



PLANNING BOARD MEETING CITY OF ST. PETE BEACH

155 Corey Avenue
St. Pete Beach, FL 33706

Monday, October 17, 2022
4:00 PM

Call to Order
Pledge of Allegiance
Roll Call

REGULAR MEETING

1. Approval of the Agenda -
 - a. **Action request: Motion to approve the October 17, 2022 Planning Board agenda**
2. Audience Comments - **Comments shall be limited to 3 minutes per person**
3. Approval of Minutes
 - a. **September 19, 2022 Planning Board Meeting**
4. Action Items
 - a. **Ord. 2022-xx: Private property and right-of-way landscaping standards (Sitting as Local Planning Agency)**
Ordinance 2022-xx, amending Land Development Code Division 22 – LANDSCAPING AND TREE PROTECTION to provide standards for planting trees in the City-owned right-of-way, instituting Florida native and non-palm tree requirements under specified circumstances, and providing additional definition to commercial and multi-family landscaping requirements.
5. Discussion Items
 - a. **Concurrency**
Discussing general concurrency requirements within St. Pete Beach.
6. Adjournment - Next Meeting November 14, 2022

APPEAL: In accordance with 286.0105, Florida Statute (Notices of meetings and hearings must advise that a record is required to appeal), if a person decides to appeal any decision made by this committee, board, agency, or commission with respect to any matter considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AMERICANS WITH DISABILITIES ACT (ADA): In accordance with the Americans with Disabilities Act and Florida Statutes, if any person with a disability defined by the ADA needs special accommodation to participate in this proceeding, then not later than two business days prior to the proceeding, he or she should contact City Hall at (727) 367-2735.

**The public is cordially invited to attend this meeting.
All agenda material is available for review at City Hall or www.stpetebeach.org.**

DRAFT PLANNING BOARD MEETING MINUTES

September 19, 2022 4:00 PM

PRESENT: Tiffany Secka, Chair
Bev Jackson, Vice Chair
Rachel Ciliberti, Member
Greg Premier, Member

EXCUSED: Tom DeYampert, Member

STAFF PRESENT: Jennifer McMahon, Chief Operating Officer
Matthew McConnell, Assistant City Attorney
Ginny Bodkin, Deputy City Clerk
Brandon Berry, Planner II

Chair Secka called the meeting to order at 4:00 PM, followed by the Pledge of Allegiance.

1. Approval of the Agenda – Discussion Item 5a., Concurrency, will be moved to next month.

Motion: Vice Chair Jackson moved, and Member Ciliberti seconded the approval of the agenda as amended; the motion carried unanimously.

2. Audience Comments - There were no audience comments.

Member Premier entered the meeting at 4:02 PM.

3. Approval of Minutes a. 8/15/2022

Motion: Member Premier moved, and Member Ciliberti seconded the approval of the minutes from the August 15, 2022 meeting as presented; the motion carried unanimously.

At 4:04 PM Chair Secka adjourned the meeting as Planning Board and reopened with the Board sitting as the Local Planning Agency (LPA).

4. Action Items –

a. Ord. 2022-xx: Residential and right-of-way landscaping standards (Sitting as Local Planning Agency (LPA))

Chief Operating Officer Jennifer McMahon explained that after the last two month's discussions on landscaping, the City has provided proposed changes to landscaping requirements within the Land Development Code, for Board review. The purpose of the changes would be to establish standards for right-of-way landscaping and to require certain native and non-palm trees be used during development and redevelopment. She reviewed the recommendations from the presentation and asked for Board input, discussion and questions. The presentation is part of the meeting record. Staff recommendation was for approval of the proposed ordinance.

Following the presentation, Chair Secka began a discussion on several concerns: multi-family residences and commercial were not included in the recommended amendments; properties with 20+ palms would incur great expense for removal and replacement to be compliant, in cases of substantial improvement; and the issue of shedding trees from neighboring properties is not addressed.

Vice Chair Jackson provided a handout from the Historic Preservation Board's July meeting to draw attention to the enforcement of standards of any kind. Ms. McMahon explained that the City has added two contractors to monitor building to the Overlay. Regarding landscaping, a new process has begun city-wide in which Parks Staff reviews the landscape plan for compliance prior to any permits being issued by the Building Department. Assistant City Attorney McConnell added that if an owner applies for and receives a Certificate of Occupancy for a project and later removes a tree, the City requires replacement of that tree within 30 days.

