

**ARTICLE V. - FACILITIES AND SERVICES: CONCURRENCY, IMPACT FEES,  
EXACTIONS, GUARANTEES AND SURETIES**

- Sec. 33-41. - Concurrency management system.
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**Sec. 33-41. - Concurrency management system.**

33-41.01. *Purpose and intent.* This article is established in order to ensure that adequate public facilities are available to handle the impacts of development and maintain the city's adopted level of service (LOS) standards concurrent with those impacts. This article establishes a regulatory program that ensures each public facility is available to serve development concurrent with the impacts of development on public facilities, or that final development orders are conditioned upon the availability of public facilities to serve development concurrent with the impacts of development. This article also establishes a monitoring system, which enables the city to determine whether it is adhering to the adopted LOS standards and its schedule of capital improvements. This article establishes a system for implementing the concurrency provisions of the City of DeLand Comprehensive Plan by requiring a determination of the anticipated impacts of development on the LOS for potable water, sewer, solid waste, drainage, parks and recreation, public schools, and road facilities, and prohibiting the issuance of any development orders where the anticipated impacts would result in a degradation in the LOS below the level approved in the City of DeLand Comprehensive Plan.

(Ord. No. 2008-39, § 10, 9-3-08)

33-41.03. *Concurrency management standards.*

- (a) *Application of standards.* No final development order or building permit shall be issued to construct, reconstruct, or alter any building or structure; no use of an existing building shall be changed; and no special exception shall be granted; until a site plan for the property has been reviewed and evaluated to determine compliance with the concurrency management provisions of this article. Any proposed rezoning which would result in an increase in the densities or intensities of development, shall be tested for facility capacity and concurrency at the time of rezoning unless the applicant requests rezoning without a determination of capacity.
- (b) *Vested rights and exemptions.*

1. *Vested rights.* The following development activity is recognized as vested for purposes of complying with this article and therefore not required to comply with the requirements of this article:
  - a. Any development that has been authorized as a development of regional impact pursuant to Ch. 380, Florida Statutes, prior to the adoption of this article; or
  - b. Any development that has been issued a final development order by the City of DeLand and which has commenced construction and is continuing in good faith i.e., any development having active building permits for a significant portion of the applicable phase of the development and which is continuously processing the work.
  - c. The replacement of structures destroyed by fire, hurricanes, tornadoes or other acts of God not exceeding the area and cubic content of the structure prior to its destruction.
  - d. Health care facilities to be constructed to meet the obligation to furnish health care services to indigents and residents of the district and authorities created by the special legislative acts creating the independent special taxing districts to the extent that such construction is authorized by the special acts as they may be amended.
2. *De minimis exemptions.* If a proposed development includes land use of such low intensity as to have a de minimis effect, if any, upon the level of service standards set forth in the DeLand Comprehensive Plan, the development shall be exempt from concurrency review. The following development activities shall be deemed de minimis:
  - a. The construction of:
    1. Accessory structures;
    2. Swimming pools;
    3. Fences and walls;
    4. Utilities such as telephone switching stations, electrical power substations, and communications towers that create no additional impact on public utilities;
    5. Signs;
    6. Any use which generates not more than 68 trips per day.
  - b. Residential projects which would result in the creation of one additional single-family dwelling.

- c. Removal of trees.
- d. Any subpermit to new construction.
- e. Improvements or additions to a single-family residence.
- f. For the purposes of public school concurrency, the following developments are deemed to be "de minimis" and are not subject to the public school concurrency review, described in Section 33-41.07 of this chapter:
  - 1. Single-family lots of record, existing prior to February 1, 2008, which otherwise would be entitled to build;
  - 2. Any residential development or any other development with a residential component that received approval of a final development order or functional equivalent prior to February 1, 2008;
  - 3. Any residential development or any other development with a residential component that is otherwise vested prior to February 1, 2008;
  - 4. Amendments to residential development approvals which do not increase the number of students generated by the development based on the student generation rates for each school type, as determined by the school district;
  - 5. Age-restricted developments that are subject to deed restrictions under the age of 55, which are recorded and irrevocable for a period of at least 30 years;
  - 6. Group quarters that do not generate students, including residential facilities such as jails, prisons, hospitals, bed and breakfasts, hotels and motels, temporary emergency shelters for the homeless, adult halfway houses, firehouse dorms, college dorms exclusive of married student housing, and religious non-youth facilities; and
  - 7. Nonresidential development.

