

- (b) Changes or alterations of conditions of any change of zone ordinance shall be processed in the same manner as a zone change, unless the council authorizes the changes or alterations to be made by the director. A request for any change or alteration of conditions shall be submitted in writing to the director, in lieu of the application required for an applicant-initiated change of zone. The request shall be accompanied by a filing fee of \$250.
  - (c) Failure to fulfill any conditions of the zone change within the specified time limitations, or any extensions thereto, may be grounds for the enactment of an ordinance making further zone changes or for rezoning the affected property back to its original zoning designation or a more appropriate zoning designation, upon initiation by either the director or the council in accordance with section 25-2-43.
- (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

**Section 25-2-45. Nonsignificant zoning changes.**

- (a) The director may administratively grant any nonsignificant zoning change. A nonsignificant zoning change must comply with the designations for the property set forth in the general plan and any development plan adopted by ordinance, and not result in an increase or decrease in any zoning designation affecting more than five percent of the area, or one acre, of any lot, whichever is less.
- (b) The applicant for a nonsignificant zoning change shall give notice to surrounding owners and lessees of record, pursuant to section 25-2-4, and shall post a sign for public notification as provided by section 25-2-12.

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999; Am. 2008, Ord. No. 08-48, sec. 2.)

**Section 25-2-46. Concurrency requirements.**

- (a) Purpose. In addition to requirements otherwise imposed, this section creates concurrency standards for roads and water supply in change of zone actions.
- (b) Applicability. This section applies to any application for change of zoning district, or for an extension of time to perform a condition of zoning, received by the planning department after the effective date of this ordinance.
- (c) Definitions. As used in this section:

“Acceptable level of service” means that the level of service of a transportation facility at the a.m. and p.m. peak hour is “D” or better.

“Approved development” means development for which zoning has been granted by the County.

“Critical road area” means a geographical area where any of the transportation facilities serving the area have been determined by the council to be worse than the acceptable level of service.

“Immediate vicinity of a project” means the area in which transportation facilities will be required to mitigate impacts caused primarily by the project.

“Level of service, or LOS” means a qualitative measure describing operational conditions within a traffic stream, and shall be determined using the procedures in the latest edition of the Highway Capacity Manual, Transportation Research Board.

“Mitigation” means specific actions to reduce traffic congestion. Mitigation is of two types: “local mitigation” which consists of improvements to roads and intersections that are in the immediate vicinity of a project, including channelization of intersections, turn lanes into a project and similar improvements. “Area mitigation” consists of improvements which increase the capacity of an arterial or other major road, such as additional lanes, in the general region containing the project, or construction of a new arterial or collector road in the general area containing the project, or improvements to public transportation such as buses or park and ride facilities, sufficient to offset the traffic demand generated by the project.

“Occupancy” means (1) the issuance of a certificate of occupancy for a commercial, multifamily, industrial building, hotel or other structure requiring a certificate of occupancy; (2) the issuance of a building permit for residential buildings that do not require a certificate of occupancy; or (3) final subdivision approval for subdivisions where dwellings are allowed, but dwellings are not being constructed before sale of any lot.

“Project area” means the area in which the project is expected to have an impact on the level of service of transportation facilities.

“Reasonable assumptions” means the percentage of full build-out that is expected to occur during the twenty-year period after the date of the application, as determined by the planning director.

“Transportation facilities” means State and County highways, roads, and public transportation facilities.

“Worse than the acceptable level of service” means that the level of service at the a.m. or p.m. peak is “E” or “F”.

(d) Traffic impact analysis report required.

- (1) A traffic impact analysis report (TIAR), prepared or updated within six months before the submission of the application, shall be included with the application for any change of zone that can generate fifty or more peak hour trips. The determination of peak hour trips shall be based on the Institute of Transportation Engineers, “Trip Generation Handbook”, or any other nationally recognized source. When the number of trips depends upon the exact future uses of the site, and those are unknown at the time of rezoning (for example, the types of commercial uses), the determination shall be based upon a typical mix of uses found in that zoning type in the community. The TIAR shall be certified as having been conducted in accordance with best practices by a professional engineer licensed in the State of Hawai‘i.
- (2) The TIAR shall assess impacts to transportation facilities in the immediate vicinity and general area of the project, and to the transportation facilities serving the project area.
- (3) The TIAR shall include projections for future growth in traffic, for a minimum of five, ten, and twenty years, and shall include other approved or proposed development that is expected to impact the project area, with reasonable assumptions about the build-out of such development.
- (4) The TIAR shall present an assessment of the impacts of the project on LOS and an evaluation of alternative plans for mitigating those impacts. The evaluation shall include budgetary cost estimates for the capital and operating costs of promising alternative plans.

