

**ORDINANCE #2017-01**

**AN ORDINANCE OF THE CITY OF ST. PETE BEACH, PINELLAS COUNTY, FLORIDA, REPEALING AND REPLACING DIVISION 29 OF THE LAND DEVELOPMENT CODE, CONCURRENCY MANAGEMENT, INCORPORATING LANGUAGE AS OUTLINED IN EXHIBIT A; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of St. Pete Beach Land Development Code implements the goals and policies of the City's Comprehensive Plan and encourages development when adequate system capacity is available to service such development; and

**WHEREAS**, the Concurrency is a matter of public policy that meet the criteria of the City of St. Pete Beach Comprehensive Plan and the Community Planning Act (F.S. 163.3161); and

**WHEREAS**, the City Commission has a commitment to preserve the services that are provided to all citizens and visitors within the City; and

**WHEREAS**, the City Commission recognizes the constraints that may occur to these services with development projects; and

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH FLORIDA, HEREBY ORDAINS:**

**Section 1.** Recitals. The above recitals ("Whereas" clauses) are hereby adopted as legislative findings, purpose and intent of the City Commission.

**Section 2.** The Concurrency Management, Division 29 of the Land Development Code, is repealed and replaced in its entirety as illustrated in "Exhibit A".

**Section 3.** All Ordinances or parts of Ordinances, in conflict herewith are hereby repealed to the extent of any conflict with this Ordinance.

**Section 4.** If any portion or part of this Ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

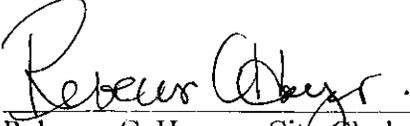
**Section 5.** This Ordinance shall become effective within 30 days of adoption.

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Deborah Schechner, Mayor

**FIRST READING: 02/14/2017**  
**PUBLISHED: 02/17/2017**  
**SECOND READING: 02/28/2017**  
**PUBLIC HEARING: 02/28/2017**

I, Rebecca C. Haynes, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law this 28<sup>th</sup> day of February, 2017.

  
\_\_\_\_\_  
Rebecca C. Haynes, City Clerk

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

  
\_\_\_\_\_  
City Attorney  
Andrew Dickman, Esq.

# Exhibit A

## DIVISION 29 - CONCURRENCY MANAGEMENT<sup>[1]</sup>

### Footnotes:

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Editor's note: Ord. No. 2006-04, § 1, amended § 29.1.1(b) to read as follows: "The purpose of this division is to ensure the availability of public facilities and the adequacy of those facilities at adopted levels of service concurrent with the impacts of development. This intent is implemented by means of a concurrency management system which shall measure the potential impact of a development permit application upon the adopted minimum acceptable level of services, as provided in the Capital Improvements Element of the Comprehensive Plan." See also: Ord. No. 2006-04, § 1, 1-24-06.

### Sec. 29.1. - Purpose and declaration of public policy.

- (a) The city commission declares as a matter of public policy that the concurrency requirements of the Local Government Comprehensive Planning and Community Planning Act [F.S. § 163.3180 et seq.] are a public necessity, and are important in the protection and enhancement of the quality of life in the city as well as the county and the state.
- (b) The purpose of this division is to ensure the availability of public facilities and the adequacy of those facilities at adopted levels of service concurrent with the impacts of development. This intent is implemented by means of a concurrency management system which shall measure the potential impact of a development permit application upon the adopted minimum acceptable level of services, as provided in the Capital Improvements Element of the Comprehensive Plan.

(Ord. No. 2006-04, § 1, 1-24-06)

### Sec. 29.2. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Acceptance of completed application means the application for a development order or development permit has been reviewed for completeness and found to have the adequate information necessary to allow continuing the review of the application.

Capital improvement means physical assets constructed or purchased to provide, improve, or replace a public facility; generally large scale, high in cost, nonrecurring, and which may require multi-year financing.

