

# ARTICLE 4 – APPLICATION PROCEDURES

## 4.1 PURPOSE

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### 4.1 PURPOSE.

This article sets forth the application and review procedures and processes required for obtaining development orders, and certain types of permits.

### 4.2 DEVELOPMENT APPROVAL PROCESS.

#### A. Permit Required Prior to Undertaking any Development Activity.

##### (1) *Generally.*

No development activity may be undertaken unless the activity is specifically authorized by a building permit or a city development permit, as applicable.

##### (2) *Prerequisites to county issuance of building permit.*

A building permit may not be issued by county, unless:

- a. The proposed major development activity is authorized by a development order issued pursuant to these regulations; or the proposed minor development has been authorized by the city pursuant to these regulations; and
- b. The proposed development activity conforms to the applicable technical construction standards, including those contained in the City Public Works Manual and those incorporated by reference throughout these regulations.

##### (3) *Minor development activity exempt from requirement for a development order.*

A building permit may be issued for minor development activity in the absence of a development order issued pursuant to these regulations. Unless otherwise specifically provided, the minor development activity shall conform to these regulations and applicable technical construction standards.

(4) *Post-permit changes.*

After a permit has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the permit without first obtaining a permit modification. A modification may be applied for in the same manner as the original permit. A written record of the modification shall be entered upon the original permit and maintained in the city Planning and Development Department's files. Very minor changes may be submitted to the Planning and Development Department via as-built drawings.

**B. Review Procedure for Development Plans.**

**Table 4.2.1. Review Procedures for Development Plans**

<b>Step 1. Pre-Application Conference. (Prior to application submission)</b>	a. Developer shall meet with the Development Approval Authority to discuss the development concept, review process, and requirements. b. Developer may request an assessment of concurrency.
<b>Step 2. Initiation of Development Review</b>	a. Submission of application for development approval – “Request for Concurrency Determination” is initiated. b. Development Approval Authority shall issue a Certificate of Concurrency based on the requirements of this Code within 2 weeks.

(1) *Pre-application conference; disclaimer.*

- a. No person may rely upon any comment concerning a proposed development plan, or any expression of any nature about the proposal made by any participant at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.
- b. A preliminary assessment of concurrency shall not be construed as to constitute reliance by the developer.

(2) *Initiating development review; application; concurrency certificate; extensions.*

- a. Upon receipt of all the required information, the City Manager or his or her designee will within two weeks make a determination of concurrency based on the requirements of section 4.3 and, if so determined, issue a concurrency certificate. The concurrency certificate shall remain valid unless either the development order or building permit expire and are not extended, or are otherwise invalidated. Major developments continuing in good faith may be granted an extension of up to six months upon application to the City Manager. Major developments continuing in good faith may be granted extensions greater than six months upon approval by the city council. Any request for an extension of development approval submitted to the city council for approval must be submitted in writing no later than the Thursday preceding the scheduled council meeting. Minor developments continuing in good faith may be granted one extension for a period of no more than six months. Once a minor development has received an extension, additional extensions will not be granted and the applicant must reapply to obtain a valid permit.
- b. Upon issuance of a concurrency certificate, the City Manager will inform the planning and development director to initiate formal review of the application for development approval, based on the procedures specified in this article.

**C. Withdrawal of Applications.**

An application for development review may be withdrawn at any time without fees being assessed so long as no notice has been given that the application will be reviewed at a public hearing or the Technical Review Committee (TRC) has met and a completeness summary has been issued.

**D. Major development plan review.**

**Table 4.2.2. Major Development Plan Review Procedures**

<b>1. Submission</b>	a. Developer shall submit development plan and required documents to the City’s Planning and Development Department.
<b>2. The Department shall, within five (5) days:</b>	a. Determine completeness of application and inform the developer of the next step.
	b. Upon determination of completeness the Department shall send copies of the development plan to members of the TRC and coordinate a meeting.
<b>3. Technical Review Committee shall:</b>	a. Review the proposed development plan for conformance to these regulations.
	b. Issue a Development Order complying with section 4.2(J).
	c. Not issue a Development Order

(1) The developer shall submit a development plan with all documents submitted in hard copy form and electronically in pdf format and pay appropriate application fees as required in this Article.

(2) If found to be incomplete:

- a. The developer may submit an amended plan within 30 days without payment of an additional fee, but, if more than 30 days have elapsed, the developer must thereafter initiate a new application and pay a new fee; or
- b. Make a determination that the plan is complete and proceed with the following procedures established in subsections (D)(3) and (D)(4) of this section.

(3) In the event that the Planning and Development Department determines that the proposed development is subject to review by the Community Redevelopment Agency (CRA) and/or the Historic Preservation Board (HPB), the applicant shall be so notified.

- a. In conjunction with the distribution to the TRC, the application for development approval shall be forwarded to the applicable board or agency for its review and approval. The respective body(s) shall have 30 days from the date of notification by the Planning and Development Department to review the application and issue the appropriate certificate.
- b. Upon receipt of certification by the CRA and/or the HPB, as applicable, the Planning and Development Department shall coordinate the approval with TRC approval.