(e) Mitigation required.

- (1) If the LOS for any transportation facility in the project area is (A) currently worse than the acceptable level of service, or (B) projected to become worse than the acceptable level of service during the five year period of the TIAR, any rezoning of the property, if approved, shall contain conditions that require mitigation of adverse traffic effects before occupancy of the project is permitted, or that occupancy be delayed until the level of service has reached the acceptable level and is no longer projected to be worse than the acceptable level.
- (2) Where the LOS deficiency is due to roadway or intersection deficiencies in the immediate vicinity of the project, the conditions of zoning shall require local mitigation. Where the deficiency in LOS is due to insufficient capacity in the transportation facilities serving the project area, the conditions of zoning shall require area mitigation.
- (3) If there is more than one way to mitigate an adverse effect, the director shall present to the council the pros and cons of the alternatives.

(f) Mitigation requirements will be deemed satisfied when:

- (1) A public agency has committed funds for area mitigation that will remove the LOS deficiency. In the case of the State, commitment of funds means that the governor has released funds to complete the improvement. In the case of the County, commitment of funds means that the council has appropriated funds to complete the improvement; or
- (2) The private developer’s commitment to implement mitigation has been secured by bond or equivalent security, or mandatory participation in an improvement district, community facilities district, or other equivalent means of guaranteeing performance.

- (g) A developer's area mitigation expenses shall be credited against any fair share or similar fee requirement for roads. A developer's local mitigation expenses shall be credited against any fair share or similar fee requirement for roads if the council determines that the mitigation substantially benefits the general public and was not necessary primarily for the benefit of the project. In general, roads that are necessary for access to or within a development or turn lanes for a private project shall not qualify for fair share credit.
- (h) The following types of rezoning applications shall be required to submit a TIAR when required by this section, but shall not be required to perform area mitigation:
- (1) Residential or other rezonings where the applicant commits, and the conditions of zoning require, that the project earn at least two times the number of affordable housing credits otherwise required under chapter 11, County affordable housing policy, provided further that the applicant shall be entitled to the full amount of "excess credits" under section 11-15, County affordable housing policy, based on the number of affordable housing credits normally required.
  - (2) Rezoning to CV, CN, MCX, PD, or ML where the council determines that the project will reduce regional traffic congestion by providing necessary commercial or light industrial opportunities to serve an area where there is a shortage of available space zoned for such uses, and substantial residential development has already been approved, provided that conditions of zoning shall ensure that any commercial development be of a scale consistent with the standards of a "neighborhood center" as described in the general plan.
- (i) The restrictions on occupancy shall not apply to the construction of infrastructure such as water tanks, roads, sewage treatment plants, or other project elements that do not generate substantial traffic.
- (j) The council may designate critical road areas by ordinance.
- (k) In a critical road area, all rezonings shall be subject to local and area mitigation, except as stated in subsection (h).
- (l) In order to determine whether a rezoning application meets the TIAR threshold of fifty or more peak hour trips, and to prevent applicants from going below the TIAR threshold by dividing a project into segments, the director shall review all development proposed on the same or adjacent properties, and shall include traffic that may be generated by any development application approved after the effective date of this ordinance, or by any other pending development application, if it is on a portion of the same lot or tax map key parcel, or an adjoining lot or tax map key parcel, or in the immediate vicinity of the development.
- (m) A change of zone application shall not be granted unless: (1) the department of water supply has determined that it can meet the water requirements of the project and issue water commitments using its existing system; or (2) specific improvements to the existing public water system, or a private water system equivalent to the requirements of the department of water supply will be provided to meet the water needs of the project and conditions of zoning delay occupancy until the necessary improvements are actually constructed.
- (n) To facilitate the development of village centers in rural areas that are not currently served by a public water system, the council may waive the water supply requirements for rezonings for commercial or light industrial uses in areas that do not currently have a public water system, and where the department of water supply has no plans to build a public water system, and which are (1) designated as an "urban and rural center" or "industrial area" on table 14-5 of the general plan and (2) designated for urban use on the land use pattern allocation guide map of the general plan; provided that conditions of zoning shall require water supply consistent with public health and safety needs such as sanitation and fire-fighting.
- (o) Nothing in this section shall limit the ability of the council to impose reasonable roadway or water improvement requirements on changes of zone or to deny change of zone applications to the extent otherwise allowed by law.
- (2007, Ord. No. 07-99, sec. 2.)