Certificate of concurrency means the document issued by the city manager certifying the concurrent availability of required public infrastructure and services. At a minimum, the certificate of concurrency shall provide information on the following:

- (1) Type of proposal.
- (2) Development potential, including site acreage, number of residential units, number of transient lodging units, nonresidential use, type of development, and building square footage.
- (3) Individual public facilities reports from the concurrency management team, if required.

- (4) Level of service capacity status review, if required.
- (5) Permitted impacts for each public facility and service, where applicable.
- (6) The date of issuance of certificate of concurrency.

CIE means the capital improvement element of the city's adopted comprehensive plan.

Concurrency means the provision of the necessary public facilities and services required to maintain the adopted level of service standards at the time the impacts of development occur.

Concurrency management system means the procedures and/or process that the city will utilize to assure that development orders and permits are not issued unless the necessary facilities are available concurrent with the impacts of development.

Concurrency management team means the city staff directed by the city manager to administer and manage the concurrency determination process.

Concurrency monitoring system means the data collection, processing, and analysis performed by the city to determine impacts on the established levels of service for potable water, sanitary sewer, drainage, solid waste, , and roads. For traffic circulation: data collection, processing and analysis will be utilized to determine traffic concern areas and traffic restriction areas in addition to impacts on the established levels of service. The traffic circulation data maintained by the concurrency management monitoring system shall be the most current information available to the city.

Development means the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; excavation, landfill or land disturbance, and use, change of use or expansion of the use of the land.

Development order means any order granting, denying, or granting with conditions, an application for development.

Development permit means any building permit, zoning permit, subdivision approval, certification, conditional use, variance, or any other official action of local government having the effect of permitting the development of the land.

FDOT means the Florida Department of Transportation.

Financial feasibility means that sufficient revenues are currently available or will be available from committed funding sources for the first three years, or will be available from committed or planned funding sources for years four and five, of a five-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the five-year schedule of capital improvements. Level of service (LOS) means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility.

Proportionate fair share is a provision that allows for development projects to mitigate the impacts thereof through "fair-share" contributions to facilities identified for capacity improvements in the capital improvements schedule.

Public facilities and services means those facilities and services included in the St. Pete Beach Comprehensive Plan required by F.S. § 163.3177, and for which level of service standards have been adopted.

Remodeling as defined in the Florida Building Code, Chapter 4, Section 423.5., means the changing of existing facilities by rearrangement of space and/or change of use.

Renovations as defined in the Florida Building Code, Chapter 4, Section 423.5., means the rejuvenating or upgrading of existing facilities by installation or replacement of materials and equipment. The use and occupancy of the spaces remain the same.

Residential approval means a residential site plan or a final residential subdivision approval.

School board means the elected body presiding over the schools of Pinellas County, responsible for exercising all of the powers and duties associated with the District schools, in accordance with F.S. Ch. 1001.

Significantly degrade means a peak hour increase in traffic volume of five percent or a decrease in average travel speed of ten percent. This criteria shall be the means of evaluating the transportation impacts in traffic restriction areas upon roadway levels of service.

SIS means strategic intermodal system.

Traffic concern area means an area within which the level of service for a given road facility has been determined by data from the concurrency management monitoring system to have reached a level of service D during the peak hour or is expected to reach a level of service E or worse during the peak hour in the next five years and no construction improvements are planned in the next five years.

Traffic restriction area means an area in which the level of service for a given road facility has been determined by data from the concurrency management monitoring system to be below the acceptable level of service adopted in this article.

Transportation concurrency means transportation facilities needed to serve new development shall be in place, or under actual construction, within three years after the city approves a building permit or its functional equivalent that results in traffic generation.

Volume-to-capacity (v/c) ratio means the rate of traffic flow of an intersection approach or group of lanes during a specific time interval divided by the capacity of the approach or group of lanes. Volume-to-capacity ratios provide a measure of traffic congestion and are utilized in the concurrency management system to identify congested road segments and to minimize the transportation impacts of development projects that affect them.

