

**CHAPTER 7**  
**CONCURRENCY MANAGEMENT SYSTEM**

**Table of Contents**

**Chapter 7. Concurrency Management System..... 1**

**Section 7.01. Purpose and Intent ..... 1**

**Section 7.02. Public Facilities ..... 1**

**Section 7.03. Tracking and Reporting..... 1**

    7.03.01. Concurrency Management Monitoring System ..... 1

    7.03.02. Concurrency Baseline Statement ..... 1

**Section 7.04. Concurrency Review ..... 1**

    7.04.01. Applicability ..... 1

    7.04.02. Exemptions ..... 1

    7.04.03. Deferral Option ..... 2

    7.04.04. Standards for Review ..... 2

    7.04.05. Application for Concurrency ..... 3

**Section 7.05. Certificate of Concurrency ..... 4**

    7.05.01. General Provisions ..... 4

    7.05.02. Reservation of Capacities ..... 4

    7.05.03. Expiration..... 6

    7.05.04. Cease and Continuance ..... 6

**Section 7.06. Phasing of Vested Development ..... 6**

**Section 7.07. Proportionate Fair-Share Program ..... 7**

    7.07.01. Purpose and Intent ..... 7

    7.07.02. Applicability ..... 7

    7.07.03. General Requirements..... 7

    7.07.04. Application Process ..... 8

    7.07.05. Determining Proportionate Fair-Share Obligation ..... 8

    7.07.06. Impact Fee Credit for Proportionate Fair-Share Mitigation ..... 9

    7.07.07. Appropriation of Fair-Share Revenues ..... 9

    7.07.08. Additional Programs ..... 10

## **Chapter 7. Concurrency Management System**

### **Section 7.01. Purpose and Intent**

The purpose of this chapter is to implement the concurrency provisions of the Comprehensive Plan, as mandated by **Chapter 163, Florida Statutes**, and the Florida Administrative Code. No development order or permit which contains a specific plan of development, including the densities and intensities of development, shall be issued except in accordance with this chapter.

### **Section 7.02. Public Facilities**

The public facilities subject to concurrency and the regulations in this chapter include: transportation facilities, potable water, sanitary sewer, solid waste, drainage, schools, and parks and recreation.

### **Section 7.03. Tracking and Reporting**

#### **7.03.01. Concurrency Management Monitoring System**

The City hereby establishes and shall maintain a concurrency management monitoring system which consists of an inventory of public facility capacity and a demand accounting system that reflects the current status and availability of public facilities. A status report on the concurrency management monitoring system shall be prepared by the City on annual basis.

#### **7.03.02. Concurrency Baseline Statement**

- A.** The Land Use Administrator shall develop a concurrency baseline statement which shall be effective for one (1) year after its issuance. Nothing herein precludes, however, the issuance and effectiveness of more frequent amendments to the concurrency baseline statement. The concurrency baseline statement is an assessment of public facility available capacity anticipated for the reporting period.
- B.** The available capacity reported for each public facility in the concurrency baseline statement shall be determined by using calculations from the concurrency management monitoring system and projections of public facility demand for vested developments. The public facility demand for vested projects shall be based upon a reasonable projection of the progress of each proposal or project, population projections, and other technical considerations, such as the practices and assumptions utilized in the Comprehensive Plan.

### **Section 7.04. Concurrency Review**

#### **7.04.01. Applicability**

All proposed developments or improvements to property requiring a final development order, except those developments or improvements which are exempt, as outlined in **Subsection 7.04.02**, or vested by this chapter, shall be subject to concurrency review prior to the issuance of a final development order.