(4) For planned development projects and major subdivision plats, the TRC shall forward a recommendation to the planning board regarding development order approval.

## **E. Appeal of TRC and Planning and Development Department Decisions.**

The developer or any adversely affected person may appeal any decision of the Technical Review Committee (TRC) and/or the Planning and Development Department by filing an appeal with the Board of Adjustments.

## **F. Project phasing; master plan required; development plan required for each phase.**

(1) For developments that are to be developed in phases, a master plan for the entire development site must be approved. The master plan shall be submitted simultaneously with an application for review of the development plan for the first phase of the development, and must be approved as a condition of approval of the development plan for the first phase.

(2) A development plan must be approved for each phase of the development under the procedures for development review prescribed in subsections 4.2(B) and 4.2(D).

a. Each phase shall include a proportionate share of proposed site and building amenities for the entire development, except that more than a proportionate share of the total amenities may be included in the earlier phases with corresponding reductions in the later phases.

## **G. Development Approval Form (ADA).**

### *(1) Applications.*

Completion of an application for development approval shall be required for all proposed development activity. Such applications shall be available from the Planning and Development Department.

a. A completed application shall be prepared by all owners, or their agents, of the property subject to the proposal. Signatures by other parties will be accepted only with proof of authorization by the owners. In a case of corporate ownership, the authorized signature shall be accompanied by a notation of the signatory's office in the corporation, and embossed with the corporate seal.

i. A signed and sealed footer survey shall be prepared and submitted to the Planning and Development Department after the footer or foundation has been completed and prior to the continuation of the development to verify the location of all structures to be located on the site.

ii. On commercial projects and major projects an "as-built" survey and/or certification shall be provided to the Planning and Development Department prior to the release of the certificate of occupancy.

## **H. Plan Submittal Requirements**

(1) Development plans shall be submitted in addition to the ADA, pursuant to this section and shall conform to the standards outlined in this subsection and subsection 4.2(I) of this section. The Planning and Development Department has the discretion to determine the submittal requirements which are and are not applicable or relevant to the proposed development.

a. Unless the Planning and Development Department or TRC determines that a different scale is sufficient or necessary for the proper review of the proposal, all site plans shall be drawn to a scale of no less than 1:40 (one inch equals 40 feet).

- b. The trim line sheet size shall be 24 inches by 36 inches. A three-quarter-inch margin shall be provided on all sides, except for the left binding side where a two-inch margin shall be provided.
- c. If multiple sheets are used, the sheet number and total number of sheets must be clearly indicated on each sheet.
- d. The front cover sheet of each plan shall include:
  - i. A generalized site plan showing the overall development plan, together with the principal roads, city limits, and/or other pertinent orientation information;
  - ii. A complete legal description of the property, including tax reference number;
  - iii. The name, address and telephone number of the property owner. Where a corporation or company is the property owner, the name and address of the president of the entity shall be shown;
  - iv. The name, address and telephone number of those individuals responsible for the preparation of the drawing;
  - v. Each sheet shall contain a title block with the development name, a graphic scale, a north arrow, and date.
  - vi. The plan shall show the boundaries of the property with a metes and bounds description reference to section, township and range, tied to a section or quarter-section or subdivision name and lot number.
  - vii. The area of the property shown in square feet and/or acres.
- e. Up to six sets of required documents shall be submitted for any development activity requiring a development order.
- f. Unless a format is specifically called out in subsection (I) of this section, the information required may be presented textually, graphically, on a map, plan, aerial photograph, or by other means, whichever most clearly conveys the required information.
  - i. It is the developer's responsibility to submit the information in a form that allows the ready determination of whether the requirements of these regulations have been met.

## **I. Detailed requirements.**

In addition to the above, applications for development approval shall include the following detailed requirements as applicable:

- (1) Detailed project site plan at no less than 1:40 (one inch equals 40 feet) scale, showing all site improvements including, but not limited to:
  - a. Rights-of-way and easements within the site and adjacent to the site;
  - b. Site dimensions and setback lines;
  - c. Building footprints with exterior dimensions and square footage for all structures, including the use of the structures;
  - d. Street and driveway layouts, entrances, exits, fire-lanes, and sidewalk;
  - e. Parking layout showing the exact location of spaces, including handicapped spaces;
  - f. Topographic (ground) contours at intervals of no greater than two feet;

