Chapter 30 - PLANNING AND DEVELOPMENT

Footnotes:
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Charter reference— *General powers of county, § 103.*
Cross reference— *Creation, operation, review of advisory boards, § 2-201 et seq.; real estate acquisition and settlement, § 2-251 et seq.; airport zoning, § 7-26 et seq.; building and construction regulations, ch. 9; environmental control, ch. 15; stormwater management, § 15-461 et seq.; domestic wastewater residual management, § 15-501 et seq.; excavations and fill, ch. 16; floodplain management, ch. 19; highways, bridges and miscellaneous public places, ch. 21; vacating roads, rights-of-way and easements, § 21-61 et seq.; impact fees, ch. 23; landscaping, ch. 24; signs, ch. 31.5; subdivision regulations, ch. 34; zoning, ch. 38; listing of special districts not in Code, app. B.*
State Law reference— *Powers of chartered counties, Fla. Const. art. VIII, § 1(g); Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 et seq.; developments of regional impact, F.S. § 380.06.*

ARTICLE I. - IN GENERAL

Sec. 30-1. - Local planning agency.

(a) The board of county commissioners hereby declares its intent to exercise the authority set out in the Local Government Comprehensive Planning and Land Development Regulation Act [F.S. § 163.3161 et seq.].

(b) The board of county commissioners hereby designates the Orange County Planning and Zoning Commission established by Laws of Fla. ch. 63-1716, as amended, as the local planning agency for the unincorporated area of the county, and for such incorporated areas in which it may have jurisdiction pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act.

(c) Notwithstanding the above paragraph, the planning and zoning commission may, at its discretion and by resolution, designate a subcommittee of its members to prepare, through support of the county planning department, the comprehensive plan or evaluation and appraisal report. All reports of the subcommittee shall be approved by the planning and zoning commission for final recommendation to the board of county commissioners.

(d) The county planning and zoning commission, in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, shall:

(1) Conduct the comprehensive planning program and prepare the comprehensive plan or elements, or portions thereof, or amendment for the unincorporated area of the county, and for such incorporated areas of the county in which it may have jurisdiction.

(2) Coordinate such comprehensive plan or elements or portions thereof with the comprehensive plans of other appropriate local governments in the state.

(3) Recommend such comprehensive plan or elements, or portions thereof, or amendment to the board of county commissioners for adoption.

(4) Monitor and oversee the effectiveness and status of the comprehensive plan, including the preparation of the evaluation and appraisal report pursuant to F.S. §163.3191 and recommend to the board of county commissioners such changes in the comprehensive plan as may be required from time to time.

(5) Exercise all other authority and power provided in such act and as may be provided from time to time by resolution of the board of county commissioners.

(6) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the board of county commissioners as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof.

(e) All meetings of the county planning and zoning commission in which it exercises its functions as the local planning agency shall be public meetings, and all records pertaining thereto shall be public records.

(f) The board of county commissioners may appropriate funds at its discretion to the planning and zoning commission fo necessary in the conduct of its work. The planning and zoning commission may, in order to accomplish the purposes a required by the Local Government Comprehensive Planning and Land Development Regulation Act, expend all sums s appropriated and other sums made available for its use from fees, gifts, state or federal grants, state or federal loans a sources, provided acceptance of loans or grants is approved by the board of county commissioners.

(Code 1965, § 37-5.1; Ord. No. 76-3, §§ 2—7, 6-11-76; Ord. No. 79-1, § 1, 1-23-79; Ord. No. 98-02, § 2, 1-27-98)

Boards, commissions, authorities, etc., § 2-136 et seq.; planning and zoning commission, § 30-34 et seq.

Local planning agency, F.S. § 163.3174.

Sec. 30-2. - Review of certain legislation prior to adoption.

(a) *Purpose.* The board of county commissioners shall consider the short- and long-term public and private costs and benefits of any new, or proposed changes to existing county resolutions, ordinances or administrative regulations that the board determines to have a substantial impact on the development of, and construction on, real property within the county.

(b) *Requests for advisory board recommendations, economic impact or justification studies, etc.* In considering any such changes, unless the board of county commissioners shall affirmatively determine one (1) of the following:

(1) The proposal will not have a substantial economic impact;

(2) Sufficient information has been provided for the board of county commissioners to assess the economic impact; or

(3) An economic impact study is not practical for the proposed change under consideration;

with all determinations to be made in the board of county commissioners' sole discretion, then the board of county commissioners shall submit the proposed changes to the advisory board(s) that the board of county commissioners deems appropriate, and the board of county commissioners shall also direct the appropriate county department to conduct an economic impact or justification study, or authorize any person or organization to submit economic impact data or information for the board of county commissioners to consider, to assure that the public and private costs and benefits of any proposed changes are fully weighed. The responsibility for providing the economic data or information shall initially lie with the originator of the proposed change. The board of county commissioners may designate specified periods of time within which such recommendations, studies and other information are to be submitted.

(c) *Submission of recommendations of advisory boards, etc.* Prior to the adoption of any such substantial proposed changes, the board of county commissioners shall either have received all recommendations and other economic impact information that was requested, or the time within which such recommendations and information were to have been submitted shall have expired. This subsection shall not apply when the board of county commissioners has previously determined either that sufficient information has been provided, or that an economic impact study was not practical.

(d) *Exceptions to review procedure.* This section shall not apply to:

(1) Any resolution, ordinance or administrative regulation enacted pursuant to mandate of federal or state law, including all ordinances and other actions connected with the adoption of the comprehensive policy plan, but specifically excluding those resolutions, ordinances and administrative regulations implementing the plan following its adoption;

(2) The readoption of any standard code, excluding any new amendments to preexisting codes; or

(3) Any emergency measure that is adopted by a four-fifths vote, provided that such measure shall not be effective for periods exceeding ninety (90) days.

(Code 1965, § 1-27; Ord. No. 79-32, §§ 1—4, 12-18-79; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Adoption of land development regulations, F.S. § 163.3194(2).

Secs. 30-3—30-30. - Reserved.

ARTICLE II. - PLANNING AND ZONING ENABLING LEGISLATION

Footnotes:
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Cross reference— *Zoning, ch. 38.*
State Law reference— *Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 et seq.*

Sec. 30-31. - Scope of chapter.

The county is hereby empowered and authorized to plan and zone all of the land within the county and not part of any municipality, and may establish and maintain the boards and commissions described herein for carrying out the purposes of this article.

(Code 1965, § 37-1; Laws of Fla. ch. 63-1716, § 1)

Sec. 30-32. - Statement of intent.

(a) It is the intent of this article to enable the county to plan and zone the land of the county not part of any municipality in order to preserve and enhance its present advantages, overcome present handicaps, and prevent or minimize such future problems as may be foreseen. The provisions of this article are designed to promote, protect, and improve the public health, safety, comfort, order, convenience, prosperity, morals and general welfare.

(b) A substantial compliance with the provisions of this article pertaining to the several methods of giving notice shall be sufficient to constitute notice to all parties affected by any proceeding authorized by this article.

(Code 1965, § 37-2; Laws of Fla. ch. 63-1716, § 2; Laws of Fla. ch. 65-1999, § 1)

Sec. 30-33. - Definitions.

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

Abutting property shall mean any property that is immediately adjacent to or contiguous to property that may be subject to any hearing required to be held under this article or that is located immediately across any road or public right-of-way from the property subject to any hearing under this article.

Area shall mean all lands located in the county, not part of any municipality.

Owner shall mean and include the owner of the fee simple title of record, a vendee under a contract or agreement for deed or a lessee under a written lease whose remaining term at the time of application for hearing is more than ten (10) years.

Person shall mean and include the words "firm," "association," "organization," "partnership," "trust," "company," "corporation," as well as an individual, and is further hereby defined to include the owner of real property, as well as anyone in possession of land, or buildings or structures thereon, or anyone who controls the actual use of any land, or buildings and structures situate thereon.

Public notice shall mean at least fifteen (15) days' notice of the time and place of a public hearing published one (1) time in a daily newspaper generally circulated in the county.

(Code 1965, § 37-3; Laws of Fla. ch. 63-1716, § 3; Laws of Fla. ch. 67-1831, § 1)

Definitions and rules of construction generally, § 1-2.

Sec. 30-34. - Planning and zoning commission—Establishment, composition, etc.

(a) *Establishment and composition.* The board of county commissioners is hereby empowered to establish a planning and zoning commission and appoint the members thereto to act in an advisory capacity to the board of county commissioners on planning and zoning in the county. The planning and zoning commission shall consist of ten (10) members, to be appointed in the following manner:

(1) Six (6) members as follows: One (1) resident from each of the county commissioners' districts. Each district commissioner shall make the recommendation of an appointee from residents within the commissioner's district.

(2) One (1) member to be appointed from the county at large. The county chairman shall make the recommendation of this appointee.

(3) Two (2) members to be appointed at large from residents living within the county. The board of county commissioners and the county chairman shall submit the recommendation of these appointees.

(4) One (1) nonvoting member to be appointed by the Orange County School Board to attend those meetings at which the planning and zoning commission considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application.

(5) Each recommendation of an appointee shall take effect only if confirmed by vote of the board of county commissioners. If for any reason a recommendation fails to attain a confirmation by the board, a new recommendation shall be made by the same district commissioner or by the chairman, as appropriate. The new recommendation shall likewise require confirmation by the board.

(6) Each such appointee shall be a resident of the county for at least the two (2) years immediately prior to his or her appointment.

(7) Members of the planning and zoning commission shall not receive any pay for serving on the commission.

(b) *Terms of office.* The terms of office of the planning and zoning commission members shall be for two (2) years; and the terms of the seven (7) members referenced in subsections (a)(1) and (a)(2) above shall expire at midnight of December thirty-first of even-numbered years, except that if a newly-elected county commissioner's or county chairman's recommendation is confirmed by the board of county commissioners prior to December thirty-first of an even-numbered year, the incumbent member's term shall expire, and the newly-appointed member's term shall begin as of the date of confirmation by the board of county commissioners; and terms of office of the two (2) "at-large" members referenced in subsection (a)(3) above and the school board's appointed member referenced in subsection (a)(4) above shall expire at midnight on December thirty-first of odd-numbered years; however, any such appointments shall continue to be effective until their successors are chosen.

A member of the planning and zoning commission shall not serve for more than four (4) consecutive terms.

(c) *Removal from office* . Any member of the planning and zoning commission may be removed from office for failure to regularly attend the meetings of the commission without just cause, or for any other just cause, by a four-sevenths (4/7)vote of the board of county commissioners; provided the member shall be entitled to a public hearing before such vote is taken.

(d) *Vacancies.* Any vacancy occurring during the unexpired term of office of any member of the planning and zoning commission shall be filled by the board of county commissioners for the remainder of the term within thirty (30)

days after the vacancy occurs.

(e) *Officers.* The planning and zoning commission shall elect a chairman and vice-chairman from among the members of the commission. The planning and zoning commission may create and fill such other offices as it may determine. The terms of all offices shall be for one (1) year, with eligibility for reelection. In the absence of the chairman, the vice chairman shall preside and have the same powers and duties.

(f) *Quorum; voting.* A quorum shall consist of five (5) voting members. Assuming a quorum exists at a meeting, a majority vote is necessary to pass a motion. For purposes of this subsection, the term "majority vote" means more than half of the votes cast by members entitled to vote, excluding abstentions. These same quorum and voting requirements shall apply to the local planning agency as well.

(g) *Meetings; rules of procedure.* The planning and zoning commission shall hold regular monthly meetings open to the public at a time to be set by the planning and zoning commission; shall adopt rules for the transaction of its business; and shall keep a record of its resolutions, transactions, findings and determinations, attendance and voting records of its members, which record shall be a public record.

(h) *Staff.* The board of county commissioners may employ, and discharge, such experts, inspectors, technicians, attorneys and staff as may be deemed proper, and pay their salaries and such other expenses as are necessary to conduct the work of the planning and zoning commission. The employees under the provisions of this article shall be under the control and supervision of the chief administrative official employed by the board of county commissioners and to be known as the planning and zoning director, and he shall make recommendations to the board of county commissioners for the employment or discharge of such employees. An additional administrative official, to be known as the county planner, may be employed under such chief administrative official to perform and supervise all planning functions provided for by this article.

(i) *Departments, officials.* If only one (1) administrative official is designated to supervise all planning and zoning functions, his or her duties shall include all of the functions set forth in section 30-41. However, the board of county commissioners may establish separate planning and zoning divisions to carry out all planning and zoning functions and procedures provided for by this article. In such event, a zoning manager and a planning manager may be designated to supervise the respective divisions. Duties and responsibilities of such officials shall be as set forth in section 30-41, and any and all references in this article to the title "planning and zoning director" shall then refer to and include only the zoning manager. Furthermore, wherever in this Code, particularly in chapters 38, 30 and 31.5, the terms "manager of the zoning, division," "manager of the zoning department," and "zoning director" are referenced, those terms shall be deemed to be the term "zoning manager."

(Code 1965, § 37-4; Laws of Fla. ch. 63-1716, § 4; Laws of Fla. ch. 65-1999, § 2; Laws of Fla. ch. 67-1831, § 2; Laws of Fla. ch. 71-795, § 1; Ord. No. 91-11, §§ 2—4, 4-29-91; Ord. No. 91-21, § 14, 10-1-91; Ord. No. 93-09, § 1, 4-20-93; Ord. No. 94-3, § 1, 2-1-94; Ord. No. 2003-17, § 2, 11-11-03; Ord. No. 2009-03 , § 1, 2-17-09; Ord. No. 2015-05 , § 4, 6-2-15)

Planning and zoning commission, § 501.

Boards, commissions, authorities, etc., § 2-136 et seq.; planning and zoning commission designated local land planning agency, § 30-1.

Sec. 30-35. - Same—Functions, powers and duties.

(a) The functions, powers and duties of the planning and zoning commission shall be in general:

(1) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work or cause changes in these conditions. Such basic information and materials may include maps and photographs of manmade and natural physical

features of the area concerned, statistics on past trends and present conditions with respect to population, property values, economic base, land use and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.

(2) To prepare and from time to time amend and revise the comprehensive and coordinated general plan for meeting present requirements and such future requirements as may be foreseen; to prepare and from time to time amend and revise an official zoning map showing the zones and districts as established by the comprehensive plan.

(3) To establish principles and policies for guiding action in the development of the area.

(4) To prepare and recommend to the board of county commissioners resolutions promoting orderly development along the lines indicated in the comprehensive plan.

(5) To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and development of the area, and to approve all proposed plats in accordance with the standards and requirements of the comprehensive plan and the regulations adopted hereunder.

(6) To provide for an orderly street development and alignment in all plats and subdivisions developed in the county.

(7) To keep the board of county commissioners and the general public informed and advised as to these matters.

(8) To conduct such public hearing as may be required to gather information necessary for the drafting, establishment and maintenance of the comprehensive plan, and such additional public hearings as are specified under the provisions of this article.

(9) To cooperate with municipalities, regional planning councils and other governmental agencies for the purpose of achieving a harmonious and coordinated plan for the development of the land resources under their respective jurisdictions.

(10) To make similar and compatible use determinations, provided each such determination relates to a specifically enumerated permitted use in the zoning district for which the determination is sought, each determination furthers the intent and purpose of the particular zoning district, and each such determination is made at a duly noticed and advertised public hearing.

(11) Upon application for changes in zoning categories, the planning and zoning commission has the authority to recommend a variance from the requirements of section 38-1501 as it relates to minimum lot area and minimum lot width only.

(b) In addition, the planning and zoning commission may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific facilities of the area. These may include, but are not limited to, schools, school sites, churches, sewer facilities, air and water pollution, studies on housing, commercial and industrial facilities, parks, playgrounds and other recreational facilities, cemeteries, public and private utilities, and traffic, transportation, parking and drainage facilities.

(c) All public officials serving the county shall, upon request, furnish to the planning and zoning commission, its employees or agents, within a reasonable time, such available records or information as it may require.

(Code 1965, § 37-5; Laws of Fla. ch. 63-1716, § 5; Ord. No. 92-1, § 3, 1-21-92; Ord. No. 98-37, § 33, 12-15-98)

Functions of planning and zoning commission, § 501.

Sec. 30-36. - Comprehensive plan—Generally.

The comprehensive plan, zoning resolutions, zoning districts and classifications, and all rules and regulations heretofore adopted by the board of county commissioners under Laws of Fla. ch. 31068 (1955), as amended by Laws of Fla. ch. 61-2591, shall continue in full force and effect until amended, repealed or altered as authorized under the provisions of this article. The planning and zoning commission shall continue to acquire basic information concerning the lands in the county for the purpose of reviewing, amending, changing or altering, from time to time as necessary, the comprehensive general plan of the area for the physical development of the area. The comprehensive general plan of the area shall be based on existing and anticipated needs, showing existing and proposed improvements in the area, and stating the principles according to which such developments should be controlled. The comprehensive plan may also include a long-range financial program for public improvements. All proposals for the construction of major arterial roads and highways, parks, public buildings, and sanitary or storm sewers, not otherwise provided for in the comprehensive plan, shall first be submitted to the planning and zoning commission for its approval. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the area, which will, in accordance with the existing and future needs, best promote public health, safety, comfort, order, convenience, prosperity, morals and the general welfare, as well as the efficiency and economy in the process of development.

(Code 1965, § 37-6; Laws of Fla. ch. 63-1716, § 6)

Comprehensive plan, F.S. §§ 163.3167, 163.3177 et seq.

Sec. 30-37. - Same—Amendment, change or alteration.

(a) So often as is desirable, but at least once each year, the comprehensive plan or the completed parts thereof shall be reviewed by the planning and zoning commission to determine whether changes in the amount, kind or direction of development of the area or other reasons make it beneficial to make additions or amendments. If the board of county commissioners desires an amendment or addition to the comprehensive plan, it may, on its own motion, direct the planning and zoning commission to prepare such amendment, and if such amendment is in accordance with the purpose of the comprehensive plan, the planning and zoning commission shall do so within a reasonable time as established by the board of county commissioners.

(b) Any change, amendment, repeal or alteration of the comprehensive general plan shall be by ordinance proposed by the planning and zoning commission, subject to the approval of a majority of the members of the board of county commissioners. The ordinance shall refer expressly to the maps, descriptive materials, and other matters intended by the planning and zoning commission to form the whole or part of the plan. The action shall be recorded on the adopted plan or parts thereof by the identifying signature of the chairman of the planning and zoning commission, together with the date of such action, and a copy of the plan or part thereof shall be certified by the planning and zoning commission to the board of county commissioners for its approval.

(c) The board of county commissioners may, by appropriate official ordinance, formally approve the amendments, changes or alteration to the comprehensive plan either as a whole or as substantial portions, corresponding generally with functional or geographic subdivisions of the area. Upon approval by the board of county commissioners, the planning and zoning director shall incorporate such maps by reference as a part of the official map of the comprehensive plan.

(Code 1965, § 37-7; Laws of Fla. ch. 63-1716, § 7)

Amendment of comprehensive plans, F.S. § 163.3187.

Sec. 30-38. - Purposes and procedures in zoning of lands.

(a) For the purposes of guiding and accomplishing coordinated, adjusted and harmonious development in accordance with existing and future needs, and in order to protect, promote, and improve public health, safety, comfort, order, convenience, morals, prosperity and general welfare, the board of county commissioners, in accordance with the

conditions and procedures specified in this act, may enact or amend a zoning ordinance. In such ordinance the board of county commissioners shall divide the entire area into districts of such number, shape and size as may be deemed best suited to carry out the purposes of this article, and within these districts the board of county commissioners may regulate and determine:

(1) Height, number of stories, size, location, erection, construction, reconstruction, alteration and use of buildings and other structures for trade, industry, residence and other purposes.

(2) Use of land and water for trade, industry, residence and to prevent or minimize water and air pollution.

(3) Setback lines, size of yards, courts and other open spaces.

(4) The percentage of lot that may be occupied.

(5) Density of population.

(6) The location, size and plan of cemeteries, burial places, parks and recreational areas, schools, school sites, churches, sewer facilities, commercial and industrial facilities, public and private utilities, traffic, parking facilities, and drainage facilities. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one (1) district may differ from those in other districts. For each district designated for the location of trades, callings, industries, commercial enterprises, residences, multiple dwellings, or buildings designed for specific uses, regulations may specify such uses that shall be excluded or subjected to reasonable requirements of a special nature, including provisions for home occupations.

(7) Conditions under which various classes of nonconformities may continue, including authority to set fair and reasonable amortization schedules for the elimination of nonconforming uses.

(8) Uses and types and sizes of structures in those areas subject to seasonal or periodic flooding so that danger to life and property in such areas will be minimized.

(9) Performance standards for use of property and location of structures thereon.

(b) Regulations and district boundaries shall be drawn in accordance with the comprehensive plan, shall protect, promote and improve public health, safety, comfort, order, convenience, prosperity, morals and general welfare, and shall be made with reasonable consideration, among other things, to the character of the districts and their special suitability for particular uses, and with a view to conserving the value of property and encouraging the most appropriate use of land throughout the area.

(Code 1965, § 37-8; Laws of Fla. ch. 63-1716, § 8; Laws of Fla. ch. 71-795, § 2)

Zoning ordinance required, F.S. § 163.3202(2)(b).

Sec. 30-39. - Procedure for establishing district boundaries; adoption of regulations and restrictions.

(a) *Tentative reports by planning and zoning commission.* Tentative recommendations as to the boundaries of districts and regulations and restrictions to be enforced therein may be prepared by the planning and zoning commission in its own initiative, or at the request of the board of county commissioners. The planning and zoning commission may hold preliminary public hearings and conferences at such times and places and upon such notice as it may determine to be necessary to inform itself in the preparation of the tentative report. Before the tentative report, which shall include the proposed zoning ordinance with maps and other explanatory material, shall be made to the board of county commissioners by the planning and zoning commission, the planning and zoning commission shall hold a public hearing, after giving due public notice.

(b) *Action by the board of county commissioners.* Within thirty (30) days the board of county commissioners shall consider the tentative report of the planning and zoning commission and shall return it, with any suggestion and recommendations, to the planning and zoning commission so that a final report may be prepared by the planning and zoning commission. No ordinance under the authority of this article shall be passed until after the final report of the planning and zoning commission has been received by the board of county commissioners.

(c) *Final report and action.* The final report on zoning regulations shall be made to the board of county commissioners aft planning and zoning commission has considered the suggestions and recommendations of that body, and after such a preliminary public hearings as the planning and zoning commission may consider desirable. After the final report has b submitted by the planning and zoning commission, the board of county commissioners shall afford all interested perso opportunity to be heard with reference to it at a public hearing or hearings, with due public notice, and shall act upon t proposed zoning regulations.

(Code 1965, § 37-9; Laws of Fla. ch. 63-1716, § 9)

Adoption of land development regulations, F.S. § 163.3194; zoning ordinance amendments, F.S. § 125.66(5).

Sec. 30-40. - Supplementing, amending the zoning districts and zoning resolution.

(a) Except as provided in this subsection, the board of county commissioners may from time to time amend or supplement the regulations and districts fixed by any zoning ordinance adopted pursuant to this article. Proposed changes may be suggested by the board of county commissioners, by the planning and zoning commission, or by petition of an owner, or his agent who is authorized in writing to request changing the zoning on the property involved in the proposed change. In the latter case the petitioner or petitioners shall be required to assume the cost of public notice and other costs incidental to hearings. The board of county commissioners shall not amend or supplement any zoning ordinance or district if the property which is the subject of the proposed change is subject to a moratorium ordinance.

(b) In considering any proposals for such amendments and supplements, regardless of the source of the proposed change, the board of county commissioners shall take into consideration the development of the area, the existing and anticipated needs, the existing and proposed improvements in the area, and the relationship between the present and proposed zoning classification district and the adjacent zoning classification districts in the county and the municipalities. Changes shall be made only upon giving consideration to the character of the districts and their special suitability for particular uses, and with the view to conserving the value of the property in the area and encouraging the most appropriate use of land throughout the area.

(c)

(1) The planning and zoning commission shall direct that a public hearing on the application be held. The planning and zoning commission shall thereupon make such investigation as it may determine necessary, including inquiry into the consistency of the request with the comprehensive policy plan, and shall hold a public hearing or hearings, with due public notice, on the application.

(2) The planning and zoning commission shall use, but not be limited to only using, the following minimum criteria to determine whether the application is consistent with the comprehensive policy plan:

a. Urbanization should be staged in a contiguous manner in order to minimize additional public expenditures.

b. Any urban expansion is done in a manner which minimizes conflict with agricultural pursuits and discourages premature scattered development.

c. The application affords preservation of agricultural land in the rural service area and provides for development at levels consistent with the comprehensive policy plan.

d. The application establishes a balance between the economic needs of the applicant and the ecological protection of the community, all within the context of the long-range needs of the county citizenry.

e. The application provides for development which will protect and preserve the county's natural environmental systems, thus avoiding the unnecessary expenditure associated with improper development.

f. The past trends and present conditions with respect to population, property values, economic base, and

land use of the surrounding area shall be weighed in relation to the amount, direction and kind of development proposed by the application.

g. Using the various goals, objectives, and policies of the comprehensive policy plan as a measure, the application shall be balanced in favor of benefiting rather than burdening the health, safety and welfare interests of the citizens of the county.

(3) For purposes of this section due public notice shall include each of the following:

a. Notice by United States mail, postage prepaid, at least ten (10) days prior to the date of the hearing, to the owners of the property within three hundred (300) feet of the subject property, at their last-known addresses.

b. The applicant shall, at least ten (10) days prior to the date of the public hearing, cause to be placed in a conspicuous and easily visible location on the property subject to the application for change, a sign at least eighteen (18) inches by twenty-four (24) inches in dimension furnished by the planning and zoning commission, setting forth in bold face letter the relevant facts pertaining to the application for review and the date, time and place when the public hearing shall be held by the planning and zoning commission.

c. An advertisement placed in a daily newspaper generally circulated in the county fifteen (15) days prior to the public hearing setting forth the general location of the subject property, the requested zoning and the date, time and place when the public hearing shall be held by the planning and zoning commission.

(d) When the public hearing is held after giving notice pursuant to subsection (c) above, the planning and zoning commission shall publicly discuss the application and take testimony and evidence from the applicant and public, as appropriate. After the public hearing the planning and zoning commission shall submit its recommendations on the proposed change to the board of county commissioners for official action. The board of county commissioners shall then at any regular or special meeting review the recommendations of the planning and zoning commission and either adopt, reject or modify the recommendations, or schedule a public hearing on any one (1) or more of them; provided, however, that no recommendation shall be rejected or modified unless the board of county commissioners shall first hold a public hearing thereon. No change or amendment shall become effective until fifteen (15) days after the action of the board of county commissioners is filed with the clerk of the board of county commissioners.

(e) Any person aggrieved by any decision of the planning and zoning commission may file a notice of appeal to the board of county commissioners in the form and in the manner as hereinafter set out in section 30-45.

(Code 1965, § 37-10; Laws of Fla. ch. 63-1716, § 10; Laws of Fla. ch. 65-1999, § 3; Laws of Fla. ch. 70-837, § 1; Laws of Fla. ch. 71-795, § 3; Laws of Fla. ch. 72-626, §§ 1, 2; Ord. No. 89-09, § 1(2), 7-10-89; Ord. No. 90-11, § 1, 6-4-90; Ord. No. 91-29, § 2(Exh. A), 12-10-91; Ord. No. 92-1, § 2, 1-21-92; Ord. No. 98-02, § 3, 1-27-98)

Adoption of land development regulations, F.S. § 163.3194; zoning ordinance amendments, F.S. § 125.66(5).

Sec. 30-41. - Administration and enforcement.

(a) An administrative official, to be known as the zoning director and employed by the board of county commissioners, shall administer and enforce the zoning ordinance and rules and regulations adopted under the authority of this article. The office of the zoning director shall be known as the zoning department.

(b) If the zoning director shall find that any of the provisions of the zoning ordinance and rules and regulations adopted under this article are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of illegal work being done; or shall take any other action authorized by the zoning ordinance or this article to insure compliance with or to prevent violation of its provisions. When a stay

order is issued by the zoning director because of a violation of this article or regulations adopted under this article, work or construction on the premises affected by the stay order shall cease until the violation has been corrected and the stay order removed.

(c) An administrative official to be known as the "planning director" and employed by the board of county commissioners shall report to the board of county commissioners and shall assist the board in the development of long-range plans for facilities and services. He shall assist the planning and zoning commission in discharging its responsibilities as spelled out in section 30-35. He shall also assist other governmental agencies in the development of plans as directed by the board of county commissioners. He may be provided with the assistance of such other persons as the board of county commissioners may employ. The office of the planning director shall be known as the planning department. The planning director shall have the following minimum qualifications: he shall be a graduate of an accredited college or university with a degree in one (1) of the following fields: architecture, political science, planning, economics, business administration, engineering or law. He shall either have a master's degree in the field of urban planning or shall have at least four (4) years' experience in the field of urban planning.

(Code 1965, § 37-11; Laws of Fla. ch. 63-1716, § 11; Laws of Fla. ch. 67-1831, § 3; Laws of Fla. ch. 72-630, § 1)

Sec. 30-42. - Board of zoning adjustment—Establishment, composition, etc.

(a) *Created; membership.* As part of the zoning regulations, the board of county commissioners shall create a board of zoning adjustment to act in an advisory capacity to the board of county commissioners and shall appoint the members thereto. The board of zoning adjustment shall consist of seven (7) members; one (1) member to be appointed from each of the county commissioners' districts upon recommendation of the district commissioner and one (1) member to be appointed at large upon recommendation of the county chairman. Each recommendation of an appointee shall take effect only if confirmed by vote of the board of county commissioners. If for any reason a recommendation fails to attain confirmation by the board, then a new recommendation shall be made by the same district commissioner or by the chairman, as appropriate. The new recommendation shall likewise require confirmation by the board.

(1) The members of the board of zoning adjustment shall receive no salaries for their services thereon, but may receive mileage at the per-mile rate established by the county while on official business in the county and actual expenses when on official business outside the county, if funds are available for this purpose and such expenses are approved by the board of county commissioners.

(2) In the discretion of the board of county commissioners, not more than two (2) members of the board of zoning adjustment may also be members of the planning and zoning commission.

(b) *Terms of office.* The terms of office of members of the board of zoning adjustment shall be for two (2) years and shall expire at midnight of December thirty-first of even-numbered years, except that if a newly-elected county commissioner's or county chairman's recommendation is confirmed by the board of county commissioners prior to December thirty-first of an even-numbered year, the incumbent member's term shall expire, and the newly-appointed member's term shall begin as of the date of confirmation by the board of county commissioners; however, any such appointments shall continue to be effective until their successors are chosen.

A member of the board of zoning adjustment shall not serve for more than four (4) consecutive terms.

