

**ARTICLE V  
CONCURRENCY PROCEDURES**

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## **ARTICLE V: CONCURRENCY PROCEDURES**

### **SECTION 1.0 PURPOSE, INTENT, LAWFULNESS, AND BEST PRACTICES**

#### **A. Purpose and Intent.**

It is the purpose and intent of this Article to provide specific regulations for the determination and maintenance of utility facility capacities through concurrency procedures. The availability of utilities can significantly impact development design, location, intensity, density, and permit ability; therefore, these provisions are intended to provide the process for an applicant to obtain conclusionary information regarding the feasibility of the utility needs for their project. It is necessary for this development tool to be clearly defined as overburdening the City's utility facilities can create insufficient levels of services that can be detrimental to the community's character and living conditions for significant areas of the City.

#### **B. Lawfulness.**

Any deviation from the provisions of this Article, unless specifically stated herein or allowed by other provisions of the *LDRs* is prohibited and unlawful.

#### **C. Best Practices.**

All reviews and determinations of the provisions within this Article by the Administrative Official shall be to implement the purpose and intent of this Article together with sound and generally accepted land use planning practices and principles.

### **SECTION 2.0 CONCURRENCY STANDARDS AND PROCEDURES**

#### **A. Concurrency Management Administrative Procedures**

##### **1. General.**

Concurrency is a finding that the public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of the development. The provisions of this Article are designed to provide a systematic process for the review and evaluation of the impact of all proposed development on concurrency facilities.

##### **2. Concurrency Facilities Defined.**

Concurrency facilities are defined as and include:

- a. Road and streets as defined in [Section 334.03](#), *Florida Statutes*.
- b. Potable Water Facilities.
- c. Sanitary Sewer Facilities.
- d. Solid Waste Facilities.
- e. Recreation and Open Space Facilities.
- f. Drainage Facilities.
- g. Police public safety requirements.
- h. Fire public safety requirements.

### 3. Purpose.

The purpose of this Article is to ensure that development orders and permits are conditioned on the availability of concurrency facilities which meet adopted level of service requirements described in [Schedule Q](#). Schedule Q cites level of service requirements and methods of calculating facility capacity governing concurrency determination. Further, in order to ensure certainty in the development process, this Article provides procedures and mechanisms to reserve capacity for concurrency facilities.

## B. Applicability and Exemptions

### 1. Applicability.

All applicants for development approval shall submit any information, data and analysis deemed necessary by the Administrative Official to conduct a concurrency review.

### 2. Exemptions.

All applicants for development shall be subject to concurrency review unless specifically exempted below:

#### a. Projects Below the Minimum Threshold.

The following development shall be exempt from concurrency management review processes; however, in no case will a development order be issued for a minimum threshold project that would impact a public facility for which a moratorium or deferral on development has been placed:

- 1) Residential projects which would result in the creation of one additional single-family dwelling or one two-family dwelling as well as structural alterations, including room additions which do not change the land use. This threshold does not apply to water or sanitary sewer;
- 2) Nonresidential change of use or expansion projects of up to ten percent of the existing gross floor area, providing such change of use or expansion is estimated to generate less than 120 vehicle trips per day and create one equivalent residential unit of utility demand or less. Trip generation data shall be pursuant to the latest edition of the publication entitled: Trip Generation, Institute of Transportation Engineers, or as hereinafter updated and amended. This threshold does not apply to water or sanitary sewer;
- 3) Construction of accessory buildings and structures which do not create additional public facility demand.
- 4) Other developments that do not increase capacity of concurrency facilities, such as grading or excavation of land or structural alterations which do not include a change of use and satisfy provisions of 1) and 2) above.

#### b. Vested Projects.

Projects which have valid development orders or permits prior to the effective date of this Article, shall be exempt from concurrency management. This shall include the following:

- 1) Any project for which a building permit has been issued and for which the building permit has not expired, and construction has commenced prior to the expiration of the building permit.
- 2) All vacant single-family detached, single-family attached and two-family dwelling lots in subdivisions that were platted and recorded prior to the effective date of this Article when initially enacted;
- 3) All vacant nonresidential lots in subdivisions that were platted and recorded prior to the effective date of this Article when initially enacted, provided however, only one principal building and one land use shall be permitted per lot or tract;
- 4) Any residential subdivision that had a major subdivision plan approved and has received a Certificate of Completion;
- 5) Any project zoned as a Planned Development, that had a master plan approved prior to the effective date of this Article when initially enacted;

- 6) Any project that had a development plan approved prior to the effective date of this Article and that approval has not expired;
- 7) Approved developments of regional impact with a development order that has not expired; and,
- 8) Any project that the City Commission approved as a vested project pursuant to procedures set forth in the Article.