- g. All existing trees six inches in diameter and greater, identifying those to remain and to be removed;
  - h. Landscape details, including the location and type of beds, lawn, shrubs, and trees;
  - i. Irrigation system; coverage and connection details;
  - j. Stormwater management system and holding ponds;
  - k. Wastewater lines location and size, and lift stations; package treatment plants; septic tanks; grease traps; stub-outs for future connections to sewer, where applicable;
  - l. Water lines and meter location and size;
  - m. Gas lines and meter location and size;
  - n. Street lighting and on-site exterior lighting;
  - o. Fences, retaining walls, indicating heights;
  - p. Satellite dish location, height, and screening;
  - q. All construction within 30 feet of the Blackwater River;
  - r. Sign location and construction drawings of proposed signs showing the location, dimensions, including the area of street facing facades, lighting, etc.
  - s. Location and extent of FEMA A and V Zones and areas of special flood hazard as shown on the flood insurance rate maps (FIRM) for the city, including the minimum floor elevations;
  - t. Location and extent of U. S. Army Corps of Engineers and/or FDEP jurisdictional wetlands, on-site and immediately adjacent;
  - u. Location of potable water wellheads within 500 feet of site; and
  - v. Location and extent of soil types utilizing soil conservation survey data;
- (3) Building elevations and floor plans at scale of no less than 1:10 (one inch equals ten feet), showing building heights and major architectural features and finishes, type of construction, etc.;
- (4) Parking space requirements calculations;
- (5) Density requirements calculations;
- (6) Curb cuts proposed and state department of transportation connection permits, where applicable;
- (7) Stormwater management plan as required by these regulations in Article 12 Stormwater Management, and any applicable state regulations;
- (8) Location of easements, including the descriptions and purpose;
- (9) Copies of required federal and state permits;
- (10) Any other information required under other sections of this Unified Development Code, including the submittal requirements for the preliminary and final subdivision plats, and any plans and specifications required by the public works manual; and
- (11) Upon construction completion, as-built site plans, including public improvements such as water, sewer, and gas lines, etc., shall be submitted to the Planning and Development Department. Such "as-built" plans shall identify any easements granted.

## **J. Development order contents.**

### *(1) A development order shall contain the following:*

- a. A listing of any modifications which must be made to the development plan before a development order may be issued, and the time limit for submitting a modified plan;
- b. A specific time period during which the development order is valid and during which time development shall commence.
  - i. A development order shall remain valid only if development commences and continues in good faith according to the terms and conditions of approval;
- c. A listing of all known federal, state, and regional permits that must be obtained in order for a development order to be issued; however, the developer is responsible for ascertaining and acquiring all required federal, state and regional permits;
- d. The development order is issued contingent upon conformance to the Florida Life Safety Code and PWPM;
- e. With regard to the concurrency management requirements contained in section 4.3, the following shall be included in the development order:
  - i. The concurrency certificate;
  - ii. A commitment by the city to the following:
    - 1) The necessary facilities shall not be deferred or deleted from the capital improvements element or the adopted three-year capital budget, unless the subject development order expires or is rescinded prior to the issuance of a certificate of occupancy; and
    - 2) Contracts shall provide that construction of necessary facilities must proceed to completion with no unreasonable delay or interruption.

### *(2) A development order may include one or more of the following as conditions of approval:*

- a. Commitment by the developer in a recordable written instrument to contract for the provision of the necessary services or facilities to achieve the concurrency requirements;
- b. Schedule of construction phasing of the proposed development consistent with the anticipated availability of one or more services or facilities;
- c. An instrument of financial security, such as an open-end letter of credit or bond in the amount of 115 percent of the cost of services or facilities that the applicant is required to construct, contract for construction, or otherwise provide; and
- d. Such other conditions as may be required by the development approval authority to ensure that concurrency will be met for all applicable facilities and services.

## **K. Community Redevelopment Areas (CRAs).**

### *(1) Intent.*

Specifically, it is the community redevelopment agency's intent to provide regulatory guidance and significant incentive whereby the planned development and revitalization of the downtown area may be encouraged and carried out consistent with the community redevelopment plans, hereafter referred to as the CRA Plans, as such plans have been adopted by the city council.

*(2) Application for Development Approval; Procedure.*

- a. The community redevelopment areas (CRAs) are geographically defined in the CRA plans.
- b. Prior to initiation of development activity in the community redevelopment areas, a land use certificate shall be obtained as required under Subsection 4.2.
- c. Each application for a land use certificate shall be accompanied with a development plan which will address the submittal requirements contained in Subsection 4.2 including site location, land use, building placement, height, floor area ratio, site coverage, setbacks, parking, landscaping, driveways, building design, and signage. Said development plan shall be approved by the Community Redevelopment Agency prior to the granting of a land use certificate. Upon such approval, said development plan becomes a part of the land use certificate and may be amended only by the authority and directive of the Community Redevelopment Agency.
- d. Proposed development activity in the CRAs which exceeds five dwelling units or 5,000 square feet of nonresidential floor area shall require Community Redevelopment Agency approval of the land use certificate.
- e. Community Redevelopment Agency decisions may be appealed to the city council.

*(3) Planned Development Project Application; Procedure.*

- a. The general intent, purpose, standards and regulations, as found in Article 17 Planned Development Projects, shall not be altered for proposed planned developments in the Community Redevelopment Areas. The procedure for filing a planned development project (PDP) shall be amended as follows:
- b. In the CRAs, a pre-application conference with the redevelopment director and staff is mandatory. Submittal of a conceptual plan is also mandatory and must be reviewed and approved by the Community Redevelopment Agency prior to action by the technical review committee (TRC) and planning board. Final approval of the conceptual plan shall be granted by the city council acting as the community redevelopment agency. The city council will pass a resolution designating the site as a PDP contingent upon final plan approval.
- c. The developer will be allowed six months to submit a detailed plan. The redevelopment director and staff must indicate it substantially conforms to the conceptual plan, prior to review by the technical review committee and the planning board. The city council, acting as the community redevelopment agency will grant final approval of the detailed and final plan.