(c) *Removal from office.* Any member of the zoning board of adjustment may be removed from office for failure to regularly attend the meeting of the board of zoning adjustment without just cause, or for any other just cause, by a four-sevenths (4/7) vote of the board of county commissioners; provided the member shall be entitled to a public hearing before such vote is taken.

(d) *Vacancies.* Any vacancy occurring during the unexpired term of office of any member shall be filled by the board of county commissioners for the remainder of the term, within thirty (30) days after the vacancy occurs.

(e) *Officers.* The board of zoning adjustment shall elect a chairman and vice-chairman from among its members, and may fill such other offices as it may determine. Terms of all officers shall be for one (1) year, with eligibility for reelection.

(f) *Quorum; voting.* A quorum shall consist of four (4) members. Assuming a quorum exists at a meeting, a majority vote is necessary to pass a motion. For purposes of this subsection, the term "majority vote" means more than half of the votes cast by members entitled to vote, excluding abstentions.

(g) *Rules of procedure.* The board of zoning adjustment shall adopt rules for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The rules of procedure shall provide that meetings shall be held at the call of the chairman and at such times as the board of zoning adjustment may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board of zoning adjustment shall be open to the public. The board of zoning adjustment shall keep minutes of its meetings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of zoning adjustment and shall be a public record.

(h) *Staff.* The employed staff of the planning and zoning commission shall serve as the employed staff of the board of zoning adjustment.

(i) *Appropriations, fees; other income.* The board of county commissioners is hereby authorized and empowered to make such appropriations as it may determine for salaries, fees and expenses necessary in the conduct of the work of the board of zoning adjustment, and also to establish a schedule of fees to be charged by the board of zoning adjustment. The board of zoning adjustment shall have the authority to expend all sums so appropriated and budgeted by the board of county commissioners for the activities authorized by this article.

(Code 1965, § 37-12; Laws of Fla. ch. 63-1716, § 12; Laws of Fla. ch. 74-550, § 1; Ord. No. 91-10, §§ 2, 3, 4-29-91; Ord. No. 92-21, § 15, 10-1-91; Ord. No. 93-09, § 2, 4-20-93; Ord. No. 98-02, § 4, 1-27-98; Ord. No. 2003-17, § 3, 11-11-03; Ord. No. 2009-03 , § 1, 2-17-09; Ord. No. 2015-05 , § 5, 6-2-15)

Board of zoning adjustment, § 502.

Boards, commissions, authorities, etc., § 2-136 et seq.

Sec. 30-43. - Same—Powers and duties.

The board of zoning adjustment shall have the following powers and duties:

(1) *Appeals.* To hear and make recommendations to the board of county commissioners from an order, requirement, decision or other determination made by the zoning manager, charged with the enforcement of the zoning ordinance adopted pursuant to this article, where it is alleged by a written appeal by an aggrieved party that there is error in such an order, requirement or decision of the zoning manager. The appeal shall specify the grounds thereof and shall be filed with the office of the zoning manager not later than thirty (30) calendar days from the date of the zoning manager's determination. The zoning manager, shall, upon the timely filing of an appeal, forthwith transmit to the clerk of the board of zoning adjustment all documents, plans and papers constituting the record and the action from which an appeal was taken.

(2) *Exceptions; applications; procedures.* To hear and make recommendations to the board of county commissioners on such special exceptions as the board of zoning adjustment is specifically authorized to pass on by the terms of the zoning regulations; to decide such questions as are involved in determining whether special exceptions should be granted; and to recommend the granting of special exceptions with such

conditions and safeguards as are appropriate under the zoning ordinance, or to recommend the denial of special exceptions when not in harmony with the purpose and intent of the zoning ordinance. A special exception shall not be recommended by the board of zoning adjustment unless and until:

a. A written application for a special exception is submitted indicating the section of the zoning ordinance under which the special exception is sought and stating the grounds on which it is requested.

b. Notice has been given as required for hearings before the board of zoning adjustment by this article.

c. The public hearing shall be held. Any party may appear in person or by agent or attorney.

d. The board of zoning adjustment shall make a finding that it is empowered under the section of the zoning regulation described in the application to recommend granting the special exception and that the granting of the special exception shall not adversely affect the public interest. In recommending the granting of any special exception, the board of zoning adjustment may prescribe appropriate conditions and safeguards, in conformity with the zoning regulations. Violation of such conditions and safeguards, if adopted by the board of county commissioners shall be deemed a violation of this article, and at the discretion of the board of county commissioners, such special exception may be revoked. The board of zoning adjustment shall prescribe a time limit subject to the approval of the board of county commissioners within which the action for which this special exception is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit shall void the special exception. An automatic one-year time limit to obtain a building permit shall apply if the board of zoning adjustment does not prescribe a time limit. A request to extend the time limit shall be made in writing to the zoning manager. The zoning manager may extend the time limit if the applicant provides proper justification for such an extension. Examples of proper justification include, but are not limited to, proceeding in good faith, there is a delay in contract negotiations not attributable to the applicant and unexpected financial hardships which were not known and could not have been reasonably foreseen by the applicant when the special exception was granted. The zoning manager's determination on a request for an extension of time may be appealed to the board of zoning adjustment and then the board of county commissioners.

e. The board of zoning adjustment considers and weighs those criteria for reviewing special exceptions contained in section 38-78.

(3) *Variances.* To recommend to the board of county commissioners upon appeal in specific cases such variance from the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship. A variance from the terms of the zoning ordinance shall not be recommended by the board of zoning adjustment unless and until:

a. A written application and site plan for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

b. Literal interpretation of the provisions of the resolutions would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance.

c. The special conditions and circumstances do not result from the actions of the applicant.

d. Recommending granting the variance requested will not confer on the applicant any special privilege that it denied by the zoning ordinance to other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

e. Notice of public hearing shall be given as required by this act for hearing before the board of zoning

adjustment.

f. The public hearing shall be held. Any party may appear in person or by agent or by attorney.

g. The board of zoning adjustment shall make findings that the requirements of subsection (3) have been met by the applicant for a variance.

h. The board of zoning adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

i. The board of zoning adjustment shall further make a finding that the granting of the variance shall be in harmony with the general purpose and intent of the zoning ordinance, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In recommending the granting of any variance, the board of zoning adjustment may prescribe appropriate conditions and safeguards in conformity with the zoning regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted and adopted by the board of county commissioners, shall be deemed a violation of this article and punishable under section 30-49. Further, variance approvals shall be in accordance with the application and site plan submitted by the applicant, as may be amended or conditioned by the BZA/BCC.

The board of zoning adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed, or both. Under no circumstances except as permitted above shall the board of zoning adjustment recommend granting a variance to permit a use not generally or by special exception permitted in the zoning district involved, or any use expressly or by implication prohibited by the terms of the zoning regulations in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures or buildings in other zoning district shall be considered grounds for the authorization of a variance.

A requested variance from the requirements of section 38-1501 which complies with each of the following three (3) criteria shall be processed in accordance with section 34-27 and shall not be heard by the board of zoning adjustment:

a. The requested variance is from a provision of chapter 38, zoning, which is either specifically listed in section 38-1501, site and building requirements, or from the type of standards listed in section 38-1501 as applicable to those properties located in the UR, RCE-2 and RCE-5 districts; and

b. The variance request is made either in combination with the initial preliminary subdivision plan review or as a change to the preliminary subdivision plan conducted in compliance with chapter 34, subdivision regulations, Orange County Code; and

c. The requested variance affects more than one (1) lot and may have an effect on the overall site development of the subdivision.

(4) *Decisions of the board of zoning adjustment.* In exercising the above-mentioned powers, the board of zoning adjustment may, so long as such action is in conformity with the terms of the zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the planning and/or zoning director(s) from whom the appeal is taken.

Four (4) members of the board of zoning adjustment must be present in order for a quorum to exist. A majority vote of the board of zoning adjustment shall be necessary to recommend reversal of any order, requirement, decision or determination of the planning and/or zoning director(s), or to recommend in favor of the applicant on any matter upon which it is required to pass under the zoning regulations, or to recommend any variation in the application of the zoning regulations.

The board of zoning adjustment shall submit its recommendations to the board of county commissioners for official action. The board of county commissioners shall then at any regular or special meeting review the recommendations of the board of zoning adjustment and either adopt, reject or modify the recommendations, or schedule a public hearing on any one (1) or more of them; provided, however, that no recommendation shall be rejected or modified unless the board of county commissioners shall first hold a public hearing thereon. No change or amendment shall become effective until fifteen (15) days after the action of the board of county commissioners is filed with the clerk of the board of county commissioners.

(Code 1965, § 37-13; Laws of Fla. ch. 63-1716, § 13; Laws of Fla. ch. 71-795, § 4; Laws of Fla. ch. 74-550, § 2; Ord. No. 91-10, § 4, 4-29-91; Ord. No. 91-29, § 2(Exh. A), 12-10-91; Ord. No. 94-4, § 2, 2-8-94; Ord. No. 97-05, § 13, 4-29-97; Ord. No. 98-02, § 5, 1-27-98; Ord. No. 2003-17, § 4, 11-11-03; Ord. No. 2008-06 , § 2, 5-13-08)

Sec. 30-44. - Hearings before the board of zoning adjustment; notice required.

For purposes of conducting board of zoning adjustment hearings due public notice shall include the following:

(1) Notice by United States mail, postage prepaid, at least ten (10) days prior to the date of the hearing, to the owners of the property within three hundred (300) feet of the subject property, at their last-known addresses.

(2) The applicant shall, at least ten (10) days prior to the date of the public hearing, cause to be placed in a conspicuous and easily visible location on the property subject to the application for change, a sign at least eighteen (18) inches by twenty-four (24) inches in dimension furnished by the board of zoning adjustment, setting forth in bold-face letter the relevant facts pertaining to the application for review and the date, time and place when the public hearing shall be held by the board of zoning adjustment.

(3) An advertisement placed in the daily newspaper generally circulated in the county fifteen (15) days prior to the public hearing setting forth the general location of the subject property, the particular request and the date, time and place when the public hearing shall be held by the board of zoning adjustment.

(Code 1965, § 37-14; Laws of Fla. ch. 63-1716, § 14; Laws of Fla. ch. 65-1999, § 4; Ord. No. 98-02, § 6, 1-27-98)

Powers and duties of board of zoning adjustment, § 502.

Sec. 30-45. - Review of planning and zoning commission's and board of zoning adjustment's decisions.

(a) Any person aggrieved by any decision of the board of zoning adjustment or the planning and zoning commission may file a notice of appeal to the board of county commissioners within fifteen (15) days after the board of zoning adjustment meeting or planning and zoning commission meeting at which such decision is made. The fifteen-day period shall be suspended for the period during which the matter is tabled or scheduled for a public hearing by the board of county commissioners. The person appealing shall file a notice of appeal upon the form, if any, prescribed by the board of county commissioners in the office of such commission or board stating wherein the commission or board erred. The commission or board shall forthwith deliver a copy of the notice of appeal to the clerk of the board of county commissioners. The commission or board shall forthwith transmit to the board of county commissioners all the papers, photographs and exhibits constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals, as the commission or board may elect.

(b) Upon the filing of the notice of appeal, the planning and zoning commission or board of zoning adjustment, as the case may be, shall be responsible for the prompt mailing of a copy of such notice by United States mail, postage prepaid, to the original applicant, to the owner of record of the subject property and the owners of abutting property furnished by the person who filed the original appeal, and to each attorney at law appearing for any person at the hearing before the planning and zoning commission or board of zoning adjustment and to the county attorney.

(c) The chairman of the board of county commissioners or in his/her absence the acting chairman, may administer oaths a the attendance of witnesses. All meetings of the board of county commissioners shall be open to the public. The boarc commissioners shall keep minutes of its meetings, showing the vote of each member on each hearing, or if absent or f vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be imm filed in the minutes of the board of county commissioners in the office of the clerk of the circuit court and shall be a pu

(d) The board of county commissioners shall conduct a trial de novo hearing upon the appeal taken from the ruling of the planning and zoning commission or board of zoning adjustment and hear the testimony of witnesses and other evidence offered by the aggrieved person and interested parties to the appeal and may in conformity with this article and the zoning regulations, rules and regulations adopted thereunder, reverse, or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the board of zoning adjustment or recommendation of the planning and zoning commission.

(e) The board of county commissioners shall conduct a hearing on the appeal within forty-five (45) days after the filing of the notice of appeal, or as soon thereafter as the board's calendar reasonably permits.

(f) An appeal to the board of county commissioners shall stay all proceedings concerning the appeal unless the planning and zoning commission or board of zoning adjustment, as the case may be, shall certify to the board of county commissioners that by reason of the facts stated in such certificate a stay would cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by restraining order, which may be granted by the board of county commissioners on due cause shown.

(Code 1965, § 37-15; Laws of Fla. ch. 63-1716, § 15; Laws of Fla. ch. 67-1831, § 4; Laws of Fla. ch. 71-795, § 5; Laws of Fla. ch. 72-626, § 3; Ord. No. 89-09, § 1(3), 7-10-89; Ord. No. 91-29, § 2(Exh. A), 12-10-91; Ord. No. 98-02, § 7, 1-27-98; Ord. No. 98-37, § 34, 12-15-98; Ord. No. 2003-17, § 5, 11-11-03)

Sec. 30-46. - Review of appeal decisions.

Any person aggrieved by the board of county commissioners' decision on an appeal from the board of zoning adjustment or the planning and zoning commission, or a decision of the board of county commissioners amending, altering or changing the comprehensive policy plan, zoning ordinance or ordinances or resolutions establishing classifications or districts as authorized by this article, may file a petition for writ of certiorari as authorized in the manner prescribed by the state appellate rules in the circuit court of the county, to review the decision of the board of county commissioners. The court shall not conduct a trial de novo. The proceedings before the board of county commissioners, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court of the county. A notice of intention to file petition for writ of certiorari shall be filed in the circuit court within ten (10) days after the decision of the board of county commissioners is filed in the office of the clerk of the board of county commissioners. The petition together with the transcript of the testimony of the witnesses, as record of the proceedings, shall be filed in the circuit court within thirty (30) days after the filing of the ruling by the board of county commissioners to which such petition is addressed, except the court may extend the time for filing the petition and transcript for good cause shown. The person filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses. The person filing the petition for certiorari shall immediately serve a copy of the notice of intention to petition for a writ upon the planning and zoning director, who shall thereupon suspend the issuance of a use permit until the court has ruled upon the petition. Neither the planning and/or zoning director, nor the planning and zoning commission, nor the board of zoning adjustment shall be a party to the certiorari proceeding. Any person may intervene, pursuant to Florida RCP 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Code 1965, § 37-16; Laws of Fla. ch. 63-1716, § 16; Laws of Fla. ch. 65-1999, § 5; Laws of Fla. ch. 71-795, § 6; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-47. - Use permits.

No building or other structure shall be constructed, altered, erected, moved, added to or structurally altered without a use permit therefor issued by the zoning director or his/her duly authorized representative. No building permit, electrical permit, plumbing permit or septic tank permit shall be issued unless and until a use permit has been issued. Furthermore, no state or county occupational or retail license shall be issued until after a use permit has been issued; provided, however, that such requirement shall not apply to the renewal of existing state and county occupational or retail license. An application for a use permit shall be submitted on a form to be prescribed by the board of county commissioners to the zoning department.

(Code 1965, § 37-17; Laws of Fla. ch. 63-1716, § 17; Laws of Fla. ch. 67-1831, § 5; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-48. - Application for rehearing.

No person shall have the right to file an application for a public hearing under the provisions of this article, and amendments thereto, if the property for which the public hearing is requested has been the subject of:

(1) A public hearing before the planning and zoning commission, the board of zoning adjustment or the board of county commissioners, or

(2) An appeal from the results of a public hearing to the board of county commissioners or a court of competent jurisdiction, or

(3) A petition for a writ of certiorari resulting from the outcome of a public hearing at the county level,

of the kind and type requested in the application within a period of nine (9) months prior to the filing of the application.

(Code 1965, § 37-18; Laws of Fla. ch. 63-1716, § 18; Laws of Fla. ch. 67-1831, § 6; Ord. No. 89-09, § 1(4), 7-10-89)

Sec. 30-48.5. - Application for rezoning, variances, special exceptions, and appeals of the zoning manager's determinations.

(a) Applications for rezonings, variances, special exceptions and appeals of zoning manager determinations shall be submitted to the zoning division, with the applicable fee, prior to consideration of the request. Prior to application submittal, the applicant is encouraged to meet on an informal basis with the planning or zoning division, as applicable, to review the request. Complete applications must be submitted at least six (6) weeks prior to the public hearing. Application deadlines shall be posted in the zoning division. All complete applications received by the deadline shall be placed on the public hearing agenda for the next available public hearing. Staff shall review the request and generate a recommendation. Staff review shall involve the following:

(1) Generation of appropriate maps showing the subject property and the surrounding areas;

(2) Site inspections to visualize what is on the site and to determine the character and nature of the surrounding area;

(3) Review of the zoning records to verify zoning trends, if any, in the area;

(4) Review of comprehensive policy plan to make a consistency finding;

(5) Review of applicable county regulations and criteria; and

(6) Consolidation of information obtained in subsections (1) through (5) and finalization of staff recommendations.

Staff recommendations on rezonings shall be delivered to the planning and zoning commission on the Friday prior to the public hearing. Staff recommendations shall also be mailed to the applicants. The information shall also be available to the public for review in the planning and zoning divisions.

(b) The public hearings on rezoning requests shall be held in the county commission chambers or other designated location on the third Thursday of every month, unless as otherwise designated due to holidays. The public hearings on variances, special exceptions and appeals of the zoning manager's determination shall be held in the county

commission chambers or other designated location on the first Thursday of the month, unless otherwise designated due to holidays. At the public hearing, the request shall be read into record; staff recommendation shall be presented and then the applicant shall be given the opportunity to make a presentation.

People wishing to speak in favor of or in opposition to the request shall then be given the opportunity to make a presentation. The applicant is given the opportunity to briefly respond to any opposition. Prior to closing the public hearing, the planning and zoning commission or board of zoning adjustment may question the applicant. Discussion shall then takes place among the members of the planning and zoning commission or board of zoning adjustment and a motion and vote shall be made to either make a recommendation to approve or deny request.

(c) The planning and zoning commission or board of zoning adjustment recommendations shall be presented to the board of county commissioners no sooner than ten (10) days and no later than thirty (30) days after the planning and zoning commission or the board of zoning adjustment make their respective recommendations. Provided, however, the board of county commissioners, by majority vote, may elect to consider the recommendations of either the planning and zoning commission or the board of zoning adjustment sooner than ten (10) days after the recommendations are made. The board of county commissioners may accept the planning and zoning commission recommendations or board of zoning adjustment recommendations or call its own public hearing for any request. Any person aggrieved by a recommendation of the planning and zoning commission or board of zoning adjustment may appeal to the board of county commissioners within fifteen (15) days of the planning and zoning commission or board of zoning adjustment meeting at which such recommendation was made by following those procedures set forth in section 30-45. If there is no appeal or board called public hearing of planning and zoning commission recommendation or board of zoning adjustment recommendation, then the recommended action shall become final after approval of the recommendations by the board of county commissioners, but no sooner than fifteen (15) days after the planning and zoning commission or board of zoning adjustment action. If a board of county commissioners public hearing is held and there is no appeal of the board of county commissioners' decision, then the decision shall become final ten (10) days following the rendering of board of county commissioners decision. Once the rezoning special exception, or variance decision is finalized, the zoning maps shall be revised to reflect the decision.

(Ord. No. 91-29, § 2(Exh. A), 12-10-91; Ord. No. 98-02, § 8, 1-27-98; Ord. No. 98-37, § 35, 12-15-98; Ord. No. 2003-17, § 6, 11-11-03)

Sec. 30-49. - Enforcement of zoning resolutions, regulations; penalties.

(a) An administrative official, to be known as the zoning director, and employed by the board of county commissioners, shall be vested with the authority to administer and enforce such rules and regulations as may from time to time be adopted by the board of county commissioners under the authority of this article. The zoning director is hereby authorized and directed to take any action authorized by this article, to insure compliance with or prevent violation of its provisions, and he shall have authority to issue administrative stay orders on such behalf.

(b) The board of county commissioners, the zoning director, or any aggrieved or interested person may have the right to apply to the circuit court of the county to enjoin and restrain any person violating the provisions of this article, of the comprehensive plan, zoning ordinance and rules and regulations adopted under the article, and the court shall upon proof of the violation of same have the duty to forthwith issue such temporary and permanent injunctions as are necessary to prevent the violation of same.

(c) Any person violating any of the provisions of this article or who shall fail to abide by and obey all orders and ordinances promulgated as herein provided shall be punished as provided in section 1-9. Each day that the violation continues shall constitute a separate violation.

(Code 1965, § 37-19; Laws of Fla. ch. 63-1716, § 19; Laws of Fla. ch. 67-1831, § 7; Laws of Fla. ch. 72-626, § 4)

Sec. 30-50. - Appropriations.

The board of county commissioners is hereby authorized to appropriate and pay out of the general revenue fund of the county sums sufficient to carry out the provisions of this article and to defray the expenses of zoning the county and amending the comprehensive plan, establishing and adding zoning regulations, establishing and adding districts and administering the provisions of this article.

(Code 1965, § 37-20; Laws of Fla. ch. 63-1716, § 20)

Sec. 30-51. - Coordinating zoning and building regulations.

It is hereby declared to be the legislative intent that the inspections and the rules and regulations promulgated hereunder shall be coordinated with the county building department act so as to avoid duplication of inspections and permits required under the respective acts insofar as practicable so as to promote the maximum efficiency and economy in all inspection activity of the county government.

(Code 1965, § 37-21; Laws of Fla. ch. 63-1716, § 21)

Sec. 30-52. - Municipalities; participation.

The board of county commissioners is granted the authority to enforce any of its regulations made under the provisions of this article within incorporated municipalities in the county, provided such municipalities adopt such regulations and request such enforcement by majority vote of its own or village council. The board of county commissioners is granted the power to accept or reject such request. Either the municipality or the board of county commissioners may withdraw such municipality from the jurisdiction of this article after giving thirty (30) days' written notice of such action to the board of county commissioners or council, as the case may be. While any such municipality is under the jurisdiction of this article, the board of county commissioners may assess within such municipality such fees and charges as may be necessary to cover the cost of enforcing its regulations and codes.

(Code 1965, § 37-22; Laws of Fla. ch. 63-1716, § 22)

Conflicts between county ordinances and municipal ordinances, § 704.

Secs. 30-53—30-75. - Reserved.

ARTICLE III. - LAND DEVELOPMENT AND USE ORDINANCE

Footnotes:
*--- **(3)** ---*
***Cross reference—** Subdivision regulations, ch. 34.*

Sec. 30-76. - Scope of act.

The county hereby determines that the provisions of this article are declared to be necessary for the promotion, protection and improvement of the public health, safety, comfort, good order, economy, appearance, convenience, prosperity, morals and the general welfare of the citizens and residents of the county, and it is in the best interest of the citizens and residents of the county to require the harmonious, orderly and progressive development and use of land within the unincorporated areas of the county. In furtherance of these purposes this article authorizes and provides for the proper development and use of land in the unincorporated areas in the county and authorizes the board of county commissioners to establish rules and regulations that are reasonable and necessary to carry out the purposes of this article. The board of county commissioners is authorized and empowered to amend or revise and enforce such rules and regulations.

(Code 1965, § 32-31; Laws of Fla. ch. 65-2015, § 1)

Sec. 30-77. - Statement of intent.

It is the intent of this article to secure or to insure:

(1) The establishment of standards of subdivision design and development which will encourage and lead to the development of sound and economically stable communities and the creation of healthful living environments;

(2) The installation of adequate streets, utilities and other necessary improvements in land subdivisions according to prescribed standards;

(3) The efficient, adequate and economic supply of utilities and services to new land developments; and the prevention of sanitation and health hazards and the establishment of safe and efficient means for disposing of waste;

(4) The prevention of traffic hazards and the establishment of safe and convenient means for the circulation of traffic, both vehicular and pedestrian, within new land developments and from new land developments into and from established communities;

(5) The purposes sought to be achieved and the problems sought to be avoided or overcome as set forth in the preamble to Laws of Fla. ch. 65-2015;

(6) That for those lands subject to periodic or seasonal flooding, subdivision and development shall occur only after proper provision shall be made for the protective flood control measures and drainage facilities necessary for flood-free development and for flood-free vehicular access to such sites; and

(7) The provision of public open spaces in new land developments through the dedication or reservation of land for recreational, educational and other public purposes;

(8) The coordination of land development in the county in accordance with orderly physical patterns; to discourage haphazard, premature, uneconomic, or scattered land development, and to serve as one (1) of the several instruments of land use control authorized for the county.

(Code 1965, § 32-32; Laws of Fla. ch. 65-2015, § 2)

Sec. 30-78. - Definitions and title.

For the purposes of this article, which shall be known as the "Orange County Land Development and Use Law," the following terms are hereby defined:

Abutting property shall mean any property that is immediately adjacent to or contiguous to property that may be subject to any hearing required to be held under this article or that is located immediately across any road or public right-of-way from the property subject to any hearing under this article.

Article shall mean this article and any rules and regulations adopted under the authority of this article, unless expressly stated otherwise.

Plat or *replat* shall mean a map, drawing or delineated representation of the division or subdivision of lands, being a complete and exact representation of the division or subdivision and other information in compliance with the requirements of all applicable provisions of any applicable ordinance and part I, chapter 177, Florida Statutes.

Street or *streets* shall mean a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however designated, whenever dedicated to public use and accepted by the public.

Subdivision shall mean the division of a parcel of land, whether improved or unimproved, into two (2) or more lots or parcels of land for the purpose, whether immediate or future, of transfer of ownership or building development where subdivider advocates, proposes, suggests or exhibits a proposed plan, map or plat of development of the land or where the subdivider proposes to create a street, right-of-way or easement that joins or connects to an existing public street for ingress and egress or to change an existing public street.

To plat or to *replat* shall mean, in whatever tense used, to divide or subdivide lands into lots, blocks, parcels, tracts, sites or other divisions, however the same may be designated, and the recording of the plat.

(Code 1965, § 32-33; Laws of Fla. ch. 65-2015, § 3; Ord. No. 2009-05 , § 1, 2-24-09)

Definitions and rules of construction generally, § 1-2.

Sec. 30-79. - Article supplemental; conflicts.

This article is supplemental and cumulative to all other laws and ordinances.

(Code 1965, § 32-48; Laws of Fla. ch. 65-2015, § 19; Ord. No. 2009-05 , § 1, 2-24-09)

Sec. 30-80. - Enforcement and penalty.

(a) The board of county commissioners or any aggrieved person may have recourse to such remedies in law and equity as may be necessary to insure compliance with the provisions of this article, including injunctive relief to enjoin and restrain any person violating the provisions of this article, and any rules and regulations adopted under this article, and the court shall, upon proof of the violation of the article, have the duty to forthwith issue such temporary and permanent injunctions as are necessary to prevent the violation of the article.

(b) Any person violating the provisions of this article or who shall fail to abide by and obey all regulations and orders adopted under this article shall be punished as provided in section 1-9. Each day that the violation shall continue shall constitute a separate violation.

(c) A purchaser of land sold in violation of this article or any regulation or order adopted under this article shall be entitled to the same remedies provided to purchasers by law; provided that failure to comply with the provisions of this article shall not impair the title of land so transferred.

(Code 1965, § 32-43; Laws of Fla. ch. 65-2015, § 13; Laws of Fla. ch. 83-481, § 1)

Sec. 30-81. - Use of act in municipalities.

The board of county commissioners is granted the authority to enforce the provisions of this article and any regulations adopted thereunder within the incorporated municipalities in the county, provided such municipalities elect to come under the provisions of this article and adopt the article and its regulations and request enforcement by the county in its jurisdiction by a majority vote of its own governing body. The board of county commissioners is granted the power to accept or reject such election. Either the municipalities or the board of county commissioners may withdraw such municipality from the jurisdiction of this article after giving thirty (30) days' written notice of such action to the board of county commissioners or governing body as the case may be. While any municipality is under the jurisdiction of this article the board of county commissioners may collect from the residents of the municipality using the provisions of this article such fees and charges as may be reasonable and necessary to cover the cost of enforcing the article and its regulations in the municipality.

(Code 1965, § 32-44; Laws of Fla. ch. 65-2015, § 14)

Conflicts between county ordinances and municipal ordinances, § 704.

Sec. 30-82. - Subdivision plan.

Whenever land in the areas of the county subject to this article is to be subdivided, the proposed plan for subdivision and use of the land shall be presented to the board of county commissioners for its approval, in accordance with the standards and provisions of this article and in accordance with any rules and regulations that may be adopted by the board of county commissioners.

(Code 1965, § 32-34; Laws of Fla. ch. 65-2015, § 4)

Sec. 30-83. - Plats; vertical construction prior to plat approval; vacation.

(a) A plat shall be approved and recorded in the manner provided in sections 34-48 and 34-133, and, to the extent that it is not inconsistent with sections 34-48 and 34-133, part I, chapter 177, Florida Statutes.

(b) With the exception of developments and model homes authorized by subsections 30-83(c) and (d), respectively, vertical construction shall not be permitted to commence at a development requiring a plat unless and until the plat has been approved and recorded. However, for single-family development, where it is expected or determined that the plat for a particular development cannot be approved and recorded through no fault of the developer's before vertical construction is ready to commence, the development review committee may approve vertical construction in advance of platting pursuant to terms and conditions that are acceptable to the DRC, provided that in no event may a temporary or permanent certificate of occupancy be issued for such vertical construction before the plat is approved and recorded.

(c) For developments having an expected construction duration of six months or more and consisting of commercial, industrial, hotel, office, or multi-family uses, or other non-single family developments which, when platted, will contain three lots or less, the DRC may approve a request to allow vertical construction in advance of plat approval, provided all of the following conditions are met:

(1) The PSP, or DP, as applicable, for such project has received final approval;

(2) A plat has been submitted for review and approval pursuant to the applicable PSP or DP and has been deemed sufficient for initial review by the County; and

(3) The project landowner has executed and delivered to the county, and the county has approved, an indemnification and hold harmless agreement, in form and substance acceptable to the county, acknowledging:

a. The issuance of building permits prior to recordation of the plat;

b. The continuing obligation of the owner to record the project plat;

c. The owner's understanding that under no circumstances will the county issue a temporary or permanent certificate of occupancy until the plat is approved and recorded; and

d. The owner's indemnification of the county from any damages, costs, or claims arising from the issuance of building permits prior to approval and recordation of the plat.

(d) Model homes may be permitted on not more than twenty (20) percent of the lots in a single family residential development with an approved preliminary subdivision plan, or phase thereof, but in no event may the number of model homes exceed five (5) per phase. The model homes shall be situated on contiguous lots or clustered within a readily identified area. Not more than one (1) model home may be used as a sales office/center, subject to the requirements of subsection 38-79(5).