For next month's meeting, the following will be brought back to consider holistically:

- Addition of multi-family and commercial properties
- Better clarify the acronym 'DBH' is in the Code
- Are there non-shedding trees to be recommended?
- Addressing properties with 20+ palms

b. Ord. 2022-xx: Beach ordinance (Sitting as LPA)

Ms. McMahon explained that work has been ongoing to expand, update and consolidate all beach related regulations into one location (from LDC and Codes) to improve clarity for staff, residences, and businesses. She reviewed a presentation on the proposed Ordinance that included areas of the code expansion and the amendments to the sections that currently reside in the Land Development Code or would be relocated. Questions and discussion ensued throughout the presentation; the presentation is part of the meeting record.

Motion: Vice Chair Jackson moved, and Member Ciliberti seconded that the Planning Board, sitting as the Local Planning Agency, finds the amendments of (Beach) Ordinance 2022-xx that pertain to the Land Development Code consistent with the St. Pete Beach Comprehensive Plan and recommends the amendments to the City Commission; the motion carried unanimously.

Chair Secka adjourned the LPA meeting and reconvened as the Planning Board at 4:35.

5. Discussion Items

a. Concurrency

Continued to next meeting.

b. Residential permitting process

Vice Chair Jackson wanted to ensure that processes are being adhered to in order to avoid errors or omissions. Ms. McMahon explained that the consultants that have been put in place will improve the review and compliance of the process. There was a brief discussion regarding permit time limits and extensions, zoning reviews, and permits for condominiums (which are considered commercial).

6. Adjournment – Next meeting 10/17/2022. There being no further business, Chair Secka adjourned the meeting at 4:50 PM.

These minutes will be presented for approval at the October 17, 2022 Planning Board meeting.

PLANNING BOARD MEETING CITY OF ST. PETE BEACH

Agenda Report

Issue Considered: Ord. 2022-xx: Private property and right-of-way landscaping standards (Sitting as Local Planning Agency)

Date: October 17, 2022

Prepared By: Brandon Berry, Planner II

Through: Jennifer McMahon, Chief Operating Officer

Summary of Issue: Ordinance 2022-xx, amending Land Development Code Division 22 – LANDSCAPING AND TREE PROTECTION to provide standards for planting trees in the City-owned right-of-way, instituting Florida native and non-palm tree requirements under specified circumstances, and providing additional definition to commercial and multi-family landscaping requirements.

Funding: N/A

Requested Motion: The Planning Board, sitting as the Local Planning Agency, finds Ordinance 2022-xx consistent with the St. Pete Beach Comprehensive Plan and recommends the ordinance to the City Commission.

Attachments:

1. Agenda Staff Report Landscaping Updates_Revised
2. Ordinance 2022-xx SFR Landscaping_Revised

CITY OF ST. PETE BEACH PLANNING BOARD STAFF REPORT

TO: Planning Board

FROM: Jennifer McMahon, Chief Operating Officer

DATE: October 17, 2022

SUBJECT: Ordinance 2022-xx, amending Land Development Code Division 22 – LANDSCAPING AND TREE PROTECTION to provide standards for planting trees in the City-owned right-of-way, instituting Florida native and non-palm tree requirements under specified circumstances, and providing additional definition to commercial and multi-family landscaping requirements during renovations and building additions.

BACKGROUND:

St. Pete Beach has modified its landscaping code over the last several years to provide homeowners greater choice in picking the vegetation that suits their preferences, while also incentivizing lot improvements that produce greater canopy spread, increased permeable surfaces, and hardier plantings. To further the intent of these amendments and complement the City's recent street tree program, this ordinance proposes code changes that will permit the planting of some required single- and two-family vegetation in the right-of-way. Furthermore, adoption of this ordinance would institute requirements for Florida native and non-palm trees for all newly-developed and redeveloped properties.

Florida native plantings provide a host of benefits, such as trees that have a greater chance of adapting and thriving in the local environment, and providing support for local ecosystems. Non-palm trees, which the City's landscaping code classifies as "canopy" and "understory" trees, often provide more substantial canopies and can provide exponentially greater carbon sequestration than equivalent palms. This ordinance requires that one-half of trees on new developments and redevelopments be Florida native and non-palm species. For substantially-improved properties, it provides for right-of-way plantings or landscaping fund contributions when the property is already compliant with tree count and cannot realistically accommodate additional landscaping.

To provide additional space for trees to thrive and a pedestrian canopy, this ordinance also proposes allowing for up to half of a one- or two-family property's required landscaping to be placed in the right-of-way in front of the home. A list of recommended trees, evaluation criteria for alternative plantings, and procedures for obtaining a permit, are outlined.