*(4) Uses Consistent with Underlying Zoning District(s).*

Uses permitted within the CRAs shall be consistent with those permitted in the land use district as well as with the community redevelopment plans, as such plans may be refined and amended from time to time in accordance with the established process for amendment.

*(5) CRA Bonus Opportunities.*

*a. Residential.*

In order to encourage higher density residential development in the downtown area and implement the CRA plans, the developer of any apartment, townhouse or condominium complex may be permitted to increase its height and density in accordance with the following:

- i) The developer of a complex situated on a CRA site may increase the building height of the complex to six stories or 75 feet, whichever is the lesser, and its floor area ratio to a maximum of 4.5; provided the development meets five of the Criteria for Waiver



identified in Subsection 3.2(C). Any increase in height must be in accordance with the provisions contained in sections 6.2(B) and 6.3(B), general regulations.

b. *Commercial.*

In order to encourage high quality commercial development within the downtown area and implementation of the CRA Plans, the developer of a single purpose or mixed use commercial building or complex within the CRAs may increase the building height to a maximum of six stories and its floor area ratio to a maximum of 4.5 by providing in the plans and funding the development of any four of the Criteria for Waiver identified in Subsection 3.2(C). Any increase in height must be in accordance with the provisions contained in sections 6.2(B) and 6.3(B), general regulations.

c. Exercise of these bonus provisions must be requested by the developer in writing stating the basis upon which it is requested and must be granted by the city council acting as the redevelopment agency.

(6) *Supplementary Design Review Regulations.*

Additional Design Review shall be in accordance with Subsection 11.4(D).

## **4.3 CONSISTENCY AND CONCURRENCY DETERMINATIONS.**

### **A. Generally.**

(1) *Purpose.* The purpose of this section is to describe the requirements for determining the consistency of proposed development projects with the city comprehensive plan, in addition to meeting the concurrency requirements.

(2) *Intent.* It is the intent of this section to ensure the availability of facilities and services necessary to serve the proposed development, at the adopted level of service standard, concurrent with the impacts of the development. It is further the intent to ensure that a concurrency determination is made by the city prior to the issuance of a development order.

### **B. Consistency with Comprehensive Plan.**

(1) *Presumption.* A development proposal shall be presumed to be consistent with the city comprehensive plan if the proposal is found to meet all the requirements of these regulations, excepting those aspects of the development addressed by the comprehensive plan but not covered by these regulations.

(2) *Challenging the consistency of a development proposal.* Any public official or citizen may question the consistency of a development proposal with the comprehensive plan. If a question of consistency is raised, the Planning and Development Department shall make a determination of consistency. The determination will be made prior to the final approval of the development plan by the city. The determination shall be supported with written findings.

(3) *No presumption in favor of concurrency.* Notwithstanding the presumption created in subsection (a) of this section, all applications for development approval within the city shall demonstrate that specified public facilities will be available at the prescribed levels of service concurrent with the impact of the development on those facilities.

- a. A determination of compliance with concurrency requirements shall be through the procedures described in 4.3(c).

## **C. Concurrency Management System.**

### *(1) Generally.*

The following method of ensuring concurrency shall be known as the Concurrency Management System (CMS) for the City of Milton. The CMS is based upon the city comprehensive plan, especially the capital improvements element and the adopted level of service standards. The system is designed to ensure that the issuance of a development order, city development permit or building permit by the city or county building official will not result in a degradation of the adopted levels of service for specified public facilities and services. The CMS also includes an annual monitoring system for the determination of the availability of adequate capacity of public facilities and services to meet the adopted level of service standards.

### *(2) Adopted levels of service shall not be degraded.*

- a. General rule. The general rule regarding concurrency is as follows:

- i. All applications for development approval shall demonstrate that the proposed development does not degrade adopted levels of service in the city. The adopted levels of service imply that sufficient treatment, collection and distribution systems must be available and must be adequate to accommodate the additional demands imposed by the proposed development. Any new collection and distribution lines shall be sized in accordance with the requirements contained in the city public works manual; and
- ii. The latest point at which concurrency is determined is prior to the final development order approval by the appropriate development approval authority. In the case of new subdivisions, the latest point at which concurrency is determined is prior to preliminary plat approval.

- b. Exception. Notwithstanding subsection (2)(a) of this section, the adopted levels of service may be degraded during the actual construction of new facilities, if upon completion of the new facilities the adopted levels of service will be met, unless otherwise prohibited by local, state or federal requirements.