(1) An applicant/developer requesting a model home permit shall submit a complete and sufficient model home application, with the applicable application fee, to the zoning division manager, and include the following documents:

a. Three (3) copies of the site plan for the lot proposed for the model home, depicting the proposed

structure, footprint, setbacks, and proposed easements for the model home being requested;

b. Three (3) copies of the subdivision plan (or plat) indicating where the model home(s) will be located; and

c. An executed notarized statement by the applicant/developer showing that it understands, agrees to, and shall comply with all applicable permitting restrictions, requirements and conditions, including those set forth in this section 30-83.

(2) The following permitting restrictions, requirements, and conditions shall apply for a model home permit:

a. The applicant/developer shall utilize a preliminary final plat with street names approved by the zoning division for issuance of a permanent street address (fee required);

b. Permitting is at the risk and expense of the applicant/developer, including if any changes are made with respect to the final recorded plat;

c. No certificate of occupancy shall be issued until an amended building permit (additional fee required) for a final permanent address is issued;

d. All construction is at the applicant/developer's own risk and expense;

e. Curb and stabilized road base shall have been installed to the satisfaction of the public works department;

f. Drainage infrastructure shall have been completed for the development to the satisfaction of the public works department;

g. a fully functional, readily accessible, county-approved fire hydrant shall be in place within five hundred (500) feet of the lot line of the proposed model home;

h. The water system serving the proposed model home shall have been partially or fully cleared for service by the Florida Department of Environmental Protection;

i. A risk affidavit and indemnification and hold harmless agreement satisfactory to the risk management division shall have been executed and provided;

j. Temporary or permanent street signs and a street address number for each proposed model home shall be in place to facilitate emergency response, as determined by the Orange County Fire Marshal; and

k. Applicant shall have complied with any and all other Orange County Code provisions, including zoning regulations.

(3) A certificate of occupancy shall not be issued for a model home until a certificate of completion for infrastructure has been issued for the subdivision, or phase thereof. However, a temporary certificate of occupancy (TCO) may be issued by the division of building safety prior to issuance of a certification of completion, provided the following restrictions, requirements, and conditions are met:

a. The public works department shall have verified completion of installation of an asphalt surface from the nearest public right-of-way to the lot line of the model home(s);

b. The public works department shall have verified completion of installation of the drainage infrastructure and its functionality, and all inspections shall have been satisfactorily completed;

c. All required traffic control signs and devices shall be in place from the nearest public road right-of-way to the lot line of the model home(s), as determined by the public works department;

d. All permits issued by the division of building safety for the model home(s) have received approved final inspections;

e. A permanent, fully functional public restroom is located in an easily accessible place within the model home(s);

f. Sufficient and clear access for emergency vehicles shall be available, as determined by the Orange County Fire Marshal;

g. the wastewater system serving the model home(s) shall have been partially or fully cleared for service by the of Environmental Protection; and

h. The applicant shall have complied with any and all other applicable Orange County Code provisions, including platting.

A TCO shall be effective for a period not to exceed ninety (90) days. An extension of no more than thirty (30) days may be granted upon good cause shown and acceptable to the county.

An appeal of a determination related to a model home application or permit shall be filed in writing within fourteen (14) days of the determination, accompanied by the applicable appeal fee. The appeal shall be heard by the development review committee.

(e) The board of county commissioners may order the vacation and reversion to acreage of all or any part of a plat or subdivision in the manner and subject to the restrictions provided by law; provided that no reversion can occur where the subdivision street and drainage improvements have been completed.

(Code 1965, § 32-35; Laws of Fla. ch. 65-2015, § 5; Laws of Fla. ch. 83-480, § 1; Ord. No. 2009-05 , § 1, 2-24-09; Ord. No. 2016-11 , § 1, 5-24-16)

Ord. No. 2016-11 , § 1, adopted May 24, 2016, amended § 30-83 and in so doing changed the title of said section from "Plats; approval; vacation" to "Plats; vertical construction prior to plat approval; vacation," as set out herein.

Sec. 30-84. - Subdivision regulations.

(a) Subdivision regulations adopted by the board of county commissioners, or any amendments to such subdivision regulations, may provide:

(1) Requirements for general information concerning existing conditions and proposed developments as a prerequisite to the approval of subdivision plans or plats. This information may include data on existing covenants, land characteristics, community facilities and utilities and information describing the subdivision proposal, including maps and reports presenting the number of residential lots, typical lot width and depth, price range, business areas, playgrounds, park areas and other open areas, proposed protective covenants and proposed utilities, drainage and street improvements.

(2) For proper density of population and intensity of use and the lengths, widths and shapes of blocks and lots.

(3) That streets in proposed subdivisions, including streets bordering on proposed subdivisions, shall be of specified widths and grades and so located as to accommodate prospective traffic to serve proposed subdivisions adequately, afford adequate light and air, and facilitate fire protection and provide access of firefighting equipment to buildings.

(4) That such streets be properly arranged, coordinated and integrated with existing or planned streets, roads or highways.

(5) That adequate easements or rights-of-way shall be provided for drainage and all utilities.

(6) That the layout and design of proposed subdivisions shall conform to the comprehensive plan of the county planning and zoning commission for the area and to measures adopted to implement the comprehensive plan.

(7) The dedication or reservation of land for streets.

(8) The extent to which grounds which are to be used for public purposes other than streets shall be dedicated or reserved as a condition precedent to approval of any subdivision or plat.

(9) That such parks, playgrounds, sites for public building or other areas designated for public use shall be of suitable size and location for their designated uses.

(10) The conditions prerequisite to subdivision and development of lands subject to seasonal or periodic flooding, including tidal flooding.

(11) The manner in which and the extent to which streets, sidewalks, water, sewer and other utility connections or ma any other necessary physical improvements shall be installed, and the specifications therefor, as conditions prece approval of the subdivision plan.

(12) The requirements of covenants as a prerequisite to subdivision plan approval.

(13) That sufficient and suitable monuments shall be placed to enable the survey of the subdivision or any part thereof to be retraced.

(14) The numbering and naming of streets and the providing of street signs.

(b) The regulations may further provide that the board of county commissioners shall not approve any subdivision plan or plat unless it finds after full consideration of all pertinent data that the subdivision can be served adequately and economically with such normal public facilities and services as are suitable in the circumstances of the particular case.

(c) The board of county commissioners shall provide in the subdivision regulations adopted by it that the board of county commissioners shall not approve any subdivision plan or plat unless the land included within the subdivision is suitable for the various purposes proposed in the request for subdivision approval. In particular, the subdivision regulations shall prescribe that no subdivision plan will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from adverse soil or foundation conditions or from any other menace to health, safety or public welfare.

(d) Subdivision regulations may require as a prerequisite to the approval of subdivision plan that:

(1) All improvements shall be installed in accord with the provisions of the subdivision regulations or amendments thereto, or

(2) A surety bond executed by the company authorized to do business in the state that is satisfactory to the board of county commissioners, payable to the county in sufficient amount to assure the completion of all required improvements and providing for and securing to the public the actual construction and installation of such improvements within a period required by the board of county commissioners and expressed in the bond. The board of county commissioners is hereby granted the power to enforce such bonds by resort to legal and equitable remedies. As an alternative to the provision of a surety bond such regulations may also provide for the deposit of cash in an escrow account whereby the board of county commissioners or its agent is put in an assured position to provide the required improvements.

(Code 1965, § 32-36; Laws of Fla. ch. 65-2015, § 6)

Sec. 30-85. - Variances and waivers.

(a) *Hardship.* Where the board of county commissioners finds that extraordinary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the general community plan or these regulations.

(b) *Additional provisions.* The regulations may further provide that the standards and requirements set out in the regulations may be modified by the board of county commissioners in the case of a plan and program for a new town which has elected to come under the provisions of this article, a complete community, or a neighborhood unit, which, in the judgment of the board of county commissioners, provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity with and achievement of the comprehensive plan of the county planning and zoning commission. In granting any such modifications, the board of county commissioners may require such reasonable conditions and safeguards as will secure substantially the objectives of the standards or requirements so modified.

(c) *Waiver.* The board of county commissioners may waive any or all of the requirements of this article and the rules and r adopted under this article, if it is determined upon the plans and data submitted by the subdivider that compliance wit article is not required because such plan or plat shall not conflict with or nullify the intent and purpose of this article. If granted, compliance with this article shall not be required as long as the plan, plat and use of the land upon which the granted shall not be altered, changed or modified by the subdivider or subsequent owner.

(d) *Conditions.* In granting variances and modifications, the board of county commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

(e) *Nonsubstantial and substantial variances.* All variance requests are to be classified and treated as either nonsubstantial or substantial by the development review committee (DRC) based upon the criteria contained in chapter 34. The board of county commissioners hereby deems nonsubstantial variances to be ministerial applications of the subdivisions regulations, chapter 34, which may be granted by the DRC. A DRC decision on a nonsubstantial variance may be appealed to the board and the board shall hold a noticed public hearing on the appealed DRC decision. Substantial variance shall be reviewed by the DRC and a recommendation forwarded to the board of county commissioners for final action at a noticed public hearing. All board of county commissioners public hearings on either substantial or nonsubstantial variances to chapter 34 shall follow the public hearing notice procedures set forth in chapter 34.

(Code 1965, § 32-37; Laws of Fla. ch. 65-2015, § 7; Ord. No. 94-4, § 3, 2-8-94)

Sec. 30-86. - Relation to comprehensive plan and zoning act.

In carrying out the purposes of this article the board of county commissioners shall review and relate the subdivision plans and plats to the comprehensive plan and zoning regulations adopted by the board of county commissioners.

(Code 1965, § 32-38; Laws of Fla. ch. 65-2015, § 8)

Sec. 30-87. - Land use permits and building permits.

No land use permit or building permit shall be issued by any department of the county if the use and development of the lot, parcel or tract of land for which the permit is requested is in violation of this article. No street shall be joined or connected to an existing public street if the land on which it is located has not been approved as a subdivision or platted under the provisions of this article.

(Code 1965, § 32-39; Laws of Fla. ch. 65-2015, § 9)

Sec. 30-88. - Appropriations.

The board of county commissioners is authorized to appropriate and pay out of the general revenue fund of the county sums sufficient to carry out the provisions of this article. The board of county commissioners is empowered to employ such personnel of whatever kind and nature as may be necessary to administer and enforce this article. The board of county commissioners is empowered to determine and set equitable fees and charges for the services and activities necessary to the administration of this article.

(Code 1965, § 32-40; Laws of Fla. ch. 65-2015, § 10)

Sec. 30-89. - Final hearing.

Before the final approval or disapproval of the subdivision plan or plat by the board of county commissioners, the board of county commissioners shall hold a public hearing or hearings, with written notice of the time, place and date of the hearing to the applicant and due public notice published once in a newspaper of general circulation in the county at least seven (7) days before the hearing and in addition shall give notice by United States mail, postage prepaid, at least seven (7) days prior to the date of the hearing to abutting property owners at their last known addresses of the time, place and date of the hearing. The testimony of witnesses in support of or in opposition to the proposed plan or plat shall be heard and the board of county commissioners may receive and consider other evidence. The chairman of the board of county commissioners or in his absence the acting chairman may administer oaths and compel the attendance of witnesses. Substantial compliance with the requirements for notice in this article shall be sufficient.

(Code 1965, § 32-41; Laws of Fla. ch. 65-2015, § 11)

Sec. 30-90. - Review of the board's decisions.

Any person aggrieved by the board of county commissioners' decision on the subdivision plan or plat may file a petition for writ of certiorari as provided by the Florida Rules of Appellate Procedure in the circuit court of the county, to review the decision of the board of county commissioners. The court shall not conduct a trial de novo. The proceedings before the board of county commissioners, including all proposed subdivision plans or plats and the exhibits attached thereto, the testimony of the witnesses at the public hearing before the board of county commissioners and the findings and order of the board of county commissioners shall be the subject of review by the circuit court. The person filing the petition for certiorari shall be responsible for filing a true and correct transcript of the final hearing before the board of county commissioners.

(Code 1965, § 32-42; Laws of Fla. ch. 65-2015, § 12; Ord. No. 98-37, § 36, 12-15-98)

Sec. 30-91. - Using or exhibiting unapproved proposed plan of subdivision prohibited.

(a) It shall be unlawful for the owner of any land subject to this article, or his agent, or other persons, to advocate, propose, suggest, use or exhibit a map, plat, survey or plan of a proposed subdivision or development of land unless the board of county commissioners has approved the proposed plan or plat in the manner provided by this article.

(b) Any owner or agent of the owner who falsely represents to a prospective purchaser of real estate that roads and streets, sewers, water systems, or drainage facilities will be built, constructed or maintained by the county shall be deemed guilty of an offense and shall be punishable as provided by section 1-9.

(Code 1965, § 32-45; Laws of Fla. ch. 65-2015, § 15)

Sec. 30-92. - Erection of buildings adjacent to unapproved streets.

No building shall be erected on a lot or parcel of land within the area of the county subject to this article, nor shall any building permit be issued therefor, unless:

(1) The street giving access to the lot or parcel on which such building is proposed to be placed has been accepted and opened as a public street or has otherwise received the legal status of a public street, or such street is shown on a legally recorded subdivision plat, or an approved subdivision plan or unless a waiver has been obtained.

(2) Such street has been improved to an extent which, under the circumstances of the particular situation is adequate to serve the needs of such building and to protect the public under the provisions of this article; provided that, if so authorized by subdivision regulations adopted under the provisions of this article, a building permit may be issued for construction of a building concurrently with the installation of required

street improvements, but no such permit shall express or imply any right of occupancy and use of such building. The board of county commissioners may require that no such building shall be occupied or used until the installation of such street improvements has been satisfactorily completed.

(Code 1965, § 32-46; Laws of Fla. ch. 65-2015, § 16)

Secs. 30-93—30-110. - Reserved.

ARTICLE IV. - RESERVED

Footnotes:
*--- (**4**) ---*
***Editor's note—** Section 2 of Ord. No. 2009-05 , adopted Feb. 24, 2009, repealed Art. IV, Subdivisions and Plats. Former Art. IV was comprised of §§ 30-111—30-123, and derived from the 1965 Code §§ 32-1—32-11; Laws of Fla. ch. 59-1646; Laws of Fla. ch. 59-1658; and Ord. No. 96-2, adopted Jan. 9, 1996.*

Secs. 30-111—30-150. - Reserved.

ARTICLE V. - LAND DEVELOPMENT CODE

Footnotes:
*--- (**5**) ---*
***Editor's note—** Ord. No. 91-29, §§ 1, 2, approved Dec. 10, 1991, is included as §§ 30-151, 30-152 of this article at the direction of the county. Exhibit A is not set out herein but is on file with both the clerk to the board of county commissioners and the county planning department. Amendments and additions to the County Code included in Exhibit A, as stated in § 30-152(b), have been incorporated into the Code; such amendments and additions are listed in the Code Comparative Table.*
***State Law reference—** Local Government Comprehensive Planning and Land Development Regulations Act, F.S. ch. 163, pt. II.*

Sec. 30-151. - Purpose; short title.

(a) *Purpose.* This article is created to comply with F.S. § 163.3202, which requires that land development regulations be adopted or amended and enforced which are consistent with the 1990—2010 comprehensive policy plan.

(b) *Short title.* This article shall be known as the "Orange County Land Development Code" and may be referred to as the "LDC."

(Ord. No. 91-29, § 1, 12-10-91)

Sec. 30-152. - Incorporation of Exhibit A; format of amendments; intent.

(a) Exhibit A includes all the text which shall constitute the Orange County Land Development Code, and Exhibit A is hereby incorporated by this reference as if fully set forth herein.

(b) The text in Exhibit A includes existing text as currently published in the County Code, amendments to that existing text and additional text not presently included in the County Code. The additional text is indicated by the underlined language; the deleted language is indicated by strike-throughs. Such amendments to existing text of the County Code as shown in Exhibit A shall amend the text of the County Code. The additional text of new regulations as shown in Exhibit A shall be incorporated into the County Code. The section numbering reference system of the provisions in Exhibit A is the same section number reference system as currently exists in and is consistent with the County Code.

(c) The intent of the Land Development Code is to bring together from the County Code those regulations affecting

land development into a centralized reference document. However, after the amendments as set forth in Exhibit A are incorporated into the County Code, if there is a conflict in the printed text of the County Code and the printed text of the Land Development Code, then the County Code shall control. All future amendments to any provisions which may appear in the Land Development Code shall be made to the text of the provision as such provision officially reads and appears in the County Code. After adoption into the County Code, any such amendment shall be reflected in the Land Development Code.

(d) Nothing in this Land Development Code shall act to eliminate or diminish the rights granted or protected by F.S. § 163.3167(8). For purposes of the foregoing, any development that has been the subject of a binding letter issued by the Florida Department of Community Affairs or its predecessor pursuant to F.S. § 380.06(4) declaring that, pursuant to F.S. § 380.06(20), the right to complete the development is not limited or modified by F.S. § 380.06, such development shall be treated as a development of regional impact.

(Ord. No. 91-29, § 2, 12-10-91)

Secs. 30-153—30-180. - Reserved.

ARTICLE VI. - COUNTY SURVEY

Sec. 30-181. - Authority to expend funds.

The board of county commissioners is hereby authorized and empowered to expend public funds out of the general revenue fund of the county through the county surveyor or any registered surveyor for the purpose of reestablishing and relocating section corners, quarter section corners, and other land corners as established by the United States Government survey in the county; and to provide for the placing of permanent reference monuments at such corners.

(Code 1965, § 32-23; Laws of Fla. ch. 26079(1949), § 1; Laws of Fla. ch. 29353(1953), § 1)

Sec. 30-182. - Survey acceptable as prima facie evidence.

When the section corners, quarter section corners, and other land corners have been reestablished, and permanent reference monuments placed at such corners, they shall be accepted in all courts as the prima facie location of such corners for any and all purposes.

(Code 1965, § 32-24; Laws of Fla. ch. 26079(1949), § 2)

Sec. 30-183. - Surveyor; recording of notes, plats and records.

The reestablishing and relocating of such corners shall be done through the county surveyor of the county or any registered surveyor, and all notes, plats and records of such survey shall be filed with the clerk of the circuit court of the county for the use of the general public, and the clerk shall make appropriate notations on all recorded plats affected.

(Code 1965, § 32-25; Laws of Fla. ch. 26079(1949), § 3; Laws of Fla. ch. 29353(1953), § 3)

Secs. 30-184—30-200. - Reserved.

ARTICLE VII. - RESERVED

Footnotes:
*--- **(6)** ---*

Editor's note— *Ord. No. 92-32, § 1, aproved Oct. 20, 1992, repealed Ord. No. 84-21, approved Nov. 5, 1984, as amended by Ord. No. 88-12, approved Sept. 19, 1988, which ordinances comprised former art. VII, §§ 30-201—30-210, of this chapter, relative to transportation corridor. Additionally, such former provisions derived from the 1965 Code, §§ 37-151—37-160, and Ord. No. 84-24, § 1, approved Dec. 17, 1984; Ord. No. 86-2, § 1, approved Jan. 20, 1986; Ord. No. 86-12, § 1, approved May 19, 1986; Ord. No. 86-15, § 1, approved June 9, 1986; and Ord. No. 86-17, § 1, approved July 7, 1986.*

Secs. 30-201—30-235. - Reserved.

ARTICLE VIII. - SITE DEVELOPMENT

Footnotes:
*--- (**7**) ---*
State Law reference— *Adoption of land development regulations, F.S. § 163.3194(2).*

DIVISION 1. - GENERALLY

Sec. 30-236. - Title.

This article shall be known as the "Orange County Site Development Ordinance."

(Code 1965, § 32-61; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-237. - Scope.

All new site development and additions or expansions to existing site development of commercial, industrial, professional, institutional, and multifamily property, in the unincorporated areas of the county, shall comply with the site development requirements contained in this article. For the purposes of this article, "multifamily" shall mean any lot or parcel of property which is to be developed for three (3) or more attached or detached dwelling units.

(Code 1965, § 32-62; Ord. No. 86-20, § 1, 8-25-86)

Conflicts between county ordinances and municipal ordinances, § 704.

Sec. 30-238. - Violations.

Violations of this article shall be punished as provided in section 1-9 of the County Code. The county may seek to enjoin or restrain any person violating the provisions of this article by applying to the circuit court of the county for whatever relief may be available.

(Code 1965, § 32-79; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-239. - Application for site development approval.

Nine (9) copies of site development plans shall be submitted in accordance with the site plan and building permit process procedures as adopted by the board of county commissioners.

(Code 1965, § 32-63; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-240. - General site development plans.

Site development plans shall comply with good engineering practice and with all applicable federal, state and county regulations and shall be signed and sealed by a state registered engineer or architect. The county engineer may require that plans be signed and sealed by a state registered engineer when he determines that the improvements or site work in question exceed services purely incidental to architectural practice.

(Code 1965, § 32-64; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-241. - Paved access.

All sites shall have access to a public paved street or road. If the site does not have such access, the developer shall submit, with the site development plans, road construction plans prepared by a state registered engineer for paving the public road to the nearest existing paved public road. Following approval by the county of the road construction plans and prior to the issuance of any certificate of occupancy, the developer shall complete construction of the paved road. All road improvements, including the construction of on-site private roads, shall be designed in accordance with the "Road Construction Specifications" and chapter 34, of the County Code, article V, division 2 (pertaining to streets or highways), which provisions are adopted by reference.

(Code 1965, § 32-65; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-242. - Maintenance of improvements.

Any infrastructure improvements required by this article shall be perpetually maintained by the applicant and all successors in interest to the real property described in the permit issued unless dedicated to the county. Prior to approval for any such improvements, the applicant shall supply to the county an executed agreement in recordable form, or some other form of security, satisfactory to the county which assures continuous, perpetual maintenance of the improvements. No certificate of occupancy shall be issued until such assurance has been received and accepted by the county.

(Code 1965, § 32-76; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-243. - Variances and appeals.

(a) No variances, waivers or modifications of any applicable federal, state or county regulation may be granted, except through the specified procedures already established for such regulations.

(b) Following application to the county engineer, variances from other provisions of this article may be granted if:

  (1) The enforcement thereof would do manifest injustice and would be contrary to the intent, purpose and spirit of this article; or

  (2) When the result of the proposed variance equals or exceeds the minimum requirements of this article.

(c) Any application for a variance from the provisions of this article must include documentation of the current physical conditions on the site, alternatives from the applicable provisions of this article, cost estimates, soil reports or other creditable data required to support or justify the requested variance.

(d) The county engineer shall notify the applicant in writing of his decision in granting or denying the variance.

(e) Any applicant for a variance aggrieved by the decision of the county engineer may file a notice of appeal to the board of county commissioners within fifteen (15) days after the decision of the county engineer is rendered. A hearing on the appeal shall be held by the board of county commissioners. Notice of the hearing shall be sent to the applicant by regular U.S. mail. Following the hearing on the appeal, the board of county commissioners may reverse, affirm or modify the decision of the county engineer. The decision of the board of county commissioners shall be final.

(Code 1965, § 32-77; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-244. - Alterations or modifications.

Once a site plan has been reviewed and approved pursuant to this article, all construction and development on the site shall be in accordance with the approved site plan unless prior approval from the county for any proposed change, alteration or modification is obtained. The owner shall maintain all site improvements to ensure operation is in conformance with approved plans.

(Code 1965, § 32-78; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-245. - Fees.

The board of county commissioners may, by ordinance, establish fees for application for development approval submitted pursuant to this article.

(Code 1965, § 32-80; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-246. - Conservation areas.

All development shall be consistent with the conservation element of the county comprehensive policy plan and the conservation regulations as shown in this Code. Where development is proposed within a conservation area, a determination must be made as to the extent of the intrusion into the conservation area. The following information shall be submitted by the developer or owner with the site development plan:

(1) A list of on-site soils using the U.S. Department of Agriculture, Soil Conservation Service's Soil Survey of Orange County, Florida;

(2) Identification of all wetland vegetative species, including freshwater marsh, wet prairies, cypress domes and stands and wetlands hardwood vegetative communities; and

(3) The site development plan shall also meet the requirements of chapter X, environmental regulations, section F, soil suitability, which may require a soils study to be completed by a geotechnical engineer.

(Code 1965, § 32-67; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-247. - Minimum fire protection.

(a) *Fire mains and fire hydrants.* Fire mains shall be sized to meet the maximum area flow requirements for the facility served. Fire hydrants must be five-and-one-quarter-inch valve hydrants and must comply with American Water Works Association (A.W.W.A.) Standard 502. Hydrants shall be spaced in accordance with county building and fire codes and county fire department standards. Hydrant flows shall be adequate to service the risk as determined by fire department standards. Mains, hydrants and other appliances shall be designed and installed according to minimum standards promulgated by the utility to which the mains are attached.

General Area Fire Flow Requirements

(may be multiple hydrants)

Land Use Type	*Area Fire Flows (gallons/minute)*	*Residual* Pressure *(PSI)*
Single-family/duplex-triplex	500	20
Multifamily	1,000	20
Commercial/industrial	2,000	20

(b) *Wet standpipes.* Wet standpipes shall be installed in all campgrounds and recreational vehicle parks, as required by se 18.205 of the Standard Fire Prevention Code.

(c) *Access to buildings by fire apparatus.* Every building proposed for construction shall be accessible to fire department apparatus. Access shall satisfy the building and fire codes and other applicable county ordinances.

(Code 1965, § 32-68; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-248. - Access driveways.

In order to preserve the integrity of the public road system, access driveways will be controlled to the maximum extent possible. Specific requirements are as follows:

(1) Driveways shall not exceed thirty (30) feet in width unless approved by the county engineer.

(2) No driveway shall be permitted within seventy (70) feet of an intersection. This measurement shall be made from the centerline of the proposed driveway to the nearest right-of-way line of the intersecting street as measured along the adjacent right-of-way line.

(3) The number of driveways to be provided for any individual site shall be the minimum number required to adequately serve the needs of the property or development. The following shall serve as guidelines for the number of driveways that will be permitted per site:

a. Parcels with frontage of one hundred (100) feet or less will be limited to one (1) driveway.

b. No more than two (2) driveways will be permitted for any individual site.

c. Additional driveways may be permitted with the approval of the county engineer, provided that only the minimum number of driveways required to adequately serve the need of the proposed development shall be permitted and all other requirements of this section are met.

(4) Driveway radii are to be constructed within the limits of the frontage boundary of the property for which they serve.

(5) Driveways shall be as nearly at right angles to the roadway as practical.

(6) On streets with standard curb and gutter, driveways with adequate radii for the use intended and valley gutter shall be required.

(7) Parking, stopping, and maneuvering of vehicles on the right-of-way shall not be permitted. Site development shall be designed to provide adequate on-site parking and maneuvering for all vehicles.

(8) No driveway shall be permitted which necessitates backing of vehicles on the right-of-way.

(9) Improvements to the public road to which any driveway would connect will be required when necessary to ensure safe and adequate ingress and egress to the site.

(Code 1965, § 32-69; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-249. - Planned rights-of-way.

No improvements including stormwater retention areas shall be permitted within the planned rights-of-way for major streets as specified in chapter 38, article XV of the County Code, as the same may be amended.

(Code 1965, § 32-70; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-250. - Sidewalks.

All sites shall have a five-foot sidewalk constructed to current county standards along all street frontages. On a case by case basis, upon approval from the county engineer, a developer may make a voluntary contribution to a sidewalk fund to pay for construction of sidewalks in lieu of actual construction of sidewalks. The amount of the contribution shall be on a per foot basis, as may be approved from time to time by the county engineer.

(Code 1965, § 32-71; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 96-2, § 6, 1-9-96)

Sec. 30-251. - Landscaping.

Landscaping shall be installed in accordance with chapter 24, article II of the County Code.

(Code 1965, § 32-72; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-252. - Building setbacks.

Building setbacks and buffer areas shall comply with current applicable regulations contained in chapter 38 of the County Code (pertaining to zoning).

(Code 1965, § 32-73; Ord. No. 86-20, § 1, 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-253. - Foliage growing and processing facilities.

Foliage growing and processing facilities shall satisfy the following requirements and shall otherwise be exempt from the other requirements of this article:

(1) *Categories.* Foliage growing and processing facilities shall be classified into one (1) of the four (4) following categories:
   a. Those projects in which the total area planned for foliage growing and processing structures is less than one thousand (1,000) square feet. This category requires approval by the zoning and building departments only, and need not be reviewed by the county engineer or public works division.
   b. Those projects in which the total area planned for foliage growing and processing structures is at least one thousand (1,000) square feet and no more than six thousand (6,000) square feet, or where the total amount of impervious material, existing or proposed covers no more than fifteen (15) percent of the total site area.
   c. Those projects in which the total area planned for foliage growing and processing structures is at least six thousand (6,000) square feet, but no more than twelve thousand (12,000) square feet or in which more than fifteen (15) percent of the total site area is planned for impervious coverage.
   d. Those projects in which the total area planned for foliage growing and processing structures is over twelve thousand (12,000) square feet.

(2) *Minimum site development plan requirements:*
   a. Site plans for facilities shall contain the following:
      1. Legal description of the proposed development site.
      2. Property boundary lines with dimensions.
      3. Dimensions and location of all existing and proposed structures.
      4. Identification of utilities to serve the proposed site (well, septic tank, etc.).
      5. Location map showing frontage on public road right-of-way. The type of road surface should be indicated. Power access or easements, if any, shall be indicated.

b. Site plans for facilities classified as Category 1 or 2 shall be prepared by the applicant and site plans for facil Category 3 or 4, or facilities in which the total amount of impervious material covers more than fifteen (15) p area, must meet the minimum stormwater management requirements contained in division 2 of this article prepared by a state registered engineer or architect.

(3) *Stormwater management requirements.* Site plans for facilities classified as Category 3 or 4, or facilities in which the total amount of impervious material covers more than fifteen (15) percent of the site area, must meet the minimum stormwater management requirements contained in division 2 of this article.

(4) *Notice of future assessments.* When proposed facilities classified as Categories 1 and 2 will utilize an unpaved county road, the owner of the proposed development site will execute a notice of future assessment of paving costs prepared by the county, and available at the county zoning department. No building permit will be issued until this notice has been properly executed and a copy submitted to the zoning department. Proposed facilities for Categories 3 and 4 shall have access onto a paved street or road.

(Code 1965, § 32-74; Ord. No. 86-20, § 1, 8-25-86)

Sec. 30-254. - Solid waste.

All residential projects with greater than four (4) units per structure shall be required to provide centralized facilities (e.g., dumpster) for deposit of solid waste from the individual living units. Such container shall provide four one-hundredths (0.04) cubic yards of capacity per bedroom. The container shall be located or screened in such a way that they are not readily visible from adjacent properties.