(c) *Level of service standards.* The adopted level of service (LOS) standards for public facilities and services contained in the City of DeLand Comprehensive Plan as identified in the following table are hereby adopted by reference:

Required Facilities	Comprehensive Plan Element	Comprehensive Plan Goals, Objectives and Policies
Wastewater	Capital improvement element	Goal I, Objective 1.2, Policy

		1.2.6
Parks and recreation	Capital improvement element	Goal I, Objective 1.2, Policy 1.2.6
Roads	Capital improvement element	Goal I, Objective 1.2, Policy 1.2.6
Stormwater drainage	Capital improvement element	Goal I, Objective 1.2, Policy 1.2.6
Solid waste	Capital improvement element	Goal I, Objective 1.2, Policy 1.2.6
Potable water	Capital improvement element	Goal I, Objective 1.2, Policy 1.2.6
Public Schools	Capital improvement element	Goal III, Objective 3.1, Policy 3.1.2

(d) *Adequate facilities requirement.* No final development order or permit may be issued except in compliance with the requirements of this article.

1. *All facilities.* In order to ensure that adequate public facilities are available to handle the impacts of development and maintain the city's adopted LOS concurrent with those impacts, the city shall ensure that prior to the approval of an application for a final development order or permit:

- a. The necessary facilities and services are in place at the time a development permit is issued; or
- b. A development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur; or
- c. The necessary facilities are under construction at the time a development permit is issued; or
- d. The necessary facilities and services are guaranteed in an enforceable development agreement or development order to insure that the necessary facilities and services will be in place when the impacts of the development occur.

2. *Parks, recreation and roads.* For parks, recreation and roads, the concurrency requirement maybe satisfied by ensuring that the following alternative standards will be met in lieu of the standards established in 1. above:

- a. At the time the development permit is issued, the necessary facilities and service are the subject of a binding, executed contract which provides for the commencement of the actual construction of the required facilities or the provisions of services within one

year of the issuance of the development permit; or

- b. The necessary facilities and services are guaranteed in an enforceable development agreement or development order which requires the commencement of the actual construction of the facilities or the provision of services within one year of the issuance of the applicable development permit.
3. *Roads.* For roads, the concurrency requirement may be satisfied by ensuring that the following alternative standards will be met in lieu of the standards established in 1. and 2. above:
    - a. For roads included in the Five-Year Schedule of Capital Improvements, the concurrency requirement may be satisfied by ensuring that the improvements required to maintain or attain the LOS adopted for the impacted road is scheduled to commence during or before the third year of the five-year schedule; or
    - b. The city shall not allow any new development to occur, except for properties exempt from the requirements of this article pursuant to section 33-41.03(b) of this article, unless a final development order is subject to the adoption and implementation of an Area-Wide Traffic Action Mitigation Plan. An Area-Wide Traffic Action Mitigation Plan shall include, but not be limited to, the following mitigation measures:
      1. Turn lanes;
      2. Signalization;
      3. Incentives for employees to use mass transit where available;
      4. Van or car pool programs; or
      5. Staggered work hours.
    - c. The city may not deny a developer or property owner a building permit or other development permit if the developer or property owner demonstrates a willingness to maintain service levels by entering into an enforceable development agreement including the implementation of an Area-Wide Traffic Action Mitigation Plan, where the developer has demonstrated compliance with the requirement to ensure 100 percent mitigation of the impact of such development. Prepayment of road impact fees may not necessarily meet the 100 percent mitigation required.
  4. *Public schools.* In the case of public school facilities, a certificate of school concurrency may be issued under the following circumstances:
    - a. Permanent student capacity is currently available (the level of

service standard is not exceeded for each school type.

- b. Permanent student capacity is not currently available (level of service standard exceeded) in the impacted Concurrency Service Area (CSA), but there is permanent student capacity available in an adjacent CSA.
- c. Permanent student capacity is neither available (level of service standard exceeded) in the impacted CSA, not in the adjacent CSA. However, there is a capacity improvement in the first three years of the school district's Five-Year Facilities Work Program that will address capacity needs. In the event that there is not sufficient capacity available to serve the proposed development, the applicant/property owners, the school district and the city may enter into negotiations in an effort to mitigate the impact from the development, as further described in section 33-41.07 of this chapter.

(Ord. No. 2008-39, §§ 11—13, 9-3-08)

33-41.04. *Concurrency management review procedures.* Certification of compliance with all terms of this article is required prior to the issuance of any final development order or permit. This section establishes the procedures required to implement the requirements of this article.

- (a) *Generally.* The technical review committee shall use the procedures listed below to determine compliance of an application for a development permit with this concurrency management system.