#### **7.04.02. Exemptions**

- A.** Final development orders, including building permits, which permit or approve the following types of development are exempt from concurrency review if the Land Use Administrator finds that no additional impact on public facilities is created:

1. Approved development plans which are specifically exempted from or specifically determined to be vested from the concurrency requirements in the Comprehensive Plan, pursuant to applicable laws.
  2. Single-family and duplex residential lots platted as of November 16, 2008 are only exempt from transportation concurrency review.
  3. Modifications to residential dwellings that include additions, renovations, or reconstruction that do not increase the number of dwelling units on the site or approved for the property prior to the modifications.
  4. Additions, renovations to, or reconstruction of, accessory dwelling units, garage apartments, or other similar accessory units on parcels properly zoned to allow the accessory dwelling units.
  5. Public facilities such as City offices, community centers, fire stations, parks, police stations, hospitals (public or not for profit), water or sewer facilities, other public works, and other public facilities as determined by the Land Use Administrator.
- B.** A Development of Regional Impact that has been approved pursuant to **Chapter 380, Florida Statutes**, for which the development is proceeding in compliance with the conditions of the Development of Regional Impact approval, may be exempt from transportation concurrency as provided by the Development of Regional Impact Development Order, if the development meets all the requirements of **Section 163.3180 (12), Florida Statutes**, and this chapter.
- C.** Final development orders which permit or approve development that creates a *de minimis* impact, as defined by **Section 163.3180 (6) Florida Statutes**, shall be exempt from concurrency review for transportation facilities.

**7.04.03. Deferral Option**

- A.** Any applicant for a final development order may elect to defer concurrency review until the time at which an application for the final development order preceding a preconstruction conference or the commencement of any construction activity is filed. The applicant shall execute an affidavit acknowledging that development rights have not been vested and that development on the subject parcel shall be required to undergo concurrency review in the future.
- B.** A deferral affidavit shall be submitted to the Land Use Administrator.

**7.04.04. Standards for Review**

- A.** The City shall not issue a final development order, or an extension or amendment to an approved development order, unless there is sufficient available capacity of public facilities to meet the established levels of service. The City shall not grant a final development order unless one (1) of the following standards is met:
1. The necessary public facilities are available and in place at the time the development is authorized in accordance with the Comprehensive Plan; or
  2. The development order is issued subject to the condition that the necessary public facilities will be in place when the impacts of the development occur; or
  3. The necessary public facilities are under construction at the time the development is authorized; or
  4. The necessary public facilities are guaranteed in an enforceable development agreement that requires that the public facilities will be in place, except transportation facilities, when the

impacts of development occur and that the applicant or developer will pay a proportionate fair-share of the costs incurred to fulfill the need for the facilities and services created by proposed development. The enforceable development agreement for improvements must be financially guaranteed by cash, letter of credit, or similar instrument approved by the Land Use Administrator on a form satisfactory to the City and issued by a financial institution acceptable to the City or Land Use Administrator; or

5. The final development order permits or approves development that is exempt from concurrency review as outlined in **Subsection 7.04.02**.

**B.** For transportation facilities, the facilities must be available, programmed, or contracted to be under construction within three (3) years of the subject final development order, or consistent with provisions of the Florida Administrative Code. The impact thresholds and spheres of influence for arterial and collector roads shall be consistent with sound and generally accepted engineering standards and principles. When transportation facilities or segments are identified as deficient through the Concurrency Management System, including transportation facilities maintained by the Florida Department of Transportation or another jurisdiction, the Proportionate Fair-Share Program as provided in **Section 7.07** may satisfy this requirement.

#### **7.04.05. Application for Concurrency**

##### **A. General Requirements**

1. Applications for concurrency may be submitted at any stage of development, but may only result in the issuance of a certificate of concurrency when issued in conjunction with a final development order.
2. For the purpose of the concurrency review, the maximum density or intensity allowed under the future land use and zoning designation shall be used, unless the applicant provides a development scenario. If an applicant provides a development scenario, concurrency will be determined based upon that scenario and the density or intensity of the subject property can not be increased without a new concurrency review.
3. Methodologies consistent with sound and generally accepted engineering and planning practices and principles shall be utilized to determine the impacts of proposed development and their effect on the available capacity of public facilities.