### *(3) Determination of available capacity.*

For purposes of these regulations, the available capacity of a facility shall be determined by:

- a. Adding together:

- i. The total capacity of existing facilities operating at the required level of service; and
- ii. The total capacity of new facilities, if any, that will become available on or before the date of occupancy of the development. The capacity of new facilities may be counted only if one or more of the following is shown:
  - 1) Necessary facilities are in place, or are under construction, at the time the development order or permit is issued;
  - 2) The development order is issued contingent upon the necessary facility and/or service being in place when the impacts of development occur. In the case of residential subdivisions, the time at which the impacts of development occur may be considered to be up to three years from final plat approval;

3) The necessary facilities are guaranteed in an enforceable development agreement which ensures that the necessary facilities and/or services will be in place when the impacts of the development occur, or for roads and recreational facilities, which ensures that the actual construction will commence within three years of the development order's issuance; and

4) The necessary facilities are the subject of a binding executed contract for construction at the time of issuance of the development order or development permit, for roads, parks and recreational facilities. The actual construction or provision of service must commence within three years of issuance of the development order or permit.

b. Subtracting from that number the sum of:

i. The demand for the service or facility created by the existing development as documented in the city comprehensive plan or as updated based on related state agency data; and

ii. The demand for the service or facility created by the anticipated completion of other approved developments, redevelopment, or other development activity.

*(4) Action upon failure to show available capacity.*

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

a. The project owner or developer may provide the necessary improvements to maintain the adopted level of service. In such case, the application shall include appropriate plans for improvements, documentation that such improvements are designed to provide the capacity necessary to achieve or maintain the level of service, and recordable instruments guaranteeing the construction, consistent with the calculations of capacity mentioned in subsection (3)(a) of this section.

b. The proposed project may be altered such that the projected level of service is no less than the adopted level of service.

*(5) Burden of showing compliance on developer.*

The burden of showing compliance with the level of service requirements shall be upon the developer. In order to be approvable, applications for development approval shall provide sufficient information to indicate that adequate facilities and/or services are available at the adopted LOS standards at the time of development impact. This information shall include, but is not limited to, the following:

a. Statements or letters of available capacity from local utility providers (i.e., sanitary sewer and potable water);

b. A statement of demand generated by the development for solid waste disposal and recreational facilities;

c. Copies of FDEP permits for stormwater management in compliance with F.A.C. Ch. 62-25 or letters of exemption thereof;

d. Statements relating to the number of vehicle trips generated by the proposed development and identification of related roadway impacts.

A detailed traffic impact study (TIS) shall be required for any development contributing more than five percent of the adopted level of service maximum roadway volume, or any development significantly altering access to or traffic flow on arterial and collector roadways. The purpose of such traffic impact

study shall be to assess the roadway level of service given projected traffic volumes and to determine traffic improvements needed to accommodate development impacts.

*(6) Determination of concurrency.*

The determination of concurrency occurs prior to the application review for development approval and shall include compliance with the level of service standards as adopted by the city.

*(7) Annual report.*

The city shall monitor the concurrency provision through the preparation of an annual report on the CMS. The initial year of concurrency monitoring, however, shall be based on data contained in the relevant elements of the 2014 Milton Comprehensive Plan. Each annual report shall contain:

- a. A summary of the actual development activity, including a summary of certificates of occupancy, indicating the quantity of development represented by type and square footage.
- b. A summary of building permit activity issued by the county, within the city, indicating:
  - i. Those that expired without commencing construction;
  - ii. Those that are active at the time of the report; and
  - iii. The quantity of development represented by the outstanding building permits.
- c. A summary of development orders approved, indicating:
  - i. Those that expired without subsequent building permits;
  - ii. Those that were completed during the reporting period;
  - iii. Those that are valid at the time of the report, but do not have associated building permits or construction activity; and
  - iv. The phases and quantity of development represented by the outstanding development orders.
- d. An evaluation of each facility and service indicating:
  - i. The capacity available for each at the beginning of the reporting period and at the end of the reporting period;
  - ii. The portion of the available capacity held for valid development orders;
  - iii. A comparison of the actual capacity to calculated capacity resulting from approved development orders and development permits;
  - iv. A comparison of actual capacity and levels of service to adopted levels of service from the city comprehensive plan;
  - v. A forecast of the capacity for each based upon the most recently updated schedule of capital improvements in the city capital improvements element.

*(8) Use of annual report.*

The CMS annual report shall constitute prima facie evidence of the capacity and levels of service of public facilities for the purpose of issuing development approvals and development permits during the 12 months following completion of the annual report.

## D. Adopted levels of service.

### (1) *Potable water.*

Development activities shall not be approved unless there is sufficient available capacity to sustain a level of service for potable water of 100 gallons per capita per day as established in the potable water sub-element of the city comprehensive plan (1ERU—250 GPD).

### (2) *Sanitary sewer.*

Development activities shall not be approved unless there is sufficient available capacity to sustain a level of service for wastewater treatment of 100 gallons per capita per day as established in the sanitary sewer sub element of the city comprehensive plan (1ERU—250 GPD).

### (3) *Transportation system.*

a. Level of service. Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for transportation systems as established in the traffic circulation element of the city’s comprehensive plan. See the following traffic circulation table:

**Table 4.4.1. Traffic Circulation Levels of Service**

Facility Type	Peak Hour Level of Service
Principal arterials	D
Minor arterials	D
Collectors	D

b. Determination of project impact. The impact of proposed development activity on available capacity shall be determined as follows:

- i. The area of traffic impact of the development shall be determined by the developer subject to review and approval by the city.
- ii. The projected level of service for roads within the traffic impact area shall be calculated based upon estimated trips to be generated by the project utilizing the Institute of Traffic Engineers trip generation rates by land use type. Where the development will have access to more than one road, the calculations shall show the split in generated traffic and state the assumptions used in the assignment of traffic to each facility.