1. *Roads.*

- a. *Traffic impact studies for larger developments.* The developer of any development which will generate 1,000 or more Average Annual Daily Trip (AADT) ends per day, as determined by reference to the Institute of Traffic Engineers Trip Generation Manual or to locally derived trip generation rates accepted by the city as accurate, shall provide the city with a traffic impact analysis (TIA) prepared by a qualified traffic engineer at the time application is made for approval of a site plan or preliminary plat.

Calculation of average daily trips shall be based upon the actual declared use of the sites as stated on the presented site plan or upon the most intense use(s) allowed under the applicable city and/or county zoning(s). For phased developments, calculation of the AADT traffic volume and traffic impact analysis shall be presented for the completed development, and shall include all proposed phases of development and land uses.

Where the proposed development lies within one mile of an educational facility or ancillary facility, such as a school bus distribution point, and/or

similar facility, such as an intermodal distribution point or mass transit facility, potentially impacted by changes in traffic volume and where AM trips are germane, both AM and PM traffic counts and impacts must be calculated. The results of the AADT calculation shall be provided to the Planning Division of Volusia County Schools, or to the equivalent representative of the potentially impacted facility.

Where improvement to an existing facility is proposed, and no change in use of the existing facility is being made, the AADT calculation may reflect only the newly proposed improvement and its use. Where improvement to and/or change in use of an existing facility is proposed the AADT calculation shall reflect the volume of traffic generated by the existing facility's current and/or new use(s) and the volume of traffic generated by improvements if proposed (i.e. the combined uses).

The analysis shall be performed in accordance with the most recent of the Volusia County Metropolitan Planning Organization (MPO) Transportation Impact Analysis Guidelines.

The required TIA methodology shall be submitted concurrently to both the Volusia County Traffic Engineer and the City of DeLand. A radius of influence map generated by Volusia County Traffic Engineering must be presented in conjunction with the submittal of the TIA methodology.

Recommended improvements made necessary by the development. These improvements shall be designed to maintain or improve the existing level of service within the study area provided in paragraph 2 above and to improve the efficiency of the streets and intersections impacted by the development.

- b. *Traffic impact studies for small developments.* For developments that will generate less than 1,000 trip ends per day, as determined by reference to the Institute of Traffic Engineers Trip Generation Manual, the applicant shall submit, under the seal of a Florida Licensed Professional Engineer qualified to perform such work, the calculations, data and references used to calculate the stated daily trip ends. The city planning department may require the applicant developer to conduct the following transportation impact analysis. The analysis shall compare the existing level of service to the adopted level of service established by the City of DeLand Comprehensive Plan for the impacted roads. The level of service shall be determined for conditions on the existing roads, to include any committed or funded improvements to those roads, meeting the minimum requirements for concurrency set forth in section 33-41.03(d)(3). The city planning department shall review with the applicant the methodology and procedure to be used in determining compliance with the concurrency management requirement, and determine the primary impact area and study

period. Any proposed reduction factors for internal capture of trips between and uses of a mixed-use project or for passerby trips shall be provided by the applicant at the meeting and considered by the department.

c. *Other transportation studies.*

1. For those roadway facilities which indicate a lower LOS than the adopted standard of the City of DeLand Comprehensive Plan, the city shall allow applicants to perform an operating LOS assessment based upon procedures outlined in the Florida Department of Transportation level of service manual, as it may be amended from time to time. A discussion of any proposed transportation system management and/or mitigation strategies shall be included in the study. The transportation study shall be signed and sealed by a registered professional engineer. The cost of this assessment shall be borne by the applicant. The city planning department in making its recommendations to the technical review committee shall consider the results of the study.

2. For development proposals impacting on roadway facilities which are within two percent of the established LOS and for which the preliminary analysis undertaken pursuant to the provisions contained in [section] 33-41.04(a)(1)b. of this article indicates the proposed development will result in a lower LOS than the adopted standard for the roadway, the city may require that a traffic study be undertaken fulfilling the requirements of [section] 33-41.04(a)(1)a.

d. *Reconciliation.* Should the applicant disagree with the results obtained by the city in its concurrency review, a transportation study pursuant to section 33-41.04(a)(1)c. of this article, may be performed at the option and expense of the applicant. The city planning department in making its recommendations to the technical review committee shall consider the results of the study.