##### **B. Traffic Study Requirements**

An application for concurrency must include a traffic impact analysis. The traffic impact analysis shall be consistent with sound and generally accepted engineering and planning practices and principles. In addition, the applicant is required to meet with the Land Use Administrator before conducting the traffic impact analysis to discuss appropriate methodology and/or mitigation proposals to be included in the traffic impact analysis. At a minimum the traffic study shall:

1. Identify the land use type of the proposed development, based on a generally accepted land use classification system (e.g., the North American Industry Classification System, the Land-Based Classification Standards, and/or Institute of Transportation Engineers Trip Generation Manual);
2. If the proposed development consists of multiple land uses, the traffic study must reflect the aggregated demand for capital transportation improvements generated by each land use type within the proposed impact-generating development;

3. Identify additional new trips (PM Peak Hour), additional vehicles (PM Peak Hour), current capacity/volume of affected roadway(s) (PM Peak Hour), available capacity/volume of affected roadway(s) (PM Peak Hour) before the proposed development, estimated capacity/volume of affected roadway(s) (PM Peak Hour), after the proposed development is complete (may be shown in phases of development), anticipated turning movements (PM Peak Hour), and additional anticipated roadway(s) capacities/volumes or improvements that may be needed to accommodate a reduced level of service identified through traffic study analysis; and
4. Utilize the latest edition of the Institute of Transportation Engineers Trip Generation, 7th Edition or later.

The findings of a traffic study satisfying the above requirements, including approval by the Land Use Administrator regarding the acceptability of the proposed traffic study methodology, shall be considered valid and applicable for a period of one (1) year after the date it was either received by the City.

## **Section 7.05. Certificate of Concurrency**

### **7.05.01. General Provisions**

- A. Certificates of concurrency may only be issued in conjunction with the issuance of a final development order.
- B. Certificates of concurrency are not transferable to another parcel or parcels of real property. Certificates of concurrency shall benefit and run with the parcel of real property to which the application related subject to the limits prescribed in this chapter and shall contain detailed information relating to limitations on uses and development densities and intensities.
- C. If an application for development is found to be exempt from the concurrency review of the Concurrency Management System review requirements of the Comprehensive Plan, this chapter, applicable requirements of the Florida Statutes, or state law, then, consistent with the provisions of this chapter, a certificate of exemption shall be issued without conditions being attached thereto.
- D. If a parcel of real property is not vested by the concurrency provisions of the Comprehensive Plan, this chapter, or applicable requirements of the Florida Statutes, a certificate of concurrency shall be valid for so long as the underlying development order relating to the subject real property, or a subsequent development order issued during the good faith continuation of the development, is valid.

### **7.05.02. Reservation of Capacities**

#### **A. Reservation Process**

The purpose of the public facility capacity reservation process is to afford property owners and developers the assurance that adequate capacity for requisite public facilities will be available when needed for a particular project, and to provide a higher degree of certainty during the construction financing process. The reservation process requires the applicant to reserve public facility capacity at the time of issuance of the certificate of concurrency.

#### **B. Reservation Fees**

Unless the applicant provides other assurances acceptable to the City that adequate public facilities will be available concurrent with the impacts of development (such as, by way of

example, a binding development agreement), all facility reservation fees shall be paid prior to the issuance of a certificate of concurrency and before authorization of any construction, pursuant to the provisions of this chapter. For phased development, the binding development agreement shall include the number of phases, quantity of development associated with each phase, the timing of facility reservation fee payments, and provisions that ensure that development of each phase will not commence until the facility reservation fees have been paid. The applicant shall pay all facility reservation fees due at the time of, and as a condition precedent to, the issuance of a building permit relating to the project, with said fees being paid at the rate in effect at the time of building permit issuance. Each facility reservation fee shall be calculated on the same basis as the application for a certificate of concurrency. Said fees shall be paid as follows:

1. For each public facility, the facility reservation fee shall be an amount equivalent to the then applicable City impact fee. All impact fees shall be required to be assessed and paid as a condition of receiving a building permit pursuant to the impact fee rate schedules in effect at the time a building permit is issued. However, each facility reservation fee previously paid shall be credited towards the corresponding impact fee as a per unit fixed-dollar deduction from the applicable impact fees at the time of building permit issuance.
2. For reservation of roadway capacity, applicants may select to reserve capacity for a fixed period of time, the periods of time being from one (1) year to three (3) years with associated scaling based on amount of the reservation fees paid. The scaling amount to be paid to secure the reservation would be:

33% of Total Impact Fee Amount for one (1) year reservation period

67% of Total Impact Fee Amount for two (2) year reservation period

100% of Total Impact Fee Amount for three (3) year reservation period

The Developer shall be required to pay the remainder of the required total impact fee amount due at the time of, and as a condition to, receiving a building permit. The scaled reservation fees paid previously shall be credited toward the impact fee in effect at the time of the building permit, and shall be on a dollar-for-dollar basis.

3. For water and sewer services, the facility reservation fee shall be an amount equivalent to the then applicable capacity fees and on the basis of the rates then in effect pursuant to the applicable rules, regulations, and requirements.

### **C. Refund of Reservation Fees**

If a final development order is not issued, expires, or is surrendered pursuant to an amending development order issued by the City or an amending development agreement, an applicant may request in writing, and the City shall issue, a refund of facility reservation fees, excluding the processing fee, if the appropriate following conditions are met:

1. For all public facilities (i.e., transportation facilities, solid waste facilities, sanitary sewer, potable water, drainage facilities, schools, and parks and recreation facilities), capacity shall be surrendered and thereupon a refund shall be made by the City at the earlier of either of the following events occurring:
  - a. A determination has been made by the Land Use Administrator that such refund shall not require or result in the elimination, deferral, or delay of a project which is needed to maintain the adopted level of service of the Comprehensive Plan.

- b. Another development is paying like facility reservation fees for the public facilities associated with the development for which the facility reservation fees are requested to be refunded. Like facility reservation fees shall be deemed those fees associated with and collected from another development paying the same impact fees relating to the same impacts on concurrency public facilities.

**D. Subject to Required Permits**

All water and sewer reservations of capacity shall be subject to the issuance of all required permits from the Florida Department of Environmental Protection and any other applicable agencies.

**E. Vested Developments.**

If a development is vested under this chapter, the requirements relating to the payment of impact fees and connection fees shall fully apply. If the payment of connection fees for water and sewer service is required to reserve capacity, such payment must occur. Vested status does not guarantee the availability of water or sewer capacity.

**7.05.03. Expiration**

Reservations of a certificate of concurrency shall run with the life of the development order, unless otherwise noted in **Subsection 7.05.02, Reservation of Capacities.**

**7.05.04. Cease and Continuance**

If a public facility to be provided by an applicant is not available at the time of the development's impacts, further development shall cease until all required public facilities are constructed. If a public facility to be provided by an applicant is included in a binding contract, but the construction is behind schedule, development may continue, but no releases for final electrical service or certificates of occupancy shall be issued until the facility has been accepted or approved by the City. If, however, a public facility is to be provided by the City and is not completed on time, development may continue within the conditions in the development order; provided, however, that certificates of occupancy or releases for final electrical service shall not be issued until potable water, sanitary sewer, and solid waste capacities are available.

**Section 7.06. Phasing of Vested Development**

- A. Developments which have been granted development rights or have been determined to be vested shall be required by the Land Use Administrator to enter into a development agreement, if a similar agreement has not been previously entered, which development agreement sets forth a reasonable schedule for the completion of development and, accordingly, the impacts upon public facilities.
- B. Development agreements for vested developments should be entered prior to the preconstruction conference being held.
- C. Each development phase shall begin on the date the preconstruction conference is held and shall terminate upon the issuance of a certificate of completion relating to a defined part of the overall development plan. The preconstruction conference for a subsequent phase must occur within two (2) years of the issuance of the certificate of completion of the prior phase in order to retain vested status.
- D. No phased development, except for Development of Regional Impacts, may have a build-out schedule exceeding twenty (20) years.