### (4) *Drainage system.*

Development activities shall not be approved unless there is sufficient available capacity to sustain a level of service which specifies the design storm as a 100-year critical duration storm, and to treat the first inch of runoff for sites less than 100 acres in size as required in Article 12, Stormwater Management. Additionally, development activities must comply with the stormwater management provisions as contained in this Unified Development Code.

(5) *Solid waste.*

Development activities shall not be approved unless there is sufficient available capacity to sustain a level of service of 4.4 pounds per capita per day for solid waste as established in the solid waste sub-element of the city comprehensive plan.

(6) *Recreation.*

Development activities shall not be approved unless there is sufficient available capacity to sustain a level of service of five acres per 2,000 people for recreational facilities as established in the recreation and open space element of the city comprehensive plan.

## **4.4 TRANSPORTATION PROPORTIONATE FAIR-SHARE PROGRAM.**

### **A. Purpose and intent.**

The purpose of these regulations is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with F.S. § 163.3180(16).

### **B. Findings.**

(1) The council finds and determines that transportation capacity is a commodity that has a value to both the public and private sector and that the city proportionate fair-share program:

- a. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
- b. Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of a transportation facility;
- c. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
- d. Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the city to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the capital improvements element;
- e. Is consistent with F.S. § 163.3180(16), and supports the following policies in the city comprehensive plan:
  - i. Transportation element goal 1, objectives 1.1 through 1.5 and policies 1.1.1 through 1.5.3 of the comprehensive plan, as amended.
  - ii. Capital improvement element goal 1, objectives 1.1 through 1.5 and policies 1.1.1 through 1.4.4 of the comprehensive plan.

(2) The proportionate fair-share program shall apply to all developments in city that impact a road segment in the city Concurrency Management System (CMS) and have been notified of a failure to achieve transportation concurrency approval. The proportionate fair-share program does not apply to designated Transportation Concurrency Exception Areas (TCEAs) or to Developments of Regional Impact (DRIs) using proportionate share under F.S. § 163.3180(12), or to developments exempted from concurrency.

### **C. 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 this Unified Development Code.
- b. The city five-year capital improvement program (CIP) or an adopted long term concurrency management system includes transportation improvements that, upon completion, will accommodate the additional traffic generated by the proposed development.

(2) The city may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program by contributing to an improvement that, upon completion, will accommodate the additional traffic generated by the proposed development, but is not contained in the CIP where one of the following apply:

- a. The city adopts, by resolution or ordinance, a commitment to add the improvement to the five-year CIP no later than the next regular update. To qualify for consideration under this section, the proposed improvement must be reviewed by the city council, and determined to be financially feasible pursuant to F.S. § 163.3180(16)(b)1, consistent with the comprehensive plan, and in compliance with the provisions of these regulations. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed ten years to fully mitigate impacts on the transportation facilities.
- b. If the funds in the adopted city five-year CIP are insufficient to fully fund construction of a transportation improvement required by the concurrency management system, the city may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. To qualify for consideration under this section, the proposed improvements must be contained in an adopted short- or long-range plan or program of the local government, MPO, FDOT and/or transit agency. Proposed improvements not reflected in an adopted plan or improvement program, but that would significantly reduce access problems on a major road, such as new roads, service roads, or improved network development and connectivity, may be considered at the city's discretion. The improvements funded by the proportionate fair-share component must be adopted into the five-year CIP of the comprehensive plan at the next annual capital improvements element update.

(3) Any improvement project proposed to meet the developer's fair-share obligation must meet the city design standards for locally maintained roadways and those of the Florida Department of Transportation (FDOT) for the state highway system.

#### **D. Intergovernmental coordination to be established.**

Pursuant to the policies in the city's intergovernmental coordination element, the city shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

#### **E. Application; contents; notice; hearing; approval.**

(1) Upon notification of a failure to satisfy transportation concurrency, applicants shall be notified in writing whether they may be eligible to satisfy transportation concurrency through a proportionate fair-share contribution.

(2) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the strategic intermodal system (SIS), then the state department of transportation (FDOT) will be notified and invited to participate in the pre-application meeting.

(3) Eligible applicants shall submit an application to the city that includes an application fee as currently established or as hereafter adopted by resolution of the city council from time to time and the following:

- a. Name, address, and phone number of owner, developer and agent;
- b. Property location, including parcel identification numbers;
- c. Legal description and survey of property;
- d. Project description, including type and amount of development;
- e. Phasing schedule, if applicable;
- f. Description of the requested fair-share method; and
- g. Copy of the concurrency denial.

(4) The Planning and Development Director shall review the application and certify that the application is sufficient within ten business days. If an application is determined to be insufficient or ineligible to participate, the applicant will be notified in writing of the reasons for such deficiencies within ten business days of the application's submittal. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The council may in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies; provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(5) Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the strategic intermodal system (SIS) requires the concurrence of the state department of transportation (FDOT). The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(6) When an application is deemed sufficient and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the city or the applicant with direction from the city and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a strategic intermodal system (SIS) facility, no later than 60 days from the date at which the applicant received the notification of a sufficient application and no fewer than 14 days prior to the city council date when the agreement will be considered.



