

ARTICLE 4

CONCURRENCY MANAGEMENT

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ARTICLE 4

CONCURRENCY MANAGEMENT

SECTION 4.01. GENERALLY

4.01.01. Purpose

The purpose of this Article is to describe the requirements and procedures for determination of whether proposed development meets the concurrency requirements of the City of Waldo Comprehensive Plan.

4.01.02. Definition Of Concurrency

Concurrency means a condition where specified facilities and services have or will have the necessary capacity to meet the adopted level of service standards at the time of impact of the development project.

SECTION 4.02. CONCURRENCY MANAGEMENT

4.02.01. Generally

The following method of ensuring concurrency shall be known as the Concurrency Management System. The Concurrency Management System is based upon the City Comprehensive Plan. The system is designed to ensure that the issuance of a Final Development Order will not result in a degradation of the adopted levels of service for specified public facilities and services. The Concurrency Management System also includes a monitoring system for determination of the availability of adequate capacity of public facilities and services to meet the adopted level of service standards.

4.02.02. Adopted Levels of Service Shall Not Be Degraded

- A. All applications for development orders shall demonstrate that the proposed development does not degrade adopted levels of service in the city.
- B. Notwithstanding the foregoing, the prescribed levels of service may be degraded during the actual construction of new facilities if, upon completion of the new facilities, the prescribed levels of service will be met.

4.02.03. Determination of Available Capacity

- A. For purposes of these regulations the available capacity of a facility shall be determined by:

1. Adding Together:
 - a. The total capacity of existing facilities operating at the required level of service; and
 - b. The total capacity of new facilities, if any, that will become available on or before the date of occupancy of the development, if the development permit applied for is not a building permit (due to the more immediate impact of building permits). The capacity of new facilities may be counted only if one or more of the following is shown:
 - (1) Construction of the new facilities is under way at the time of issuance of the final development order.
 - (2) The new facilities are the subject of a binding executed contract for the construction of the facilities or the provision of services at the time of issuance of the final development order.
 - (3) The new facilities are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, Florida Statutes, or an agreement or development order pursuant to Chapter 380, Florida Statutes. Such facilities shall be consistent with the capital improvements element of the City Comprehensive Plan. The agreement must guarantee that the necessary facilities and services will be in place when the impacts of the development occur.
 2. Subtracting from that Number the Sum of:
 - a. The demand for the service or facility created by existing development as documented in the City Comprehensive Plan; and
 - b. The demand for the service or facility created by the anticipated completion of other approved developments, redevelopment, or other development activity.
- B. Where available capacity cannot be shown, the following methods may be used to maintain adopted levels of service:
1. The project owner or developer may provide the necessary improvements to maintain the 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 calculations of capacity above.

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

4.02.04. Determination of Concurrency

- A. The burden of showing compliance with these level of service requirements shall be upon the developer. In order to be approved applications for development approval shall provide sufficient information showing compliance with these standards.
- B. The initial determination of concurrency occurs during the Pre-Application Conference between the developer and the Development Review Coordinator and shall include compliance with the level of service standards adopted by the City. However, final determination shall be made during the Final Development Plan Review.

4.02.05. Adopted Levels of Service

The applicable levels of services shall be as adopted in the City of Waldo Comprehensive Plan.

SECTION 4.03. PROPORTIONATE FAIR-SHARE PROGRAM

4.03.01. Purpose and Intent

The purpose of this ordinance 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 §163.3180(16), F.S.

4.03.02. Findings

- A. The City Council finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors.
- B. Further, the City Council finds that the City Proportionate Fair-Share Program:
 1. 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.
 2. 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.

3. 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.
4. 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 (“CIE”) of the City’s Comprehensive Plan.
5. Is consistent with §163.3180(16), F.S., and supports policy II.1.1 in the City Comprehensive Plan.

4.03.03. Applicability

- A. The Proportionate Fair-Share Program shall apply to all developments in the City that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the City Concurrency Management System (“CMS”), including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section 4.03.05.
- B. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in the City’s CMS, and/or Chapter 163.3180, F.S., regarding exceptions and de minimis impacts.

4.03.04. Definitions

Terms used in this ordinance shall have the meanings given to them in the City Land Development Code or in Sections 163.3164, F.S. or 163.3180, F.S.

4.03.05. General Requirements

- A. 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:
 1. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
 2. The five-year schedule of capital improvements in the City CIE or the long-term schedule of capital improvements for an adopted long-term CMS includes a transportation improvement that, upon completion, will satisfy the requirements of the City transportation CMS. The provisions of Section 4.03.05 B may apply if a project or projects needed to satisfy concurrency are not presently contained

within the local government CIE or an adopted long-term schedule of capital improvements.