## **Section 7.07. Proportionate Fair-Share Program**

### **7.07.01. Purpose and Intent**

The purpose of this section is to establish a method to mitigate the impacts of development on transportation facilities by the cooperative efforts of the public and private sectors, and shall be known as the Proportionate Fair-Share Program.

### **7.07.02. Applicability**

The Proportionate Fair-Share Program shall apply to all developments in the City that impact a road segment or intersection in the Concurrency Management System, including transportation facilities maintained by Florida Department of Transportation or another jurisdiction that are relied upon for concurrency review, and that have been notified that a failure to achieve transportation concurrency on a roadway segment, segments, or intersection(s) exists. The Proportionate Fair-Share Program does not apply to developments meeting the *de minimis* standards under **Section 163.3180 (6), Florida Statutes**, or to developments exempted from concurrency.

### **7.07.03. General Requirements**

- A.** An applicant may propose satisfying the transportation concurrency requirements of the City by making a proportionate fair-share contribution, pursuant to the following requirements:
  - 1.** The proposed development is consistent with the Comprehensive Plan and this Land Development Code.
  - 2.** The 5-year Capital Improvement Program includes transportation improvement(s) that, upon completion, will mitigate additional traffic generated by the proposed development, as determined by the Land Use Administrator, and in accordance with the proportionate fair-share statute.
- B.** The Land Use Administrator may determine to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will mitigate the impact of additional traffic generated by the proposed development, as projected by City staff, using best available data and methodologies, but is not contained in the Capital Improvement Program, where one (1) of the following apply:
  - 1.** The City adopts, by resolution or ordinance, a commitment to add the improvements to the next 5-year Capital Improvement Program no later than the next regular update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Land Use Administrator and must be determined to be financially feasible. “Financially feasible” means that additional developer contributions, payments, or other funding sources are anticipated during a period not to exceed ten (10) years, to fully mitigate the specified impact(s) on the identified transportation facility or facilities and in accordance with the proportionate fair-share statute.
  - 2.** If the Land Use Administrator determines that the funds in the Capital Improvement Program are insufficient to fully fund construction of a transportation improvement required by the Concurrency Management System, then a proportionate fair-share payment may be required for another improvement which will, as determined by the Land Use Administrator, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share component shall be adopted into the next 5-year Capital Improvement Program at the next annual Capital Improvement Element update.

- C. Any improvement project proposed to meet the developer’s fair-share obligation must meet generally accepted design standards applicable for the Florida Department of Transportation maintained roadways and/or City maintained roadways, whichever is applicable.

**7.07.04. Application Process**

- A. The Land Use Administrator shall notify an applicant in writing if a failure to satisfy transportation concurrency requirements occurs. Upon receipt of such notice, an applicant may submit a proposed proportionate fair-share calculation to the Land Use Administrator for review.
- B. Pursuant to **Section 163.3180 (16) (e), Florida Statutes**, proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation. Improvements to non-Strategic Intermodal System Florida Department of Transportation maintained roadways shall likewise require Florida Department of Transportation review and approval.
- C. The Land Use Administrator shall determine whether a proportionate fair-share calculation is sufficient and eligible and is consistent with professionally accepted engineering practices. Upon a finding of sufficiency, a proportionate-share agreement will be prepared between the City and the applicant. The agreement shall include, but not be limited to, the amount of payment, description of work, estimated construction costs using the projected future cost of the improvement and data, and the timing of payment. All proportionate-share agreements are subject to approval by the City Council.