2. *Potable water.*

a. *Submittals.* The applicant for a development permit shall submit, along with the application for a development permit, proof that sufficient capacity exists as demonstrated by one of the following:

1. Documentation from the DeLand Department of Public Utilities indicating that it has the capacity to serve the project as proposed, at or above the adopted level of service. If the ability to serve a proposed project is contingent upon planned facility expansion, details regarding such planned

improvements shall also be submitted. Prior to the issuance of a final development order by the city, the applicant may be required to enter into a utility service agreement with the city confirming the city's commitment and ability to serve the proposed project; or

2. A notarized statement or affidavit that there is an existing potable water well on the site and documentation that the well has sufficient capacity to meet all the demand for the development including necessary fire flow.
3. Documentation that the development will be served by a new well and that the site and development proposal is not a food establishment and is either a nonresidential development of less than 5,000 square feet, or a residential development of 19 or less units.

b. *Presumption of available capacity.* A presumption of available capacity shall be rendered by the city planning department upon receipt of one of the above.

3. *Wastewater.*

a. *Submittals.* The applicant for a development permit shall submit, along with the application for a development permit, proof that sufficient capacity exists as demonstrated by one of the following:

1. Documentation from the DeLand Department of Public Utilities indicating that it has the capacity to serve the project as proposed, at or above the adopted level of service. If the ability of the DeLand Department of Public Utilities to serve a proposed project is contingent upon planned facility expansion, details regarding such planned improvements shall also be submitted. Prior to the issuance of a final development order by the city, the applicant may be required to enter into a utility service agreement with the city confirming the city's commitment and ability to serve the proposed project; or,
2. In the case of a proposed residential development that is to be serviced by an on-site septic tank the following must be shown: (1) that the proposed development is at a density of no greater than one unit per acre; and (2) that the proposed development is to be located upon suitable soils and therefore eligibility for all applicable HRS permits for an on-site septic system, pursuant to 10D-6, F.A.C. [section 10D-6, Florida Administrative Code].

b. *Presumption of available capacity.* A presumption of available capacity shall be rendered by the planning director upon receipt of

one of the above.

4. *Drainage.*

a. *Submittals.* The applicant for a development permit shall submit, along with the application for the development permit, an affidavit acknowledging that all stormwater quality and quantity requirements of this chapter, the Florida Department of Environmental Protection, and the St. Johns River Water Management District can and must be met prior to the issuance of a certificate of occupancy for the proposed development.

b. *Presumption of available capacity.* The planning director upon receipt of the required affidavit shall render a presumption of available capacity.

5. *Solid waste.* Based upon the data and analysis contained in the City of DeLand Comprehensive Plan, adequate capacity exists for estimated demand for solid waste services. Therefore, a presumption of available capacity for all development shall be rendered by the director of planning, unless Volusia County (the provider of the service) indicates capacity is no longer available. The city shall contact Volusia County Solid Waste Services to include available capacity in the Concurrency Management System Annual Report. Due to the fact that the service is provided by Volusia County, the city shall periodically reassess the available capacity and a determination will be made as to whether the presumption of available capacity is to be continued.

6. *Recreation and open space.* Based upon the data and analysis contained in the City of DeLand Comprehensive Plan, adequate capacity exists for estimated demand for park and open space facilities. A presumption of available capacity for all development shall be rendered by the planning director. The Concurrency Management System Annual Report shall reassess and a determination will be made as to whether the presumption of available capacity is to be continued.

7. *Public schools.*

a. All development applications subject to school concurrency review as required by this Article shall submit a completed School Planning and Concurrency Application to the school district by the applicant/property owner.

b. School district staff shall review development application information submitted and shall evaluate the impact of the proposed development on the school capacity provided in the school district's Five-Year Facilities Work Program, the impact on

the adopted level service standards for public schools, and the projected timing and delivery of public school facilities to serve the proposed development.