(7) The city shall notify the applicant regarding the date of the council meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the council.

**F. Proportionate fair-share obligation; requirements; calculations.**

(1) The proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively:

- a. Private funds;
- b. Contributions of land; and
- c. Construction and contribution of facilities.

(2) 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.

(3) 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 buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from the construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of the developer payment, of the improvement necessary to maintain the adopted level of service."

Or

**Table 4.5.1. Calculation – Proportionate Fair-Share Obligation**

Proportionate share	=	$\sigma$ [[(Development trips)/(SV increase)] × cost]
<b>Where:</b>		
Development trips	=	Those trips from the development that are assigned to the roadway segment and have triggered a deficiency per the concurrency management system;
SV increase	=	Service volume increase provided by the eligible improvement to the roadway segment per E;
Cost	=	Adjusted cost of the improvement to the segment. 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 the construction at the anticipated cost in the year it will be incurred.

(4) For the purposes of determining proportionate share obligations, the city shall determine improvement costs based upon the actual cost of the improvement as obtained from the capital improvements program, the MPO transportation improvement program, or the FDOT work program. Where such information is not available, improvement cost shall be determined using one of the following methods:

- a. An analysis by the city of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the council. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; or
- b. The most recent issue of FDOT *Transportation Costs*, as adjusted based upon the:
  - i. Type of cross section (urban or rural);
  - ii. Locally available data from recent projects on acquisition, drainage, and utility costs; and
  - iii. Significant changes in the cost of materials due to unforeseeable events.

This method shall be used for all state road improvements not included in the adopted FDOT work program.

(5) If the city has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.

(6) If the city has accepted the right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 80 percent of the most recent assessed value by the county property appraiser or, at the applicant's option, by the 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 city's estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference.

## **G. Proportionate fair-share agreements.**

(1) Upon the execution of a proportionate fair-share agreement (agreement) the applicant shall receive a city certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months of the agreement's execution, 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 the issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than 12 months from the date of the agreement's execution, the proportionate fair-share cost shall be recalculated at the time of the payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to section H and adjusted accordingly.

(3) Developer improvements authorized under these regulations involving dedications to the city must be completed upon the final acceptance of the improvements and receipt of a warranty bond.

(4) Developer improvements authorized under these regulations not involving dedications to the city must be completed upon the recording of a final plat or upon the issuance of a certificate of occupancy.

(5) Any requested change to a development project subsequent to a development order will be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic.

(6) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the agreement's execution. The application fee and any associated advertising costs to the city will be nonrefundable.

## **H. 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 city Capital Improvements Program (CIP), or for use as otherwise established in the terms of the proportionate fair-share agreement.

(2) In the event a scheduled facility improvement is removed from the CIP, 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 pursuant to the requirements of this code.

## **4.5 IMPACT FEES FOR NEW DEVELOPMENT.**

### **A. Authorization.**

This section is enacted pursuant to the general police power, the authority granted to cities by section 2(b), article VIII, of the Florida Constitution, F.S. ch. 166, and F.S. §§ 163.3161 through 163.3244.

### **B. Purpose and intent.**

This section is enacted for the purpose of requiring that new development pay for its fair share of public facilities through the imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the city for public facilities and services that serve such development.

### **C. Applicability.**

Unless expressly accepted or exempted, this section applies to all fees which may be imposed by the city to finance capital facilities and maintain levels of service, the need for which is created by new development including, but not limited to:

- (1) Affordable housing fees;
- (2) Park and recreational fees;
- (3) Drainage fees;
- (4) Police/public safety fees;
- (5) Transportation improvement fees;
- (6) Public works fees;
- (7) Public art and cultural events fees;
- (8) Fire department fees;
- (9) Library fees; and
- (10) Public education fees.

### **D. Exemptions.**

This division does not apply to:

- (1) Taxes and special assessments;

- (2) Fees for processing development applications;
- (3) Fees for the enforcement of or inspections, pursuant to regulatory ordinances;
- (4) Fees for utility connection or utility impact fees which are authorized by city Code provisions outside of this section;
- (5) Fees collected under development agreements, other than impact fees;
- (6) Fees imposed pursuant to a reimbursement agreement between the city and a property owner for that portion of the cost of a public facility paid for by the property owner which exceeds the need for the public facility attributable to, reasonably related to, and roughly proportional to the development;
- (7) Fees to mitigate impacts on the environment;
- (8) Fees imposed, levied, or collected by other governmental agencies, including subdivisions of the state and federal government; and
- (9) Stormwater utility fees which are authorized by city Code provisions outside of this section.