**c. Redevelopment Projects.**

Proposed redevelopment shall be credited for 100 percent capacity of the existing project. If a redevelopment project generates capacity in excess of 100 percent of the existing project, a concurrency review shall be required; however, the concurrency review shall only be directed to the capacity generated which exceeds the capacity of prior existing development. Capacity determination shall be conducted at the time of demolition permit application based on signed and sealed for engineer or architect evaluation of plumbing fixtures, traffic trips, etc. of the applicable facility. The proposed redevelopment generates less impact than the existing project, the applicant for concurrency review shall be given a concurrency credit memorandum within 30 days of the concurrency evaluation which enables the applicant to reapply for the unused capacity. The concurrency credit memorandum will expire within three years of its issuance. The applicants' submission of an application for a demolition permit shall initiate the concurrency review for the express purpose of issuing credits for redevelopment.

**d. Public Facilities.**

Public facilities necessary to ensure the protection of the health, safety and general welfare of the citizens of the City, including public schools (pre-kindergarten through 12th grade), shall be exempt from concurrency review. This shall include all public facility construction projects included in the City's Capital Improvements Program required to meet any adopted level-of-service standard.

**C. Criteria for Concurrency and Final Development Orders**

**1. Final Development Order.**

Final development orders include site development permits, building permits and development orders or agreements. A final development order shall only be granted for a proposed development based upon a finding that all public facilities and services included in this Article have sufficient capacity at or above their adopted level-of-service to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted level of service will be in place concurrent with the impacts of the development, as defined herein.

**2. Criteria.**

The following criteria must be met in order to comply with concurrency management requirements. It is the responsibility of the developer to construct the necessary infrastructure to create the capacity serving the project. This includes any improvements to public infrastructure such as pipes, lift stations, roadways, etc. Public sanitary sewer lines shall be improved to and include the nearest lift station. Public roadways, water lines, or drainage systems shall be improved equal to the furthest extent of the property:

- a. The necessary concurrency facilities and services are in place at the time a development permit is issued, or a development permit is issued subject to the condition that the necessary facilities and services will be in place by a specified date when the impacts of the development are anticipated to occur; or
- b. The necessary facilities are under construction at the time a development permit is issued; or
- c. The necessary facilities and services are the subject of a binding executed contract for the construction of the facilities or the provision of services at the time the development permit is issued; or

- d. The necessary facilities and services have been included in the Capital Improvements Program and are programmed for construction prior to or concurrent with the impacts of the proposed development; or
- e. In the case of road facilities, the necessary improvements are committed in the first three years of the applicable adopted Florida Department of Transportation Five Year Work Program, or the Seminole County Five Year Transportation Plan; or
- f. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to [Section 163.3220, Florida Statutes](#), or an agreement or development order issued pursuant to [Chapter 380, Florida Statutes](#), or any other development agreement entered into between the City and a property owner who's property is proposed for development. The agreement must guarantee that the necessary facilities and services will be in place prior to or concurrent with the impacts of the development.

#### **D. Concurrency Administration**

The Administrative Official shall be responsible for concurrency reviews as required by this Article. A concurrency determination shall be based on a numerical review performed by the City based on information provided by the Applicant. The City, upon request from the applicant, may make a non-binding determination of whether sufficient capacities in public facilities and services are available to satisfy the demands of each proposed development.

##### **1. Application for Concurrency Review.**

Concurrency review shall be initiated upon submission and acceptance of any development application in accordance with [Article I](#), Section 7.0. An applicant may request a standalone concurrency review in an acceptable form to the Administrative Official with a fee as established in the fee schedule.

##### **2. Project Impact Assessment.**

The City shall use the best available information to establish and evaluate existing capacities for concurrency facilities. The applicant shall be responsible for calculating the anticipated impacts of a proposed development. The City shall assess the impacts of the proposed development against existing conditions.

##### **3. Project Phasing/Timing of Improvements.**

Public facility improvements associated with a phased development may likewise be phased, provided that all public facility improvements necessary to accommodate the impacts of the entire development are to be provided and a schedule established for their construction prior to the issuance of a Certificate of Completion.