- c. School district staff shall provide a concurrency report to the city. The report shall detail whether or not school capacity will be available to serve the proposed development. The report shall include a Certificate of School Concurrency if sufficient capacity exists for the proposed development or it may set forth conditions required to satisfy the requirements of school concurrency, including proportionate share mitigation, as described in section 33-41.07 of this chapter. The report shall include the information on concurrency assessments and recommending conditions of approval to the city commission for development applications.
- (b) *Mandatory review.* Any person engaged in development shall submit all information required by Article XII or XIII, depending upon the type of development, of this chapter to the city planning department on application forms provided by the department. The burden of showing compliance with the adopted levels of service and meeting the concurrency evaluation shall be upon the applicant. Concurrency reviews for public school facilities shall be conducted by the school district as described in section 33-41.07 of this chapter.
1. *Completeness review.* Within five days after receipt of an application, the planning department shall determine whether the application is complete. If it is determined that the application is not complete, written notice shall be forwarded to the applicant, either hand-delivered or by mail, specifying the deficiencies. The planning department shall take no further action on the application unless the deficiencies are remedied.
  2. *Determination of exemption.* The submitted information shall be reviewed by the department to determine whether the proposed development activity is exempt. If exempt from this section, the department shall issue a Certificate of Exemption to the applicant.
  3. *Determination of available capacity.* Within 45 days following receipt of a complete application, the technical review committee shall either conclude that adequate necessary public facilities exist or will exist for the proposed development and is therefore eligible for a Certificate of Capacity when considered for a final development order, or that inadequate necessary public facilities exist and the proposed development fails to meet concurrency. The recommendation shall be in writing and shall include the reasons for the recommendation. Detailed capacity review analysis shall be provided by the city's technical review committee for the following

development orders:

- a. Site plans;
- b. Preliminary plats for residential uses;
- c. Planned developments for both residential and nonresidential uses;
- d. Developments of regional impact.

and

4. *Final development orders.* When the city commission or the department is reviewing final development orders listed in paragraph 3. above, it shall determine the adequacy of necessary public facilities. If adequate necessary public facilities are found to exist, it shall issue a Certificate of Capacity with the final development order. If deficiencies are found to exist, the requirements of section (8) of this section shall apply. Upon issuance of a final development order, the capacity identified in the Certificate of Capacity shall be reserved for same time period as the approved development. The Certificate of Capacity shall be issued at the same time that the development order or permit is approved.
5. *Phased development.* In determining whether the necessary public facilities and services will be available concurrent with the impacts of development, the city may approve developments in stages or phases. Specific conditions for permitting each phase to proceed shall be included in an enforceable development agreement or development order to ensure that necessary public facilities and services will be in place when the impacts of the development occur. For phased or staged developments, calculation of the total need for public facilities and/or services shall be presented for the entire development upon site plan submittal, and shall include all proposed phases of development and land uses. In some cases, construction or acquisition of the necessary total facilities and services may be required in the initial phase of development.
6. *Development agreement.* The city and the applicant may enter into development agreements for the purpose of assuring the city that the applicant shall provide required public facility capacity. Any development agreement must provide one or more of the following assurances, acceptable to the city in form and amount, to guarantee the applicant's pro rata share of the cost of completing or providing any public facilities and services which may be necessary to maintain the adopted levels of service standards for the subject property:
  - a. Cash escrow;
  - b. Irrevocable letter of credit;

- c. Prepayment of impact fees; or
  - d. Prepayment of capacity/connection charges. Whenever an applicant's pro rata share of a public facility is less than the full cost of the facility, the city shall do one of the following:
    - 1. Contract with the applicant for the full cost of the facility, including terms regarding reimbursement of the applicant for costs in excess of the applicant's pro rata share; or
    - 2. Obtain assurances from other sources similar to those described above in this section; or
    - 3. Amend the Comprehensive Plan to modify the adopted level of service standard so as to reduce the required facility to equal the applicant's needs.
7. *Determination of inadequate capacity.* If the city denies a final development order because the city's analysis indicates a lack of sufficient capacity for any of the facilities required to meet concurrency, the applicant may challenge the concurrency determination by presenting substantial, competent evidence that sufficient capacity does exist by virtue of the following:
- a. The proposed development's impacts will differ from the impacts estimated by the city as a result of special circumstances of that development;
  - b. Based on the city's own information the analysis being used has an error in its base data;
  - c. In the case of roads, the applicant presents evidence through travel speed, distance and time studies that impacted roadway links actually operate at higher levels than indicated by the city. The city engineer before the commencement of such a study shall develop methodology for such travel speed/distance/time studies. In the event the travel time/distance/time studies are warranted, the city or its agent shall conduct such a study after receiving a fee from the applicant to cover the costs of conducting and analyzing the study. The applicant shall have the opportunity to review the methodology prior to the commencement of the study.
8. *Strategies to rectify lack of concurrency.* Should a development not pass the above concurrency evaluation, several strategies may be used to rectify this, including the following:
- a. A plan amendment which lowers the adopted level of service standard for the affected facilities and/or services.