(Code 1965, § 32-75; Ord. No. 86-20, § 1, 8-25-86)

Secs. 30-255—30-275. - Reserved.

DIVISION 2. - STORMWATER STANDARDS

Footnotes:
*--- (**8**) ---*
Cross reference— *Stormwater management in subdivisions, § 34-226 et seq.*

Sec. 30-276. - Categories.

In order to provide general guidelines for the many types of development covered by this article, development will be categorized as follows:

(1) *Category one:* Development that currently contains mostly impervious area and where additional development, and/or site modifications, will cause no increase in impervious area.

(2) *Category two:* Development not covered in Category one above, and is less than ten (10) acres total.

(3) *Category three:* Development not covered in Category one above and is ten (10) acres or more total.

(Code 1965, § 32-66(a); Ord. No. 86-20, § 1(a), 8-25-86)

Sec. 30-277. - General design standards.

(a) A stormwater management system shall be designed and installed for the development that will contain features to provide for:

(1) Pollution abatement (Categories 1, 2 and 3).

(2) Recharge, where possible (Category 3 only).

(3) Rate of discharge limitations (Categories 2 and 3).

(4) Protection from flooding (Categories 2 and 3).

(b) These requirements may be waived for individual sites within commercial or industrial subdivisions which have provided master drainage systems.

(c) Pollution abatement will be accomplished by retention, or detention with filtration, of one-half inch of runoff from the developed site, or the runoff generated from the first one (1) inch of rainfall, on the developed site. The volume of runoff generated from the first inch of rainfall shall be estimated by multiplying the Rational Method Runoff Coefficient (C) for the developed site by one (1) inch of rainfall.

(d) Recharge in areas where the soils are compatible (Hydrologic Soil Group Type "A" soils as described by the U.S.D.A. Soil Conservation Service) will be accomplished by providing for retention of the total runoff generated by a twenty-five-year frequency, twenty-four-hour duration storm event from the developed site.

(e) The post development peak rate of discharge permitted from the site will not exceed the predevelopment peak rate of discharge from the site during a twenty-five-year frequency storm event. Those sites with no positive outfall will be required to retain total runoff from a one-hundred-year storm event.

(f) All residential structures are to be flood-free and all commercial and industrial structures are to be either flood-free or floodproofed (see section 30-279).

(Code 1965, § 32-66(b); Ord. No. 86-20, § 1(b), 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-278. - Disposition of runoff.

(a) All development will be required to treat the required volume of runoff in accordance with section 30-277(c) for pollution abatement purposes. Additionally, Categories 2 and 3 will be required to limit the rate of discharge from the developed site to the rate of discharge emanating from the site prior to development based upon a twenty-five-year frequency storm event. When pollution abatement volumes and detention volumes to reduce the peak rate of discharge are incorporated into one (1) facility, the volume of water impounded to reduce peak discharges in excess of the pollution abatement volume must be evacuated by a positive, nonfiltering system unless otherwise approved by the county engineer.

(b) Off-site easements for stormwater management facilities will be required when either of the following conditions exist:

(1) The discharge is into any manmade facility for which the county does not have either a drainage easement or right-of-way.

(2) The discharge is into a natural system such that the rate or character (i.e., sheet flow vs. concentrated flow) of the flow at the property line has been changed. The easement will be required to a point at which natural conditions are duplicated.

(c) Special engineering features to minimize the transport of floating debris, oil, and grease remaining in the detention volumes to reduce peak discharges will be incorporated into the design of the outlet control structure. The design of this control system will make adequate provision to minimize erosion.

(Code 1965, § 32-66(c); Ord. No. 86-20, § 1(c), 8-25-86)

Sec. 30-279. - Development within areas of special flood hazard.

(a) All development within areas of special flood hazard as delineated on the official flood insurance rate maps (FIRM) or as determined by the county engineer shall comply with the following requirements:

(1) Establish, to the satisfaction of the county engineer, the elevation of the base flood (one-hundred-year flood).

(2) Set the minimum finished floor elevation at least one (1) foot above the elevation of the base flood.

(3) For commercial or industrial developments, floodproofing may be substituted in lieu of elevating the finished floor.

(4) Provide compensating storage for all floodwater displaced by development below the elevation of the base one-hundred-year flood.

(b) Compensating storage is to be accomplished between the normal high water of the special flood hazard area and the estimated one-hundred-year flood elevation.

(c) All developments within riverine flood hazard areas shall be designed to maintain the flood-carrying capacity of the floodway such that the base flood elevations are not increased, either upstream or downstream.

(Code 1965, § 32-66(d); Ord. No. 86-20, § 1(d), 8-25-86)

Sec. 30-280. - Design criteria.

(a) *Method of computing runoff volume and peak rate of discharge.* The design method used to establish runoff volume and peak rate of discharge shall incorporate the most current techniques. The following methods of computation can be used:

(1) Category 2 development:

a. The Rational Formula may be used to determine peak predevelopment dis-charges by the formula Q = CIA, where:

Q	=	Peak discharge in cfs.
I	=	Intensity of rainfall derived from FDOT rainfall charts (Appendix 5.1.A) and the time of concentration for the basin.
A	=	Area contributing in acres.
C	=	Runoff coefficient.

b. The detention storage volume of the pond required when using the Rational Formula will be determined by the formula V = CRA, where:

V	=	Volume of pond in acre-feet.
C	=	Runoff coefficient.
R	=	25-year, 6-hour rainfall (5.75 inches divided by 12 inches per foot.)
A	=	Area contributing in acres.

(2) Category 3 development: Hydrographs should be developed by the SCS Unit-Hydrograph or by the modified Sant Hydrograph method.

(b) *Design storm (minimum).* Each facility listed below shall be designed for the indicated storm frequency:

Facility	*Design Storm Frequency*
Canals, ditches or culverts for drainage external to the development	25-Year
Cross drains, storm sewers	10-Year
Roadside swales for drainage internal to the development	10-Year

(c) *Storm duration and rainfall intensity.* The following guidelines are for use in the design of the stormwater management system. For the Rational Method, time of concentration (TC) will dictate the rainfall intensity. Rainfall intensities for the Rational Method are to be obtained from the Florida Department of Transportation Rainfall Curves for Zone. TC values are to be obtained from the Federal Highway Administration Kinematic Wave Formula (defined on Appendix 5.1.B) for sheet of overland flows, and from the Manning Equation for concentrated flows (i.e., gutter flow, ditch flow, pipe flow, etc.). For other methods such as hydrographs, TR-20, HEC I, etc., use the following to determine design storm duration:

(1) For predevelopment time of concentration between zero and thirty (30) minutes, use six-hour storm duration for design.

(2) For predevelopment time of concentration over thirty (30) minutes, use twenty-four-hour storm duration for design. Rainfall distributions for the above are to be in accordance with the county's adopted distributions. Tabulated time vs. rainfall depth values for the ten-year, twenty-five-year and one-hundred-year frequency storm events are shown on Appendix 5.2. A twenty-four-hour rainfall duration shall be used with all calculations involving the one- hundred-year storm frequency event. If the TC of the site will likely change due to development, the maximum discharge permitted from the site will be limited to the predevelopment rate of discharge calculated with the predevelopment TC in order to minimize the impact of the development on the receiving water bodies. TC used hydrograph methods shall be determined for both the predevelopment and postdevelopment site conditions according to the methods specified above for the Rational Method. A table of acceptable "n" values for use in the Kinematic Wave Formula is provided on Appendix 5.1.C.

(d) *Drainage pond criteria.* The following shall apply to drainage ponds:

(1) *Design criteria for pollution abatement utilizing retention or detention with filtration.* The design of ponds for the required retention or detention with filtration may consider separate facilities, or pollution abatement may be combined into the design of the detention pond required to reduce the peak rate of flow from the developed site to that peak rate of flow prior to the development of the site. All retention ponds or detention ponds with filtration will be designed as dry bottom ponds unless otherwise approved by the county engineer. A minimum of two (2) feet of filter media is required for filtering the pollution abatement volume. The volume of stormwater impounded for pollution abatement will be evacuated through the filter media within a seventy-two-hour time period. A positive, nonfiltering bleed-down device with an operable gate or valve shall be installed as a backup system in the event that the filtration system fails. The gate or valve shall normally be set and locked in the closed position. The bottom of a required retention or detention with filtration pond shall be a minimum of three (3) feet above the estimated seasonal, high water table, underdrains will be installed with a minimum invert elevation of one (1) foot below the pond bottom, along the entire perimeter of the pond unless a geotechnical engineer determines a lesser amount of underdrain can adequately control the high water table. Underdrains used to filter and discharge the pollution abatement volume must be located in the "side-slope" position similar to the illustration on Appendix 5.3.

a. It is also recommended that under-drains used solely to control a high groundwater table be located in

the side-slope position; however, the "pond bottom" located for this type of under-drain will be considered on a case-by- case basis. The use of a "mound-type" underdrain is strictly prohibited.

b. With the approval of the county engineer, wet-bottom ponds will be allowed, provided that a minimum of six (6) feet of water depth below the design low or "normal" water level is designed into the facility. Final design seepage rates will be determined by a geotechnical engineer. All necessary calculations to support the above shall be submitted to the county engineer.

(2) *Design criteria of detention facilities to reduce peak rate of flow; twenty-five-year frequency storm event:* The detention pond will be sized to limit the peak rate of discharge from the developed site to that discharge generated prior to development. Supporting calculations shall be submitted and will contain, as a minimum, runoff hydrographs for the predeveloped site and the postdeveloped site, and a discharge hydrograph after routing through the proposed detention facility. All routing calculations to be submitted must consider the tailwater of the receiving facility. If the receiving facility is an existing storm sewer, the hydraulic gradient line elevation (HGL) of this receiving facility can be assumed at one-half foot below its gutter line elevation, unless a detailed study of the existing system indicates otherwise.

a. Credit for seepage to further reduce the peak rate of discharge will not be allowed, unless accompanied by supporting documentation prepared by a geotechnical engineer.

b. A minimum of fifty (50) percent of the total volume of water required to attenuate the peak discharge of the facility in excess of the pollution abatement volume must be evacuated within a twenty-four-hour time period. The remaining fifty (50) percent must be evacuated within a seventy-two-hour time period.

c. All stormwater evacuation from detention facilities in excess of the pollution abatement volume will be accomplished by a positive, nonfiltering discharge structure only. The use of underdrains to accomplish this required evacuation is prohibited. One (1) foot of the freeboard is required above the design high water of the pond.

d. The outlet structure shall be designed to skim floating debris, oil and grease from an elevation six (6) inches below the surface of the pollution abatement volume to an elevation six (6) inches above the design high water level of the pond.

(3) *Design criteria for recharge facilities:* Recharge facilities may be required in developments (Category 3) where Type "A" soils, as indicated on the soils survey map for the county prepared by the U.S.D.A. Soil Conservation Service, are predominant. Type "A" soils have a high infiltration rate when thoroughly wet and experience a low rate of runoff, thus providing the potential for prime aquifer recharge. These soils are predominately located in aquifer recharge areas, such as the upland and low ridge areas of the county as shown on Map #VII-A [of the Land Development Code].

If a site has Type "A" soils, a detailed soils report prepared by a geotechnical engineer shall be submitted to the county engineer for review prior to the development of final, detailed drainage plans for the site. The report shall contain a recommendation as to whether or not recharge is feasible on the proposed site. The county engineer, after review of the report and recommendation of the geotechnical engineer, shall make a final written decision regarding whether or not recharge facilities will be required.

a. If recharge facilities are required by the county engineer, retention of the total runoff generated by a twenty-five-year frequency, twenty-four-hour duration storm event from the developed site will be required.

b. Final design seepage rates utilized in the design of the recharge facilities will be determined by a geotechnical engineer. All necessary calculations to support the above shall be submitted to the county engineer.

(4) *Design criteria where a positive outfall is not available:* When a positive outfall is not available or discharge into a lake without a positive outfall is proposed, the pond design shall detain the one-hundred-year storm event.

The pond shall be designed to evacuate a daily volume equivalent to one (1) inch of runoff from the total area contributing to the pond.

(5) *Design criteria for off-site drainage:* Off-street areas which drain to or across a site proposed for development must be accommodated in the stormwater management plans for the development. The stormwater management service for the development must be capable of transporting existing off-site flows through or around the development. The estimation of the off-site flows must be done separately from the estimation of on-site post-development flows (i.e., separate off-site and on-site hydrographs must be computed due to the typically significant difference in land use characteristics). It is strongly recommended that the project engineer meet with the appropriate county engineering staff prior to generating final detailed design calculations in order to establish off-site design requirements for a particular project.

(e) *Operation and maintenance of stormwater facilities:* Operation and maintenance of all stormwater management facilities constructed under this article shall be the owner's responsibility, unless such facilities are conveyed to and accepted by the county. Areas adjacent to open drainage ways and ponds shall be graded to preclude the entrance of stormwater except at planned locations. Where retention/detention areas are located on the project periphery, the developer may be required to provide additional landscaping or screening to adequately protect abutting properties. The submittal of a proposed operation and maintenance schedule shall be required prior to final approval of the project.

(Code 1965, § 32-66(e); Ord. No. 86-20, § 1(e), 8-25-86; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

Sec. 30-281. - Exfiltration system.

An exfiltration system will be permitted for management of stormwater providing the designs have been completed by a qualified geotechnical engineer and that the following requirements are met:

(1) The design shall be completed by a geotechnical engineer and the engineer shall submit the following certification at the time construction plans are submitted for review and approval. "This is to certify that the exfiltration system design for (project name) has been designed in conformance with Orange County Code section 30-277 and meets the requirements pertaining to pollution abatement, rate of discharge, and protection from flooding."

(2) The design geotechnical engineer shall provide full-time inspection of the installation of the exfiltration system and prior to release of certifications of occupancy the following certification shall be submitted: "This is to certify that the exfiltration system installation for (project name) has been inspected and was installed in conformance with the approved design."

(3) The site plan shall be further designed in such a manner that in the event the exfiltration system fails, the stormwater will be retained on-site for the full twenty-five-year, twenty-four-hour storm prior to any stormwater being permitted to leave the site.

(4) The design of the exfiltration system shall provide for access for inspection purposes and further shall have provisions to insure that maintenance activity can be performed.

(Code 1965, § 32-66(f); Ord. No. 86-20, § 1(f), 8-25-86)

Sec. 30-282. - Drainage plan requirements; all categories of development.

(a) *Drainage map.* The project engineer shall include in the construction plans a master drainage map showing all existing and proposed features. The map is to be prepared on a twenty-four-inch by thirty-six-inch sheet on a scale not to exceed one (1) inch equals two hundred (200) feet. The following shall be included on the drainage map:

(1) Drainage bounds, including all off-site areas draining to the proposed site.

(2) Sufficient topographical information with elevations to verify the location of all ridges, streams, etc., (one-foot

contour intervals).

(3) High water data on existing structures upstream and downstream from the site.

(4) Notes indicating sources of highway data.

(5) Notes pertaining to existing standing water, area of heavy seepage, or springs.

(6) Existing drainage features (ditches, roadways, pond, etc.). Existing drainage features are to be shown a minimum of one thousand (1,000) feet downstream of the proposed development, unless the ultimate outfall system is a lesser distance.

(7) Drainage features, including location of inlets, swales, ponding area, etc.

(8) Delineation of drainage sub-areas.

(9) General type of soils (obtain from soil survey of the county).

(10) Flood hazard classification.

(11) Description of current ground cover and/or land use.

(b) *Subsoil investigation.* A subsoil report shall be prepared by a geotechnical engineer experienced in the preparation of this type of report. The contents of the subsoil report will be in accordance with section 30-280(d).

(c) *Stormwater calculations.* Stormwater calculations for retention/detention areas, including design high water elevations for the twenty-five-year and one-hundred-year storm events shall include the following:

(1) Cross sections of retention/detention facilities.

(2) Typical swale, ditch or canal sections.

(3) Drainage, rights-of-way.

(4) Typical fencing detail.

(5) Note on the design plans that an erosion control plan will be submitted to the county engineer for approval prior to the preconstruction conference.

(Code 1965, § 32-66(g); Ord. No. 86-20, § 1(g), 8-25-86)

Secs. 30-283—30-305. - Reserved.

ARTICLE IX. - SURFACE WATER BOUNDARY REGULATIONS

Sec. 30-306. - Title.

The regulations established herein shall be known and may be cited as the "Orange County Surface Water Boundary Regulations."

(Code 1965, § 36-151; Ord. No. 82-14, § 1, 8-17-82)

Sec. 30-307. - Applicability.

The regulations contained in this article for determining the landward edge or boundary of any natural surface water body shall apply to establishing construction setback lines under the county zoning resolution, septic tank setback lines under the county growth management policy, and jurisdictional boundaries for all regulated activities under Laws of Fla. chs. 57-1643, 63-1711, 65-2017 and 67-1829.

(Code 1965, § 36-1; Ord. No. 82-14, § 2, 8-17-82)

The acts referenced in the above section are compiled in this Code as indicated below:

Laws of Fla. ch.	*Code Location*
57-1643	ch. 33, art. II
63-1711	ch. 33, art. IV
65-2017	ch. 33, art. III
67-1829	ch. 15, art. VI

Sec. 30-308. - Normal high water elevation—Defined.

The term "normal high water elevation" means the landward edge of any natural surface water body during normal hydrological conditions.

(Code 1965, § 36-153; Ord. No. 82-14, § 3, 8-17-82)

Definitions and rules of construction generally, § 1-2.

Sec. 30-309. - Same—Evidence.

For the purposes of this article, the normal high water elevation shall constitute the landward edge of any natural surface water body during normal hydrological conditions and is an elevation determined by the public works director or his designee through compilation of relevant, available evidence specific to a particular water body which should include, when available:

(1) *Botanical indicators.* The presence of water for sufficient periods of time precludes the existence of terrestrial plant communities and tends to establish conditions whereby shoreline plant (hydrophytic) species inhabit the nearshore and shoreline areas. Since these communities tend to change slowly, they are widely utilized to accurately distinguish the uplands from those lands susceptible to the normal inundation of a specific water body. The normal high water elevation is typically indicated by that elevation where upland, terrestrial plant communities tend to terminate and shoreline (hydrophyte) plants are established as the prevalent plant community. The hydrophytic species list contained in section 30-310 characterizes the aquatic habitat, as well as shoreline areas of a water body. Additional plant species may be used where they are shown to be relevant to a unique situation.

(2) *Physical indicators.* Physical indicators include any observable physical feature along a given shoreline resulting from the presence of water in a given water body for sufficient periods of time so as to leave a physical line, mark or other distinguishable feature, including, but not limited to, watermarks on trees, older docks and seawalls, and watermarks on older bridges and abutments. In order to accurately establish the normal high water elevation, the affidavits and like testimony of long-time residents living near a particular water body and other acceptable collateral evidence may be used as an acceptable indicator.

(3) *Geomorphological indicators.* The normal, sustained presence of water along a given shoreline of either lakes (still waters) or streams (flowing waters) tends to leave specific, surficial indications of that normal, sustained presence, such as deposits of organic silts, peat and muck, natural beach ridges, scarps, and levees. These deposits and other indicators may be multiple, depicting historical sustained low water elevations, average elevations, and high water elevations. The normal high water elevation is typically indicated by the most landward scarp, beach ridge or levee found along a particular shoreline, and is likewise indicated by the highest or most landward silt, peat or muck deposits, or the most landward stratification of those deposits.

(4) *Water level records.* Water level elevations obtained and recorded by any governmental agency, registered land surveyor, or others whose records are verifiable by the public works director or his designee may be used to determine the normal high water elevation. These records shall be accorded less weight than other individual indicators provided herein unless such records cover a period of at least fifteen (15) years.

(5) *Controlled lake elevations.* Where lake elevations are controlled by properly engineered structures, the normal hi elevation is presumed to be one-half foot above the control elevation. Where a normal high water elevation estab method conflicts with the other indicators contained herein, the public works director or his designee shall deterr elevation. The public works director's determinations should include, when available, all of the indicators contain may include additional hydrologic surveys or engineering studies at the discretion of the public works director.

(Code 1965, § 36-154; Ord. No. 82-14, § 4, 8-17-82)

Sec. 30-310. - Same—Hydrophytic species list.

The following list of hydrophytic species for determining the normal high water elevation is hereby adopted:

Common Name	*Botanical Name*
Trees:	
Bald cypress	Taxodium distichum
Pond cypress	Taxodium ascendens
Swamp tupelo	Nyssa biflora
Water ash	Fraxinum caroliniana
Dahoon	Ilex cassine
Willow	Salix caroliniana
Loblolly	Gordonia lasianthus
Sweet bay	Magnolia virginiana
Swamp bay	Persea palustris
Sweet gum	Liquidambar styraciflua
Woody Shrubs:	
Water willow	Justicia ovata
Button bush	Cephalanthus occidentalis
Primrose willow	Lugwigia peruviana
St. John's wort	Hypericum fasciculatum
Grasses, Grass-like, Forbs:	
Alligator weed	Alternathera philoxeroides
Arrowhead	Saggitaria
Arrowroot lily	Thalia geniculata
Beak rush	Rhynchospora tracyi
Bladderwort	Ultricularia vulgaris
Bullrosh	Scirpus americanus Scirpus validus
Cattail	Typha spp.
Coontail	Ceratophyllum demersum
Duckweed	Lemma
Florida elodea	Hydrilla verticillata
Golden club	Orontium aquaticum
Leather fern	Arostichum danaeifolium
Maidencane	Panicum hemitomon
Naiad	Naja spp.
Pickerelweed	Pontederia cordata Pontederia lanceolata
Pondweed	Pontamogeton illinoensis
Royal fern	Osmunda regalis
Sawgrass	Cladium jamaicensis
Spatter dock	Nuphar
Spike rush	Eleocharis cellulosa

Soft rush	Juncus effusus
Swamp lily	Crinum americanum
Tape grass	Vallisneria neotropicalis
Water fern	Salvinia rotundifolia
Water hyssop	Bacop caroliniana
Water lily	Nymphaea
Water shield	Brasenia schreberi
Giant reed	Phargmites australis Phragmites communis
Torpedo grass	Panicum repens
Chain fern	Woodwardia virginica
Hat pins	Eriocaulon decangulare
Red root	Lachnanthes caroliniana
Cinnamon fern	Osmunda cinnamomea
Wild taro	Colocasia esculenta

(Code 1965, § 36-155; Ord. No. 82-14, § 5, 8-17-82)

Sec. 30-311. - Same—Additional determinations.

Lines which determine the landward extent of water may be ambulatory, not static, and may change through time by the natural or man-induced occurrence of accretions, relictions and avulsions. Therefore, the prior determination of a normal high water elevation for a particular water body at a particular time shall not preclude later determinations of the then-existing normal high water elevation. The normal high water elevation shall have no significance with respect to sovereign ownership, or with respect to establishing vertical control or stormwater frequency elevations.

(Code 1965, § 36-156; Ord. No. 82-14, § 6, 8-17-82)

Sec. 30-312. - Construction setback lines; report.

Whenever an applicant for a building permit, septic tank permit, zoning approval or variance wants to change a previously determined construction setback line, the applicant shall prepare and submit a written report containing a proposed normal high water elevation and indicating the procedures used to determine the normal high water elevation to the public works director. This report shall include the following:

(1) A general description of the water body, including the location by section, township and range, existing or proposed control structures, and an accurate description of the benchmark utilized.

(2) A summary of elevations related to botanical evidence, physical evidence, geomorphological evidence and water elevation records as defined in section 30-309 shall be submitted and certified by a state registered land surveyor. The public works director may require the applicant to provide additional consultant's services or other information as may be deemed necessary to make the determination.

(3) The summary shall include elevation readings at no less than three (3) different locations to be used for projecting the normal high water elevation on lakes having a surface area of ten (10) acres or less and elevation readings at no less than five (5) different locations to be used for projecting the normal high water elevation on lakes having a surface area of more than ten (10) acres. At each location, elevations should be determined using as many of the previously described indicators as possible. Elevations should be based on county datum and should be calculated to the nearest tenth of a foot.

(4) Upon acceptance and review of the report referred to herein, the public works director or his designee shall

determine the normal high water elevation for a particular water body. Review of determinations rendered hereunder shall follow and be subject to the appropriate procedure, if any, applicable to the review of the original proceeding from which the normal high water elevation determination arose (i.e., building permit application procedure, zoning variance procedure, septic tank permit application procedure, etc.). This section shall not be construed to give rise to any right to an interlocutory or intermediate appeal of public works director determinations.

(Code 1965, § 36-157; Ord. No. 82-14, § 7, 8-17-82)

Secs. 30-313—30-325. - Reserved.

ARTICLE X. - REDEVELOPMENT TRUST FUND

Footnotes:
*--- (**9**) ---*
State Law reference— *Community Development Act of 1969, F.S. § 163.330 et seq.; redevelopment trust fund, F.S. § 163.387.*

Sec. 30-326. - Definitions.

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

Agency shall mean the community redevelopment agency of the county created by Res. No. 90-M24 adopted on April 8, 1990.

Community redevelopment area shall mean the community redevelopment area described in Res. No. 90-M33, adopted on June 11, 1990.

Fund shall mean the community redevelopment trust fund created by this article.

Plan or *community redevelopment plan* shall mean the plan adopted for the community redevelopment area adopted by Res. No. 90-M33, adopted June 11, 1990.

(Ord. No. 90-13, § 1, 6-11-90)

Definitions and rules of construction generally, § 1-2.

Sec. 30-327. - Created.

There is hereby created, in accordance with the provisions of F.S. § 163.387, a community redevelopment trust fund for the community redevelopment area, which fund shall be utilized and expended for the purpose of and in accordance with the plan, including any amendments or modifications thereto approved by the board of county commissioners including any community redevelopment (as that term is defined in F.S. § 163.340) under the plan.

(Ord. No. 90-13, § 1, 6-11-90)

Sec. 30-328. - Use.

The moneys to be allocated to and deposited into the fund shall be used to finance community redevelopment within the community redevelopment area which shall be appropriated when authorized by the agency. The agency shall utilize the funds and revenues paid into and earned by the fund for community redevelopment purposes as provided in the plan and as permitted by

law. The fund shall exist for the duration of the community redevelopment undertaken by the agency pursuant to the plan to the extent permitted by F.S. § 163.387. Moneys shall be held in the fund and the fund shall be administered by the county for and on behalf of the agency, and disbursed from the fund as provided by F.S. § 163.387, this article or when authorized by the agency.

(Ord. No. 90-13, § 2, 6-11-90)

Sec. 30-329. - Payments into fund—Generally.

(a) There shall be paid into the fund each year by each of the taxing authorities (as that term is defined in F.S. 163.340) levying ad valorem taxes within the community redevelopment area, a sum equal to ninety-five (95) percent of the incremental increase in ad valorem taxes levied each year by that taxing authority, as calculated in accordance with section 30-330 and F.S. § 163.387, based on the base tax year established in section 30-330 (such annual sum being hereinafter referred to as the "tax increment").

(b) All taxing authorities shall annually appropriate to and cause to be deposited in the fund the tax increment determined pursuant to F.S. § 163.387 and section 30-330 at the beginning of each fiscal year thereof as provided in F.S. § 163.387. The obligation of each taxing authority to annually appropriate the tax increment for deposit in the fund shall commence immediately upon June 11, 1990 and continue to the extent permitted by F.S. § 163.387 until all loans, advances and indebtedness, if any, and interest thereon, incurred by the agency as a result of community redevelopment in the community redevelopment area have been paid.

(Ord. No. 90-13, §§ 3, 6, 6-11-90)

Sec. 30-330. - Same—Method of calculation.

(a) The most recently approved tax roll prior to June 11, 1990 used in connection with the taxation of real property in the community redevelopment area shall be the real property assessment roll of the county reflecting valuation of real property for purposes of ad valorem taxation as of January 1, 1989 (the base year value) and submitted to the state department of revenue pursuant to F.S. § 193.1142, and all deposits into the fund shall be in the amount of tax increment calculated as provided in subsection (b) based upon increases in valuation of taxable real property from the base year value.

(b) The tax increment shall be determined and appropriated annually by each taxing authority and shall be an amount equal to ninety-five (95) percent of the difference between:

(1) The amount of ad valorem taxes levied each year by all taxing authorities on taxable real property located within the geographic boundaries of the community redevelopment area; and

(2) That amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for all taxing authorities, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the assessment roll used in connection with the taxation of such property by all taxing authorities, prior to June 11, 1990.

(Ord. No. 90-13, §§ 4, 5, 6-11-90)

Sec. 30-331. - Maintenance of fund.

The fund shall be established and maintained as a separate trust fund by the county pursuant to F.S. § 163.387 and this article, and other directives of the governing body of the agency as may from time to time be adopted, whereby the fund may be promptly and effectively administered and utilized by the agency expeditiously and without undue delay for its statutory purpose pursuant to the plan.

(Ord. No. 90-13, § 7, 6-11-90)

Sec. 30-332. - Trustee.

The county comptroller (the trustee), on behalf of the county and the agency, shall be the trustee of the fund and shall be responsible for the receipt, custody, disbursement, accountability, management, investment, and proper application of all moneys paid into the fund in accordance with state and local laws. Disbursement of moneys shall be made upon presentation of adequate supporting documentation in the reasonable opinion of the trustee.

(Ord. No. 90-13, § 8, 6-11-90)

ARTICLE X.V - INTERNATIONAL DRIVE COMMUNITY REDEVELOPMENT TRUST FUND

Sec. 30-333. - Establishment of trust fund.

There is hereby established and created, in accordance with the provisions of F.S. ch. 163, pt. III (the "Redevelopment Act"), a community redevelopment trust fund (the "International Drive Community Redevelopment Trust Fund") for the International Drive Community Redevelopment Area, which fund shall be utilized and expended for the purposes of and in accordance with the plan, including any amendments or modifications thereto approved by the board, including any "community redevelopment" as that term is defined in F.S. § 163.340(9), under the plan. The "Agency" is the Board of County Commissioners of Orange County, Florida, having been previously designated and established as the agency by Resolution 98-M-07 adopted by the board on March 17, 1998.

(Ord. No. 98-22, § 1, 9-29-98)

Sec. 30-334. - Administration of trust fund.

The monies to be allocated to and deposited into the International Drive Community Redevelopment Trust Fund shall be used to finance "community redevelopment" within the community redevelopment area according to the tax increment revenues generated by the community redevelopment area, which shall be appropriated by the agency. The agency shall utilize the funds and revenues paid into and earned by the International Drive Community Redevelopment Trust Fund for community redevelopment purposes as provided in the plan and as permitted by law. The International Drive Community Redevelopment Trust Fund shall exist for the duration of the community redevelopment undertaken by the agency pursuant to the plan to the extent permitted by the redevelopment act. Monies shall be held in the International Drive Community Redevelopment Trust Fund by the county for and on behalf of the agency, and disbursed by the International Drive Community Redevelopment Trust Fund as provided by the agency.