**7.07.05. Determining Proportionate Fair-Share Obligation**

- A. Proportionate fair-share mitigation for concurrency impacts may include, but are not limited to, separately or collectively, private funds, contributions of land, and construction or contribution of transportation improvements.
- B. A development shall be required to pay only its proportionate fair-share. The calculated value of the proportionate fair-share mitigation for the impacted transportation facilities shall not differ regardless of the method of mitigation.
- C. The methodology used to calculate an applicant’s proportionate fair-share obligation shall be as provided for in **Section 163.3180 (12), Florida Statutes**, as follows:

$$\text{Proportionate Share} = \sum [ [( \text{Development Trips}_i ) / ( \text{SV Increase}_i ) ] \times \text{Cost}_i ] - \text{Impact Fee Credits}$$

Where:

Development Trips = those trips from the development that are assigned to roadway segment i and have triggered a deficiency per the Concurrency Management System;

SV Increase = Service volume increase provided by the eligible improvement to roadway segment i;

Cost = Adjusted cost of the improvement to segment i. Cost shall be based on the most recent cost and market data and shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred;

Impact Fee Credits = Used where applicable. More specifically, impact fee credits for the proportionate fair-share obligation will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced based on the Proportionate Fair-Share Agreement as they become due, according to this

Code. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of the development under review, then the applicant or its successor must pay the remaining impact fee amount to the City pursuant to the requirements of the impact fee code. Any impact fee paid in excess of the impact fee obligation for the proposed development may be applied to the calculated proportionate-share amount.

- D. For the purposes of determining proportionate-share obligations, the Land Use Administrator shall determine improvement costs based upon the projected future cost of the improvement, as obtained from the Capital Improvement Program or another method approved by the Land Use Administrator. Cost for Florida Department of Transportation facilities shall be based upon Florida Department of Transportation cost estimates.
- E. The City may accept rights-of-way dedication for all, or a portion of, the proportionate fair-share payment. Credit for the dedication of the nonsite related right-of-way shall be assigned a value by Land Use Administrator or, at the option of the applicant, by fair market value established by an independent appraisal approved by the Land Use Administrator prepared at no expense to the City.
  - 1. At the option of the applicant, the reimbursement is to be based on either the assessed value of the proffered land, based on the most recent appraisal by the Flagler County Property Appraiser, or the fair market value of the land, as determined by a certified property appraiser hired and paid for by the applicant. If the latter option is chosen and the City rejects the applicant's appraisal, the City may hire and pay for a second appraiser to appraise the property. If either party rejects the second appraisal, a third appraisal may be performed by an appraiser chosen by the first and second appraisers, the costs of which are to be shared equally by the City and the applicant. The third appraisal is binding to both parties. All appraisals must be consistent with generally accepted appraisal techniques, and the date of valuation must be the proposed date of transfer to the City.
  - 2. The applicant shall supply to the City, a survey and legal description of the land and a certificate of title search of the land at no expense to the City. If the estimated value of the right-of-way dedication proposed by the applicant is less than the City estimated total proportionate fair-share obligation for that development, then the applicant shall also pay or provide for mitigation of the difference.

**7.07.06. Impact Fee Credit for Proportionate Fair-Share Mitigation**

- A. Transportation impact fees shall be applied as a credit against proportionate fair-share mitigation only if the proposed improvement is on the list of approved projects in the current 5-year Capital Improvement Program, or as amended by the next regular update, or in the first five (5) years of the current 10-year Capital Improvement Program and the City's impact fee program. Credits may also be given to proposed improvement that will be incorporated into the next, or following, 5-year Capital Improvement Program. Impact fee credits shall be calculated at the same time as the applicant's proportionate-share obligation is calculated.
- B. Any transportation impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other parcel or parcels of real property within the City.

**7.07.07. Appropriation of Fair-Share Revenues**

- A. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the Capital Improvement Program.

- B.** In the event a scheduled facility improvement is removed from the Capital Improvement Program, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development.

**7.07.08. Additional Programs**

The City may utilize any program relating to concurrency as may be permitted by state law.