(Ord. No. 2006-04, § 1, 1-24-06; Ord. No. 2007-01, § 1, 1-23-07; Ord. No. 2009-05, § 1, 4-28-09)

### Sec. 29.3. - Levels of service adopted by reference.

The adopted levels of service standards, as stated in the City Comprehensive Plan, for public facilities and services are hereby adopted by reference.

(Ord. No. 2006-04, § 1, 1-24-06)

### Sec. 29.4. - General requirements.

- (a) A certificate of concurrency shall be required prior to the issuance of any development permit for a non-exempt development project. The City of St. Pete Beach shall not issue any development order (excluding future land use or zoning map amendments) or building permit for any project that results in a reduction of the level of service requirements established and adopted in the City of St. Pete Beach Comprehensive Plan. An applicant must prepare and complete an application for a certificate of concurrency including an infrastructure study as determined to be necessary by the Technical Review Committee. If a development will require more than one development permit, the issuance of a certificate of concurrency shall occur prior to the issuance of the initial permit. Upon request by applicants, a preliminary concurrency review shall be performed and a conditional certificate of concurrency may be issued. This conditional certificate shall not be binding upon the city and shall only be effective for the year in which the annual concurrency monitoring report was issued. Only those certificates of concurrency issued for development permits shall be binding. Applicants may be charged a fee established by the city commission for certificates of concurrency.

- (1) Application for development. The property owner, or authorized representative, must provide a complete application for development containing the required documentation for the specific development order or permit. The Technical Review Committee shall then review the application for completeness in a timely manner to ensure that the required information is sufficient to accept the application and continue its review.
- (2) Development review. When the application for development has been accepted, it shall be processed and reviewed for impacts of the development on the public facilities and services identified in this division.
- (3) Concurrency review. The concurrency review shall compare the available and reserved capacity of the facility or service to the demand projected for the proposed development. The available capacity shall be determined by adding the total of the existing excess capacity and the total future capacity of any proposed construction or expansion that meets the requirements of section 29.6. The levels of service (LOS) of all facilities and services must be sufficient before a development permit can be issued.
  - a. Traffic restriction and traffic concern areas. Traffic restriction and concern areas shall be designated on an annual basis at the time the annual concurrency monitoring report is issued. These areas will be designated based on the criteria defined in section 29.2. Applications for development permits within these areas may require detailed traffic studies.
    1. If the development is found to be in a traffic restriction area, a traffic study shall be required. If the traffic study indicates that the affected roadway is not significantly degraded, the project will be found concurrent for traffic.
    2. If the development is found to be in a traffic concern area, a traffic study may be required. If the traffic study indicates that the affected roadway LOS may be lowered below the adopted LOS, the project will be found concurrent for traffic only if provisions and measures are attached as conditions to prevent the reduction of the LOS.
    3. If the development is found to be in a traffic restriction or traffic concern area and the traffic study indicates that the affected roadway is significantly degraded, the project will be found concurrent for traffic only if provisions and measures are attached as conditions to prevent the significant degradation of the affected roadway.
    4. If the development is not found to be in a traffic restriction or traffic concern area but the estimated traffic volumes resulting from the development degrade the peak hour LOS below the adopted LOS standard, the project will be found concurrent for traffic only if mitigation provisions are attached as conditions to prevent the degradation of the affected roadway below the adopted LOS standard.
- (4) Certificate of concurrency.
  - a. The certificate of concurrency shall indicate the date of issuance and shall automatically expire simultaneously with the expiration of the development permit to which it applies. In the event that a time extension is requested prior to the expiration of the development permit, then the accompanying certificate of concurrency may be renewed upon determination by the Technical Review Committee that the conditions of concurrency will still be met.
  - b. Any development order or permit that is issued within the effective period of a validly issued certificate of concurrency shall be vested for the purposes of concurrency until the expiration of that development order or permit, provided that development commences within the validity period of the development order or permit and continues in good faith.
- (5) Development order or development permit compliance.

