

WAC 365-198-060 Joint terms and conditions for counties, cities and towns. Counties, cities, and towns that choose to use this chapter as an alternative to an interlocal agreement must adopt the following joint terms and conditions by reference to this chapter in an ordinance or resolution:

(1) The county and city or town shall establish an evaluation and monitoring program based on quantitative and qualitative performance measures developed by the department for monitoring the regional transfer of development rights program under RCW 43.362.070.

(2) The county and city or town shall enter into a dispute resolution process through mediation, with an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any terms and conditions in this chapter adopted by reference. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation that they might otherwise be entitled to bring.

(3) The terms and conditions in this chapter adopted by reference shall become effective on the effective date of the adopting ordinance or resolution.

(4) The county, city or town may repeal the provisions of this chapter adopted by reference upon ninety days' written notice by the transferring county to the cities or towns or by cities and towns to the transferring county if:

(a) The city or town's development regulations allowing the use of development rights credits, or the provisions of the county's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or

(b) The county, city or town materially defaults in the performance of the obligations as set forth in provisions of this chapter adopted verbatim or by reference, and fails to cure the default within thirty days' of receipt of written notice from the county, city or town.

(5) A city or town's repeal of the terms and conditions in this chapter adopted by reference shall not affect the use of development rights credits previously certified by the county. Development credits certified by the county prior to repeal by the city or town that have not been used in the city or town's receiving area may be used in the county's or another city or town's designated receiving area.

(6) The city or town shall indemnify and hold harmless the transferring county and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the city or town, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the city or town shall defend the same at its sole cost and expense, provided that the transferring county retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the transferring county and its officers, agents, employees, or any of them, or jointly against the city or town and transferring county and their respective officers, agents, and employees or any of them, the city or town shall satisfy the same.

(7) The transferring county shall indemnify and hold harmless the city or town and its officers, agents and employees, or any of them

from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the transferring county, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the city or town, the transferring county shall defend the same at its sole cost and expense, provided that the city or town retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the city or town and its officers, agents, and employees, or any of them, or jointly against the city or town and county and their respective officers, agents, and employees, or any of them, the county shall satisfy the same.

(8) The county and city or town acknowledge that if the claims, actions, suits, liability, loss, costs, expenses and damages referenced in subsections (6) and (7) of this section are caused by or result from the concurrent negligence of the city or town, its agents, employees, and/or officers and the county, its agents, employees, and/or officers, the provisions of this chapter adopted by reference shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

[Statutory Authority: RCW 43.362.050. WSR 10-18-066, § 365-198-060, filed 8/30/10, effective 9/30/10.]