Furthermore, Staff are requesting that commercial and multi-family landscaping requirements be amended to provide clarification to existing requirements and codify Staff interpretation. These amendments include clarifying that additional landscaping is only required in conjunction with building additions and renovations when the property is not already compliant with the landscaping division, specifying that changes of use require the property to be reviewed to the landscaping requirements of the new use, and requiring that additional required landscaping be planted to bring the property into increased compliance with interior and buffer requirements unless impractical.

Finally, this ordinance recommends that non-evergreen trees be planted so as to not cause shedding leaves or fruit to land on neighboring property when viable and when planted due to landscaping requirements.

PLANNING BOARD:

The Planning Board, sitting as the LPA, will review proposed Ordinance 2022-xx on October 17, 2022 for consistency with St. Pete Beach's Comprehensive Plan.

CONSISTENCY WITH THE COMPREHENSIVE PLAN – STAFF REVIEW

Staff has reviewed the proposed Ordinance and finds it to be consistent with the City of St. Pete Beach's Comprehensive Plan specifically as follows:

FUTURE LAND USE ELEMENT - Future Land Use Policies - Green Practices, Residential Character and Introduction to Land Use Categories

GOAL 1:

Support rebuilding and maintaining a sustainable carbon-neutral community by adopting and implementing land development and building regulations that: protect and conserve water resources; promote energy efficient buildings; encourage environmentally sensitive site and building design; facilitate recycling of construction materials and debris; support innovative building and site design that recognizes the complexities and environmental sensitivities of our coastal environment and its vulnerability to storms; and protect and enhancement of the overall environmental quality of our City.

Objective 1.2

Transform the City's development and permitting regulations into a Smart Growth and Quality Development Code, promoting flexibility, mixed use, incorporating economic and environmentally sustainable standards and pilot Green practices program incentives.

Policy 1.2.3

The City shall identify and promote the use of native and drought tolerant landscape with particular emphasis on Florida-friendly landscaping techniques including use of reclaimed water, and rain sensor irrigation systems to conserve water resources.

Objective 2.1

The integrity and quality of life throughout the City, including existing residential neighborhoods, as well as core commercial and resort areas, will be maintained through the enforcement of the land development regulations and shall be encouraged to be improved, and for those properties experiencing blighting conditions such as deterioration, degradation, and distress shall be encouraged to redevelop through the use of land development regulations and other incentives, in accordance with the Future Land Use Element.

Policy 2.1.6

The conservation, maintenance and rehabilitation of existing residential areas shall be encouraged through provisions contained in the land development regulations and other applicable City codes.

COASTAL AND CONSERVATION ELEMENT

GOAL 1:

To ensure the highest environmental quality possible, the City of St. Pete Beach shall conserve, protect and appropriately manage the natural resources (aquatic, wetland and terrestrial).

Objective 1.4

The City shall conserve, appropriately use and protect native vegetation.

Policy 1.4.2

Native vegetation shall receive priority in the landscaping.

STAFF RECOMMENDATION:

Staff recommends the Planning Board, sitting as the LPA, recommend approval of Ordinance No. 2022-xx and find it consistent with the city's Comprehensive Plan as stated in the staff report.

Ordinance 2022-XX

AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT CODE DIVISION 22 – LANDSCAPING AND TREE PROTECTION; SECTION 22.4. – TYPE, QUALITY AND SIZE OF PLANT MATERIAL; SECTION 22.5 – LANDSCAPING FOR SINGLE-FAMILY AND TWO-FAMILY DWELLINGS; SECTION 22.6 – LANDSCAPING FOR ALL OTHER DEVELOPMENTS; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY; CORRECTION OF SCRIVENER’S ERROR; CONSTRUCTION; PUBLICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of St. Pete Beach promotes the use of native and Florida-friendly landscaping within the City.

WHEREAS, the City Commission recognizes that robust landscaping provisions can result in greater choice for homeowners and businessowners while providing ecological benefits, hardier plantings, and a reduction in the heat island effect.

WHEREAS, on September 19, 2022 and October 17, 2022, the City’s Planning Board, sitting as the Local Planning Agency, held public hearings to consider the proposed Land Development Code changes and provided recommendations to the City Commission.

WHEREAS, the City Commission has found this ordinance to be in the best interest of the citizens of the City, and preserves safety and welfare.

WHEREAS, notice of this ordinance has been provided in accordance with applicable law.

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

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

SECTION 2. Language in the City’s Land Development Code is to be amended as follows:

DIVISION 22 – LANDSCAPING AND TREE PROTECTION

Sec. 22.4. Type, quality and size of plant material.