- a. Any development orders and development permits approved and issued after the effective date of this division shall be based upon and in compliance with the certificate of concurrency issued for that application.
- (b) The burden of showing compliance with the adopted levels of service and meeting the concurrency evaluation shall be upon the applicant. For non-exempt development orders or projects, the applicant shall prepare and submit an infrastructure study that determines the extent of any degradation of the infrastructure below the adopted levels of service unless determined unnecessary by the City's Technical Review Committee based on an evaluation of potential impact relative to the nature, size, type, and location of the proposed development project or land use amendment application. Mitigation fees and/or physical or operational improvements determined to be reasonably required in proportion to the impacts caused by the increased density and/or intensity of new development in consideration of the long-term concurrency management plan of the local government who owns and operates the facility or system, shall be stipulated as conditions of approval as part of the development order. The Technical Review Committee shall document its findings pertaining to its review.

(Ord. No. 2006-04, § 1, 1-24-06; Ord. No. 2015-22, § 6, 12-15-15)

#### Sec. 29.5. - Exemptions.

The following developments are exempt from the requirements of this division in accordance with the provisions of F.S. § 163.3180:

- (1) Final approved development orders relating to a development of regional impact (DRI) project, pursuant to F.S. Chapter 380.
- (2) All single-family homes built upon individual zoning lots.
- (3) Any development which can be demonstrated to represent no net increase in density or intensity of land use as compared to the immediately previous use of the development site.

(Ord. No. 2006-04, § 1, 1-24-06)

#### Sec. 29.6. - Minimum requirements for concurrency.

An application for a development permit and/or order must comply with the following minimum concurrency requirements for each of the following public facilities and services:

- (a) For potable water, sanitary sewer, solid waste, and drainage one of the following are the minimum standards that must be met to satisfy the concurrency requirement:
  - (1) The necessary facilities and services are in place at the time a development permit or order is issued;
  - (2) A development permit or order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
  - (3) The necessary facilities are under construction at the time a permit or order is issued;
  - (4) 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 F.S. § 163.3220, or an agreement or development order issued pursuant to F.S. Chapter 380.
- (b) For recreation and open space, one of the following are minimum standards that must be met to satisfy the concurrency requirement:
  - (1) Compliance with the standards in subsections (a)(1)—(4) of this section;

- (2) At the time the development permit or order is issued, the necessary facilities and services are the subject of a binding executed contract which provides for the commencement of the actual construction of the required facilities, or the provision of services within one year of the issuance of the development permit or order;
  - (3) The necessary facilities and services are guaranteed in an enforceable development agreement which requires the commencement of the actual construction of facilities or the provision of services within one year of the issuance of the applicable permit or order. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. § 163.3220 or an agreement or development order issued pursuant to F.S. Chapter 380.
- (c) For roads and mass transit, where the city has committed to provide the necessary public facilities and services in accordance with the five-year schedule of capital improvements, the city will satisfy the concurrency requirement by complying with the standards in subsections (a)(1)—(4) and (b)(2) of this section and by assuring that the following provisions are met:
- (1) The capital improvements element and schedule of capital improvements, in addition to meeting all of the other statutory and rule requirements, is financially feasible. The schedule of capital improvements may include those projects included in the county capital improvement element or in the first three years of the adopted state department of transportation five-year work program.
  - (2) The five-year schedule of capital improvements which includes both necessary facilities to maintain the adopted level of service standards to serve the new development proposed to be permitted and the necessary facilities and services required to eliminate that portion of existing deficiencies which are a priority to be eliminated during the five-year period.
  - (3) A financially feasible funding system based on currently available revenue sources which is adequate to fund the public facilities and services required to serve the development authorized by the development order and development permit and which are included in the five-year schedule of capital improvements.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.7. - Action upon failure to show available capacity.