(Ord. No. 98-22, § 2, 9-29-98)

Sec. 30-335. - Funding of trust fund.

There shall be paid into the International Drive Community Redevelopment Trust Fund each year by each of the "taxing authorities," as that term is defined in F.S. § 163.340(2), levying ad valorem taxes within the International Drive Community Redevelopment Area, a sum equal to ninety-five (95) percent of the incremental increase in ad valorem taxes levied each year by that taxing authority, as calculated in accordance with the redevelopment act and section 30-337 of this article, based on the base year established in section 30-336 of this article (such annual sum being hereinafter referred to as the "tax increment").

(Ord. No. 98-22, § 3, 9-29-98)

Sec. 30-336. - Base year of trust fund.

The most recent assessment role used in connection with the taxation of property prior to October 5, 1998 shall be the preliminary assessment roll of taxable real property in Orange County, Florida, prepared by the Property Appraiser of Orange County, Florida, and submitted to the department of revenue pursuant to F.S. § 193.1142, reflecting valuation of real property for purposes of ad valorem taxation as of January 1, 1998 (the "base year value"), and all deposits into the International Drive Community Redevelopment Trust Fund shall be in the amount of tax increment in valuation of taxable real property from the base year value.

(Ord. No. 98-22, § 4, 9-29-98)

Sec. 30-337. - Determination of tax increment.

The tax increment shall be determined and appropriated annually by each taxing authority, and shall be an amount equal to ninety-five (95) percent of the difference between:

(a) That amount of ad valorem taxes levied each year by all taxing authorities on taxable real property located within the geographic boundaries of the International Drive Community Redevelopment Area; and

(b) That amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for all taxing authorities, upon the total of the assessed value of the taxable real property in the International Drive Community Redevelopment Area as shown upon the most recent assessment roll used in connection with the taxation of such property by all taxing authorities, prior to October 5, 1998.

(Ord. No. 98-22, § 5, 9-29-98)

Sec. 30-338. - Appropriation of tax increment.

All taxing authorities shall annually appropriate to and cause to be deposited in the International Drive Community Redevelopment Trust Fund the tax increment determined pursuant to the redevelopment act and section 30-337 of this article at the beginning of each fiscal year thereof as provided in the redevelopment act. The obligation of each taxing authority to annually appropriate the tax increment for deposit in the International Drive Community Redevelopment Trust Fund shall commence immediately upon the effective date of the ordinance from which this article derives and continue to the extent permitted by the redevelopment act.

(Ord. No. 98-22, § 6, 9-29-98)

Sec. 30-339. - Restriction on trust fund.

The International Drive Community Redevelopment Trust Fund shall be established and maintained as a separate trust fund by the county and may be promptly and effectively administered and utilized by the agency expeditiously and without undue delay for its statutory purpose pursuant to the plan. The International Drive Community Redevelopment Trust Fund shall be kept separate and distinct from any other community redevelopment trust fund, and shall not be co-mingled with any other community redevelopment trust fund.

(Ord. No. 98-22, § 7, 9-29-98)

Sec. 30-340. - Appointment of governing body as trustee.

The governing body of the agency shall be the trustee of the International Drive Community Redevelopment Trust Fund and shall be responsible for the receipt, custody, disbursement, accountability, management, investment, and proper application of all monies paid into the International Drive Community Redevelopment Trust Fund.

(Ord. No. 98-22, § 8, 9-29-98)

ARTICLE XI. - COMPREHENSIVE PLAN AND VESTED RIGHTS

Footnotes:
*--- (**10**) ---*
***Editor's note—** Ord. No. 91-18, § 1, approved Sept. 10, 1991, amended this chapter by creating a new art. XI, recodifying former art. V of this chapter, §§ 30-151—30-163, relative to the comprehensive policy plan, as div. 1 of this article, §§ 30-341—30-353, and adding new provisions as divs. 2—4, which have been included herein as §§ 30-360—30-363, 30-385—30-392 at the discretion of the editor.*
Section 2 of Ord. No. 2020-10, adopted Sept. 21, 2010, amended art. XI, Comprehensive Policy Plan and Vested Rights, title to read as herein set out.
***State Law reference—** Comprehensive plans, F.S. § 163.3177 et seq.*

DIVISION 1. - GENERALLY

Footnotes:
*--- (**11**) ---*
***Note—** See the editor's note to art. V of this chapter.*

Sec. 30-341. - Comprehensive policy plan—Authority.

This division is adopted in compliance with and pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. §§ 163.3161—163.3243.

(Ord. No. 91-16, § 1, 7-1-91)

Sec. 30-342. - Same—Purpose and intent.

(a) The purpose and intent of this division is to preserve and enhance present advantages; encourage the most appropriate use of land, water and resources consistent with the public interest; overcome present handicaps; and deal effectively with future problems which may result from the use and development of land within the county. Through the use of the 1990—2010 Comprehensive Policy Plan adopted by this division, it is the intent of the board of county commissioners to preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; to prevent the overcrowding of land and avoid undue concentration of populations; to facilitate the adequate and efficient provision of transportation, water, sewerage, parks and recreation facilities, solid waste, drainage, and other facilities and services; to conserve, appropriately develop, utilize and protect natural and historic resources; to adequately plan for and guide growth and development within the county; to coordinate local decisions relating to growth and development; and to ensure that the existing rights of property owners be preserved in accord with the Consititutions of the State of Florida and of the United States.

(b) The goals, objectives, policies, future conditions maps, Capital Improvements Element tables pertaining to projects, revenue and expenditures for the first five (5) fiscal years subsequent to plan adoption, public participation procedures and monitoring and evaluation procedures adopted by this division are declared to be the minimum requirements necessary to accomplish the purpose and intent of this division; and they are declared to be the minimum requirements to maintain, through orderly growth and development, the character and stability of present and future land use and development in the county. Nothing in this plan is to be construed to limit the powers and authority of the board of county commissioners to enact ordinances, rules or regulations that are more restrictive than the provisions of the comprehensive policy plan.

(c) Neither the comprehensive policy plan, nor the land use regulations adopted to implement the comprehensive policy plan, shall be construed or applied so as to result in an unconstitutional taking of private property or the

abrogation of validly existing vested rights.

(Ord. No. 91-16, § 2, 7-1-91)

Sec. 30-343. - Same—Adoption.

The Orange County Comprehensive Policy Plan, to be known as the 1990—2010 Comprehensive Policy Plan, is hereby adopted in conformance with, and pursuant to, the Local Government Comprehensive Planning and Land Development Regulations Act, F.S. §§ 163.3161—163.3243.

(Ord. No. 91-16, § 3, 7-1-91)

Sec. 30-344. - Same—Contents.

The comprehensive policy plan shall consist of (i) this division, (ii) the goals, objectives, policies, Capital Improvements Element tables pertaining to projects, revenue and expenditures for the first five (5) fiscal years subsequent to plan adoption, public participation procedures, and monitoring and evaluation procedures in Exhibit A, and (iii) the future conditions maps in Exhibit A. The documents and contents of Exhibit A are incorporated herein by reference as if set forth fully in this division, and Exhibit A is on file with the planning department and with the clerk to the board of county commissioners at 201 South Rosalind Avenue in Orlando.

(Ord. No. 91-16, § 4, 7-1-91)

Sec. 30-345. - Repeal of growth management policy.

The Orange County Growth Management Policy, which was adopted by Ordinance No. 80-5, as amended, is hereby repealed.

(Ord. No. 91-16, § 5, 7-1-91)

Sec. 30-346. - Administration.

The county chairman, acting through the county administrator and the several departments of the executive branch of county government, shall be responsible for the administration of the comprehensive policy plan, as it may be amended from time to time.

(Ord. No. 91-16, § 6, 7-1-91)

Sec. 30-347. - Appeals.

The land development code may provide for appeals relating to any administrative decision or determination concerning implementation or application of the provisions of the comprehensive policy plan.

(Ord. No. 91-16, § 7, 7-1-91)

Sec. 30-348. - Takings.

In order to prevent the taking of private property, the board of county commissioners shall establish administrative procedures which any party challenging the denial of a development order as a taking of private property must exhaust before any action on a request for development is deemed final by any court or quasi-judicial proceeding.

(Ord. No. 91-16, § 8, 7-1-91)

Sec. 30-349. - Vested rights.

In recognition of the fact that property owners may have vested land development rights with respect to the comprehensive policy plan, the board of county commissioners shall adopt a vested rights ordinance. The vested rights ordinance shall establish procedures for the filing of an application for a vested rights certificate, and for the review of the application. The vested rights ordinance shall set forth standards for determination of entitlement to a vested rights certificate. The standards shall be consistent with F.S. § 163.3167(8), which implies that certain developments have vested rights. The vested rights ordinance shall contain definitions of major terms, shall declare the effect of a vested rights certificate, may require the submittal of annual reports and significant physical development by the developer or owner of a vested project, and may provide for the expiration and revocation of a vested rights certificate.

(Ord. No. 91-16, § 9, 7-1-91)

Sec. 30-350. - Legal status.

(a) After and from the effective date of Ordinance No. 91-16, all development undertaken by, and all actions taken in regard to, development orders shall be consistent with the comprehensive policy plan.

(b) All land development regulations hereafter enacted or amended shall be consistent with the comprehensive policy plan adopted by this division, and any land development regulations existing at the time of adoption that are not consistent with the comprehensive policy plan shall be amended so as to be consistent.

(c) During the period when the provisions of the comprehensive policy plan and one (1) or more land development regulations are inconsistent, the provisions of the comprehensive policy plan shall govern any action taken in regard to an application for a development order. The county chairman and the county administrator shall establish a procedure for adoption by the board of county commissioners for review of proposed development orders for consistency with the comprehensive policy plan.

(d) From the effective date of Ordinance No. 91-16, the land development regulations, land development code, or an amendment thereto shall not be adopted by the board of county commissioners until such regulations, code or amendment have been referred to the county local planning agency for review and recommendation as to the relationship of such proposal to the comprehensive policy plan.

(e) For purposes of this section, the term "land development regulations" shall include land use and zoning designations, zoning regulations, subdivision regulations, commercial site plan regulations, building permit regulations, and any other regulations pertaining to the development of land within the county.

(f) The comprehensive policy plan shall have the legal status set forth in F.S. § 163.3194. No public or private development of land within the unincorporated (or incorporated where applicable) areas of the county shall be permitted except in conformity with the comprehensive policy plan adopted herein.

(Ord. No. 91-16, § 10, 7-1-91)

Sec. 30-351. - Filing of ordinance.

A certified copy of Ordinance No. 91-16, including Exhibit A, shall be filed with the secretary of state and with the clerk of the circuit court.

(Ord. No. 91-16, § 11, 7-1-91)

Sec. 30-352. - Severability.

(a) If any section, paragraph, subsection, clause, sentence or provision of this division shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this division, but the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision

immediately involved in the controversy in which such judgment or decree shall be rendered.

(b) In the event that the entire comprehensive policy plan shall be adjudged by any court of competent jurisdiction to be invalid, the repeal of the previously existing comprehensive plan shall be deemed invalid, and the preceding comprehensive plan adopted under Orange County Ordinance No. 80-5, as amended, shall be deemed the comprehensive plan for the county.

(Ord. No. 91-16, § 12, 7-1-91)

Sec. 30-353. - Enforcement and penalties.

(a) Violations of this division shall be subject to prosecution and penalties pursuant to F.S. § 125.69.

(b) In addition, any violation of this division shall be subject to appropriate civil action in the court of appropriate jurisdiction, including the issuance of injunctions and temporary restraining orders.

(Ord. No. 91-16, § 13, 7-1-91)

Secs. 30-354—30-359. - Reserved.

DIVISION 2. - CONSISTENCY AND VESTED RIGHTS

Sec. 30-360. - Title.

Divisions 2, 3 and 4 of this article XI collectively shall be known as the "Orange County Vested Rights Ordinance."

(Ord. No. 91-18, § 1, 9-10-91)

Sec. 30-361. - Scope and purpose.

In recognition that the rights of some property owners to develop their land may be vested, despite the particular development being inconsistent with the Orange County Comprehensive Policy Plan, this division 2 sets forth the standards, and division 4 sets forth the procedures, for the determination and recognition of those vested rights.

(Ord. No. 91-18, § 1, 9-10-91)

Sec. 30-362. - Definitions.

When used in this division, the following terms shall have the following meanings, unless the context clearly otherwise requires:

Binding letter of vested rights. A letter issued by the Florida Department of Community Affairs or its predecessor pursuant to F.S. § 380.06(4), determining that the right to undertake or complete a DRI without undergoing development-of-regional-impact review is vested pursuant to F.S. § 380.06(20).

Building. Any structure that encloses a space used for sheltering any occupancy.

Comprehensive policy plan or *comprehensive plan* or *plan.* The comprehensive plan required by the Local Government Comprehensive Planning and Land Development Regulations Act (F.S. §§ 163.3161—163.3243) and adopted by the board of county commissioners on July 1, 1991, by Ordinance No. 91-16, as such plan may be amended from time to time.

Construction. The introduction and use at the development site of more than inconsequential amounts of both labor and materials in the assembly and erection of the structures or infrastructure associated with the particular development in a manner consistent with development permits which have been issued by the county. Construction typically means more than mere clearing, grubbing, grading, and staking the development site and includes good faith efforts on the part of the landowner to proceed under, not merely to prolong the effectiveness of, the development order or permit or approval in question.

Development. Any activity or operation described in F.S. § 380.04, as it may from time to time be amended, or in any successor legislation. However, to the extent § 380.04 conflicts with the definition of "subdivision" below, the latter shall govern.

Development of regional impact or *DRI.* Any development described in F.S. § 380.06(1) as it may from time to time be amended, or in any successor legislation.

Development order. Any order issued by the county granting, denying or granting with conditions an application for a development permit as that term is defined in F.S. § 163.3164.

Good faith. Honesty of intention, and freedom from actual or constructive knowledge of circumstances which ought to put the holder upon inquiry. Good faith shall not encompass dishonest, fraudulent or deceitful action, ignorance of the law, mistake of law, circumvention of legal requirements, or delay resulting from neglect or lack of diligence.

Land. The earth, water and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

Land development code. The Orange County Land Development Regulations which are consistent with and implement the comprehensive policy plan pursuant to the requirement of F.S. § 163.3202 and which the county is obligated by F.S. ch. 163 to enforce.

Lot or parcel of land. Any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

Party.

(1) A specifically named person whose substantial interests are being determined in a vested rights proceeding.

(2) Any other person who is entitled to participate in the vested rights proceeding because the person's substantial interests may be affected by the vested rights determination, and who makes an appearance at the proceeding.

(3) Any other person allowed by the hearing officer for good cause to intervene or participate in the vested rights proceeding.

(4) Any agent, representative, or counsel of any person described in subparagraphs (1), (2) or (3) above.

Person. An individual, corporation, partnership, governmental agency, business trust, estate, trust, association, two (2) or more persons having a joint or common interest, or any other legal entity.

Structure. Anything constructed, installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

Subdivision. Any subdivision of land as defined in section 30-78 of this Code.

(Ord. No. 91-18, § 1, 9-10-91; Ord. No. 91-26, § 2, 12-10-91)

Sec. 30-363. - Developments entitled to a vested rights certificate.

(a) *Vested rights generally.* Pursuant to F.S. § 163.3167(8), nothing in the comprehensive plan shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to F.S. ch. 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.

(b) *Vested rights certificates.* Any person may request from the county a determination of whether the person's right to complete a development is vested pursuant to subsection (a) above, and F.S. § 163.3167(8), notwithstanding that all or some part of the development is inconsistent with the comprehensive plan. Such request shall be made on application forms as the county may from time to time prescribe, and the request shall be made and shall be reviewed and approved or disapproved in accordance with the procedures described in division 4 of this article.

(c) *DRIs.* Notwithstanding its inconsistency, in whole or in part, with the comprehensive plan, a DRI shall be entitled to a vested rights certificate if, as of July 1, 1991, either:

(1) The DRI was approved by the board pursuant to F.S. § 380.06 and the pertinent development order has not expired; or

(2) There has been issued for the DRI a binding letter of vested rights, and such rights are still valid and have not expired.

(d) *Other developments.* Notwithstanding its inconsistency, in whole or in part, with the comprehensive plan, a development other than a DRI shall be deemed to have been issued a final local development order and to have commenced and to be continuing in good faith for purposes of subsection (a) and F.S. § 163.3167(8), and therefore to be entitled to a vested rights certificate, if (1) the development otherwise complies with and is allowed to proceed under all county ordinances and regulations and (2) as of June 5, 1991, the development met one (1) or more of the following criteria:

(1) *Building permit.* Any structure for which:

a. A building permit has been issued; and

b. The building permit has not expired; and

c. Construction has started or is started before the permit expires.

(2) *Subdivisions (residential or nonresidential).*

a. Any subdivision for which

1. A plat for all or any part of the project has been recorded; and

2. The subdivision was approved pursuant to chapter 65-2015, Laws of Florida, as amended; or

b. Any subdivision for which:

1. A preliminary subdivision plan has been approved and has not expired; and

2. The final subdivision plan for at least one (1) phase of the project has been submitted, or genuine permitting activity has started; and

3. Before expiration of the preliminary subdivision plan approval or July 1, 1992, whichever is earlier, construction pursuant to the preliminary subdivision plan has started or is started, or a surety in form, substance, and amount acceptable to the county guaranteeing such construction is delivered to the county; or

c. Any subdivision which was platted in accordance with subsection (d)(2)a or b but which is subsequently required to replat due to some government action (such as but not limited to roadway construction).

(3) *Nonresidential projects.* Any nonresidential project for which:

a. The site development plan has been approved; and

b. The approval of the site development plan has not expired; and

c. Construction has started or is started before expiration of the approval of the site development plan.

(4) *Planned developments.* Any planned development for which:

a. The land use plan has been approved; and

b. A complete application for approval of a development plan for all or a substantial part of the project has been received or is received by the county no later than July 1, 1992; and

c. The application for approval is granted.

(5) *Lot splits.* Any lot that was approved by the county and indicated on the official zoning maps of Orange County as part of a lot split of a larger parcel, but only if a building permit is issued for the lot before July 1, 1996.

(6) *Proposed subdivisions.* Any proposed subdivision for which:

a. A development order approving the appropriate zoning has been granted; and

b. A complete application for approval of the preliminary subdivision plan has been received by the county; and

c. The application for approval is granted; and

d. Before expiration of the preliminary subdivision plan approval, either construction pursuant to the preliminary subdivision plan is started or a surety in form, substance, and amount acceptable to the county guaranteeing such construction is delivered to the county.

(7) *Residential building permit applications.* Any proposed residential structure for which:

a. A development order approving the appropriate zoning has been granted; and

b. A complete application for a building permit has been received by the county; and

c. The application is approved; and

d. Construction is started before the permit expires.

(8) *Nonresidential building permit applications.* Any proposed nonresidential structure for which:

a. A development order approving the appropriate zoning has been granted; and

b. A complete application for approval of the site development plan has been received by the county; and

c. The application is approved; and

d. Construction is started before the building permit expires.

(9) *Urban infill.* Any proposed residential structure for which all of the following requirements are met:

a. Is located in the urban service area; and

b. Is located in an appropriate zoning district to construct a single-family or duplex structure; and

c. The requisite facilities and services are available to the parcel at no additional cost to the county; and

d. If necessary, can meet or reasonably obtain a variance from all applicable zoning requirements, e.g., lot size, setbacks, etc. (Note: A vested rights certificate does not waive the necessity of obtaining a variance if one (1) is required to utilize the parcel); and

e. The planning and development director determines that the structure, if built, would fill in undeveloped land within existing urban residential development in a manner consistent with the county's policies to encourage compact urban development and discourage urban sprawl (that is, it would constitute a bona fide "urban infill" project).

(10) *Parcels of record in rural settlements.* Any parcel of property that was legally created and either (i) recorded in the public records of the county prior to May 21, 1991, or (ii) sold under a valid "contract for deed" prior to May 21, 1991, and that has a land use designation permitting a residential structure in a rural settlement, may be developed with a single principal residential structure and related ancillary structures notwithstanding the future land use designation. Furthermore, an existing or future residential structure in a rural settlement shall

be allowed to be expanded, enlarged, renovated, demolished or removed, and rebuilt or replaced. However, this vested right shall not act to exempt any project from other county land development regulations; and multiple contiguous parcels in common ownership or under a common "contract for deed" as of May 21, 1991, shall be aggregated and deemed to be one (1) parcel for purposes of this criteria.

(11) *Environmentally sensitive large lots in the urban service area.* Any residential lot or lots for which all of the following requirements are met:

a. Is located in the urban service area; and

b. Is located in an appropriate zoning district to construct a single-family structure; and

c. The requisite facilities and services are available to the lot or lots at no additional cost to the county; and

d. The planning and development director determines that, because the lot or lots are in a location that is actually in or is in close proximity to environmentally sensitive resources, development less dense than indicated on the comprehensive policy plan future land use map is warranted to promote, consistent with the comprehensive policy plan, conservation of such environmentally sensitive resources. Environmentally sensitive resources may include, but are not limited to, floodplains, conservation areas and the habitat of wildlife or plants which are listed as threatened, endangered or species of special concern.

(12) *Other development.* Any other project for which there is proof that:

a. A development order has been issued or the county has otherwise taken official action specifically with respect to development of the property; and

b. Extensive obligations or expenses (other than land purchase costs and payment of taxes) including, but not limited to, legal and professional expenses related directly to the development have been incurred or there has otherwise been a substantial change in position; and

c. Such obligations, expenses, and change in position were undertaken by the property owner in good faith reliance on the actions taken by the county; and

d. It would be unfair to deny the property owner the opportunity to complete the project because of its inconsistency with the plan.

(e) *Permit expirations; substantial deviations, etc.*

(1) The purpose of this division 2 is only to specify the circumstances under which a person may undertake or continue the development of land despite the inconsistency of the development with the comprehensive plan, and nothing in this division 2 shall act to create rights that otherwise do not exist. Therefore, as implied above, upon the expiration of any development order or permit or approval that serves as the predicate for the property owner's right under this division 2 to develop, the rights granted under this division 2 shall likewise expire. Also, if any application for a permit or other approval is denied, or if the application is granted but the permit or approval later expires for lack of construction or otherwise, and if the submission of the application serves as the predicate for the rights granted under this division 2, then the rights granted hereunder shall also expire.

(2) Furthermore, any such development shall continue to be subject in all respects to all laws, ordinances, rules, and regulations and shall continue to be subject to all terms, conditions, requirements and restrictions contained in any development order or permit or approval or binding letter of vested rights pertaining to the particular development.

(3) Any substantial change or substantial deviation from the terms of the development order upon which a vested rights certificate was predicated shall cause the change or deviation to become subject to the comprehensive policy plan.

(f) *Activity centers.*

(1) Notwithstanding any part of this division 2 to the contrary, subject to subsection 30-363(f)(2) any development th within an activity center identified in the comprehensive plan shall comply with all requirements and restrictions properties in the activity center by both the comprehensive plan and the corresponding strategic development pl issuance of a vested rights certificate under this article shall not act to exempt the development from such requir restrictions in any respect.

(2) A development authorized as of July 1, 1991, as a development of regional impact pursuant to F.S. ch. 380 or a DRI with a binding letter of vested rights shall be exempt from all requirements and restrictions imposed on properties in an activity center by both the comprehensive plan and the corresponding strategic development plan.

(Ord. No. 91-18, § 1, 9-10-91; Ord. No. 91-26, § 3, 12-10-91)

Secs. 30-364—30-369. - Reserved.

DIVISION 3. - CONCURRENCY, EXEMPTIONS, AND VESTED RIGHTS

Footnotes:
*--- (**12**) ---*
***Editor's note—** Section 2 of Ord. No. 2020-10, adopted Sept. 21, 2010, amended Div. 3, Concurrency and Vested Rights, title to read as herein set out.*

Sec. 30-370. - Scope and purpose.

In recognition that the rights of some property owners to develop their land may be vested, notwithstanding the imposition of concurrency requirements, or that certain property may be exempt from such requirements, this division 3 sets forth the standards, and division 4 sets forth the procedures, for the determination and recognition of those vested rights.

(Ord. No. 91-26, § 1, 12-10-91; Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-371. - Definitions.

Unless specifically noted otherwise, the definitions set forth in sections 30-362 and 30-501 are applicable to this division 3. The following definitions shall also govern this division 3:

Concurrency requirements. The requirements of F.S. § 163.3180, the county comprehensive plan, the county concurrency management system, as may be amended from time to time or promulgated.

Principal structure. The building or structure in which the primary use of the parcel or lot is conducted.

(Ord. No. 91-26, § 1, 12-10-91; Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-372. - Developments entitled to a vested rights certificate for concurrency other than schools.

(a) *Vested rights generally.* Pursuant to F.S. § 163.3167(8), nothing in the comprehensive policy plan shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to F.S. ch. 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.

(b) *Vested rights certificates.* Any person may request from the county a determination of whether the person's right to complete a development is vested pursuant to subsection (a) above and F.S. § 163.3167(8), notwithstanding the imposition of concurrency requirements. Such request shall be made on application forms as the county may from

time to time prescribe, and the request shall be made and shall be reviewed and approved or disapproved in accordance with the procedures described in division 4 of this article.

(c) *DRIs.* Notwithstanding the imposition of concurrency requirements, a DRI shall be entitled to a vested rights certificate if, on or before December 2, 1991, either (1) the DRI was approved by the board pursuant to F.S. § 380.06 and the pertinent development order has not expired or (2) there has been issued for the DRI a binding letter of vested rights, and such rights are still valid and have not expired.

(d) *Other developments.* Notwithstanding the imposition of concurrency requirements, a development, which may be other than a DRI, shall be deemed to have been issued a final local development order and to have commenced and to be continuing in good faith for purposes of subsection (a) above and F.S. § 163.3167(8), and therefore to be entitled to a vested rights certificate, if (1) the development otherwise complies with and is allowed to proceed under all county ordinances and regulations and (2) the development meets at least one (1) of the following criteria:

(1) *Building permit.* Any structure for which a building permit has been issued on or before December 2, 1991, and the building permit has not expired; or

(2) *Subdivisions in all zoning districts including planned developments.*

a. *Residential.* Any residential subdivision, or phase thereof, for which either:

1. The subdivision was approved pursuant to chapter 65-2015, Laws of Florida, as amended, and the plat has been recorded on or before December 2, 1991; or

2. The preliminary subdivision plat (PSP) has been approved pursuant to chapter 65-2015, Laws of Florida, on or before December 2, 1991, and has not expired.

b. *Nonresidential.* Any nonresidential subdivision, or phase thereof, or platting of a single lot, for which either:

1. The subdivision or single lot plat was approved pursuant to chapter 65-2015, Laws of Florida, as amended, and for which the plat has been recorded on or before December 2, 1991; or

2. The preliminary subdivision plan (PSP) has been approved pursuant to chapter 65-2015, Laws of Florida, on or before December 2, 1991, and has not expired; or

(3) *Commercial projects and projects subject to site development review.* Any project that is required to comply with the requirements of the county site development ordinance, County Code chapter 30, article VIII, section 30-236 et seq., for which the building permit has been issued on or before December 2, 1991; or

(4) *Public schools.* Any public school project to build the actual school facility to accommodate students in the academic environment, grades kindergarten through twelfth, for which at least one (1) of the following criteria has occurred prior to December 2, 1991:

a. The site is clearly indicated and recognized as a public school site on a recorded plat; or

b. The site is clearly indicated and recognized as a public school site on an approved preliminary subdivision plan (PSP); or

c. The site is proposed as a public school site and is owned by the county public school district; or

d. The site is proposed as a public school site and is under a contract to purchase by the county public school district; or

e. The site is proposed as a public school site and is subject to an eminent domain suit; or

(5) *Other projects.* Any other project for which there is proof that as of December 2, 1991:

a. A development order has been issued or the county has otherwise taken official action specifically with respect to development of the property; and

b. Extensive obligations or expenses (other than land purchase costs and payment of taxes) including, but not limited to, legal and professional expenses related directly to the development have been incurred or

there has otherwise been a substantial change in position; and

c. Such obligations, expenses and change in position were undertaken by the property owner in good faith reliance on the actions taken by the county; and

d. It would be unfair to deny the property owner the opportunity to complete the project based on the project's effects on the levels of service as adopted by the comprehensive policy plan and implemented through the county concurrency management system.

(e) *Applicability of criteria.* The criteria for obtaining a vested rights certificate as set forth in section 30-372(c) and (d) are not mutually exclusive, and therefore, a development may make application under more than one (1) theory. Further, if a development obtains a vested rights certificate pursuant to the criteria contained in section 30-372(c) or (d)(1), (2) or (3) and such vested rights certificate expires pursuant to section 30-373(b) or (c)(1), (2) or (3), then the development shall not be prohibited from making application for a new vested rights certificate under section 30-372(d)(5).

(f) *Subsequent approval; ability to make application.*

(1) *Intent.* It is the intent of the county to recognize that in those circumstances listed below a project which commenced before but ultimately receives county approval after December 2, 1991, may apply for a vested rights certificate.

(2) *Project denials.* A project where:

a. The project under normal circumstances would have been granted approval by December 2, 1991, except for a denial issued by the county; and

b. The denial of the project is appealed; and

c. Ultimately the denial is reversed and the requested permit or process is approved after December 2, 1991;

then the project shall be entitled to apply for a vested rights certificate as if the approval had been granted before December 2, 1991.

(3) *Third party litigation.* A project where:

a. Litigation against an approved project or a project which under normal circumstances would have been approved by December 2, 1991, is initiated by a third party before December 2, 1991; and

b. The litigation has the effect of either preventing the county from issuing any development permits and/or preventing the project from proceeding under development permits already issued; and

c. The litigation is ultimately decided in favor of the project;

then the project shall be entitled to apply for a vested rights certificate notwithstanding that during the pendency of the litigation the issuance of development permits by the county may have been delayed or issued after December 2, 1991, and/or the project was prevented from proceeding towards completion under any development permits issued prior to the litigation.

(Ord. No. 91-26, § 1, 12-10-91; Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-373. - Expiration of vested rights certificates for concurrency other than schools.

(a) *General.* The purpose of this division 3 is only to specify the circumstances under which a person may undertake or continue the development of land despite the effect of the development, in whole or in part, on the levels of service as adopted by the comprehensive policy plan and implemented through the county concurrency management system, and nothing in this division 3 shall act to create rights that otherwise do not exist. Consequently, other than

as provided for in section 30-372(f), upon the expiration of any development order or permit or approval that serves as the predicate for the property owner's right under this division 3 to develop, the rights granted under this division 3 shall likewise expire.

(b) *Criteria to determine expiration of vested rights certificates for DRIs.*

(1) A vested rights certificate issued for a DRI pursuant to section 30-372(c) shall expire upon the termination or expiration of the development order.