- b. A reduction in the scale or impact of the proposed development.
  - c. Phasing of the proposed development to match the availability of capacity with the timing of each phase of the development.
- (c) *Optional review.* Any person may request a Preliminary Concurrency Determination at any time subject to payment of a fee established by resolution of the DeLand City Commission. A Preliminary Concurrency Determination is simply a quick determination by the DeLand Planning Department as to whether capacity for a particular development activity appears to exist. It reserves no capacity and is in no way binding upon the City of DeLand. All persons requesting a Preliminary Concurrency Determination shall complete the required forms provided by the City of DeLand Planning Department.

(Ord. No. 2008-39, § 14, 9-3-08)

33-41.05. *Concurrency management certification.*

- (a) *Certificates of concurrency.* There are hereby established two types of certification to be issued by the city in administering the concurrency management requirements of this article. Concurrency reviews for public school facilities shall be conducted by the school district as described in section 33-41.07. The certificates are the Certificate of Exemption and Certificate of Capacity and shall serve the following purposes:
1. *Certificate of Exemption.* A Certificate of Exemption shall be issued by the City of DeLand Planning Department upon finding that a development application is exempt from the requirements of this article. The certificate shall be included with all other required submittals for an application for a final development order or permit.
  2. *Certificate of Capacity.* The Certificate of Capacity shall be issued at final development review with the issuance of a final development order or permit, and shall constitute a commitment of capacity of necessary public facilities.
    - a. A Certificate of Capacity shall be valid for the same time period as the development order with which it was issued.
    - b. A Certificate of Capacity may be extended according to the same terms and conditions as the underlying development order. If the development is granted an extension, so shall the Certificate of Capacity. A Certificate of Capacity may be extended through and remain in effect for the life of each subsequent development order for the same parcel and development for as long as the applicant obtains a subsequent order prior to the expiration of the earlier development order.

- c. A Certificate of Capacity runs with the land and is valid only for subsequent development orders for the same parcel and development and to new owners of the original parcel for which it was issued.
- d. A Certificate of Capacity shall expire if the underlying development order expires or is revoked by the city and the capacity has not yet been extended to a subsequent development order for the same parcel.
- e. No further determination of capacity for the subject property shall be required before the expiration of the Certificate of Capacity except that any change in the density, intensity or land use which requires additional public facilities or capacity shall be subject to review and approval or denial by the city.

(Ord. No. 2008-39, § 15, 9-3-08)

33-41.06. *Concurrency management monitoring.*

- (a) *Generally.* In order to ensure that adequate necessary public facilities are available concurrent with the impacts of development on public facilities, the city shall establish and maintain the following monitoring practices.
  - 1. *Annual report.* The planning department shall monitor the cumulative effect of all approved development orders and development permits on the capacity of public facilities. The department shall prepare and present to the city commission and the public a report on the public facilities and level of service inventory for concurrency management. This report shall include the degree of any facility deficiencies and a summary of the impacts the deficiencies will have on the approval of future development orders. The department shall then recommend a schedule of improvements necessary to prevent a deferral or moratorium on the issuance of development orders.
  - 2. In the case of public school facilities, the planning department shall provide to the School Board the creation of subdivision and/or single-family lots equal to or less than three units, as described in the annual planning coordination process established by the Interlocal Agreement for Public School Facilities Planning. These units shall be included by the School Board in planning student allocations by school. Likewise, the school district shall prepare and provide the planning department with reports on enrollment capacity and maintain and publish data that identifies existing capacity and projected annual capacity, including the reservation of future capacity, consistent with the Interlocal Agreement.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02; Ord. No. 2008-39, § 16, 9-3-08)

33-41.07. *Public school facilities concurrency review procedures.*

- (a) *School planning and concurrency application.* All development applications subject to school concurrency review as required by this chapter shall submit a completed School Planning and Concurrency Application to the school district by the applicant/property owner. After review of the information provided, school district staff shall provide a concurrency report to the city. The report shall detail whether or not school capacity will be available to serve the proposed development. The report shall include a Certificate of School Concurrency if sufficient capacity exists for the proposed development or it may set forth conditions required to satisfy the requirements of school concurrency, including proportionate share mitigation. The department will include this information in concurrency assessments and recommending conditions of approval by the city for development applications.
- (b) *Certificate of School Concurrency.* A Certificate of School Concurrency shall be valid for the duration of the final development order for a site plan or preliminary plat issued by the city. A Certificate of School Concurrency issued to an applicant/property owner shall be site-specific and not be transferable to other sites without the approval of the school district and the city. A Certificate of School Concurrency shall be issued only if the following conditions are met:
  - 1. The impacts of the proposed development's projected student enrollment will not cause the adopted level-of-service (LOS) to be exceeded. If the projected student growth from the development does cause the adopted LOS to be exceeded in its particular concurrency service area (CSA), and if that type of school and capacity exists in one or more contiguous CSA's, then the development will be deemed to have met this particular school concurrency requirement. The adjacent CSA as determined by the policies and conditions established by the school board, and as included in the Interlocal Agreement for Public School Facilities Planning and the Public School Facilities Element of the Comprehensive Plan;
  - 2. The proposed school facility is consistent with the applicable land use categories and policies of the Comprehensive Plan. Schools shall be permitted in the future land use classifications as listed below:
    - a. Elementary schools shall be permitted in Educational, Low Density Residential, Urban Low Intensity, and Medium Density Residential.
    - b. Middle schools shall be permitted in Educational, Urban Low Intensity, Medium Density Residential, and High Density Residential.