- (c) *Trees.* Except as otherwise provided herein, all trees planted under the provisions of this Code shall be of a species having an average crown of greater than 15 feet at maturity and having a trunk which can be maintained in a clean condition, free of

Words ~~stricken~~ through shall be deleted. Words underscored constitute the amendment proposed. The symbol *** constitutes code sections not shown for purposes of brevity. Remaining provisions are now in effect and remain unchanged.

branches, from grade to five feet above grade. Trees having an average mature spread of crown less than 15 feet may be substituted by grouping the trees so as to create the equivalent of a 15-foot crown spread.

- (1) Native requirements. One-half of the trees required shall be Florida native species. When this results in a fractional number, required native species for the property shall be rounded up to the nearest whole number. Sources for Florida native plantings may include the Florida Native Plant Society, University of Florida IFAS, or similar organizations as determined by the city manager.
- (2) Non-palm requirements. One-half of the trees required shall be non-palm species. When this results in a fractional number of plantings, required non-palm trees for the property shall be rounded to the nearest whole number.
- (13) Canopy trees shall have a minimum height of 12 feet and a DBH dimension of three inches at the time of planting. A recommended list of canopy trees and palms to be used includes but is not limited to the following types:

Quercus virginiana (Live Oak)

Conocarpus erectus (Buttonwood)

Conocarpus erectus serviceus (Silver Buttonwood)*

Tabebuia Caraba (Silver Trumpet/Yellow Flower)*

Pinus elliottii (Slash Pine)

Tabebuia argentia (Gold Tree)

Swietenia mahogani (Mahogany)

Celtis laevigata (Sugarberry)

Platanus occidentalis (Sycamore)

Juniperus silicicola (Southern Red Cedar)

Bucida buceras (Black Olive)

- (24) One of the following palms is equivalent to one required canopy tree when planted at the required height of 12 feet of clear trunk:

Phoenix dactylifera (Medjool Date Palm)*

Phoenix canariensis (Canary Island Date Palm)

Roystonea elata (Royal Palm)*

Cocos nucifera (Coconut Palm)*

Or any single or multi-stemmed palm known to be of equivalent mature size.

- (35) Three of the following palms are equivalent to one required canopy tree when planted at the required height of eight feet of clear trunk:

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Syragus romanzoffiana (Queen Palm)

Acoelorrhaphe wrightii (Paurotis Palm)

Sabal palmetto Cabbage Palm (Sabal Palm)*

Washingtonia robusta (Washingtonian Palm)

Or any single palm known to be of equivalent mature size.

- (46) Required canopy trees may be replaced with under-story trees when the mature height of the canopy trees will conflict with overhead power lines, excluding service drops. Appropriate setbacks of trees from such power lines, as referenced by Florida Power and Light's "Plant the Right Tree in the Right Place" publication shall be required, a copy of which is on file at the office of the city clerk.

- (57) Accent/under-story trees shall be a minimum of eight feet in overall height and a tree DBH dimension of two inches at the time of planting.

- (68) The following is a recommended list of accent/under-story trees to be used:

Jatropha Hastata Compacta (Jatropha)*

Coccoloba Uvifera (Sea Grape)

Coccoloba diversifolia. (Pigeon Plum)

Tecoma stans (Yellow Elder)

Persea borbonia (Redbay)

Ilex vomitoria (Yaupon Holly)*

Callistemon viminalis (Weeping bottlebrush)

Eriobotrya japonica (Loquat)

Myrica cerifera (Wax Myrtle)

Lagerstroemia indica (Crepe Myrtle)

- (9) Tree plantings in the City-owned right-of-way shall be a minimum of twelve feet in overall height and a tree diameter of three inches measured 4.5 feet above the ground at the time of planting. However, this requirement may be modified to no less than eight feet in height and a tree diameter of two inches measured 4.5 feet above the ground to avoid conflicts with utilities, visibility, or to address other concerns. The following is a recommended list of trees to be planted in the right-of-way:

Chrysophyllum oliviforme (Satinleaf)

Cordia sebestena (Geiger Tree)

Coccoloba divesifolia (Pigeon Plum)

Conocarpus erectus (Green Buttonwood)

Conocarpus erectus var. sericeus (Silver Buttonwood)

Citharexylum spinosum (Florida Fiddlewood)

Ilex cassine (Dahoon Holly)

Other species may be considered by the city manager in addition to those listed above. Consideration may be given to the salt and wind tolerance of the species, light and soil demands, root habits, mature canopy spread, and risk of harm to passerby from spiny or otherwise dangerous foliage.