- a) The schedule of facility improvements shall ensure that all facility improvements necessary to accommodate the impacts of the development (or portion thereof), for which a certificate or completion or certificate of occupancy has been applied, shall be in place prior to the issuance of the certificate.
- b) Under no circumstances shall the final certificate of occupancy or completion be issued for a project unless all required facility improvements required by the development order, development agreement, or development plan have been completed.

##### **4. Development Agreements.**

If the minimum requirements for concurrency as outlined in [Article VI](#) cannot be met, concurrency may be achieved by guaranteeing necessary facility improvements in an enforceable development agreement, as permitted by Article VI. Said development agreement may include guarantees to construct required facility improvements, or to provide funds equivalent to the cost of providing such facility improvements.

The terms and schedules of all investment reimbursement programs shall be set forth in a binding development agreement.

#### **5. Concurrency Findings.**

The following criteria will be evaluated during any development review process. The evaluation shall include, but are not limited to:

- a. The anticipated public facility impacts of the proposed development;
- b. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards;
- c. Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development;
- d. The facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standard and the entity responsible for the design and installation of all required facility improvements or additions; and
- e. The date such facility improvement or additions will need to be completed to be concurrent with the impacts on such facility created by the proposed development.

### **E. Investment Reimbursement Plan for Construction of New Public Facilities**

#### **1. Authorization.**

The Administrative Official is authorized to negotiate and establish within a development agreement for approval by the City Commission an investment reimbursement plan. When it is required that a developer funds the cost of infrastructure or public facilities improvements in order to support the proposed development concurrent with the impacts of the development and pursuant to the concurrency management system and the developer is also required to provide or fund additional capacity in the system to accommodate other future development in the area or fund a facility that will be regularly utilized by other future developments the developer may be eligible to participate in an equitable system of investment reimbursement to recover a portion of the costs incurred in the installation of the facilities according to the provisions of this section.

#### **2. Applicability.**

This Section shall apply to any developer who is required to fund public roadways, potable water facilities, sanitary sewer facilities, water facilities and/or drainage facilities that may be used or shared in the future by the developers and owners of other parcels of land in the vicinity.

#### **3. Establishment of Investment Reimbursement Fund.**

Upon approval of an appropriate development agreement or development order the Administrative Official shall establish, in conjunction with the City's Finance Director, an Investment Reimbursement fund to manage the contributions of the participants. The City's Finance Director shall determine how the investment reimbursement fund is accounted for. The Administrative Official shall also establish a fee schedule and method of collecting investment reimbursement administrative fees, which shall be incorporated into the development agreement or development order.

#### **4. Establishment of Investment Reimbursement Area.**

The Administrative Official shall establish the geographical boundaries of the investment reimbursement area based on the City's plans for infrastructure development and the future utilization of the proposed public infrastructure by adjoining or proximate parcels of land. Every future development or future subdivision located within the Investment Reimbursement Area shall be required to contribute to the cost of the built infrastructure which benefits the property.

**5. Recovery of Reasonable Costs.**

The Administrative Official shall prepare criteria and rules to determine the allowable costs to be recovered including, but not limited to, the design, supervision, construction and installation costs of that portion of the infrastructure or facility that will be shared by other owners.

**6. Share Formula.**

The Administrative Official shall prepare rules to determine the costs apportioned to each project or property within the Investment Reimbursement Area, which rules shall be submitted to the City Commission for approval. For properties located within the Investment Reimbursement Area, the Administrative Official shall establish proposed conditions at the time of subdivision or development requiring future developers to pay contributions into the fund.

**7. Duration of Investment Reimbursement Area.**

The Investment Reimbursement Area shall remain in effect for a maximum period of ten years.

**8. Development Agreement Requirements.**

Every development agreement that includes an investment reimbursement plan shall contain, at a minimum, the following components:

- a. Description of the public facilities included in the investment reimbursement plan;
- b. An exhibit delineating the applicable investment reimbursement area; and
- c. Engineering computations and documentation of estimated construction costs which form the basis for determining cost recovery amounts for the investment reimbursement schedule. The estimated construction costs shall be amended in the investment reimbursement schedule upon completion of the project should they differ from the original estimated costs. The party funding and/or constructing the project shall be responsible for furnishing the updated construction cost data to the Administrative Official, for review and approval, prior to any disbursement according to the investment recouping schedule.