(2) A vested rights certificate issued for a DRI with a binding letter of vested rights shall expire upon the expiration or invalidity of the binding letter.

(c) *Criteria to determine expiration of vested rights certificates for other developments.*

(1) *Building permits.* A vested rights certificate predicated on the issuance of a building permit shall expire upon the expiration of the building permit. Expiration of the building permit shall be determined as set forth in County Code section 9-103.

(2) *Subdivisions in all zoning districts including planned developments.*

a. *Residential.*

1. A vested rights certificate issued pursuant to section 30-372(d)(2)a.1. shall not expire.

2. A vested rights certificate issued pursuant to section 30-372(d)(2)a.2. shall expire on December 1, 1993, unless the plat has been approved and recorded before December 1, 1993, and either (a) the infrastructure has been completed and a certificate of completion has been issued by the county before December 1, 1993, or (b) a letter of credit (not developer's agreement or bond) has been posted before December 1, 1993, guaranteeing completion of the infrastructure within one (1) year from the date of platting.

b. *Nonresidential.*

1. A vested rights certificate issued pursuant to section 30-372(d)(2)b.1. shall expire if the project does not commence construction on at least one (1) principal structure by December 1, 1995, and thereafter the project shall maintain a rate of construction equal, on the average as calculated prospectively from December 1, 1995, to commencement of and good faith efforts toward completion of at least one (1) principal structure on a distinct parcel within the platted subdivision, or phase thereof, every two (2) years.

2. A vested rights certificate issued pursuant to section 30-372(d)(2)b.2. shall expire on December 1, 1993, unless the plat has been approved and recorded before December 1, 1993, and either (a) the infrastructure has been completed and a certificate of completion has been issued by the county before December 1, 1993; or (b) a letter of credit (not developer's agreement or bond) has been posted before December 1, 1993, guaranteeing completion of the infrastructure within one (1) year from the date of platting. Further, a vested rights certificate for a plat recorded pursuant to this subsection shall expire if the project does not maintain a rate of construction equal, on the average calculated prospectively from the date of recording of the plat in the county official public records, to commencement of and good faith efforts toward completion of at least one (1) principal structure on a distinct parcel within the platted subdivision, or phase thereof, every two (2) years.

(3) *Commercial projects and projects subject to site development review.* A vested rights certificate issued pursuant to section 30-372(d)(3) shall expire if and when the building permit expires.

(4) *Other projects.* A vested rights certificate issued pursuant to section 30-372(d)(5) shall expire if and when such project ceases to be "continuing in good faith." A vested rights certificate issued pursuant to section 30-372(d)(5) may include criteria, standards, thresholds and/or guidelines, as may be specifically applicable to the

particular project, to assist in determining whether and when the project is no longer "continuing in good faith."

(d) *Required compliance with laws, ordinances, etc.* Any development which is granted a vested rights certificate from the concurrency requirements is not in any way exempt or vested from other regulations or conditions of approval as may be applicable to the development. Any development which is granted a vested rights certificate shall continue to be subject in all respects to all the nonconcurrency laws, ordinances, rules and regulations and shall continue to be subject to all terms, conditions, requirements and restrictions contained in any development order or permit or approval or binding letter of vested rights pertaining to the particular development.

(e) *Substantial change or deviation.* Notwithstanding subsections (a) through (d), additional impacts generated by any substantial change or substantial deviation from the terms of the development order upon which a vested rights certificate was predicated shall be subject to concurrency requirements to the extent of the additional impacts generated by the substantial change or substantial deviation over and above the previously approved development order.

A replat of a plat meeting the criteria specified in section 30-372(d)(2) shall not in and of itself be deemed a substantial change or deviation, unless such replat creates an impact on density or intensity of development greater than the plat it replaces. Such replat shall not extend the time required for commencement of good faith efforts toward completion applicable to the plat it replaces.

(Ord. No. 91-26, § 1, 12-10-91; Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-374. - Developments entitled to exemption from school concurrency.

Certain development may be exempt from school concurrency as provided below:

(a) *Exemptions.* The following types of developments are exempt from the requirements of school concurrency if any of the following exemptions have been met; provided, however, the exemption shall not be granted until an application for school concurrency exemption, accompanied by sufficient documentation and any applicable fee, is submitted and approved by the concurrency management official:

(1) *De minimis.* Any residential development that creates an impact of less than one (1) student.

(2) *Existing lot of record.* One (1) single-family house, one (1) duplex, and/or one (1) accessory multifamily unit being developed on an existing single platted residential lot of record on or before September 16, 2008.

(3) *Building permit.* Any building or structure that has received a building permit as of September 16, 2008.

(4) *Nonsubstantial amendment to previously approved residential development.* Any amendment to any previously approved residential development, which does not increase the number of dwelling units or change the type of dwelling units (e.g., converts single-family to multifamily, etc.).

(5) *Housing for older persons.* Any age-restricted community that qualifies as one (1) of the three (3) types of communities designed for older persons as "housing for older persons" in the Housing for Older Persons Act, 42 U.S.C. § 3607(b). This exemption shall be applied in conformity with the principles set forth in Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So.2d., 126 (Fla. 2000). Provided, however, that any senior housing community or dwelling unit that loses its qualification as housing for older persons shall be required to meet applicable school concurrency requirements in effect at the time the qualification as housing for older persons is lost.

(6) *Alteration/expansion of existing unit.* Alterations or expansion of an existing dwelling unit where no additional dwelling units are created.

(7) *Accessory buildings or structures.* The construction of accessory buildings or structures that will not

create additional dwelling units.

(8) *Dwelling unit replacement.* The replacement of a dwelling unit where no additional dwelling units are created and where the replacement dwelling unit is located on the same lot. If the type of dwelling unit is different from the original dwelling unit type, the exemption shall be limited to an exemption based on the current student generation rate for the original dwelling unit type. Documentation of the existence of the original dwelling unit must be submitted to the concurrency management official.

(9) *Group living facilities.* Group living facilities that do not generate students which include residential facilities such as local jails, prisons, hospitals, bed and breakfast, motels and hotels, temporary emergency shelters for the homeless, adult halfway houses, firehouse sleeping quarters, dormitory-type facilities for post-secondary students, and religious non-youth facilities, regardless of whether such facilities may be classified as residential uses.

(b) *Vested rights.* The following types of developments may be exempted from the requirements of school concurrency by a school concurrency vested rights certificate; provided, however, a certificate shall not be issued until an application for school concurrency vested rights, accompanied by sufficient documentation and any applicable fee, is submitted and approved by the concurrency management official based on a review by the Orange County Attorney's Office:

(1) *Approved site plan/plat.* Any new residential development that has site plan approval for a site pursuant to a specific development order approved on or before September 16, 2008, including the portion of any project that has received final subdivision plat approval as a residential subdivision into one (1) dwelling unit per lot.

(2) *DRI development order.* Developments of regional impact that have filed a complete application for a development order prior to May 1, 2005, or for which a development order was issued prior to July 1, 2005.

(3) *Developers agreement.* The portion of any residential development that, on or before September 16, 2008, is the subject of a binding and enforceable developers agreement or capacity enhancement agreement designated as a capacity commitment agreement by resolution of the school board.

(4) *Common law.* Any other project for which there is proof that, as of September 16, 2008:

a. A development order has been issued or the county has otherwise taken official action specifically with respect to development of the property; and

b. Extensive obligations or expenses (other than land purchase costs and payment of taxes) including, but not limited to, legal and professional expenses related directly to the development have been incurred or there has otherwise been a substantial change in position; and

c. Such obligations, expenses, and changes in position were undertaken by the property owner in good faith reliance on the actions taken by the county; and

d. It would be unfair to deny the property owner the opportunity to complete the project based on the project's effects on the levels of service for public schools as adopted by the comprehensive plan and implemented through the county concurrency management system.

(c) *County review of application.* The county shall determine within forty-five (45) business days from receipt of a completed exemption application or school concurrency vested rights application, whether the applicant has satisfied the applicable criteria for the exemption or vested rights certificate and shall notify the applicant and the school board in writing of its determination.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-375. - Expiration of exemption or vested rights certificates for school concurrency.

(a) *Expiration of school concurrency exemptions under subsection 30-374(a).* School concurrency exemptions listed in sub 374(a) shall expire when the basis for the exemption terminates or expires.

(b) *Expiration of school concurrency vested rights certificates under subsection 30-374(b).* School concurrency vested rights listed in subsection 30-374(b) shall expire as follows:

(1) *Site plan.* School concurrency vested rights based on a preliminary subdivision plan approval shall expire when the preliminary subdivision plan expires, in accordance with section 34-73. School concurrency vested rights based on a commercial site plan approval shall expire when the building permit expires, in accordance with section 9-33.

(2) *DRI development order.* School concurrency vested rights based on an application or a development order for a development of regional impact shall expire upon withdrawal, denial, or expiration of the application for a development order, or, if a development order has been approved, such school concurrency vested rights shall expire for any phase of the development order upon expiration of the development order build-out date for such phase, or for the entire development order upon expiration of the development order. Further, such school concurrency vested rights shall expire upon any material default of the school mitigation conditions of the development order or a related development agreement, unless such project, or portions of such project, remains exempt pursuant to another exemption provision. Additionally, school concurrency vested rights based on a development order shall expire when the developer files a notice of proposed change that increases the number of residential units and such change is approved, or when the developer receives a substantial deviation to the development order that increases the number of residential units.

(3) *Developers agreement.* School concurrency vested rights based on a developers agreement or capacity commitment agreement shall expire upon expiration of the developers agreement, capacity commitment agreement, extension thereof, or upon any material default of the school mitigation conditions of such development agreement or capacity commitment agreement, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.

(4) *Common law.* School concurrency vested rights based on common law shall expire if and when the project ceases to be continuing in good faith. A vested rights certificate issued pursuant to subsection 30-374(b)(4) may include criteria, standards, thresholds and/or guidelines, as may be specifically applicable to the particular project, to assist in determining whether and when the project is no longer continuing in good faith.

(c) *Required compliance with laws, ordinances, etc.* Any development which is granted a school concurrency exemption or vested rights certificate is not in any way exempt or vested from other regulations or conditions of approval as may be applicable to the development. Any development which is granted a school concurrency exemption or vested rights certificate shall continue to be subject in all respects to all other laws, ordinances, rules, and regulations and shall continue to be subject to all terms, conditions, requirements and restrictions contained in any development order, permit, approval, or binding letter of vested rights pertaining to the particular development.

(d) *Substantial change or deviation.* Notwithstanding subsections (a) through (c), additional impacts generated by any substantial change or substantial deviation from the terms of the development order upon which a school concurrency vested rights certificate was predicated shall be subject to concurrency requirements to the extent of the additional impacts generated by the substantial change or substantial deviation over and above the previously approved development order.

A replat of a plat meeting the criteria specified in subsection 30-374(b)(1) shall not in and of itself be deemed a substantial change or deviation, unless such replat creates an impact on residential density or intensity of development greater than the plat it replaces. Such replat shall not extend the time required for commencement of good faith efforts toward completion applicable to the plat it replaces.

(Ord. No. 2010-10 , § 2, 9-21-10)

Secs. 30-376—30-384. - Reserved.

DIVISION 4. - VESTED RIGHTS CERTIFICATES AND EXEMPTIONS

Footnotes:
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Editor's note— *Section 2 of Ord. No. 2020-10, adopted Sept. 21, 2010, amended div. 4, Vested Rights Certificates, in its entirety to read as herein set out. Former div. 4 was comprised of §§ 30-385—30-392 and derived from Ord. No. 91-18, adopted Sept. 10, 1991; and Ord. No. 98-28, adopted Oct. 20, 1996.*

Sec. 30-385. - Applications.

(a) *Filing of application.* A person who believes he or she is entitled to a school concurrency exemption or a vested rights certificate for a particular development, whether for purposes of "consistency" or "concurrency," or both, shall complete, execute and file an application for a vested rights certificate or school concurrency exemption with the director of the growth management department or his or her designee. The application shall be accompanied by any applicable fee.

(b) *Due date.* The purpose for which vested rights certificates are issued is to provide certainty and predictability in the use and conveyance of land and interests therein. There is no deadline, therefore, for applying for certificates. However, after either (i) denial of a development order, when the denial is based on inconsistency with the comprehensive plan or failure to meet the concurrency requirements of the comprehensive plan, or (ii) receipt of notice of a proposed rezoning that has been initiated by the county (that is, an administrative rezoning), failure to file an application for a vested rights certificate within forty-five (45) days from the denial of a development order or notice of an administrative rezoning shall constitute an abandonment and waiver of any claim to vested rights.

(c) *Contents of application.* The application shall be accompanied by documentation sufficient to enable the director or his or her designee to determine whether the development is vested. An incomplete or insufficient application shall be returned to the applicant for additional information.

(d) *Certification by and continuing obligation of applicant.*

(1) The signature upon the application of the applicant, or any agent or attorney for the applicant, shall constitute a certification that the person signing the application has read the application and relevant supporting information and that to the best of his or her knowledge it is true and correct.

(2) Until the application has received final approval or denial (including any appeal period), the applicant shall have a continuing obligation to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changed circumstances.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-386. - Decision on application.

The director or his or her designee shall review the application and any supporting or background information and shall consult with the county attorney or his or her designee and any other county staff as the director deems necessary or desirable. Within forty-five (45) days after receipt of a complete and sufficient application, the director or his or her designee shall transmit in writing to the applicant either the vested rights certificate or the reason or reasons for denial. The certificate may be issued with conditions or limitations. The decision shall be mailed by U.S. mail, return receipt requested.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-387. - Appeals.

(a) Any party aggrieved by the action of the director or his or her designee, may notify the director in writing that such party is appealing the decision. The notification shall be delivered to the director no later than thirty (30) days after the decision on the application is rendered; otherwise, the applicant shall be deemed to have waived all rights to challenge the decision. (For purposes of this section, the term "renders" means the date the applicant initials or otherwise indicates receipt of the decision on the application. However, in the event the decision on the application is not accepted or is returned, the term "renders" means ten (10) calendar days after the date the decision was signed.) Upon receipt by the director of a timely notice of appeal, the director shall submit the appeal to the DRC, which shall consider the appeal no later than ninety (90) days following receipt or at such later date to which the applicant may consent.

(b) Any decision of the DRC pursuant to this article may be appealed to the board of county commissioners by submitting a letter to the chairman of the DRC within thirty (30) days of the decision. For appeals regarding school concurrency exemptions or vested rights, a copy of the appeal request shall be submitted to the school board for its information,

(1) The board of county commissioners may deny or approve (with or without conditions) the application or may return the application to the appropriate committee or staff for further consideration with or without comments or directions.

(2) The board of county commissioners shall review the application on the same basis and in accordance with the procedures of this division, and an approval issued by the board of county commissioners shall have the same effect as an approval by the respective committee or director and shall accordingly enable the director to issue a vested rights certificate or school concurrency exemption, which may contain such conditions as the board of county commissioners may require.

(c) A person aggrieved by a decision of the board of county commissioners on an application for a vested rights certificate or exemption may challenge the decision in the Circuit Court for the Ninth Judicial Circuit. If the aggrieved person decides to challenge the decision, he/she shall file a petition for writ of certiorari with the clerk to the circuit court not later than thirty (30) days after the decision is rendered by the board of county commissioners. The record before the circuit court shall consist of the complete record of the proceedings before the board of county commissioners.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-388. - Requirement of exhaustion of procedures.

Judicial review shall not be available under section 30-387 or otherwise unless and until the procedures set forth in sections 30-385 through 30-387, inclusive, of this division have been exhausted.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-389. - Effect of exemption or vested rights certificate.

(a) Except as may be provided otherwise in this article XI for developments within activity centers, an exemption or a vested rights certificate shall enable the owner of the subject property to undertake and complete the development addressed by the exemption or vested rights certificate, notwithstanding that the development may be inconsistent with the comprehensive plan, or in violation of the concurrency requirements of the plan, or both, as the certificate may specify, but only if the development complies with and is subject to all other applicable laws and regulations.

(b) All development subject to a vested rights certificate shall continue to comply and be consistent with any binding letter of vested rights or terms of any development order upon which the issuance of the vested rights certificate was predicated.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-390. - Suspension and revocation of exemption or vested rights certificate.

(a) Notwithstanding anything in this article to the contrary, subject to subsection (b) herein, an exemption or a vested rights certificate may be suspended or revoked upon a showing by the county of an imminent peril to the health and safety of the people of the county which did not exist or was unknown at the time the certificate was issued, or an exemption or a vested rights certificate may be suspended or revoked upon a showing by the county that the certificate was issued based upon false, inaccurate, misleading or incomplete information.

(b) An exemption or vested rights certificate shall not be revoked prior to a hearing being held by the board of county commissioners. However, an exemption or a vested rights certificate may be suspended prior to a hearing being held by the board, provided the board shall hold a hearing within forty-five (45) days after the suspension.

(Ord. No. 2010-10 , § 2, 9-21-10)

Sec. 30-391. - Vested rights certificate runs with the land.

A vested rights certificate shall inure to the benefit of and run with the land to which it applies.

(Ord. No. 2010-10 , § 2, 9-21-10)

Secs. 30-392—30-499. - Reserved.

ARTICLE XII. - CONCURRENCY MANAGEMENT

DIVISION 1. - GENERALLY

Sec. 30-500. - Purpose; short title.

The purpose of this article is to implement the concurrency provisions of the County Comprehen sive Plan (hereinafter referred to as the "comprehensive plan"), as mandated by F.S. ch. 163, F.A.C. rule 9J.-5.0055, and the Amended Interlocal Agreement for Public School Facility Planning and Implementation of Concurrency (hereinafter referred to as the "interlocal agreement") entered into by the county, the school board and the applicable municipalities within the county as required in F.S. § 163.3180(13). No development order or permit shall be issued except in accordance with this article. This article may be cited as the concurrency management ordinance.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 2, 5-14-96; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-501. - Definitions.

Adjacency review: The review of school concurrency service areas adjacent to the school concurrency service area in which the proposed residential development is located as required by section 18.6(e) of the interlocal agreement.

Adjusted FISH capacity: The number of students who can be served in a permanent public school facility as provided in the Florida Inventory of School Houses ("FISH"), adjusted to account for the design capacity of modular or in-slot classrooms on the campuses designed as modular or in-slot schools, but not to exceed core capacity.

Adverse trip: A vehicle trip on a segment of a failing transportation facility.

Alternative mobility area (AMA): A designated transportation concurrency exception area established for the purpose of promoting urban infill development or redevelopment and maximizing the use of existing public infrastructure pursuant to Objective T2.3 and Map 16 in the Transportation Element of the County's adopted Comprehensive Plan.

Annual capacity availability report: A report prepared on or by October 1 of each year specifying, among other things, capacity used for the preceding year, and available, encumbered, and reserved capacity for each public facility and service. Pursuant to section 46.2 of the interlocal agreement, the school board shall provide information by March 1 of each year to the county with regard to public school enrollment, capacity, and levels of service for each school concurrency service area.

Appeal: A request for a review of an administrative interpretation of any provision of this article, or a review of a decision made by any administrative official or board or commission.

Applicant: A person or entity who files an application under this article.

Application: Any document submitted by an applicant under this article including, but not limited to, any of the following:

(1) An application submitted to the concurrency management official seeking a capacity encumbrance letter;

(2) The appeal of the denial of a capacity encumbrance letter;

(3) An application to be placed on a capacity waiting list;

(4) An application for a proportionate share agreement (for transportation) or for proportionate share mitigation (for schools); or

(5) An application for, or proposal of, a transportation concurrency mitigation plan for a project that, if approved, will allow a capacity encumbrance letter to be issued.

Area of influence: The geographical transportation network of roadway segments on which the proposed project is tested.

Available school capacity: The ability of a school concurrency service area to accommodate the students generated by a proposed development at the adopted level of service standards. Available school capacity shall be derived using the following formula for each school type:

Available School Capacity = (School Capacity x Adopted Level of Service [1]) - (Enrollment [2] + Reserved Capacity [3])

Where:

[1] Adopted Level of Service = the ratio, expressed as a percentage, of enrollment to school capacity as jointly adopted by the school board and local governments.

[2] Enrollment = student enrollment as counted in the most recent official October count.

[3] Reserved Capacity = the total amount of school capacity reserved for all residential developments within a school concurrency service area.

Building: Any structure that encloses or covers a space used for sheltering any occupancy.

Building permit: For purposes of this article, a permit which authorizes, (i) the construction of a new building, or (ii) the expansion of a floor area or the increase in the number of dwelling units contained in an existing building, or (iii) change in use, shall qualify as a building permit.

Capacity: Refers to the availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trip ends.

Capacity, available: Capacity which can be encumbered or reserved to future users for a specific public facility or service.

Capacity commitment agreement: A developers agreement or capacity enhancement agreement, whether individually or as part of a consortium of capacity enhancement agreements, executed prior to September 9, 2008, containing commitments to fund wholly or partially the construction of public school facilities to provide school capacity at identified public schools required to serve the affected residential developments.

Capacity, encumbered: Capacity which has been removed from the available capacity bank through the issuance of a capacity encumbrance letter.

Capacity encumbrance letter: A letter issued by the county based upon a determination by the CMO that adequate capacity for each public service and facility is available and has been encumbered pursuant to section 30-588 to serve the densities and intensities of development designated on such capacity encumbrance letter.

Capacity enhancement agreement: A legally enforceable and binding agreement between an applicant and the school board (and, when necessary, the county), committing to mitigation determined to be necessary by the school board to avoid or mitigate overcrowding individual schools impacted by the proposed residential development pursuant to the comprehensive plan public schools facilities element policy PS6.3.1.

Capacity information letter: An informational and nonbinding letter for a specific development or property which indicates available capacity for each public facility based upon adopted LOS standards at the time the letter is issued but which does not (i) guarantee capacity in the future, nor (ii) encumber, commit or reserve capacity for any period of time. Capacity information letters for schools are issued by the school board.

Capacity, permitted: Capacity, which has been removed from the reserved or encumbered capacity bank and has been committed to a particular property through issuance of a building permit.

Capacity reservation certificate: A certificate issued by the county pursuant to this article, which constitutes proof that adequate capacity for each required public facility or service exists and has been reserved to serve the densities and intensities of development within the time period designated on such certificate.

Capacity reservation fee: The fee, as established by resolution of the board of county commissioners, that is required to be paid to the county as a condition of capacity reservation in the amount equivalent to the then applicable impact fees calculated on the basis of the capacity reserved for the term of the capacity reservation certificate:

(1) Less any outstanding impact fee credits applicable to the property; and

(2) For a project which has received a certificate of affordability from the county's housing and community development division, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

Capacity, reserved: Capacity which has been removed from the available or encumbered capacity bank and allocated to a particular property through issuance of a capacity reservation certificate reserving capacity for a period of time specified in such capacity reservation certificate. For schools, capacity is reserved through the issuance of a certificate of school concurrency or the execution of a proportionate share mitigation agreement.

Capacity, vested: Transportation capacity which has been withdrawn from the available capacity bank through issuance of a trip-based vesting determination or phasing agreement.

Capacity waiting list: A chronological listing of applicants that have been denied a capacity encumbrance letter and have applied to be put on the capacity waiting list. Applicants on the capacity waiting list shall be offered capacity as it becomes available on a "first come-first served" basis. The county does not maintain a capacity waiting list for schools.

Certificate of school concurrency: A written determination by the county based on a finding of the school board that available school capacity is sufficient to accommodate the residential development and has been reserved for such development. A certificate of school concurrency may be included in a consolidated capacity reservation certificate.

Change of use: For purposes of this article, any proposed change of use, redevelopment or modification of the character, type or intensity of use of an existing building or site.

CIE: Capital improvements element of the comprehensive plan required pursuant to F.S. § 163.3177(3)(a).

CIP: Capital improvements program, a five-year schedule of capital improvements adopted annually in conjunction with the county budget. The CIP is part of the adopted CIE. For schools, the CIP includes the five-year district facilities work program of the school district's educational facilities plan adopted in accordance with F.S. § 1013.35.

CMO: Concurrency management official, the county administrator or his or her designee.

Collateral assignee: That person or entity to which a capacity encumbrance letter or capacity reservation certificate is collaterally assigned in accordance with the terms and conditions of this article as security for a loan encumbering the real property described in, and which is the subject of, either a capacity encumbrance letter or a capacity reservation certificate.

Comprehensive plan: The Orange County 2010-2030 Comprehensive Plan required pursuant to F.S. § 163.3177 (adopted by the board of county commissioners on May 19, 2009, as may be amended or replaced from time to time).

Concurrency: Growth management laws intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development.

Concurrency management database: Inventory of public facilities subject to concurrency including, for transportation, traffic counts and tracking of encumbered, reserved, and (where data is available) vested trips.

Concurrency evaluation: Evaluation based on adopted LOS standards to ensure that public facilities and services required as a result of new development are available concurrently with the impacts of such development, as defined in this article.

Concurrency management system (CMS): The adopted procedures and/or processes used to ensure that public facilities that are required as a result of new development are available concurrently with the impacts of such development consistent with F.S. § 163.3180.

Core capacity: The maximum number of students that can be effectively served in a school dining facility.

County: Orange County, a charter county and a political subdivision of the State of Florida.

County Code: The new (recodified) Code for Orange County, Florida, adopted by the board of county commissioners in and by virtue of Ordinance No. 91-9 approved April 16, 1991, and effective April 26, 1991, as may be amended, modified, and/or recodified from time to time.

County vested rights ordinance: Divisions 2, 3, and 4 of article XI, chapter 30 of the County Code as may be amended from time to time.

Developer's agreement: An agreement entered into between the county and/or the School Board and one (1) or more persons or entities associated with the development of land including, but not limited to, agreements associated with development orders issued pursuant to F.S. 380.06.

Development analysis: The document required to be prepared and submitted under section 30-563 of this article and section 18.4 of the interlocal agreement as a requirement for the review of a school concurrency determination application for evaluating the impacts of a proposed residential development on school concurrency.

Development completion: The time at which all components of a development are completed and a certificate of occupancy has been issued.

Development impact (schools): The projected students from a residential development as a result of a development application or a school concurrency determination application calculated by multiplying the proposed number of dwelling units by the student generation rates by school type as set forth in the most recent school impact fee study as may be amended from time to time.

DRC: Development review committee.

Encumbrance period: The period following the date of issuance of a capacity encumbrance letter for which period capacity is encumbered pursuant to such capacity encumbrance letter.

Exempt development: Any development that qualifies for an exemption pursuant to section 30-374 of this chapter or section 18.2 of the interlocal agreement.

FDOT: The Florida Department of Transportation.

FISH: Florida Inventory of School Houses; an inventory of educational facilities within each school district that is required by the Florida Department of Education to be updated annually.

FSUTMS: The Florida Standard Urban Transportation Model Structure is a formal set of modeling steps, procedures, software, file formats, and guidelines established by the Florida Department of Transportation (FDOT) for use in travel demand forecasting throughout the state.

In-slot (modular) classrooms: Relocatable classrooms that conceptually "slide" into the spaces along a common walkway, as part of a modular campus which is characterized by a campus with brick and mortar core facilities and covered concrete walkways leading to the relocatable classrooms, list of which may be obtained from the school board. With the exception of in-slot (modular) classrooms, relocatable classrooms are not considered permanent capacity.

Land development code: Those portions of the County Code that the county is obligated to enforce pursuant to F.S. ch. 163, which regulate the development and/or use of real property and that are consistent with and implement the comprehensive plan pursuant to the requirements of F.S. § 163.3202.

Long-Term Transportation Concurrency Management System (LTTCMS): A schedule of transportation capital improvements adopted into the CIE intended to achieve the adopted LOS within a 10-year timeframe.

LOS: Level of service standard, which is the measurement indicating the degree of service provided by, or proposed for, a designated public facility based on the operational characteristics of such facility.

Mitigation plan: A plan or proposal by the applicant for a project by which the applicant proposes to improve public facilities to mitigate the impacts of the applicant's project.

Pedestrian connectivity index: A link-to-node ratio defined as the number of links (street segments between intersections and cul-de-sacs) divided by the number of nodes (total number of intersections and cul-de-sacs).

PM peak hour peak directional trips: The vehicle trips in the direction of higher travel demand on a road during the evening peak commuting period.

Project: The particular lot, tract of land, structure or other development unit for which the applicant files an application under this article.

Project that promotes public transportation: A development within the urban service area that directly affects the provision of public transit, including transit terminals, transit lines and routes, separate lanes for the exclusive use of public transit services, transit stops (shelters and stations) office buildings or projects that include fixed-rail or transit terminals as part of the building, and projects which are transit-oriented and designed to complement reasonably proximate planned or existing public facilities consistent with Policy T2.8.1 and Section 163.3164(37), Florida Statutes.

Project trip: A new vehicle trip that begins or ends within the project and that uses one (1) or more off-site roads.

Proportionate share mitigation: An improvement or contribution made by an applicant pursuant to a binding and enforceable agreement between the applicant school board and the county to provide monetary compensation or other mitigation for the additional demand on deficient public school facilities created by a proposed residential development, as mandated in F.S. § 163.3180(6)(h)2., and as set forth in section 30-622(4) of this article and section 19 of the interlocal agreement.

Public facilities and services: Those public facilities and services for which level of service (LOS) standards have been established in the Comprehensive Plan, and which include the following:

(1) Roads;

(2) Wastewater;

(3) Stormwater;

(4) Solid waste;

(5) Potable water;

(6) Parks and recreation;

(7) Mass transit; and

(8) Schools.

RAC: Road agreement committee.

Reservation period: The length of time for which capacity is reserved pursuant to a capacity reservation certificate.

Residential development: Any development that is comprised of residential units, in whole or in part, for nontransient human habitation, and includes single-family and multifamily dwelling units, regardless of whether the approval procedure for such development is considered commercial or residential.

Road agreement committee: (RAC) A staff committee that reviews agreements related to roads and transportation impact fee credits pursuant to Administrative Regulation 4.03, as may be amended from time to time.

Roads: Major thoroughfare network.

Roadway segment: A portion of a road defined by two (2) end points, usually the length of road from one (1) signalized intersection to the next signalized intersection.

School board: The school board of Orange County, Florida, which is the governing body of the school district of Orange County, Florida.

School concurrency: Pursuant to F.S. § 163.3180(6)(h)2., the requirement that public school facilities adequate to maintain level of service standards be in place or be scheduled to be under construction within three (3) years after the issuance of final subdivision or site plan approval or the functional equivalent.

School concurrency determination application: The written submittals for the determination of available school capacity for a residential development or a phase of a residential development, which is included as part of an application for site plan approval.

School concurrency service area: A geographic area in which the level of service standards are measured by the school board for each school type (elementary, middle, high) as designated in the public school facilities element of the county's comprehensive plan and the interlocal agreement.

School type: The category of public school based on the level or type of instruction, whether elementary school grades, middle school grades, or high school grades.