- a. All right-of-way tree plantings shall be Florida native species and shall not conflict with existing or planned utilities, access, other improvements, or intersection visibility requirements as specified in section 6.21. Evergreen trees are strongly preferred. Additional concerns may be grounds for denial or landscaping plan modification as determined by the city manager at their discretion.
- b. In general, the setback of right-of-way plantings should be at least half of the mature canopy from the street, other trees, and utility poles. This standard may be modified by the city manager with evidence that the plantings will not cause conflicts at maturity.
- c. A right-of-way permit shall be required for all right-of-way plantings, and the city manager may require additional assurances such as recording of the permit or simultaneous issuance of an irrigation permit before approving right-of-way plantings.
- d. Maintenance of right-of-way plantings is the responsibility of the property owner who installed them and their successors. In instances where trees placed in the right-of-way function as required plantings for a property, as may be permitted elsewhere in this division, trees shall be maintained and replaced as necessary to maintain minimum property requirements. Should a property owner wish to no longer maintain their right-of-way plantings, they may request to provide the plantings to the City for maintenance. However, the zoning lot must be planted to meet the minimum tree requirements based on this division, and a denial of the City to assume maintenance will require the property owner to remove or relocate the trees and restore the right-of-way at their sole expense.

- (10) Compliance with tree requirements. All newly-developed and redeveloped properties must fully comply with this section. Substantially-improved properties that meet the required tree count but not the native and/or non-palm ratios listed in (1) and (2) above, and where it can be proven to the satisfaction of the city manager that additional plantings on the property would imperil existing structures, utilities, or healthy trees, may have their landscaping planted

in the right-of way with approval of the city manager or contribute to the City's landscaping fund. This option shall be in addition to the provisions of sec. 22.5(c) and apply to all substantially-improved properties. For purposes of this item, required native and/or non-palm landscaping shall be classified as the number of trees required to bring the property into compliance with items (1) and (2) above. In the case of a landscaping fund contribution, the payment must be equal to a quote for the aforementioned landscaping provided by a registered landscaping company.

- (11) *Native and non-palm standards for developed properties.* When a tree is removed from a developed property, and the property does not comply with the requirements of items (1) and (2) above, required replacement trees must contribute toward the native and non-palm requirements of this section. When additional landscaping is required for developed multifamily, commercial or office properties as provided in section 22.6, and the property does not comply with the requirements of items (1) and (2) above, new landscaping shall be required to contribute toward the native and non-palm requirements of this section.
- (12) *Placement of non-evergreen trees.* When spatially practical, non-evergreen trees should be planted such that the average mature canopy for the species would not extend over the property line to abutting private property. Evergreen trees shall be those classified as such in the UF IFAS publication EES-57, "Native Trees for South Florida" (2020) or a publication determined by the city manager to be of similar regard. Average mature canopy shall be the numerical midpoint of the average canopy for the species specified in the U.S. Department of Agriculture Forest Service "ST-" fact sheet series or publications determined by the city manager to be of similar regard. Spatially practical means that the relocation of the tree would not conflict with the potential building envelope for the property as specified in the zoning district regulations, would not cause interference with utilities, other required landscaping or structure foundations, would not reduce the density of plantings in a required buffer or required interior vegetation, or reduce the property below its non-canopy or Florida native tree requirements. This standard shall apply only to trees planted as of the date of this ordinance, and shall exclude any tree which naturally takes root via the dropping of seed or other natural mechanism that lacks an intentional human action to cultivate.

Sec. 22.5. Landscaping for single-family and two-family dwellings.

All new or substantially improved single-family and two-family dwellings shall be landscaped in accordance with this subsection prior to the issuance of a certificate of occupancy.

- (c) *Right-of-way plantings.* Up to half of the required trees for single-family and two-family

dwelling may be permitted to be planted in the right-of-way between the zoning lot and the street. All right-of-way plantings shall require approval through a right-of-way utilization permit. Additional criteria may be found in section 22.4(c).

- (ed) *Other materials.* The remainder of the required landscaped areas shall be adequately landscaped with shrubs, grass, ground cover or other landscape treatment as described in subsection 22.4.

Sec. 22.6. Landscaping for all other developments.

- (a) *New multifamily and all nonresidential developments.* New multifamily and all nonresidential developments shall be landscaped in accordance with the applicable provisions of this ~~section~~division.
- (b) *Additions to existing buildings.* When the cost of any addition to or renovation of an existing multifamily or nonresidential building is determined to be a substantial improvement, as defined in Division 2, the property shall be landscaped in accordance with paragraph (a) prior to the issuance of a certificate of occupancy. If the proposed addition or renovation will not constitute a substantial improvement and if the property does not comply with the requirements of this division, one square foot of landscaping for each one square foot of additional building area shall be required. If no buildings are constructed, and the property does not comply with the requirements of this division, landscaping equal to the following table shall be required.

