
Sec. 94-580. - Standards of concurrency review.

The following standards of review shall be utilized to determine whether the LOS standards have been met:

1. *[Potable water, sewer, solid waste and drainage.]* For potable water, sewer, solid waste and drainage, the following standards must be met, at a minimum, to satisfy the concurrency requirement:
 - a. The necessary facilities and services are in place at the time a final development order is issued;
 - b. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
 - c. The necessary facilities are under construction and bonded for completion at the time a final development order is issued; or
 - d. The necessary facilities and services are guaranteed in an enforceable development agreement to be available within the time frames listed in subsections (1)a—c of this section, which guarantee is secured by a completion bond, letter of credit, or other security acceptable to the city.
2. *[Parks and recreation.]* For parks and recreation, the following standards must be met, at a minimum, to satisfy the concurrency requirement:
 - a. The necessary facilities and services are in place at the time a final development order is issued;
 - b. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
 - c. The necessary facilities are under construction and bonded for completion at the time a permit is issued;
 - d. The necessary facilities and services are guaranteed in an enforceable development agreement to be available within the time frames listed in subsections (2)a—c of this section, which guarantee is secured by a completion bond, letter of credit, or other security acceptable to the city;
 - e. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed contract bonded for completion 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 final development order; or
 - f. The necessary facilities and services are guaranteed in an enforceable development agreement 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 agreement, which guarantee is secured by a completion bond, letter of credit, or other security acceptable to the city.
3. *[Roads.]* For roads, the following standards must be met, at a minimum, to satisfy the concurrency requirement:
 - a. The project must comply with all requirements of the county road ordinances; and
 - b. As to roads covered by the LOS standards, but not covered by the county road ordinances, the following must be met:
 1. The necessary facilities are in place at the time a final development order is issued;
 2. A final development 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 and bonded for completion at the time a final development order is issued;
 4. The necessary facilities are guaranteed in an enforceable development agreement to be available within the time frames listed in subsections (3)b.1—3 of this section, which guarantee is secured by a completion bond, letter of credit, or other security acceptable to the city;
 5. At the time the final development 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 final development order;
 6. The necessary facilities and services are guaranteed in an enforceable development agreement 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 final development order, which guarantee is secured by a completion bond, letter of credit, or other security acceptable to the city; or

7. The necessary facilities are included within the first three years of the applicable, adopted state department of transportation five-year work program, or are scheduled to commence within the first three years of the five-year schedule of capital improvements included within the capital improvements element of the comprehensive plan.

4. *Proportionate Fair-Share Program—Roads.*

- a. *Purpose and intent.* The purpose of this subsection is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with F.S. § 163.3180(16).
- b. *Applicability.* The Proportionate Fair-Share Program shall apply to all developments that fail to meet the standards of this section on a thoroughfare road within the city that is not the responsibility of Palm Beach County or the Florida Department of Transportation (FDOT). The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under F.S. § 163.3180(12), or to projects exempted from this section.
- c. *General requirements.* An applicant may choose to satisfy the transportation concurrency requirements by making a proportionate fair-share contribution, pursuant to the following requirements:
 1. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
 2. The road improvement necessary to maintain the adopted LOS is specifically identified for construction in the five-year schedule of capital improvements in the Capital Improvements Element of the Comprehensive Plan.
 3. Any improvement project proposed to meet the developer's fair-share obligation shall meet any applicable city design standards for locally maintained roadways.
- d. *Intergovernmental coordination.* Pursuant to policies in the Intergovernmental Coordination Element of the Comprehensive Plan, the city shall coordinate with Palm Beach County and other affected jurisdictions such as FDOT, regarding mitigation to non-city thoroughfare roads impacted by developments located within the city and who are applying for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.
- e. *Application process.*
 1. In the event of a lack of capacity to satisfy transportation concurrency, the applicant shall have the opportunity to satisfy transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of subsection c.
 2. Prior to the submittal of an application, eligible applicants shall schedule a pre-application meeting with the city's planning and zoning department. Subsequent to the pre-application meeting, eligible applicants shall submit a completed development application and all documentation requested by the city. The city shall establish applicable application fees for the cost of reviewing the application. If the impacted facility is on the Strategic Intermodal System (SIS), then FDOT will be notified and invited to participate in the pre-application meeting. The city shall also have the option of notifying and inviting Palm Beach County and any other affected local government.
 3. The planning and zoning department shall review the application and certify that the application is sufficient and complete within ten working days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program as indicated in subsection c, then the applicant will be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed withdrawn and all fees forfeited to the city.
 4. Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.
 5. When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the applicant and delivered to the appropriate parties for review, including a copy to the FDOT

