

## ARTICLE VIII: CONCURRENCY PROCEDURES

### SECTION 8.1 CONCURRENCY MANAGEMENT ADMINISTRATIVE PROCEDURES

- A. 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, as required by the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, Part II, Florida Statutes, and Rule 9J-5.0055, Florida Administrative Code.
- B. Concurrency Facilities Defined.** Concurrency facilities are defined as and include:
1. Roadways
  2. Potable Water Facilities
  3. Sanitary Sewer Facilities
  4. Solid Waste Facilities
  5. Recreation and Open Space Facilities
  6. Drainage Facilities
- C. 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 insure certainty in the development process, this Article provides procedures and mechanisms to reserve capacity for concurrency facilities.

### SECTION 8.2 APPLICABILITY AND EXEMPTIONS

- A. Applicability.** All applicants for development approval shall submit any information, data and analysis deemed necessary by the Administrative Official to conduct a concurrency review.
- B. Exemptions.** All applicants for development shall be subject to concurrency review unless specifically exempted below:
1. **Projects Below the Minimum Threshold.** The following development shall be exempt from concurrency management reviews:
    - a. Residential projects which would result in the creation of one (1) additional single family dwelling or one (1) two family dwelling as well as structural alterations, including room additions which do not change the land use;

- b. Nonresidential change of use or expansion projects of up to ten percent (10%) of the existing gross floor area, providing such change of use or expansion is estimated to generate less than one hundred twenty (120) vehicle trips per day and create one (1) 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.
  - c. In no case, however, shall a development order be issued for a minimum threshold project which would impact a public facility for which a moratorium or deferral on development has been placed.
  - d. Construction of accessory buildings and structures which do not create additional public facility demand.
  - e. Other developments which 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 (a) and (b) above.
- 2. 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:
- a. 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.
  - b. All vacant single family detached, single family attached and two family dwelling lots in subdivisions which were platted and recorded prior to the effective date of this Article;
  - c. All vacant nonresidential lots in subdivisions which were platted and recorded prior to the effective date of this Article, provided however, only one (1) principal building and one land use shall be permitted per lot or tract;
  - d. Any subdivision for which the preliminary subdivision plan has been approved prior to the effective date of this Article and which approval has not expired;
  - e. Any project Zoned PD, Planned Development, for which a Master Plan has been approved prior to the effective date of this Article;
  - f. Any project for which a Development Plan has been approved prior to the effective date of this Article and which approval has not expired;

- g. Approved developments of regional impact with a development order that has not expired; and,
  - f. Any project for which the City Commission approves as a vested project pursuant to procedures set forth in the Article.
3. **Redevelopment Projects.** Proposed redevelopment shall be credited for 110% capacity of the existing project. If a redevelopment project generates capacity in excess of 110% 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. The proposed redevelopment generates less traffic than the existing project, the applicant for concurrency review shall be given a concurrency credit memorandum within thirty (30) days of the concurrency evaluation which enables the applicant to reapply for the unused capacity. The concurrency credit memorandum will expire within five (5) 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.
4. **Public Facilities.** Public facilities necessary to ensure the protection of the health, safety and general welfare of the citizens of the City of Sanford, 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.
5. **Transportation Concurrency Exception Area.** Transportation concurrency requirements shall not apply to development or redevelopment within the Transportation Concurrency Exception Area as depicted on Map II-8 of the 2001 City of Sanford Comprehensive Plan, provided that the development or redevelopment project complies with the standards and requirements of Subsection 4.0 of Schedule Q of the Land Development Regulations.

### **SECTION 8.3            CRITERIA FOR CONCURRENCY AND FINAL DEVELOPMENT ORDERS**

- A. **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 (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development, as defined herein.
- B. The following criteria must be met in order to comply with concurrency management requirements:

1. 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
2. The necessary facilities are under construction at the time a development permit is issued; or
3. 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
4. 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
5. 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.
6. 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 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.

#### **SECTION 8.4 CONCURRENCY ADMINISTRATION**

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

- A. **Application for Concurrency Review.** Concurrency review shall be initiated upon submission and acceptance of an application for a Planned Development Project Master Plan, a Site Plan and/or a Preliminary Subdivision Plan. An applicant may request a concurrency review upon making application in an acceptable form to the Administrative Official. At the request of the applicant and pursuant to payment of a fee established in the manner set forth in this Ordinance, the Administrative Official may issue a non-binding letter of concurrency findings.
- B. **Project Impact Assessment.** The Administrative Official 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 Administrative Official shall assess the impacts of the proposed development against existing conditions.

- C. **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 final development order. 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 of completion or certificate of occupancy has been applied, shall be in place prior to the issuance of the certificate. 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 or development agreement have been completed.
- D. **Development Agreements.** If the minimum requirements for concurrency as outlined in Article IX cannot be met, concurrency may be achieved by guaranteeing necessary facility improvements in an enforceable development agreement, as permitted by Article IX. 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.