Cost of Renovation	Dollar Amount of Landscaping Required
\$1,001.00—\$10,000.00	25 percent of renovations costs
\$10,001.00—\$25,000.00	20 percent of renovations costs
\$25,001.00—\$100,000.00	15 percent of renovations costs
Over \$100,001.00	10 percent of renovations costs

When an existing property is required additional landscaping due to building additions or renovations, the additional landscaping shall be planted to bring the property into increased compliance with the relevant buffer and interior landscaping requirements of this division unless determined by the city manager to be spatially impractical. In the event that the required landscaping cannot be placed on the property in such a way as to permit proper maintenance, said landscaping may be placed in the public right-of-way with the approval of the city. If that is not practical, a payment in accordance with the table above may be made to the city for landscaping in an appropriate area.

- (c) *Changes in use.* ~~Changes in use of existing buildings shall require the landscaping of the property to bring it into full compliance with all the standards provided in this section.~~ Any site or renovation work performed for the purpose of changing the use of a building or structure shall require landscaping in accordance with the type of work as specified in (b) preceding. In determining whether the site meets the requirements of this division, the site shall be reviewed under the landscaping requirements of the new use.

- (d) *Community Redevelopment District (CRD)*. All new projects within the CRD abutting Gulf Boulevard and Blind Pass Road are encouraged to utilize plant material marked with an (*) within the front setback.

SECTION 3. Codification. This Ordinance shall be codified in the Code of Ordinance of the City of St. Pete Beach.

SECTION 4. Conflicts. All ordinances or parts of ordinances, in conflict herewith are hereby repealed to the extent of any conflict with the Ordinance.

SECTION 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance as they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 6. Scrivener's Error. The City Attorney may correct scrivener's errors found in this Ordinance by filing a corrected copy of this Ordinance with the City Clerk.

SECTION 7. Construction. This Ordinance is to be liberally construed to accomplish its objectives.

SECTION 8. Publication. This Ordinance shall be published in accordance with the requirements of law.

SECTION 9. Effective Date. This ordinance shall take effect immediately upon adoption.

FIRST READING: _____
 PUBLISHED: _____
 SECOND READING: _____
 PUBLIC HEARING: _____

CITY COMMISSION, CITY OF ST. PETE
 BEACH, FLORIDA.

 Alan Johnson, Mayor

I, Amber LaRowe, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law

Words ~~stricken~~ through shall be deleted. Words underscored constitute the amendment proposed. The symbol *** constitutes code sections not shown for purposes of brevity. Remaining provisions are now in effect and remain unchanged.

this _____ day of _____, 2022.

Amber LaRowe, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Andrew Dickman, City Attorney

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PLANNING BOARD MEETING CITY OF ST. PETE BEACH

Agenda Report

Issue Considered: Concurrency

Date: October 17, 2022

Prepared By: Jennifer McMahon, Chief Operating Officer

Through:

Summary of Issue: Discussing general concurrency requirements within St. Pete Beach.

Funding: N/A

Requested Motion: For discussion only.

Attachments: 1. LDC DIVISION_29
CONCURRENCY_MANAGEMENT

DIVISION 29 CONCURRENCY MANAGEMENT¹

¹Editor's note(s)—Ord. No. 2017-01, § 2(Exh. A), adopted Feb. 28, 2017, repealed Div. 29, §§ 29.1—29.13, and reenacted a new Div. 29, §§ 29.1—29.13, as set out herein. Former Div. 29 pertained to similar subject matter and derived from Ord. No. 2006-04, § 1, adopted Jan. 24, 2006; Ord. No. 2007-01, §§ 1, 2, adopted Jan. 23, 2007; Ord. No. 2009-05, § 1, adopted April 28, 2009; and Ord. No. 2015-22, § 6, adopted Dec. 15, 2015.

Sec. 29.1. Purpose and declaration of public policy.

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.2. Definitions.

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

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

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

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

- (1) Type of proposal.
- (2) Development potential, including site acreage, number of residential units, number of transient lodging units, nonresidential use, type of development, and building square footage.
- (3) Individual public facilities reports from the concurrency management team, if required.
- (4) Level of service capacity status review, if required.
- (5) Permitted impacts for each public facility and service, where applicable.
- (6) The date of issuance of certificate of concurrency.

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

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

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

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

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

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

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

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

FDOT means the Florida Department of Transportation.

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

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

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

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

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

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

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

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

SIS means strategic intermodal system.

Traffic concern area means an area within which the level of service for a given road facility has been determined by data from the concurrency management monitoring system to have reached a level of service D

during the peak hour or is expected to reach a level of service E or worse during the peak hour in the next five years and no construction improvements are planned in the next five years.