Site plan: Site plan shall be the point at which school concurrency is imposed. For multifamily projects this shall mean commercial site plan. For single-family projects, this shall mean preliminary subdivision plan; provided, however, that a capacity reservation certificate shall not be required until prior to plat approval.

Student generation rates: The number of students generated by development type and school type as set forth in the most recent school impact fee study as may be amended from time to time.

Subdivision: Any subdivision of land as defined in chapter 30, article III of the County Code.

Transportation concurrency: Transportation facilities are deemed to be concurrent when facilities needed to serve new development are in place or under actual construction within three (3) years after the local government approved a building permit or its functional equivalent that results in traffic generation.

Trip end: One (1) end of a vehicle trip.

VMT: Vehicle-mile(s) of travel generated by the project.

Vehicle trip: A vehicle movement in one (1) direction from an origin to a destination.

Vested rights: The right to develop, or continue to develop, a project notwithstanding the project's inconsistency with the county concurrency management system and/or county comprehensive plan, provided a vested rights certificate has been obtained pursuant to the county vested rights ordinance.

(Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-502. - Procedure.

The CMO or his or her designee shall be responsible for carrying out the requirements of this article and shall make determinations regarding concurrency and shall issue all documentation regarding concurrency according to the procedures set forth in this article.

These procedures are set forth in divisions 5 and 6 of this article.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-503. - Development not subject to this article.

(1) *Building permit issued prior to effective date of article.* Development pursuant to a building permit issued prior to December 13, 1991, is vested pursuant to the provisions of the county vested rights ordinance. No such building permit shall be extended except in conformance with the applicable provisions of the County Code. If the CMO determines such a building permit has lapsed or expired pursuant to the appropriate provision of the County Code, then no subsequent building permit shall be issued except in accordance with this article.

(2) *Vested projects.* Development which is vested as defined and determined in accordance with the county vested rights ordinance shall be exempt from the requirements of this article under the conditions, for the period and for the purposes specified therein.

(3) *De minimis development.* When evaluating for transportation concurrency, after December 13, 1991, total new development or redevelopment on a parcel of record as of December 13, 1991, which does not exceed one (1) percent of the maximum volume at the adopted level of service (LOS) on affected transportation facilities shall be exempt from the requirements of this article; provided, however, that the project's impacts when added to the existing and projected roadway volumes will not exceed one hundred (100) percent of the maximum volume at the adopted LOS of the affected transportation facility. Notwithstanding the foregoing, a single-family home on a single-

family platted lot or lot of record as of December 13, 1991, shall be exempt from the requirements of this article. When evaluating for school concurrency, any residential development that creates an impact of less than one (1) student shall be considered de minimis and exempt from school concurrency.

(4) *Exempt permits.*

(a) The following types of permits are hereby determined to be exempt from the requirements of this article because they do not create additional impacts on public facilities or services:

Boat dock permit

Electrical permit

Fence permit

Fire service permit

Floodplain permit

Mechanical permits (a/c, heating, ventilation)

Moving of structures (only applies to the permit issued for designating the route of the move)

Plumbing permit

Right-of-way utilization permit

Roofing or sheetmetal permit

Shoreline alteration permit

Sign permit

Tree removal permit

Underground utilities permit

(b) Additionally, the following shall be exempt from the requirements of this article if, on a case-by-case basis, the CRC determines that the proposed development or activity will not create additional impacts on public facilities or services:

(i) Variances.

(ii) Special exceptions.

(iii) Interior alterations.

(iv) Residential accessory structures which are restricted to a use or uses which are incidental or accessory to a dwelling unit on residential property, which structures do not constitute dwelling units.

(v) Additions or expansions to a dwelling unit on residential property provided such additions or expansions do not increase the number of dwelling units in the particular building or buildings on such property.

(vi) Such other permit, development or activity, which the CRC determines, on a case-by-case basis, will not create additional impacts on public facilities or services.

(5) *School concurrency.* When evaluating for school concurrency, any developments exempt from school concurrency pursuant to section 30-374 shall be exempt.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 3, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-504. - Change of use.

Any proposed change of use, which term or phrase shall include a change, redevelopment or modification of the character, type or intensity of use (excluding demolition), shall require a concurrency evaluation in accordance with this article.

(1) Increased impact on public facilities or services.

(a) If a proposed change of use shall have a greater impact on public facilities and/or services than the previous use, a capacity encumbrance letter (and a capacity reservation certificate, if appropriate) shall be required for the net increase only. For school concurrency this includes any amendment to any previously approved residential development that adds residential units or increases the number of dwelling units or changes the type of dwelling units (e.g., converts nonresidential to residential or converts single-family to multifamily).

(b) For transportation concurrency, if the proposed change in use has an impact of less than one hundred ten (110) percent of the previously existing capacity, the change of use shall not be denied based on the failure to meet the adopted LOS. For school concurrency, any residential development that creates an impact of less than one (1) student is exempt from school concurrency pursuant to subsections 30-503(3) and 30-374(a)(1).

(2) *Decreased impact on public facilities and services.* If the proposed change of use shall have an impact on public facilities and/or services which is equal to or less than the previous use, then the proposed change, redevelopment or modification of use may proceed without the encumbrance of additional capacity in accordance with the provisions of this article; provided, however, that in connection with such proposed change, redevelopment or modification, all other applicable provisions of the County Code must be complied with.

(3) *Definition of "previous use."* For purposes of this section, the term "previous use" shall mean either:

a. The use existing on the site when a concurrency evaluation is sought; or

b. If no active use exists on the site at the time when a concurrency evaluation is sought, then the most recent use on the site within the six-year period immediately prior to the date of application.

The applicant shall provide evidence which establishes the existence of such use. Such evidence must include, but shall not be limited to, utility records, phone bills, income tax returns, tax bills, occupational licenses, and unrelated party affidavits.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-505. - Demolition or termination of existing use.

In the case of demolition of an existing structure or termination of an existing use in conjunction with plans for redevelopment, the concurrency evaluation for future development shall be based upon the new or proposed land use as compared to the land use existing at the time of such demolition or termination. Credit for prior use shall not be transferable to another parcel. Credit for prior use must be utilized in connection with a redevelopment of the site within two (2) years following the demolition of the existing structure or termination of the existing use, whichever first occurs. Credit for prior use shall be deemed extinguished in the event such credit is not utilized in connection with the issuance of a building permit or a capacity reservation certificate within two (2) years following the date of issuance of the demolition permit for the subject property, or the termination of the existing use, whichever first occurs.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-506. - Transportation concurrency exception areas.

The alternative mobility area is designated as a transportation concurrency exception area pursuant to Objective T2.3 and Map 16 in the transportation element of the county's adopted comprehensive plan. The AMA requirements found in Objective T2.3 and its associated policies shall apply to future land use map amendments, rezonings, special exceptions, PD land use plans, development plans, preliminary subdivision plans, and commercial site plans within the AMA, and may apply to substantial changes to PD land use plans, preliminary subdivision plans, and development plans within the AMA.

(Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-507. - Projects that promote public transportation.

(a) Projects that promote public transportation are exempt from transportation concurrency based on their consistency with Policy T2.8.1 of the comprehensive plan and Section 163.3164(37), Florida Statutes, implementation of site design and performance standards specified under Transportation Objective T2.8, and the submittal of a mobility analysis that satisfies all of the requirements of this section.

(1) A project may establish eligibility through comprehensive plan amendment, rezoning, special exception, or planned development land use plan, preliminary subdivision plan, or development plan. A project with appropriate future land use or zoning that is not a planned development may establish eligibility through application to the county roadway agreement committee (RAC).

(2) A portion of a planned development or proposed development may be eligible for concurrency exception if designed as a project promoting public transportation. This partial exception shall not affect other portions of a planned development or proposed development not designed as a project promoting public transportation, which shall still be subject to transportation concurrency.

(3) A pre-application conference shall be required with the transportation planning, development engineering, zoning, and planning divisions and can be scheduled by contacting the transportation planning division.

(4) The county shall require the applicant to complete a mobility analysis for the proposed development as part of the project's transportation analysis that must be submitted to the transportation planning division. The transportation planning division will coordinate review comments, which will be provided to the applicant within fifteen (15) working days of submittal of the mobility analysis. The mobility analysis must be based on the methodology published by Orange County which may include the following:

a. A map depicting the proposed development site in the immediate context of adjacent parcels;

b. Existing circulation network (streets, sidewalks, pedestrian paths, and bicycle paths, with stub-outs clearly indicated) noting incomplete facilities or those in need of repair;

c. Proposed circulation network for the development site in relationship to its immediate context and in connection to existing and/or planned transit stops/stations;

d. Footprint of proposed development if available.

(5) An applicant may apply to remove the "project promoting public transportation" designation from all or part of a project by notifying the transportation planning division. For planned developments, the applicant must submit the revised plan to development review committee (DRC) and, if mitigation is necessary, to the RAC. For projects that are not planned developments, the applicant must apply to the concurrency management office for a concurrency determination and make any required payments to the county. Pursuant to section 38-1207, substantial changes to PD land use plans must be approved by the board of county commissioners.

(6) Projects that promote public transportation on constrained, backlogged, or long-term transportation concurrency management system roadways shall be exempt from the requirement for proportionate share, but shall be required to meet any site design requirements of Transportation Element Policy 2.2.4.

(b) Any denial involving a "project promoting public transportation" designation may be appealed to the RAC.

(Ord. No. 2013-13 , § 2, 5-21-13)

Secs. 30-508—30-519. - Reserved.

DIVISION 2. - LEVEL OF SERVICE (LOS) STANDARDS

Sec. 30-520. - Performance standards.

Level of service standards for potable water, solid waste, wastewater, parks and recreation, stormwater, roads, mass transit and public school facilities shall be as established in the Comprehensive Plan. The Comprehensive Plan's capital improvements element standards are as follows:

(1) *Potable water.* Pursuant to the CPP, level of service standard for potable water shall be two hundred seventy-five (275) gallons per day per equivalent residential unit when central water service from the county public utilities is required for development. If the service provider is other than the county public utilities, then the service standard of the appropriate service provider shall be utilized.

(2) *Solid waste.* Pursuant to the CPP, level of service standard for solid waste is to maintain a landfill capacity to accommodate solid waste generated at a rate of six (6.0) pounds per person per day.

(3) *Wastewater.* Pursuant to the CPP, level of service standards for wastewater shall be two hundred twenty-five (225) gallons per day per equivalent residential unit when central sewer from the county public utilities is required for development. If the service provider is other than the county public utilities, then the service standard of the appropriate provider shall be utilized.

(4) *Parks and recreation.* Pursuant to the CPP, level of service standards for parks and recreation are one and one-half (1.5) acres per one thousand (1,000) population (unincorporated area) for publicly owned activity-based parks and six (6.0) acres per one thousand (1,000) population (unincorporated area) for publicly owned resource-based parks. The projected population of a particular development in connection with which a capacity encumbrance letter or a capacity reservation certificate is requested shall be based upon the following population factors:

(a) 2.86 persons per dwelling unit for single-family;

(b) 1.80 persons per dwelling unit for multifamily; and

(c) 2.77 persons per dwelling unit for mobile homes.

(5) *Stormwater.* Pursuant to the CPP, level of service standard for stormwater shall be based on the following stormwater quantity and quality criteria:

(a) Design storm based on twenty-four-hour minimum:

Facility	Design Storm
Bridges	100 year
Canals, ditches, or culverts for drainage external to the development	25 year

Crossdrains, storm sewers	10 year
Roadside swales for drainage internal to the development	10 year
Detention basins	25 year
Retention basins (no positive outfall)	100 year

(b) Stormwater management systems shall be required to retain or detain with filtration the first one-half (½) inch of rainfall on the site, or the runoff generated from the first inch of rainfall on developed sites, whichever is greater.

(c) A retention/detention system shall be required which limits peak discharge of a developed site to the discharge from the site in an undeveloped condition during a twenty-four-hour/twenty-five-year frequency storm event.

(d) Prior to development approval, projects shall be required to receive appropriate permits from state agencies to comply with the rules and regulations for stormwater facility design, performance and discharge.

(e) Discharged stormwater runoff shall not degrade receiving surface water bodies below the minimum conditions established by state water quality standards (F.A.C. §§ 17-302 and 17-40.420).

(6) *Roads level of service.* Pursuant to the CPP, peak hour level of service for roads are:

Level of Service Standards

Type	State and County	
	Rural	Urban
SIS *	D	E
Principal arterials	D	E
Minor arterials	D	E
Collectors	D	E

* SIS—Strategic Intermodal System

(7) *Mass transit.* Pursuant to the CPP, level of service standard for mass transit is to maintain a person trip capacity of not less than thirty-seven thousand eight hundred eighty-six (37,886) per weekday.

(8) *Public schools.* The level of service standard for public school facilities shall be as jointly determined by the school board and the county and adopted by the county in the Comprehensive Plan.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 4, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13; Ord. No. 2013-15 , § 3, 6-18-13)

Secs. 30-521—30-549. - Reserved.

DIVISION 3. - CONCURRENCY EVALUATIONS

Sec. 30-550. - Concurrency requirements applicable.

The CMO shall utilize the standards and requirements set forth in this article to conduct a concurrency evaluation prior to issuance of a capacity information letter (see division 4), capacity encumbrance letter (see division 5), or capacity reservation certificate (see division 6) for those projects not otherwise exempt from concurrency review as set forth in section 30-503. In addition to the standards set forth in this article, the CMO shall also utilize the standards set forth in the comprehensive policy plan and such other standards regarding concurrency as may be authorized by the board of county commissioners from time to time. In connection with concurrency evaluations, the CMO shall have the authority to consider, utilize and rely upon, in whole or in part, other appropriate methodologies, evaluations, studies, documents and/or information submitted by the applicant.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-551. - Capacity encumbrance and subsequent reservation.

No capacity encumbrance letter (or capacity reservation certificate) shall be issued except after a concurrency evaluation is conducted pursuant to this article which indicates that capacity for the proposed development is available with respect to all applicable public facilities and services.

(Ord. No. 91-27, § 1, 12-10-91)

Sec. 30-552. - Comprehensive Plan amendments and rezoning applications.

(1) *Comprehensive Plan amendments.* A concurrency evaluation as outlined in this division is not required in connection with a Comprehensive Plan amendment or future land use map amendment. However, the county may consider the availability of public services and facilities when evaluating the appropriateness of a future land use map amendment or Comprehensive Plan amendment. A request for future land use map amendment or Comprehensive Plan amendment may be denied if public facilities and services are not expected to be available within the planning period pursuant to the Comprehensive Plan. In evaluating the availability of public school facilities, the county shall request school capacity information from the school board for all Comprehensive Plan amendments that will result in a net increase of ten (10) single-family or fifteen (15) multifamily residential units pursuant to section 704B.2. of the County Charter and the Comprehensive Plan public schools facilities element policy PS6.3.1.

(2) *Zoning applications.* A concurrency evaluation as outlined in this division is not required in connection with a rezoning application or other zoning application subject to this article. However, the county may consider the planned availability of public services and facilities when evaluating the appropriateness of a rezoning application or

other zoning application subject to this article. A rezoning application or other zoning application subject to this article may be denied if public facilities and services are not expected to be available within the planning period pursuant to the Comprehensive Plan future land use element. In evaluating the availability of public school facilities, the county shall request school capacity information from the school board for all rezoning applications that will result in a net increase of ten (10) single-family or fifteen (15) multifamily residential units pursuant to section 704B.2. of the County Charter and the Comprehensive Plan public schools facilities element policy PS6.3.1.

(3) *Planned development.* A study to assess traffic and capacity impacts shall be required as part of any application for planned development (PD) zoning. If the PD already has a CEL, no study shall be required. The study shall be submitted as part of the staff analysis to the planning and zoning commission/local planning agency as well as to the board of county commissioners in connection with the review by such bodies of the requested rezoning, and such study shall be considered in determining the appropriateness of the requested rezoning and/or the conditions applicable thereto. A substantial change to a PD that affects traffic may require a traffic study and analysis.

(4) *Recommendation for denial.* In the case where there is a recommendation of denial of the requested future land use map, comprehensive policy plan, rezoning, or PD application, the applicant is not precluded from applying for a capacity encumbrance letter and a capacity reservation certificate in accordance with this article.

(Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-553. - Preliminary subdivision plan (PSP) and plat approvals for residential subdivisions.

Other than projects subject to the requirements of the county site development ordinance, County Code chapter 30, article VIII, section 30-326 et seq., unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation shall be required as part of any application for a residential preliminary subdivision plan (PSP). The PSP may be approved, notwithstanding a lack of the requisite capacity (other than public school capacity), provided that such approval shall reiterate that the requisite capacity is not then and may not in the future be available. If there is insufficient school capacity, the approval shall require that a certificate of school concurrency be obtained prior to approval and recording of the plat. The approval shall also state that in all cases a capacity reservation certificate shall be required before platting. If the concurrency evaluation indicates that the subdivision would be concurrent, and if the preliminary subdivision plan (PSP) is approved, a capacity reservation certificate shall be required before the plat is approved for recording.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-554. - Nonresidential subdivisions.

Unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation shall be required as part of any application to approve a nonresidential subdivision plat for recording. A nonresidential subdivision may be approved for recording without a capacity reservation certificate. However, approval of a nonresidential plat for recording does not entitle or ensure any capacity to the subdivision. Further, any vertical construction or development on a project on such platted lands shall comply with section section 30-555.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-555. - Commercial projects and projects subject to site development review process.

Unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation will be required as part of any application for any project required to comply with the requirements of the county site development ordinance, County Code chapter 30, article VIII, section 30-236 et seq., commonly known as commercial site plan review. If the concurrency evaluation indicates that the proposed development would be concurrent, a capacity reservation certificate shall be required before the final commercial site plan is approved.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-556. - Concurrency evaluation—Potable water.

A concurrency evaluation for potable water shall be required prior to issuance of a capacity encumbrance letter. The potable water LOS standards specified in section 30-520(1) shall be implemented, and the concurrency evaluation for potable water shall be conducted on the basis thereof.

If the county public utilities is not the service provider, a letter from the potable water service provider verifying its ability to serve the project must be submitted to the CMO. All applicants are cautioned and put on notice that, where a capacity encumbrance letter and/or a capacity reservation certificate is issued on the basis of or in reliance upon, in whole or in part, the commitment of a service provider other than the county to furnish or provide all or a part of the necessary public facilities and/or services, the capacity encumbrance letter or the capacity reservation certificate may be revoked or terminated in the event of the failure or refusal of such service provider other than the county to provide the services and/or facilities at the requisite level of service.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for potable water in order to encumber capacity, the CMO shall determine the maximum amount of potable water, in gallons per day, which would be necessary to serve the proposed uses. If such amount of potable water, plus potable water which is or will be generated by all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth herein, then the development shall be deemed to be concurrent for potable water, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of potable water, plus potable water which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth herein, then the proposed development shall be deemed not to be concurrent for potable water, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* The portion of existing and projected treatment plant capacity which will be allocated to serve the proposed development shall be determined by applying the LOS standard to the number of equivalent residential units (ERUs) in the proposed development. The LOS standard for potable water when the county is the service provider is two hundred seventy-five (275) gallons per day per ERU. For potable water, one (1) of the following standards will satisfy the concurrency requirement: (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 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 the enforceable development agreement that includes the provisions of F.A.C. rule 9J-5.005(3)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

The concurrency determination for potable water focuses on present and planned plant capacity. It does not include an evaluation of actual connections from county facilities to the project and on-site infrastructure. Therefore, any capacity encumbrance letter or capacity reservation certificate is subject to the developer complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) ordinances, rules and regulations governing water capacity. The concurrency evaluation for potable water with respect to a particular development shall be performed by the county utilities engineering department and shall be based upon the last annual capacity availability report provided to the CMO by the county public utilities engineering department as provided for in division 7 of this article.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 5, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2013-15 , § 4, 6-18-13)

Sec. 30-557. - Same—Solid waste.

A concurrency evaluation for solid waste shall be required prior to issuance of a capacity encumbrance letter. The solid waste LOS standards specified in section 30-520(2) shall be implemented, and concurrency evaluations for solid waste shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for solid waste in order to encumber capacity, the CMO shall determine the maximum amount of solid waste, in pounds per day, which could be generated by the proposed uses. If such amount of solid waste, plus solid waste which is or will be generated by all existing, permitted, vested, encumbered and reserved development, is equal to or less than the performance standards set forth in this section and in section 30-520(2), then the proposed development shall be deemed to be concurrent for solid waste, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of solid waste which would be generated by the proposed development, plus solid waste which is or will be generated by all existing, permitted, vested, encumbered and reserved development, is greater than one hundred (100) percent of the county landfill capacity, then the proposed development shall be deemed not to be concurrent for solid waste, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* Solid waste LOS will be measured for all proposed development. Measurement shall be achieved by comparing the forecasted annual tonnage measured by the adopted LOS with the actual tonnage reported by the resource recovery department. The county will maintain the projected landfill capacity by applying the appropriate LOS standards to total county-wide population and will update the inventory on an annual basis in the annual capacity availability report. The review will occur more frequently if and when the projected remaining useful life of the county disposal system is five (5) years or less. For solid waste, one (1) of the following standards will satisfy the concurrency requirement: (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 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 that includes the provisions of F.A.C. rule 9J.-5.005(3)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 5, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-558. - Same—Wastewater.

A concurrency evaluation for wastewater shall be required prior to issuance of a capacity encumbrance letter. The wastewater LOS standards specified in section 30-520(3) shall be implemented, and concurrency evaluations for the wastewater shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for wastewater in order to encumber capacity, the CMO shall determine the maximum amount of wastewater, in gallons per day, which would be necessary to serve the proposed uses. If such amount of wastewater, plus wastewater which is or will be generated by all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth in this subpart, then the development shall be deemed to be concurrent for wastewater, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of wastewater, plus wastewater which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth in this section and in section 30-520(3), then the proposed development shall be deemed not to be concurrent for wastewater, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* The portion of existing and projected treatment plant capacity which will be allocated

to serve the projected development shall be determined by applying the LOS standard to the number of equivalent residential units (ERUs) in the proposed development. For wastewater, one (1) of the following standards will satisfy the concurrency requirement: (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 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 that includes the provisions of F.A.C. rule 9J.-5.005(2)(a)1.-3. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

The concurrency determination for wastewater focuses on present and planned plant capacity. It does not include an evaluation of actual connections from county facilities to the project and on-site infrastructure. Therefore, any capacity encumbrance letter or capacity reservation certificate is subject to the developer complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) ordinances, rules and regulations governing the connection and allocation rules of the county wastewater treatment plants. The concurrency evaluation for wastewater with respect to a particular development shall be performed by the county public utilities engineering department and shall be based upon the last annual capacity availability report provided to the CMO by the county utilities engineering department as provided for in division 7 of this article.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-559. - Same—Parks.

A concurrency evaluation for parks shall be required prior to issuance of a capacity encumbrance letter for any residential development. The parks LOS standards specified in section 30-520(4) shall be implemented, and concurrency evaluations for parks shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for parks in order to encumber capacity, the CMO shall determine the number of acres of parkland which would be necessary to serve the number of dwelling units on the site. If such amount of parkland, plus parkland which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth in this section and section 30-520(4), then the project shall be deemed to be concurrent for parks, and accordingly, the requested capacity encumbrance letter may be issued. If such amount of parkland, plus parkland which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth in this section and in section 30-520(4), then the project shall not be deemed to be concurrent for parks, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* When appropriate, the projected acreage need for parks in connection with each application shall be determined by the population estimate submitted by the applicant and verified by the CMO. The county will maintain a current inventory of available public park acreage which can be counted toward the LOS requirement. The inventory will be updated at least annually at the time of submission of the annual capacity availability report referred to in division 7 below. For parks, one (1) of the following standards will satisfy the concurrency requirement: (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 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 that includes the provisions of F.A.C. rule 9J.-5.005(2)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 5, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-560. - Same—Stormwater.

A concurrency evaluation for stormwater shall be required prior to the issuance of a capacity encumbrance letter. The project shall be deemed concurrent with respect to stormwater provided the applicant shall submit, as part of the application for the capacity encumbrance letter, a signed statement, which may be part of the application, that upon submittal of actual development plans for the project, the stormwater LOS standards specified in section 30-520(5) shall be implemented, and evaluations for stormwater shall be conducted on the basis thereof. Development plans for the project shall not be approved, and a building permit authorizing commencement of development shall not be issued except upon a determination that development of the project in accordance with the submitted development plans shall result in the project meeting the stormwater LOS standards specified in section 30-520(5) as implemented and evaluated by and in accordance with the stormwater management requirements of the county subdivision regulations and as specified in section 30-520(5). Issuance of the capacity encumbrance letter does not relieve the applicant from compliance with all other applicable local, state and federal permitting requirements.

(Ord. No. 91-27, § 1, 12-10-91)

Sec. 30-561. - Same—Mass transit.

A concurrency evaluation for mass transit shall be required prior to issuance of a capacity encumbrance letter. The mass transit LOS standards specified in section 30-520(7) shall be implemented, and concurrency evaluations for mass transit shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for mass transit in order to encumber capacity, the CMO shall determine the person trip handling capacity reported by the primary mass transit provider. If adequate capacity is available measured by the performance standards set forth in this section and section 30-520(7), then the project shall be deemed to be concurrent for mass transit, and accordingly, the requested capacity encumbrance letter may be issued. If the person trip capacity reported by the mass transit provider does not meet the performance standards set forth in this section and section 30-520(7), then the project shall not be deemed to be concurrent for mass transit, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* Mass transit LOS will be maintained by the county based on population and the current primary service provider's inventory of buses. The county is not solely responsible for the operations of the current mass transit provider. Rather, the county along with other jurisdictions in Central Florida contributes toward this service to offset operating and capital deficits. The county is financially committed to continue contributions through 1995, by an adopted interlocal agreement. The mass transit provider is responsible for adjusting and reallocating available resources as necessary to maintain the adopted LOS standard. The present mass transit provider is pursuing a dedicated source of funding to finance mass transit. The county will update the capacity availability annually and report the same in the annual capacity availability report. For mass transit, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a development permit is issued; (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; (c) the necessary facilities are under construction at the time a development

permit is issued; and (d) the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 5, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-562. - Same—Roads.

A concurrency evaluation for roads shall be required prior to the issuance of a capacity encumbrance letter. The road LOS standards outlined in division 2 of this article shall apply to this concurrency evaluation for roads.

If the amount of traffic which would be generated by the proposed development, plus traffic which is or will be generated by existing, permitted, encumbered, and reserved development (and where data is available, vested development), is greater than the capacity on the affected roadways at the adopted LOS, then the proposed development shall not be deemed concurrent for transportation, and accordingly, the requested capacity encumbrance letter shall not be issued.

(1) *LOS standards.* The road LOS standards outlined in division 2 of this article shall apply to this concurrency evaluation for roads. LOS impacts must be determined using generally accepted standards including the tables in the latest edition of the FDOT Quality Level of Service Handbook depicting the generalized peak hour directional volumes and approved LOS computation tools. A proposed development claiming exempt status shall be required to submit to the CMO such data as the CMO shall require for verification of the exempt status of the proposed development. A part of the data referred to in the preceding sentence may include development plans.

(2) *Traffic study.* A concurrency evaluation shall include a traffic study. A traffic study shall include:

(a) *Summary.* Project name, project location (including location map and parcel identification number), applicant contact information, parcel owner information (if different than applicant), proof of ownership of parcel(s).

(b) *Proposed development.* Proposed use for the property by land use category and amount of development.

(c) *Area of influence.* The impact area for purposes of evaluating concurrency shall be all road segments within a one (1) mile radius of the project if project site is located within the urban area as determined by the board of county commissioners. The impact area for purposes of evaluating concurrency shall be all road segments within a two and one-half (2½) mile radius of the project if project site is located within the rural area as determined by the board of county commissioners.

(d) *Proposed project traffic.* Traffic to be generated by the proposed development by land use category and amount of development.

(i) *Trip generation.* Trip generation rates shall be based on the latest edition of Institute of Traffic Engineers Trip Generation Manual (ITE Trip Generation Manual) or a county-approved trip generation study. All generated trips shall be assumed to be external, unless documented.

(ii) *Trip distribution.* Trip distribution shall be performed to allocate trips to origin and destination land use areas external to the site and may be performed manually or using an appropriate transportation model such as FSUTMS. The assumptions use to allocate trips on the network shall be documented in the traffic study.

(iii) *Trip assignment.* Trip assignment may be performed manually or using FSUTMS or a comparable county-approved model. If the manual method is used, the assignment may be done concurrently with distribution. The assignment process shall be based on a review of the land uses within the area of influence. All assumptions shall be documented in the traffic study.

(e) *Available capacity.* Roadway capacity as reported in the concurrency database, which is based on generalize tables as found in the latest edition of FDOT Quality Level of Service Manual, or approved LOS computation plan or high-plan analysis.

(f) *Special analysis.* Any deviation from the traffic study requirements must be supported by documented justification and must be approved by the concurrency review committee.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 6, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-563. - Same—Public schools.

A concurrency evaluation for public school facilities is required prior to the issuance of a capacity encumbrance letter. The public school LOS standards shall apply to this concurrency evaluation for public school facilities.

If the impacts to the school concurrency service area which would be generated by the proposed residential development, plus impacts generated by existing, permitted, encumbered, and reserved development (and where data is available, vested development) would cause the adopted LOS within the affected school concurrency service area to be exceeded, then the requested capacity encumbrance letter shall be denied.

(a) *Application requirements.* Any applicant seeking approval for a preliminary subdivision plan ("PSP") or a multifamily commercial site plan that is not exempt under section 30-374, shall submit to the county a school concurrency determination application which shall contain a development analysis.

(b) *Development analysis content.* The development analysis shall include:

(1) Location of the residential development, including applicable tax parcel identification numbers.

(2) Number of residential units and unit types.

(3) Phasing schedule (if applicable).

(4) Map showing, as applicable, existing and proposed zoning classifications and existing and proposed future land use categories for areas subject to and adjacent to the parcel for which the concurrency approval is sought.

(5) Any existing request by the county or the school board for a school site within the parcel.

(6) If the application proposes a school site, the development analysis must include the estimated date of availability to the school board and the provider(s) for on-site and off-site infrastructure and whether the proposed school site satisfies the school site selection criteria set forth in article XVIII, chapter 38 of this Code; and

(7) If the applicant has previously executed a capacity enhancement agreement, a copy of the agreement must be included in development analysis and the development analysis must indicate whether the residential development will exceed the capacity provided for in the capacity enhancement agreement.

(c) *Review and evaluation.* The county will review the school concurrency determination application for completeness, and forward the complete development analysis to the school board for review.

(1) The county may charge applicant a nonrefundable application fee.

(2) The school board may require additional information from the applicant.