c. High schools shall be permitted in Educational, High Density Residential, Mixed Commercial, and Highway Commercial.

(c) *Proportionate Share Mitigation.* In the event that it is determined that there is not sufficient capacity available to serve the proposed development, or if required infrastructure is not in place to serve the proposed schools, the applicant/property owner, the school district and the city shall enter into negotiations in an effort to mitigate the impact from the development. If the negotiation results in an executed mitigation agreement, a Certificate of School Concurrency shall be issued and shall be conditioned upon those mitigation measures agreed to by the applicant/property owner and the school district. If mitigation is not agreed to, the school district shall not issue a Certificate of School Concurrency. The department will include this information in concurrency assessments and recommending conditions of approval to the city commission for development applications.

1. Mitigation shall be directed to projects on the school district's financial feasible work program that the school district agrees will satisfy the demand created by the proposed development and shall be assured by a legally binding mitigation agreement between the school district, the city and the applicant. The mitigation agreement shall be executed prior to the city's issuance of the development order.
2. The applicant/property owner's total proportionate share obligation shall be calculated by multiplying the number of needed student stations generated from the proposed project, times the school district's current cost per student station, plus land cost for each type of school. (Number of needed student station x cost per student station) + cost of land for each school type = proportionate share obligation.
3. The student generation rates used to determine the impact of a particular development shall be the student generation rates adopted in the most recent school impact fee study.
4. The cost per student station shall be the most recent actual costs per student station, and capitalization costs if applicable, paid by the School Board for the equivalent school facility.
5. Mitigation options must consider the school district's educational delivery methods and requirements and the state requirements for educational facilities. The identified mitigation options are subject to negotiations between the applicant/property owner, the school district, and the city, and may include, but not be limited to, the following:

a. Donation of buildings for use as a primary or alternative learning facility.

- b. Renovation of existing buildings for use as learning facilities.
- c. Funding for or construction of permanent student stations or core capacity.
- d. Construction of schools in the school district's adopted Five-Year Capital Facilities Work Program ahead of schedule, upon agreement with the school board.
- e. Dedication of a school site as approved by the school board.
- f. Up-front lump-sum payment of school impact fees.
- g. Up-front payment of interest and other costs of borrowing.
- h. Payment of off-site infrastructure expenses that bring service to school site, including but not limited to roads, water, and/or sewer improvements.
- i. Payment of transportation costs associated with the movement of students as a result of an overcapacity school.
- j. Funding assistance with acquisition of a school site.
- k. Phasing of construction or delay of construction in order to timely plan for the availability of school capacity.
- l. Establishment of an educational facilities benefit district.
- m. Establishment of educational facilities mitigation banks.
- n. Any other measure approved by the school board which actually increases school capacity or accelerates a project on the Five-Year Work Program.

(Ord. No. 2008-39, § 17, 9-3-08)

**Sec. 33-42. - Impact fees for water and wastewater.**

33-42.01. *Incorporation by reference.* Impact fees for the potable water and wastewater facilities shall be as provided for in § 30-20 of the Code of Ordinances of the City of DeLand.

**Sec. 33-43. - Impact fees for parks and recreation.**

[Reserved for future use.]

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Sec. 33-44. - Impact fees for police.**

[Reserved for future use.]

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Sec. 33-45. - Impact fees for fire/rescue.**

[Reserved for future use.]

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Sec. 33-46. - Development exactions and required dedications.**

33-46.01. *Dedication of sites for public uses.* Dedication of sites for public uses shall be as required by section 33-89.01, article VIII of this chapter.