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

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

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.3. Levels of service adopted by reference.

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.4. General requirements.

- (a) A certificate of concurrency shall be required prior to the issuance of any development permit for a non-exempt development project. The City of St. Pete Beach shall not issue any development order (excluding future land use or zoning map amendments) or building permit for any project that results in a reduction of the level of service requirements established and adopted in the City of St. Pete Beach Comprehensive Plan. An applicant must prepare and complete an application for a certificate of concurrency including an infrastructure study as determined to be necessary by the Technical Review Committee. If a development will require more than one development permit, the issuance of a certificate of concurrency shall occur prior to the issuance of the initial permit. Upon request by applicants, a preliminary concurrency review shall be performed and a conditional certificate of concurrency may be issued. This conditional certificate shall not be binding upon the city and shall only be effective for the year in which the annual concurrency monitoring report was issued. Only those certificates of concurrency issued for development permits shall be binding. Applicants may be charged a fee established by the city commission for certificates of concurrency.
 - (1) *Application for development.* The property owner, or authorized representative, must provide a complete application for development containing the required documentation for the specific development order or permit. The Technical Review Committee shall then review the application for completeness in a timely manner to ensure that the required information is sufficient to accept the application and continue its review.
 - (2) *Development review.* When the application for development has been accepted, it shall be processed and reviewed for impacts of the development on the public facilities and services identified in this division.
 - (3) *Concurrency review.* The concurrency review shall compare the available and reserved capacity of the facility or service to the demand projected for the proposed development. The available capacity shall be determined by adding the total of the existing excess capacity and the total future capacity of any

proposed construction or expansion that meets the requirements of section 29.6. The levels of service (LOS) of all facilities and services must be sufficient before a development permit can be issued.

- a. *Traffic restriction and traffic concern areas.* Traffic restriction and concern areas shall be designated on an annual basis at the time the annual concurrency monitoring report is issued. These areas will be designated based on the criteria defined in section 29.2. Applications for development permits within these areas may require detailed traffic studies.
 - 1. If the development is found to be in a traffic restriction area, a traffic study shall be required. If the traffic study indicates that the affected roadway is not significantly degraded, the project will be found concurrent for traffic.
 - 2. If the development is found to be in a traffic concern area, a traffic study may be required. If the traffic study indicates that the affected roadway LOS may be lowered below the adopted LOS, the project will be found concurrent for traffic only if provisions and measures are attached as conditions to prevent the reduction of the LOS.
 - 3. If the development is found to be in a traffic restriction or traffic concern area and the traffic study indicates that the affected roadway is significantly degraded, the project will be found concurrent for traffic only if provisions and measures are attached as conditions to prevent the significant degradation of the affected roadway.
 - 4. If the development is not found to be in a traffic restriction or traffic concern area but the estimated traffic volumes resulting from the development degrade the peak hour LOS below the adopted LOS standard, the project will be found concurrent for traffic only if mitigation provisions are attached as conditions to prevent the degradation of the affected roadway below the adopted LOS standard.

(4) *Certificate of concurrency.*

- a. The certificate of concurrency shall indicate the date of issuance and shall automatically expire simultaneously with the expiration of the development permit to which it applies. In the event that a time extension is requested prior to the expiration of the development permit, then the accompanying certificate of concurrency may be renewed upon determination by the Technical Review Committee that the conditions of concurrency will still be met.
- b. Any development order or permit that is issued within the effective period of a validly issued certificate of concurrency shall be vested for the purposes of concurrency until the expiration of that development order or permit, provided that development commences within the validity period of the development order or permit and continues in good faith.

(5) *Development order or development permit compliance.*

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

as conditions of approval as part of the development order. The Technical Review Committee shall document its findings pertaining to its review.

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.5. Exemptions.

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

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.6. Minimum requirements for concurrency.

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

- (a) For potable water, sanitary sewer, solid waste, and drainage one of the following are the minimum standards that must be met to satisfy the concurrency requirement:
 - (1) The necessary facilities and services are in place at the time a development permit or order is issued;
 - (2) A development permit or order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
 - (3) The necessary facilities are under construction at the time a permit or order is issued;
 - (4) The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. § 163.3220, or an agreement or development order issued pursuant to F.S. Chapter 380.
- (b) For recreation and open space, one of the following are minimum standards that must be met to satisfy the concurrency requirement:
 - (1) Compliance with the standards in subsections (a)(1)—(4) of this section;
 - (2) At the time the development permit or order is issued, the necessary facilities and services are the subject of a binding executed contract which provides for the commencement of the actual construction of the required facilities, or the provision of services within one year of the issuance of the development permit or order;
 - (3) The necessary facilities and services are guaranteed in an enforceable development agreement which requires the commencement of the actual construction of facilities or the provision of services within one year of the issuance of the applicable permit or order. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. § 163.3220 or an agreement or development order issued pursuant to F.S. Chapter 380.