- B. 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 satisfy the requirements of the City transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:
1. The City adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate City boards and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this Article. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.
 2. If the funds allocated for the five-year schedule of capital improvements in the City CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, 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 fair-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.
 3. The improvement or improvements funded by the proportionate fair-share component must be adopted into the five-year capital improvements schedule of the comprehensive plan or the long-term schedule of capital improvements for an adopted long-term concurrency management system at the next annual capital improvements element update.
- C. Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the City for locally maintained roadways and those of the FDOT for the state highway system.

4.03.06. Intergovernmental Coordination

Pursuant to policies in the Intergovernmental Coordination Element of the City comprehensive plan, 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.

4.03.07 Application Process

- A. Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of Section 4.03.05.
- B. 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 FDOT will be notified and invited to participate in the pre-application meeting.
- C. Eligible applicants shall submit an application to the City that includes an application fee as set by resolution and the following:
 - 1. Name, address and phone number of owner(s), developer and agent.
 - 2. Property location, including parcel identification numbers.
 - 3. Legal description and survey of property.
 - 4. Project description, including type, intensity and amount of development.
 - 5. Phasing schedule, if applicable.
 - 6. Description of requested proportionate fair-share mitigation method(s).
 - 7. Copy of concurrency application.
- D. The Development Review Coordinator shall review the application and certify that the application is sufficient and complete within 10 business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program as indicated in Section 4.03.05, then the applicant shall be notified in writing of the reasons for such deficiencies within 10 business days of submittal of the application. 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 City 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.

- E. Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.
- F. When an application is deemed sufficient, complete, 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 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 meeting when the agreement will be considered.
- G. 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.

4.03.08. Determining Proportionate Fair-Share Obligation

- A. 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.
- B. 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.
- C. The methodology used to calculate an applicant’s proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), F. S., 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

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

Where:

Development Trips_i = 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;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment “i” per section 4.03.05;

Cost_i = 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.

- D. 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 CIE, the MPO/TIP or the FDOT Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:
1. An analysis by the City of costs by cross section type that incorporates data from recent projects and approved by the Council. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor as determined in Appendix A; or
 2. 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.
- E. 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.
- F. If the City has accepted 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 115 percent of the most recent assessed value by the County property appraiser or, at the option of the applicant, by 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 estimated total

proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

4.03.09. Impact Fee Credit for Proportionate Fair-Share Mitigation

- A. If in the future the City adopts one or more impact fees, proportionate fair-share contributions shall be applied as a credit against those impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.
- B. Impact fee credits for the proportionate fair-share contribution shall be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant shall be reduced per the Proportionate Fair-Share Agreement as they become due per the City Impact Fee Ordinance. 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 pursuant to the requirements of the City impact fee ordinance.
- C. Major projects not included within the local government's impact fee ordinance or created under subsections 4.03.05 B 1. and 2., which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government's discretion for impact fee credits.
- D. The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the local impact fee ordinance.

4.03.10. Proportionate Fair-Share Agreements

- A. Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a certificate of concurrency compliance. Should the applicant fail to apply for a development permit within 12 months or within the period of time granted under the Agreement, whichever is greater, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.
- B. 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 4.03.08, and adjusted accordingly.

- C. All developer improvements authorized under this Section 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.
- D. 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.
- E. 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.
- F. Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the City shall be non refundable.
- G. 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.

4.03.11. Appropriation of Fair-Share Revenues

- A. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the City CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, 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% local match for funding under the FDOT TRIP.
- B. In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section 4.03.05 B 2. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., and then 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 of the developer contributions for this purpose.

- C. Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under Section 4.03.08, the City shall reimburse the applicant for the excess contribution using one or more of the following methods:
1. 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.
 2. 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.
 3. The City may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the City and the applicant.

APPENDIX A: METHOD FOR COST ESCALATION

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

- Cost_n = The cost of the improvements in year n;
 Cost_0 = The cost of the improvement in the current year;
 $\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;
 n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{-1} + \text{Cost_growth}_{-2} + \text{Cost_growth}_{-3}]/3$$

Where:

- $\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;
 Cost_growth_{-1} = The growth rate of costs in the previous year;
 Cost_growth_{-2} = The growth rate of costs two years prior;
 Cost_growth_{-3} = The growth rate of costs three years prior.