- E. **Concurrency Findings.** Upon the conclusion of the concurrency review, the Administrative Official shall prepare a written set of findings concerning the proposed development. These findings shall include, but are not limited to:
1. The anticipated public facility impacts of the proposed development;
  2. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards;
  3. Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development;
  4. The facility(s) improvement or additions necessary to accommodate the impact of the proposed development at the adopted level(s) of service standard(s) and the entity(s) responsible for the design and installation of all required facility improvements or additions; and
  5. The date such facility(s) improvement or additions will need to be completed to be concurrent with the impacts on such facility(s) created by the proposed development.

## **SECTION 8.5 CAPACITY RESERVATION**

- A. **Reservation of Capacity.** If the Administrative Official determines that the capacity of public facilities is equal to or greater than that required to maintain the adopted level-of-service for said facilities, the applicant may request a reservation of capacity. Upon receipt of an application for capacity reservation in a form acceptable to the Administrative Official, the Administrative Official shall approve, approve with

conditions, or deny the capacity reservation application. The Administrative Official shall issue a Letter of Capacity Reservation which shall state applicable findings, conditions, stipulations and appropriate information. A Letter of Capacity Reservation shall be required prior to a final development order. A Letter of Capacity Reservation does not represent overall development approval and shall not release a recipient of such letter from all other applicable provisions of the land development regulations. The City Commission shall establish fees in the manner set forth in this Ordinance to be paid by the applicant in order to reserve facility capacity. Said fees shall set forth time frames for final reservation of capacity and provisions for extensions.

- B. First-Come-First-Served.** Letters of Capacity Reservation shall be issued on a first-come, first-served basis by the Administrative Official. Letters of Capacity Reservation shall be valid only for the specific land uses, densities, intensities, construction and improvement schedules contained in the application. Letters of Capacity Reservation run with the land and are transferable to a successor in ownership. Reservation of capacity for concurrency shall expire if the underlying development order or development agreement expires or is revoked.
- C. Forfeiture of Capacity Reservation.** In the event all capacity of a concurrency facility has been reserved through Letters of Capacity Reservation, the Administrative Official shall have the authority to review all Letters of Capacity Reservation, beginning with the longest standing such Letter. If the Administrative Official determines that the development has not proceeded in "good faith," the Administrative Official may recommend to the City Commission that the Letter of Capacity Reservation be forfeited. If the City Commission shall, with due public notice and notification of the owner or applicant, hold a public hearing to determine whether the Letter of Capacity Reservation shall or shall not be forfeited and whether a refund shall be made. If the longest standing development order holding a Letter of Capacity Reservation has proceeded in good faith, then the next longest standing Letter of Concurrency Reservation shall be reviewed by the Administrative Official, and so on. This system will proceed until a determination is made as to whether previous development orders with a Letter of Capacity Reservation have proceeded in good faith.
- D. Project Deferrals/Development Moratoriums.** If, at any time the City's inventory of public facilities capacities indicates that a public facility has dropped below its adopted level-of-service standard, the City shall cease to issue development orders for projects which would impact the deficient facility(s) or area of facility operations, as defined within this Ordinance. Such a suspension or moratorium on the issuance of development orders shall continue until such time as the adopted LOS standard is reestablished or the Comprehensive Plan is amended to reflect an acceptable level of service standard for the facility(s) in question.
- E. Concurrency Denials.** In the event that the City's concurrency review reveals that the proposed development would generate public facility impacts beyond that which can be absorbed by available capacity, the City shall ensure that there is a financial or other legally binding commitment to ensure that public facilities necessary to correct the anticipated deficiency will be in place concurrent with the impacts of the proposed development. Should the City and/or a developer be unable to provide such assurances, the project shall be denied. The Administrative Official may place projects denied due to

failure to meet concurrency requirements, but for which all other land development requirements have been met, on a prioritized list for approval of development orders once facility improvements have been made.

## **SECTION 8.6            INVESTMENT REIMBURSEMENT PLAN FOR CONSTRUCTION OF NEW PUBLIC FACILITIES**

- A.    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.
- B.    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.
- C.    Establishment of Investment Reimbursement Fund.** The Administrative Official shall establish an Investment Reimbursement fund and appoint a 'banker' to manage the contributions of the participants. The banker may a City employee, a participant in the Investment Reimbursement Area, or a designee of the Administrative Official. The Administrative Official shall also establish a fee schedule and method of collecting investment reimbursement administrative fees.
- D.    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.
- E.    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 developers and owners.

- F. 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.
- G. Duration of Investment Reimbursement Area.** The Investment Reimbursement Area shall remain in effect for a maximum period of ten (10) years.
- H. Development Agreement Requirements.** Every development agreement that includes an investment reimbursement plan shall contain, at a minimum, the following components:
1. Description of the public facilities included in the investment reimbursement plan;
  2. An exhibit delineating the applicable investment reimbursement area; and
  3. 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.