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- (c) For roads and mass transit, where the city has committed to provide the necessary public facilities and services in accordance with the five-year schedule of capital improvements, the city will satisfy the concurrency requirement by complying with the standards in subsections (a)(1)—(4) and (b)(2) of this section and by assuring that the following provisions are met:
- (1) The capital improvements element and schedule of capital improvements, in addition to meeting all of the other statutory and rule requirements, is financially feasible. The schedule of capital improvements may include those projects included in the county capital improvement element or in the first three years of the adopted state department of transportation five-year work program.
 - (2) The five-year schedule of capital improvements which includes both necessary facilities to maintain the adopted level of service standards to serve the new development proposed to be permitted and the necessary facilities and services required to eliminate that portion of existing deficiencies which are a priority to be eliminated during the five-year period.
 - (3) A financially feasible funding system based on currently available revenue sources which is adequate to fund the public facilities and services required to serve the development authorized by the development order and development permit and which are included in the five-year schedule of capital improvements.

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

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

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

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.8. Concurrency annual monitoring report.

- (a) On an annual basis, the city manager shall prepare a concurrency annual monitoring report. The city manager shall convey such annual report to the city commission.

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.9. Providing for intergovernmental coordination.

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.10. Providing for adequate funding.

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.11. Enforcement.

- (a) Violations of this division shall be subject to prosecution and punishment pursuant to section 1-14 of the Code of Ordinances.
 - (b) In addition to the penalties provided by subsection (a) of this section for violation of this division, any violation of this article shall be subject to appropriate civil action in the court of appropriate jurisdiction.
- (Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.12. Proportionate fair share program.

- (a) *General requirements.*
 - (1) An applicant may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair-share contribution, pursuant to the following requirements:
 - a. The proposed development is consistent with the comprehensive plan and applicable land development regulations; and
 - b. The five-year schedule of capital improvements for St. Pete Beach includes a transportation improvement(s) that, upon completion, will mitigate the transportation impacts of the proposed development in accordance with the requirements of this subsection.
 - (2) The applicant may also choose to satisfy transportation concurrency by contributing to an improvement that, upon completion, will satisfy the requirements of this subsection, but that is not contained in the Schedule where the following apply:
 - a. St. Pete Beach adopts, by resolution or ordinance, a commitment to add the improvement to the schedule no later than the next regularly scheduled update. To qualify for consideration under this subsection, the proposed improvement must be determined to be consistent with the comprehensive plan, and in compliance with the provisions of this subsection.
 - b. If the funds allocated for the schedule are insufficient to fully fund construction of a transportation improvement required for the applicant to comply with the terms of this subsection, the city may enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will significantly benefit the impacted transportation system.
 - c. The improvement or improvements funded by the proportionate fair-share component must be adopted into the schedule.
 - d. Any improvement project proposed to meet the applicant's fair-share obligation must meet design standards of the city, county and FDOT as applicable.
- (b) *Proportionate fair share mitigation agreement.*
 - (1) Upon notification that a proposed development project is subject to transportation concurrency regulations and is eligible to participate in the proportionate fair share program, the applicant shall be notified in writing of such during the site plan review process pursuant to section 5.1 of Division 5 herein..

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

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

OR

$$\text{Proportionate Fair-Share} = \Sigma [((\text{Development Trips}_{\text{sub}}) / (\text{SV Increase}_{\text{sub}})) \times \text{Cost}_{\text{sub}}]$$
Where:

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

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

Cost;sub\sub; = Adjusted cost of the improvement to segment "i". Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

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

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

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

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)

Sec. 29.13. Concurrency monitoring system.

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

- (a) All changes in zoning districts.
- (b) A summary of all building permits.
- (c) A summary of all demolition permits.

(d) Summary of all certificates of occupancy.

(e) A summary of systems and the impacts incurred.

Compliance with the City's existing levels of service will be calculated and capacity reserved at the time of final action of an approved site plan or building permit if no site plan is required. If no site plan is required, or an enforceable Developers Agreement then capacity shall be reserved at the time of final action. Capacity reservation shall be valid for 18 months. If construction is not initiated during this period, the reservation shall be terminated.

(Ord. No. 2017-01, § 2(Exh. A), 2-28-2017)