33-46.02. *Dedication of utility easements.* Dedication of utility easements shall be in accordance with the requirements of section 33-88.03, article VIII of this chapter.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Sec. 33-47. - Guarantees and sureties.**

33-47.01. *Applicability.*

- (a) The provisions of this section apply to all proposed developments in the city, including private road subdivisions.
- (b) Nothing in this section shall be construed as relieving a developer of any requirement relating to concurrency contained in this article.
- (c) This section does not modify existing agreements between a developer and the city for subdivisions platted and final development orders granted prior to the effective date of this chapter, providing such agreements are current as to all conditions and terms thereof.

33-47.02. *Improvements agreements required.* All subdivisions shall comply with the requirements of section 33-147, article XIII of this chapter. The approval of any development plan shall be subject to the developer providing assurance that all required improvements, including storm drainage facilities, streets and highways, water and sewer lines, survey reference markers, sidewalks, street name markers, bulkheads, bridges and replacement trees where required, shall be satisfactorily constructed according to the approved development plan. The following information shall be provided:

- (a) Agreement that all improvements, whether required by this chapter or constructed at the developer's option, shall be constructed in accordance with the standards and provisions of this chapter.
- (b) The term of the agreement indicating that all required improvements shall be satisfactorily constructed within the period stipulated. The term shall not exceed one year from the recording of the plat or 30 percent occupancy of the development, whichever comes first.

- (c) The projected total cost for each improvement. Cost for construction shall be determined by either of the following:
  - 1. Estimate prepared and provided by the applicant's engineer.
  - 2. Copy of the executed construction contract provided.
  - 3. Specification of the public improvements to be made and dedicated together with the timetable for making improvements.
  - 4. Agreement that upon failure of the applicant to make required improvements (or to cause them to be made) according to the schedule for making those improvements, the city shall utilize the security provided in connection with the agreement.
  - 5. Provision of the amount and type of security provided to ensure performance.
  - 6. Provision that the amount of the security may be reduced periodically, but not more than two times during each year, subsequent to the completion, inspection and acceptance of improvements by the city.

33-47.03. *Amount and type of security.*

- (a) The amount of the security listed in the improvement agreement shall be approved as adequate by the director.
- (b) Security requirements may be met by but are not limited to the following:
  - 1. Cashiers check.
  - 2. Certified check.
  - 3. Interest bearing certificate of deposit.
  - 4. Irrevocable letters of credit.
  - 5. Surety bond.
- (c) The amount of security shall be 110 percent of the total construction costs for the required developer-installed improvements. The amount of security may be reduced commensurate with the completion and final acceptance of required improvements. In no case, however, shall the amount of the bond be less than 110 percent of the cost of completing the remaining required improvements.
- (d) Standard forms are available from the city attorney's office and approved by the city commission.

33-47.04. *Completion of improvements.*

- (a) When improvements are completed, final inspection shall be conducted and corrections, if any, shall be completed before the city engineer recommends final acceptance. A recommendation for final acceptance shall be made upon receipt of a certification of project completion and one copy of all test results.
- (b) As required improvements are completed and accepted, the developer may apply for release of all or a portion of the bond consistent with the requirement in section 33-47.03(c) above.

33-47.05. *Maintenance of improvements.*

- (a) A maintenance agreement and security shall be provided to assure the city that all required improvements shall be maintained by the developer according to the following requirements:
  - 1. The period of maintenance shall be a minimum of one year.
  - 2. The maintenance period shall begin with the acceptance by the city of the construction of the improvements.
  - 3. The security shall be in the amount of ten percent of the construction cost of the improvements.
  - 4. The director shall maintain the original agreement.
- (b) Whenever a proposed development provides for the creation of facilities or improvements, which are not proposed for dedication to the city, a legal entity shall be created to be responsible for the ownership and maintenance of such facilities and/or improvements.
  - 1. When the proposed development is to be organized as a condominium under the provisions of chapter 718, Florida Statutes, common facilities and property shall be conveyed to the condominium's association pursuant to that law.
  - 2. When no condominium is to be organized, an owners' association shall be created, and all common facilities and property shall be conveyed to that association.
  - 3. No development order shall be issued for a development for which an owners' association is required until the documents establishing such association have been reviewed and approved by the city attorney.
- (c) An organization established for the purpose of owning and maintaining common facilities not proposed for dedication to the city shall be created by covenants running with the land. Such covenants shall be included with the final plat. Such organization shall not be dissolved nor shall it dispose of any common facilities or open space by sale or otherwise without first offering to dedicate the same to the city.

(Ord. No. 2002-09, §§ 1, 2, 2-18-02)

**Secs. 33-48—33-55. - Reserved for future use.**