### **E. Imposition, calculation and collection of impact fees.**

- (1) Calculation of an impact fee shall mean to determine the amount of impact fee to be imposed on a particular development project and includes an individual determination showing a reasonable, and roughly proportional, relationship between:
  - a. The fee's use and the type of development project on which the fee is imposed;
  - b. The need for the public facility or service and the type of development project on which the fee is imposed; and
  - c. The fee amount and the cost of the portion of the public facility or service attributable to the development on which the fee is imposed.
- (2) The city may only impose impact fees as a condition of approval of new development projects as provided in this section. Fees shall be calculated upon the net increase in density or intensity represented by the new development.
- (3) The base fee amount of each impact fee for residential and nonresidential development, for each type of public facility or service funded by impact fees, shall be calculated at least every three years and adopted by ordinance. When the city manager determines that it is appropriate to the particular public facility or service, the fee amount may be calculated, imposed and expended by benefit area.
- (4) After an individualized determination that each impact fee for a development project has been calculated as provided in this section, impact fees shall be imposed prior to issuance of any building permit.
- (5) Impact fees shall be collected by the city manager at the time of, and as a condition for, issuance of an application for development approval. In no case shall a building permit be issued by the county until such time as the fees established here are collected, except that connection fees shall be collected at the time of application for connection to the utility system.
- (6) An administrative fee, in the amount of five percent of the impact fee imposed on a development project, shall be collected from that development project with, and in addition to, the impact fee for the purpose of defraying the city's cost of administering the impact fee program.
- (7) In the event the impact fees are paid prior to, or concurrent with, the issuance of a building permit and subsequently the building permit is amended, the applicant shall pay the impact fee in effect at the time the amended building permit is issued with credit being given for the previous fees paid.

(8) In the case of the change of use, redevelopment, expansion, or modification of an existing use of a site which requires the issuance of a building permit, the impact fee shall be based upon the net increase in density or intensity of the proposed use as compared to the most immediately-preceding use of the property for which the permit is requested.

#### **F. Notice and hearing required for establishing or increasing impact fees.**

- (1) Prior to establishing or increasing any particular impact fee, the city council shall hold a public hearing.
- (2) Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be published as required for the adoption of a general ordinance pursuant to F.S. § 166.041.
- (3) At least ten days prior to the public hearing, the city shall make available to the public data showing the amount or the estimated amount of the impact fee and a summary of the basis for the calculation of the impact fee amount.
- (4) City council action to establish or increase any impact fee shall be taken only by an ordinance containing findings which demonstrate the basis for calculating the fee.

#### **G. Independent impact analysis.**

- (1) A developer may choose to use an independent impact analysis to compute the impact fee due as a result of a development.
- (2) The developer shall be responsible for the preparation of the draft independent impact analysis and the city manager may accept, reject, or modify the draft analysis.
- (3) The city manager shall have the authority to approve the person or firm who prepares the draft independent impact analysis on the basis of the person or firm's professional training and experience in preparing development impact analysis. The independent impact analysis shall follow standard methodologies and formats. Prior to the submission of the draft independent impact analysis, the developer shall meet with the city manager to review the requirements for preparing draft independent impact analysis.

#### **H. Impact fee accounts.**

The city may provide for a separate accounting of each type of capital improvement for which an impact fee is imposed. Where benefit areas have been designated by the city manager there may be a separate accounting for each benefit area. The impact fees collected shall be separately accounted for according to type of improvement and benefit area, if relevant. The funds for each impact fee shall be specifically tracked, monitored and accounted for separate from other funds of the city.

#### **I. Use of impact fee proceeds.**

Impact fees may be expended only for the type of capital improvements for which they were imposed, calculated, and collected, in accordance with the time limits and procedures established in this section. If the impact fees were calculated and collected by benefit area, then the fees may be expended only in the benefit area in which they were collected. The impact fees may be used to pay the principal, interest, and

other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the city to finance such improvements.

## **J. Refunds.**

(1) Upon application of the property owner, the city may refund that portion of any impact fee which has been on deposit over six years and which is unexpended and uncommitted, except as described in subsection (b) of this section. The refund shall be made to the then-current owner of lots or units of the development project.

(2) If fees in any impact fee account are unexpended or uncommitted during the sixth year, the fees are exempt from subsection (a) of this section if the city council makes the following findings:

- a. A need for the capital improvement still exists;
- b. The fees will be used for an identified purpose within two years; and
- c. The purpose for which the fees will be used is substantially similar to the purpose for which the fees were collected.

(3) The city may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner on the same or other property or otherwise by agreement with the owner.

## **K. Statute of limitations.**

Any judicial action or proceeding to attack, review, set aside, or annul the reasonableness, legality, or validity of any impact fee must be filed and service of process affected within 90 days following the date of imposition of the fee or the final determination of the city council, whichever is later.

## **L. Amendment procedures.**

Prior to the city council's adoption of the budget and revisions to the capital improvements project list, the city manager shall report at least once every three years to the city council with:

- (1) Recommendations for amendments to this section, if any;
- (2) Proposals for changes to the capital improvements project list, identifying capital improvements to be funded in whole or in part by impact fees, if any;
- (3) Proposals for changes in the boundaries of benefit areas, if any; and
- (4) Proposals for changes to impact fee rates and schedules, if any.

## **M. Analysis and establishment of fees.**

Consistent with the foregoing requirements of this section, the city council shall adopt an appropriate impact fee by resolution from time to time. The analysis utilized to establish the applicable fee shall be maintained on file in the city clerk's office.