place. The performance of these areas shall be based on the percentage of lane miles meeting the LOS standards as described in this Chapter.

DDD. “Traffic demand model” means the simulation through computer modeling of vehicle trip ends assigned on the roadway network.

EEE. “Trip allocation program” means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

FFF. “Trip end” means a single or one-directional vehicle movement.

GGG. “Unit” or “Dwelling unit” means a dwelling unit as defined in Section 16.08.228 of this code.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this ___th day of ______ 2015.

__________________________
Timothy C. Matthes, Mayor

ATTEST:

__________________________
Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM

__________________________
Carol A. Morris, Interim City Attorney

Published: ___________________
Posted: _________________
Effective Date:______________