Where available capacity cannot be shown, the following methods may be used to maintain adopted level of service:

- (a) A plan amendment which limits the adopted level of service standard for the affected facilities and/or services.
- (b) A binding executed contract between the city and the applicant to provide the necessary improvements.
- (c) An enforceable development agreement, which may include, but is not limited to, development agreements pursuant to F.S. § 163.3220.
- (d) A change in the funding source.
- (e) A reduction in the scale or impact of the proposed development.
- (f) Phasing of the proposed project.
- (g) Transportation management or restriction programs that reduce the traffic impact of the development by mandating the use of mass transit, increasing effective roadway capacity, shifting the effects on peak hour, etc.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.8. - Concurrency annual monitoring report.

- (a) On an annual basis, the city manager shall prepare a concurrency annual monitoring report. The city manager shall convey such annual report to the city commission.
- (b) The city manager shall establish and maintain a concurrency monitoring system for the purpose of monitoring the status of public facilities and services, and to be used in the establishment of each annual report.
- (c) The concurrency annual report shall be issued every year and will be effective for one year. Nothing herein precludes the issuance and effectiveness of more frequent concurrency reports, if updating or correction is deemed necessary, including but not limited to circumstances where: errors are noted; the impact of issued development orders, as monitored by the city manager, indicates a degradation to the adopted level of service; or where changes in the status of capital improvement projects changes the underlying assumptions of the concurrency annual report.
- (d) Under no circumstances will a more frequent concurrency report divest those rights acquired by a preceding concurrency annual report, except where a known danger exists to the health, safety or welfare of the general public.
- (e) The concurrency annual report shall include, at a minimum, a review of the levels of service and capacity for all the adopted levels of service standards included in the Comprehensive Plan.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.9. - Providing for intergovernmental coordination.

- (a) The city as the provider of public facilities or services to other government entities.
  - (1) The city shall provide services to other local government entities within the county in accordance with the policies included in the Comprehensive Plan. The city shall administer this division such that the development in those areas shall be consistent with the comprehensive plan and implementing ordinance.
  - (2) The city shall require that all proposed development within these other local government entities which require city services be submitted to the city manager to disseminate the proposal to the appropriate review personnel. A certificate of concurrency from the city shall be required for any public facility or services provided by the city to any local government in which a permit or order is proposed to be issued.
- (b) The city as the recipient of public facilities or services from other government entities.
  - (1) The city shall recognize the level of service provided by other governmental entities who provide services or facilities to the city in accordance with the policies of the comprehensive plan. The city shall ensure that all development within its area shall be in accordance with such policies as identified in the comprehensive plan.
  - (2) The city shall work with other governmental entities to ensure appropriate intergovernmental coordination. Appropriate methodology for tracking concurrency will be coordinated with these other governmental entities.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.10. - Providing for adequate funding.

The capital improvement element of the comprehensive plan was designed to meet requirements of the state law mandating that local governments provide sufficient capacity of public facilities concurrent with development.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.11. - Enforcement.

- (a) Violations of this division shall be subject to prosecution and punishment pursuant to section 1-14 of the Code of Ordinances.
- (b) In addition to the penalties provided by subsection (a) of this section for violation of this division, any violation of this article shall be subject to appropriate civil action in the court of appropriate jurisdiction.

(Ord. No. 2006-04, § 1, 1-24-06)

Sec. 29.12. - Proportionate fair share program.

(a) General requirements.