for any proposed proportionate fair-share mitigation on a SIS facility, no later than 60 days from the date at which the applicant received the notification of a sufficient, complete, and eligible application. If the agreement is not received by the city within these 60 days, then the application will be deemed withdrawn and all fees forfeited to the city.

6. No proportionate fair-share agreement will be effective until approved by the planning and zoning director through an administrative approval.

f. *Determining proportionate fair-share obligation*

1. 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.
2. A development eligible for participation under the Proportionate Fair-Share Program shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.
3. The methodology used to calculate a development'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 (SV) 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

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

Where:

Development Trips_{sub i} = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per TPS;

SV Increase_{sub i} = Service volume increase provided by the eligible improvement to roadway segment "i" per Subsection c. General Requirements;

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

4. For the purposes of determining proportionate fair-share obligations, the city traffic engineer or designee shall determine improvement costs based upon the actual and/or anticipated cost of the improvement in the year that construction will occur.
5. If an improvement is proposed by the applicant, then the value of the improvement shall be based on an engineer's certified cost estimate provided by the applicant and reviewed by the city traffic engineer or designee or other method approved by the city traffic engineer or designee.
6. If the city has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the right-of-way shall be valued on the date of the dedication at 115 percent of the most recent assessed value by the property appraiser, or at the option of the applicant and in-lieu of the 115 percent of assessed value option, by fair market value established by an independent appraisal approved by the city at the expense of the applicant. This appraisal shall assume no approved development plan for the site. All right-of-way dedicated shall be part of a roadway segment that triggered the deficiency, and shall not be site-related. 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 the applicant's expense. If the estimated value of the right-of-way dedication proposed by the applicant is less than the city estimated total proportionate fair share obligation for that development, then the applicant shall also pay the difference. Prior to purchase or

acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations. The city shall also have the option of requiring an environmental assessment for right-of-way dedication.

g. *Proportionate fair-share agreements.*

1. Upon execution of a proportionate fair-share agreement ("agreement"), the applicant shall receive a certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months, 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 no later than issuance of the first building permit, and shall be non-refundable. If the payment is submitted more than 90 days from the date of execution of the agreement, then the proportionate fair-share cost shall be recalculated at the time of payment, pursuant to subsection f and adjusted accordingly.
3. In the event an agreement requires the applicant to build or pay 100 percent of one or more road improvements, all such improvements shall be commenced prior to issuance of a building permit and assured by a binding agreement that is accompanied by a performance security, as determined by the city, which is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of certificates of occupancy.
4. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement shall be completed prior to issuance of the first building permit but shall not include a building permit issued for a dry model.
5. Any requested change to a development 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. The application fee and any associated advertising costs paid to the city will be non-refundable.
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.

h. *Appropriation of fair-share revenues.*

1. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIE, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may be used as the 50 percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP), or any other matching requirement for state and federal grant programs as may be allowed by law.
 2. In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of subsection c.
5. In determining the availability of public facilities, an applicant may propose and the city may approve proposed projects in stages or phases so that public facilities needed for each phase shall be available in accordance with the standards set forth in this section.

(Code 1979, § 33-249; Ord. No. 4005-06, § 2, 12-18-2006)