- (1) An applicant may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair-share contribution, pursuant to the following requirements:
  - a. The proposed development is consistent with the comprehensive plan and applicable land development regulations; and
  - b. The five-year schedule of capital improvements for St. Pete Beach includes a transportation improvement(s) that, upon completion, will mitigate the transportation impacts of the proposed development in accordance with the requirements of this subsection.
- (2) The applicant may also choose to satisfy transportation concurrency by contributing to an improvement that, upon completion, will satisfy the requirements of this subsection, but that is not contained in the Schedule where the following apply:
  - a. St. Pete Beach adopts, by resolution or ordinance, a commitment to add the improvement to the schedule no later than the next regularly scheduled update. To qualify for consideration under this subsection, the proposed improvement must be determined to be consistent with the comprehensive plan, and in compliance with the provisions of this subsection. b. If the funds allocated for the Schedule are insufficient to fully fund construction of a transportation improvement required for the applicant to comply with the terms of this subsection, the city may enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will significantly benefit the impacted transportation system.
  - c. The improvement or improvements funded by the proportionate fair-share component must be adopted into the Schedule.
  - d. Any improvement project proposed to meet the applicant's fair-share obligation must meet design standards of the city, county and FDOT as applicable.

(b) Proportionate fair share mitigation agreement.

- (1) Upon notification that a proposed development project is subject to transportation concurrency regulations and is eligible to participate in the proportionate fair share program, the applicant shall be notified in writing of such during the site plan review process pursuant to Section 5.1 of Division 5 herein..
- (2) If the applicant chooses to exercise this concurrency option, a meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If

the impacted facility is on the SIS, then the FDOT will be notified and invited to participate in the meeting.

- (3) Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrence of the FDOT. Therefore, agreements involving improvements to SIS facilities will require approval by FDOT.
  - (4) After a mitigation project is identified and agreed upon by the city, the applicant and FDOT (if the project affects an SIS facility), a proposed proportionate fair-share obligation and binding agreement will be prepared by the city or the applicant with direction from the city. The final agreement will become a part of the site plan submittal which will be delivered to the appropriate parties for review. Final approval of the site plan and agreement rests with the city manager.
- (c) Determining proportionate fair-share obligation.
- (1) The proportionate fair-share obligation shall be based on the impact a development has on a transportation facility as determined by a traffic impact analysis that assesses the volume of traffic generated by the proposed development.
  - (2) A facility shall be considered impacted when the net trips generated by the proposed development meets or exceeds five percent of the facility's peak hour capacity.
  - (3) Should the impacted facility be operating at an LOS that meets the locally adopted LOS standard, it would not be eligible for the application of proportionate fair share provisions.
  - (4) Should the impacted facility be operating at a substandard LOS based on existing conditions or as a result of the impacts of a proposed development, the facility would be identified as eligible for proportionate fair share provisions and the applicant would be notified as such.
  - (5) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.
  - (6) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.
  - (7) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in F.S. § 163.3180(12), as follows:

The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS.

OR

$$\text{Proportionate Fair-Share} = \sigma \left[ \left( \frac{\text{Development Trips}_{i,j}}{\text{SV Increase}_{i,j}} \right) \times \text{Cost}_{i,j} \right]$$

Where:

$\text{Development Trips}_{i,j}$  = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS;

$\text{SV Increase}_{i,j}$  = Service volume increase provided by the eligible improvement to roadway segment "i";

Cost;subsub; = Adjusted cost of the improvement to segment "i". Cost 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.

- (8) For the purposes of determining proportionate fair-share obligations, the city shall determine improvement costs based upon the actual cost of the improvement as obtained from the MPO transportation improvement program. Where such information is not available, improvement cost shall be determined using one of the methods described below.
    - a. An analysis by the city of construction costs that incorporates data from recent projects and is updated annually; or
    - b. The most recent issue of FDOT transportation costs, as adjusted based upon the type of cross-section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT work program shall be determined using this method in coordination with the FDOT district.
  - (9) The value of a proportionate fair share mitigation project proposed by the applicant and accepted by the city shall be determined using one of the methods provided in this subsection.
  - (10) The city may also accept right-of-way dedication for the proportionate fair-share payment credit for the dedication shall be based on fair market value established by an independent appraisal approved by the city and at no expense to the city. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the city at no expense to the city. If the estimated value of the right-of-way dedication proposed by the applicant is less than the estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference.
- (d) Impact fee credit for proportionate fair-share mitigation.
- (1) Proportionate fair-share contributions shall be applied as a credit against impact fees consistent with the terms of the impact fee section of section 41.6 of the Land Development Code.
  - (2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the proportionate fair-share agreement as they become due per the impact fee section of section 41.6 of the Land Development 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 development under review, then the applicant or its successor must pay the remaining impact fee amount to the city.
- (e) Proportionate fair-share agreements.
- (1) Upon execution of a proportionate fair-share agreement, the applicant shall receive transportation concurrency approval or functional equivalent. Should the applicant fail to apply for a development permit in accordance with section 29.4(1), then the agreement shall be considered null and void, and the applicant shall be required to reapply.
  - (2) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be non-refundable. If the payment is submitted more than 12 months from the date of execution of the agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to section 29.11(c) and adjusted accordingly.
  - (3) All proportionate fair share mitigation improvements authorized under this subsection must be completed prior to issuance of a development permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the

completion of all required improvements. It is the intent of this subsection that any required improvements be completed before issuance of building permits or certificates of occupancy.

- (4) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.
  - (5) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
  - (6) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement.
  - (7) The city may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.
- (f) Appropriation of fair-share revenues.
- (1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIE, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50 percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).
  - (2) In the event a scheduled proportionate fair share improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within the same corridor or planning sector that would mitigate the impacts of development pursuant to the requirements of section 29.11(a)(2)b.
  - (3) Where an impacted facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan, the city may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. Such coordination shall be ratified by the city through an interlocal agreement that establishes a procedure for earmarking the developer contributions for this purpose.
  - (4) Where an applicant constructs a transportation facility that exceeds their proportionate fair-share obligation calculated under section 29.11(c)(7), the city shall reimburse them for the excess contribution using one or more of the following methods:
    - a. An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the city.
    - b. An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.
    - c. The city may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the city and the applicant.
- (g) Cross jurisdictional impacts.
- (1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the city may enter into an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on multi-jurisdictional transportation facilities. The agreement shall provide for application of the

methodology in this subsection to address the cross jurisdictional transportation impacts of development.

- (2) A development application submitted subject to transportation concurrency requirements and meeting all of the criteria listed below shall be subject to this subsection.
  - a. All or part of the proposed development is located within an area or corridor designated by an adjacent local government where development projects are subject to transportation concurrency requirements in accordance with their respective land development codes.
  - b. If the additional traffic from the proposed development would use five percent or more of the adopted peak hour LOS maximum service volume of a multi-jurisdictional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted multi-jurisdictional facility").
  - c. The impacted multi-jurisdictional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.
- (3) Upon identification of an impacted multi-jurisdictional facility, the city shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.
- (4) The adjacent local government shall have up to 90 days in which to notify the city of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of F.S. § 163.3180. Should the adjacent local government decline proportionate fair-share mitigation under this subsection, then the provisions of this subsection would not apply and the applicant would be subject only to the proportionate fair share requirements of the city.
- (5) If the subject application is subsequently approved by the city, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied.

### 29.13 Concurrency Monitoring System

The Community Development Department (in cooperation with the Building Official) shall be responsible for monitoring development activity to ensure that all development is consistent with the criteria outlined herein. All existing and committed development and its impact on the current facility capacity subject to level-of-service standards shall be documented. Monitoring of the systems shall occur at a minimum prior to the adoption of the Capital Improvements Schedule and shall include:

- a) All changes in zoning districts.
- b) A summary of all building permits
- c) A summary of all demolition permits
- d) Summary of all certificates of occupancy
- e) A summary of systems and the impacts incurred.

Compliance with the City's existing Levels of Service will be calculated and capacity reserved at the time of final action of an approved site plan or building permit if no site plan is required. If no site plan is required, or an enforceable Developers Agreement then

capacity shall be reserved at the time of final action. Capacity reservation shall be valid for 18 months. If construction is not initiated during this period, the reservation shall be terminated.