(3) Within fifteen (15) days of the receipt of the development analysis, the school board shall determine if there is available school capacity for each school type in the affected school concurrency service area to accommodate the impacts of the residential development, and shall issue a written preliminary school concurrency recommendation to the county consistent with section 18.6 of the interlocal agreement.

(4) In the event that the school board finds there is insufficient available school capacity for the school concurrency service area in which the proposed residential development is located, and, where applicable, in an adjacent school concurrency service area, to accommodate the residential development

pursuant to section 18.6 of the interlocal agreement, the school board shall so state in its preliminary school concurrency recommendation (preliminary recommendation). The school board shall offer the applicant the opportunity to enter a sixty-day period to negotiate a proportionate share mitigation agreement. Based on the school board preliminary recommendation of insufficient capacity, the county shall issue a capacity encumbrance denial letter. If mitigation is agreed upon, the school board shall enter into an enforceable and binding proportionate share mitigation agreement with the county and the applicant and the county may issue a capacity encumbrance letter pursuant to the terms thereof.

(5) If the school board finds that there is sufficient available school capacity within the applicable school concurrency service area, the school board shall issue the preliminary recommendation so stating. The county may treat the preliminary recommendation as a final school concurrency recommendation and in reliance thereon, issue a capacity encumbrance letter.

(Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Secs. 30-564—30-569. - Reserved.

DIVISION 4. - CAPACITY INFORMATION LETTERS

Sec. 30-570. - Purpose.

A capacity information letter is a nonbinding analysis of existing levels of service for public facilities and services (excluding public schools) in the vicinity of the parcel identified in the application at the time the capacity information letter is issued and does not guarantee capacity in the future or encumber/reserve capacity for any period of time. The capacity information letter does not purport to analyze the impacts of the applicant's proposed project on public facilities or services nor to determine if the existing levels of service are sufficient (i) to permit development of a particular parcel, (ii) to authorize the issuance of a capacity encumbrance letter, or (iii) to authorize the issuance of a capacity reservation certificate. Any request for a capacity information letter for schools shall be directed to the school board.

The issuance of a capacity information letter does not relieve the applicant from complying with the remaining provisions of this article with respect to capacity encumbrance or capacity reservation.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-571. - Application.

Generally. An application for a capacity information letter shall be submitted to the CMO together with the required fee, which shall be set by resolution adopted by the board of county commissioners from time to time. Any person seeking a capacity information letter shall submit the following information to the CMO on a form prescribed by the CMO. No such application shall be accepted (or deemed accepted) until it is complete.

(a) Date of submittal;

(b) Applicant's name, address and telephone number;

(c) Parcel I.D. number and legal description.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 7, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-572. - Processing of application by CMO.

Upon receipt of a complete application for a capacity information letter, the CMO shall access the existing levels of service for public facilities and services in the vicinity of the parcel consistent with division 2 of this article. The CMO shall issue the capacity information letter within ten (10) calendar days after receipt of the application.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 8, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-573. - Contents of capacity information letter.

At a minimum, the capacity information letter shall contain:

(1) Date of issuance;
(2) Applicant's name, address and telephone number;
(3) Parcel I.D. number and legal description;
(4) Name and location of nearest potable water facility and available capacity if supplied by the county;
(5) Name and location of nearest wastewater facility and available capacity if supplied by the county;
(6) Available capacity of activity-based and resource-based parks;
(7) Available capacity of mass transit facilities;
(8) Available capacity of solid waste facilities; and
(9) Available capacity of road facilities.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06)

Secs. 30-574—30-579. - Reserved.

DIVISION 5. - CAPACITY ENCUMBRANCE LETTERS

Sec. 30-580. - Introduction.

A capacity encumbrance letter is a determination by the CMO that, for a particular parcel, given a specific proposed development density or intensity and based on the timing of development by phase and year, the proposed development will be concurrent at the time the capacity encumbrance letter is issued and that the CMO has encumbered a specified amount of public facility or service capacity as specified in the letter. A capacity encumbrance letter is a prerequisite to a capacity reservation certificate. In no event shall an applicant encumber a greater amount of capacity than that necessary to serve the maximum amount of development permitted on the site under its current land use designation on the future land use map.

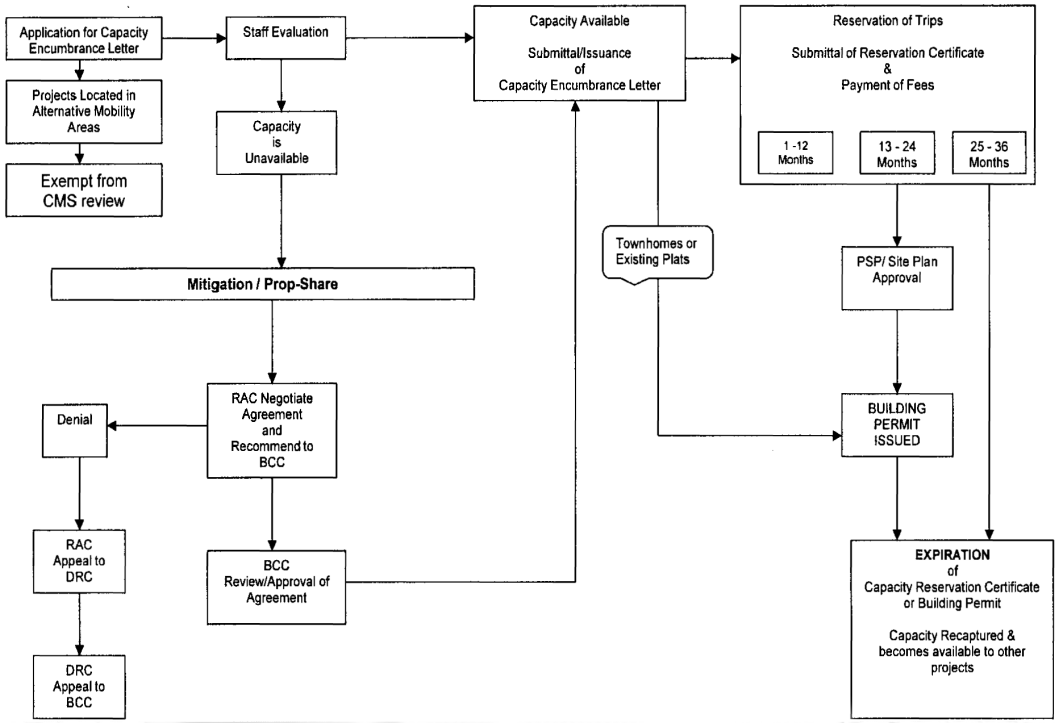
(Ord. No. 91-27, § 1, 12-10-91)

Sec. 30-581. - Procedure for capacity encumbrance letter evaluation.

Within twenty-one (21) days after receipt of an application for a capacity encumbrance letter for public facilities other than schools, the CMO shall process the application, conduct a concurrency evaluation in accordance with division 3 of this article, and issue a capacity encumbrance letter or a capacity encumbrance denial letter. For residential development requiring a school concurrency evaluation, within twenty-one (21) days after the receipt of a final school concurrency recommendation from the school board the CMO shall issue a capacity encumbrance letter or a capacity encumbrance denial letter. When the CMO reviews the application, the basis for the review shall be to determine whether or not the project, and its resulting demands upon public facilities and services and the resulting impacts upon applicable LOS, will result in degradation in the LOS of any applicable public facility or service below the LOS adopted in this article and/or the Comprehensive Plan.

For road concurrency, staff will prepare a general assessment of the project's impacts and determine if roadways operating below or projected to operate below the adopted LOS standards according to the concurrency management database are located within the project's area of influence. If failing facilities are identified within the area of influence, staff will notify the applicant of options to satisfy concurrency and should the applicant choose to proceed, the applicant will be required to attend a regularly scheduled RAC meeting to negotiate a proportionate share contribution agreement.

SECTION 30-581 TRANSPORTATION CONCURRENCY PROCEDURE FLOW CHART



(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 9, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-582. - Application for capacity encumbrance letter.

Generally. An application for a capacity encumbrance letter shall be accompanied by a fee which shall be set by resolution of the board of county commissioners from time to time. Any application seeking a capacity encumbrance letter shall submit the following information to the CMO, on a form provided by the CMO. No such application shall be accepted (or deemed accepted) until it is complete.

(1) Property owner's name, address and telephone number;

(2) Applicant's name, address and telephone number;

(3) Parcel I.D. number and legal description;

(4) Land use(s) permitted for the parcel or parcels under the future land use map;

(5) Proposed use(s) by land use category, square feet and number and type of units;

(6) Phasing information by proposed uses, square feet and number of units, if applicable;

(7) Existing use of property;

(8) Acreage of property;

(9) Name of project;

(10) Site design information, if applicable;

(11) Potable water needs for the proposed development (together with a verification of service letter from the

service provider if the county public utilities is not the service provider);

(12) Wastewater needs for the proposed development (together with verification of service letter from the service provider if the county public utilities is not the service provider);

(13) Traffic information specified in section 30-562;

(14) Public school information specified in section 30-563;

(15) Proposed geographic allocation of capacity by legal description, if applicable;

(16) Such other information as deemed necessary by the county.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 10, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-583. - Action by CMO if all public facilities and services found to be concurrent.

(a) If, during the concurrency evaluation, the CMO determines that all public facilities and services are concurrent, concurrent with conditions, or are presumed to be concurrent pursuant to divisions 3 and 5 of this article, the CMO shall issue the capacity encumbrance letter, which shall advise the applicant that capacity is available for reservation or for issuance of a building permit or, for public schools, that capacity is available for reservation. The effective date of encumbrance of capacity shall be deemed to be the date of the capacity encumbrance letter. If the applicant seeks a reservation during the encumbrance period, capacity shall be reserved by issuance of a capacity reservation certificate in accordance with division 6 of this article. If the applicant is not the property owner, a copy of the capacity encumbrance letter shall also be sent to the property owner. At a minimum, the capacity encumbrance letter shall include:

(1) Property owner's name, address;

(2) Applicant's name, address;

(3) Parcel I.D. number and legal description;

(4) Land use(s) permitted for the parcel or parcels under the future land use map;

(5) Amount of capacity encumbered for each facility or service;

(6) The date the capacity encumbrance letter was issued;

(7) The date upon which the capacity encumbrance letter expires, unless, prior to such expiration date, either (i) a building permit is issued, or (ii) the encumbered capacity is reserved by the issuance of a capacity reservation certificate.

(b) The foregoing notwithstanding, for the period from November 13, 2009, through March 31, 2013, any capacity encumbrance letter existing and valid during the period from January 6, 2009, through March 31, 2013, shall be valid for a period of three hundred sixty-five (365) days from the date of issuance. No extensions shall be granted in addition to the three hundred sixty-five (365) days; if an applicant wishes to maintain the capacity, the applicant will be required to obtain a capacity reservation certificate.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2009-32 , § 10, 11-3-09; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2011-02 , § 10, 3-8-11; Ord. No. 2012-07 , § 5, 3-6-12)

Sec. 30-584. - Use of encumbered capacity.

If a capacity reservation certificate is issued within the encumbrance period and the capacity encumbered is greater than the capacity reserved, the excess encumbered capacity shall revert to the available capacity bank on the date the capacity reservation certificate is issued. If a building permit is issued, or for public schools, a plat or commercial site plan is approved, within the encumbrance period and the capacity encumbered is greater than the capacity committed to the building permit, plat, or commercial site plan, the excess encumbered capacity shall revert to the available capacity bank on the date the building permit is issued, or for public schools, following the approval of the plat or commercial site plan. When a valid building permit is issued for a

project utilizing encumbered capacity, that capacity shall become permitted capacity and shall not be recaptured unless the building permit lapses or expires without the issuance of a certificate of occupancy. When a valid capacity reservation certificate is issued for a project utilizing encumbered capacity, that capacity shall become reserved capacity and shall not be recaptured unless (i) the capacity reservation certificate lapses or expires without the issuance of a valid building permit, or (ii) a building permit is issued but lapses or expires without issuance of a certificate of occupancy.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-585. - Action by CMO if one or more public facilities determined not to be concurrent.

If, during the concurrency evaluation, the CMO determines that one (1) or more public facilities or services lacks sufficient available capacity to accommodate the applicant's request, the CMO shall issue a capacity encumbrance denial letter which shall advise the applicant that capacity is not available for one (1) or more public facilities or services. The applicant shall have sixty (60) calendar days from the issuance of a capacity encumbrance denial letter to submit an application (i) to be placed on the capacity waiting list where applicable, (ii) to pursue the concurrency denial/mitigation process outlined in division 8 of this article, and/or (iii) to pursue the proportionate share contribution (to remedy a transportation facilities deficiency only), and/or (iv) to pursue proportionate share mitigation (to remedy a public school facilities deficiency only) as outlined in division 8 of this article. At a minimum, the denial letter shall include:

(1) Property owner's name, address;

(2) Applicant's name, address;

(3) Parcel I.D. number and legal description;

(4) Land use(s) permitted for the parcel or parcels under the future land use map;

(5) Proposed use(s) by land use category, square feet and number of units;

(6) The public services or facilities determined not to be concurrent, including the level of the deficiency, if known;

(7) The options available to the applicant including, but not necessarily limited to:

(i) Submitting an application to be placed on the applicable capacity waiting list;

(ii) Submitting an application for the concurrency appeal/mitigation process outlined in division 8 of this article;

(iii) Submitting an application for proportionate share contribution (to remedy a transportation facilities deficiency only) as outlined in division 8 of this article; and

(iv) For purposes of school concurrency, negotiating a proportionate share mitigation agreement with the school board and the county in accordance with division 8 of this article.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 11, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-586. - Capacity waiting list.

(1) Applicants who receive a capacity encumbrance denial letter due to insufficient capacity within an applicable service area may elect to be placed on the capacity waiting list. The county does not maintain a capacity waiting list for school capacity. Placement on the capacity waiting list will serve to confirm a valid application for a capacity encumbrance letter and will serve to ensure an equitable "first come-first served" processing of applications. Projects on the capacity waiting list shall be offered capacity as it becomes available on a "first come-first served" basis. Applicants will be notified by certified mail that capacity is available for allocation to their specific project and advised as to any additional information or documentation required to facilitate

updating and final review of their application. If the available capacity is insufficient to accommodate the project as a whole, the CMO shall nevertheless offer the available capacity to the applicant, and the applicant may:

(a) Reserve the available capacity by payment of the required fee to obtain issuance of a capacity encumbrance letter as respects the then available capacity, and either:

(i) Remain in place on the waiting list and continue waiting for additional capacity, or

(ii) For transportation facilities deficiencies only, utilize the proportionate share contribution for the additional capacity required for the specific parcel.

(2) Reject the offer of capacity, in which event the available capacity shall be offered to the next applicant on the waiting list.

(a) Within thirty (30) days following receipt of an applicant of a written offer of capacity, the applicant shall (i) supply such additional information or otherwise finalize the pending application as required by the CMO, (ii) pay the required fee for issuance of the capacity encumbrance letter, and (iii), if applicable, submit a request to pursue the proportionate share contribution for the provision of transportation facilities only.

(b) Failure to accept the offered capacity by timely providing the updating information requested by the CMO and paying the applicable capacity encumbrance fee will result in nonissuance of the capacity encumbrance letter and removal of the applicant from the capacity waiting list.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 12, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-587. - Transfer of encumbered capacity.

Encumbered capacity shall not be transferred to property not included in the legal description provided by the applicant in the application for the capacity encumbrance letter. However, if during the encumbrance period the applicant submits an application for a building permit or an application for a capacity reservation certificate, he may, as a part of such application, designate the amount of capacity allocated to portions of the property, such as lots, blocks, parcels or tracts, included in the application. Moreover, a capacity encumbrance letter shall be deemed in all respects appurtenant to the real property described therein and to which it applies. A capacity encumbrance letter may not be sold, assigned, transferred or conveyed separate or apart from the real property to which it relates and which is described in the capacity encumbrance letter.

Notwithstanding the preceding sentence, a capacity encumbrance letter, and all rights and obligations appertaining thereto, may be collaterally assigned as security for a loan encumbering the real property described in, and which is the subject of, the capacity encumbrance letter, provided that, as a precondition to the effectiveness of such collateral assignment, application must be made to the CMO, utilizing a form prescribed by the CMO for such purpose, requesting authorization to make such collateral assignment of all rights, duties and obligations under the capacity encumbrance letter. The CMO may approve or disapprove such application and, in connection with any approval, may impose conditions with respect to the effectiveness of such collateral assignment; the approval, disapproval or approval with conditions shall be in writing and signed by the CMO. The collateral assignment shall vest in the collateral assignee as security interest in the capacity encumbrance letter, but the collateral assignee shall not be deemed to have acquired title to the capacity encumbrance letter until and unless the collateral assignee acquires fee title in and to the property described in the capacity encumbrance letter and the county receives written notice from the collateral assignee that it has acquired such fee simple interest, together with copies of such legal documents evidencing the acquisition of such fee title by the collateral assignee, at which time, the CMO shall reissue the capacity encumbrance letter to the collateral assignee as fee simple title holder of the property. However, in no event shall such reissuance to a collateral assignee extend the original encumbrance period, and the reissued capacity encumbrance letter shall expire on the same date as the original letter would have expired. The CMO shall not be required to furnish any written notices to the collateral assignee; specifically, but not by

way of limitation, the CMO shall not be required to notify the collateral assignee of the expiration of a capacity encumbrance letter, notwithstanding that the effect of the expiration of the one-hundred-twenty-day encumbrance period would be termination of the capacity encumbrance letter and return of the capacity to the available capacity bank.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2009-32 , § 10, 11-3-09; Ord. No. 2011-02 , § 10, 3-8-11; Ord. No. 2012-07 , § 5, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-588. - Expiration of capacity encumbrance letter.

If the capacity encumbrance letter expires prior to issuance of either a capacity reservation certificate in accordance with division 6 of this article or a building permit using the encumbered capacity, the capacity shall revert to the available capacity bank as described in division 7 of this article.

A capacity encumbrance letter shall be valid for a period of one hundred eighty (180) days following the date of the letter (the "encumbrance period") and may be extended by the CMO for successive thirty-day periods not to exceed a total of an additional one hundred eighty (180) days.

For school concurrency, the capacity encumbrance letter shall be valid for one hundred eighty (180) days from the date of issuance of the letter and may be extended up to an additional one hundred eighty (180) days upon applicant request and written approval by the county and notice to the school board, provided that applicant demonstrates to the county that applicant is proceeding in good faith to obtain necessary development approvals.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 13, 5-14-96; Ord. No. 2009-32 , § 10, 11-3-09; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2011-02 , § 10, 3-8-11; Ord. No. 2012-07 , § 5, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-589. - Reserved.

DIVISION 6. - CAPACITY RESERVATION CERTIFICATE

Sec. 30-590. - Introduction.

The purpose of the capacity reservation process is to allow property owners and developers to ensure that capacity is available when it is needed for a particular project and to provide a higher degree of certainty during the construction financing process.

(Ord. No. 91-27, § 1, 12-10-91)

Sec. 30-591. - Application for capacity reservation certificate.

Generally. An application for a capacity reservation certificate for public facilities other than schools (for schools, see section 30-599) shall be submitted to the CMO and shall be accompanied by a valid capacity encumbrance letter and the capacity reservation fee. The capacity reservation fee shall be established by resolution adopted by the board of county commissioners from time to time. At a minimum, the application shall include:

(1) Property owner's name, address and telephone number;

(2) Applicant's name, address and telephone number;

(3) Parcel I.D. number and legal description;

(4) Land use(s) permitted for the parcel or parcels under the future land use map;

(5) Proposed use(s) by land use category, square feet and number of units;

(6) Phasing information by proposed uses, square feet and number of units, if applicable;

(7) Existing use of property;

(8) Acreage of property;

(9) Name of DRI, PD, subdivision, office park, if applicable;

(10) Site design information, if applicable;

(11) Whether sewer capacity has been reserved for the proposed development;

(12) Written consent of the property owner, if different from applicant;

(13) A copy of a valid capacity encumbrance letter;

(14) The reservation period requested; and

(15) Allocation of capacity, by legal description, if applicable.

For schools, the development analysis referenced in section 30-563 shall be updated as necessary and shall serve as the application for a certificate of school concurrency.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 14, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-592. - Issuance of capacity reservation certificate.

Within fourteen (14) calendar days of the receipt of a complete application for a capacity reservation certificate, accompanied by a valid capacity encumbrance letter and the required applicable fee, the CMO shall issue a capacity reservation certificate. The capacity reservation certificate shall describe the amount and length of time the capacity shall be reserved. Upon issuance of the capacity reservation certificate, the CMO shall reserve the requested capacity.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 15, 5-14-96)

Sec. 30-593. - Reservation time period.

(1) *Types of capacity reservations.* Capacity shall be reserved for a specified time frame under certain conditions. Pursuant to this section, an applicant may request one (1) of two (2) different types of capacity reservations:

(a) *Fixed time frame capacity reservation certificate.* A fixed time frame capacity reservation certificate shall allow the applicant to reserve capacity for up to three (3) years. Reservations may be made for one (1), two (2) or three (3) years. A specific quantity of capacity must be requested for use during each year of the reservation time frame. Capacity for fixed time frame capacity reservation certificates shall be reserved based on the standards and criteria for concurrency evaluations identified in division 3 of this article. For accounting purposes, the CMO shall reserve the requested capacity for each year from the appropriate capacity bank. Except as provided in sections 30-594 and 30-595 below, a fixed time frame capacity reservation certificate will allow the applicant to utilize the capacity reserved for a particular year only during the one-year period specified in the certificate.

(b) *Flexible time frame capacity reservation certificate.* A flexible time frame capacity reservation certificate shall allow the applicant to reserve capacity for three (3) years based on the standards and criteria for concurrency evaluations identified in division 3 of this article. The total capacity requested must be reserved for the full duration of the reservation. However, for accounting purposes, the CMO shall allocate the requested capacity equally for each year from the appropriate capacity bank. A flexible time frame capacity reservation certificate will allow the applicant to utilize the capacity at any time during the term of the certificate.

(2) *Expiration.* Upon expiration of the time frame set forth in the capacity reservation certificate, if a building permit was not obtained within the reservation period, the CMO shall transfer the reserved capacity to the available capacity bank.

(a) If a building permit was issued, but the project has not completed build-out, the applicant can request from

the CMO, an extension, not to exceed three (3) additional years, providing that all capacity reservation fees have been paid for the project at the time of the extension request and there is not a capacity waiting list within the location of the project.

(b) Notwithstanding the existence of a capacity waiting list, if the applicant can demonstrate that the development is proceeding in good faith, the CMO may grant an extension. Failure of the development to proceed in good faith during any extension of the reservation period shall be grounds for the CMO to terminate the extension after thirty (30) days' written notice of intent to terminate has been given to the applicant, and providing the applicant is given an opportunity to be heard on the issue of whether the development has proceeded in good faith.

(c) If the county delays progress on the applicant's project through no fault of the applicant, notwithstanding the existence of a capacity waiting list, the applicant may request an extension of the capacity reservation certificate, which may be granted by the CMO.

(d) Notwithstanding the existence of a capacity waiting list, if the applicant has been required to execute a capacity enhancement agreement with the School Board of Orange County, and the terms of that agreement result in the delay of the applicant's development (through no fault of the applicant), then the applicant may request an extension of the capacity reservation certificate, which may be granted by the CMO.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 16, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2009-32 , § 11, 11-3-09; Ord. No. 2011-02 , § 11, 3-8-11; Ord. No. 2012-07 , § 6, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-594. - Shifting of capacity under fixed time frame capacity reservation certificate.

(1) Shifting of capacity is the movement of reserved capacity from one (1) or more specific yearly time frames to other specific yearly time frames. In order to shift capacity, an application to shift capacity, either forwards or backwards, shall be submitted to the CMO at least thirty (30) days prior to the expiration of the specific yearly time frame into which or out of which the capacity was originally allocated pursuant to the capacity reservation certificate. In evaluating an application to shift capacity the CMO shall consider:

(a) Whether the applicant has previously shifted capacity;

(b) The project's current status and degree to which the applicant is deviating from his phasing schedule;

(c) The stated reasons for the deviation from the phasing schedule;

(d) The length of any applicable waiting list; and

(e) The funds expended by the applicant prior to the initiation of vertical construction.

(f) Whether the applicant has applied for or has made a proportionate share contribution for the provision of transportation facilities only.

(2) Where necessary to ensure equitable allocation of capacity, the CMO may approve an application to shift capacity with conditions. If an application to shift capacity is denied or if the applicant disagrees with the conditions, the denial or the conditions may be appealed in accordance with the provisions of division 8 of this article.

(3) No unused capacity reserved pursuant to the capacity reservation certificate may be carried forward beyond a total of three (3) years from the date of the original issuance of such certificate unless an extension has been applied for and received from the CMO as outlined in subsection 30-593(b).

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, §§ 17, 18, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-595. - Extension of fixed time frame capacity reservation certificates.

(1) Not later than thirty (30) days before the expiration date of a fixed time frame capacity reservation certificate originally issued for one (1) year or two (2) years, the applicant may request an extension, not to exceed twelve (12) months. In connection with any requested extension, a limit may be placed on the amount of capacity which may be

carried forward and allocated to the twelve-month extension term. The CMO shall determine whether the extension is warranted, based on criteria including, but not limited to, the following:

(a) Size of the project; and

(b) Amount of capacity requested; and

(c) Phasing; and

(d) Location of the project; and

(e) Capacity availability within the service area; and

(f) Reasons for requesting the reservation time period extension; and

(g) Whether the developer exercised good faith in attempting to secure issuance of a building permit.

(h) Whether the applicant has applied for or has made a proportionate share contribution for the provision of transportation facilities only.

(2) No unused capacity reserved pursuant to the capacity reservation certificate may be carried forward beyond a total of three (3) years from the date of the original issuance of such certificate unless an extension has been applied for and received from the CMO as outlined in subsection 30-593(2).

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, §§ 19, 20, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2009-32 , § 11, 11-3-09; Ord. No. 2011-02 , § 11, 3-8-11; Ord. No. 2012-07 , § 6, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-596. - Capacity reservation fees for fixed time frame capacity reservation certificates.

(1) A capacity reservation fee shall be required to be paid as a condition of capacity reservation. The capacity reservation fee shall be an amount equivalent to the then applicable transportation impact fee calculated on the basis of the total capacity reserved for the term of the capacity reservation certificate:

(a) Less any outstanding impact fee credits applicable to the property; and

(b) Less any proportionate share contribution for the provision of transportation facilities only; and

(c) For a project which has received a certificate of affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

However, in the event the capacity reservation certificate is not used and the applicant would otherwise be entitled to a refund, the appropriate traffic impact fee credit shall be recredited to the applicant. Capacity may be reserved for one (1) year, two (2) years or three (3) years. The allocation of capacity reservation fees shall be based upon the duration of the capacity reservation certificate with the applicable capacity reservation fee prorated equally over the term of the reservation. For example, if the fixed time frame capacity reservation certificate provides for a reservation of capacity over a three-year term, thirty-three and one-third (33 1/3) percent of the capacity reservation fee shall be due at the time of filing the application for capacity reservation; thirty-three and one-third (33 1/3) percent of the capacity reservation fee shall be due on or before the expiration of one (1) year from the date of issuance of the capacity reservation certificate; and the balance of the capacity reservation fee shall be due on or before the expiration of two (2) years from the date of issuance of the capacity reservation certificate. No capacity reservation certificate shall be issued until and unless the required portion of the capacity reservation fee is paid in full. Failure to pay the capacity reservation fee within one hundred twenty (120) days from the date of issuance of the capacity encumbrance letter so that the capacity reservation certificate may be timely issued shall be deemed a withdrawal of the application for a capacity reservation certificate, and the CMO shall return the capacity to the available capacity bank.

The applicant shall be required to pay all impact fees due at the time of, and as a condition of, receiving a building permit, pursuant to the impact fee rate schedule in effect at the time a building permit is issued. However, the capacity reservation fee paid by the applicant shall be credited toward the impact fees due at time of issuance of the building permit on a dollar-for-dollar

basis.

The capacity reservation fees collected pursuant to this section shall be kept separate from other revenue of the county. They shall be kept with road impact fees, but they shall be separately earmarked from road impact fees.

EXAMPLE NO. 1

Capacity Reservation Fees in Connection
with Fixed Time Frame One-Year Capacity Reservation Certificate

	Year 1
Fee equal to	100% of transportation impact fees.

EXAMPLE NO. 2

Capacity Reservation Fees in Connection
with Fixed Time Frame Two-Year Capacity Reservation Certificate

	Year 1	Year 2
Fee equal to	50% of transportation impact fees.	50% of transportation impact fees.

EXAMPLE NO. 3

Capacity Reservation Fees in Connection
with Fixed Time Frame Three-Year Capacity Reservation Certificate

	Year 1	Year 2	Year 3
Fee equal to	33 1/3 % of transportation impact fees.	33 1/3 % of transportation impact fees.	33 1/3 % of transportation impact fees.

(2) Refund of unused fixed time frame capacity reservation fee. Capacity reservation fees shall be refundable as set forth in this paragraph. The CMO shall refund one hundred (100) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with subsection 30-596(1) if the capacity was reserved for a one-year (twelve (12) months) reservation period or less. The CMO shall refund one hundred (100) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with subsection 30-596(1) if the capacity was reserved for a two-year (twenty-four (24) months) reservation period. The CMO shall refund ninety (90) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with subsection 30-596(1) if the capacity was reserved for a three-year (thirty-six (36) months) reservation period. Refunds shall be granted only if and to the extent that capacity reservation fees are subsequently received by the county from third parties in such amounts as are required to affect any requested refund. Those applicants awaiting refunds shall be placed on a list, and refunds shall be made to applicants in the order in which their names appear on such list, provided that funds are available to affect such refunds as specified in the preceding sentence.

(3) In the event legislation is passed eliminating transportation concurrency and providing for mobility requirements, applicants with existing capacity reservation certificates may be given the option to apply any existing capacity reservation fees towards any future mobility requirements. The specific terms of any such arrangement shall be

memorialized in a development agreement approved by the board of county commissioners.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 92-21, § 2, 7-21-92; Ord. No. 96-15, § 21, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2009-32 , § 11, 11-3-09; Ord. No. 2011-02 , § 11, 3-8-11; Ord. No. 2012-07 , § 6, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-597. - Capacity reservation fees for flexible time frame capacity reservation certificates.

(1) A capacity reservation fee shall be required to be paid as a condition of capacity reservation. The capacity reservation fee shall be an amount equivalent to the then applicable transportation impact fee calculated on the basis of the total capacity reserved:
   (a) Less any outstanding impact fee credits applicable to the property; and
   (b) Less any proportionate share contributions for the provision of transportation facilities only; and
   (c) For a project which has received a certificate of affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

However, in the event the capacity reservation certificate is not used and the applicant would otherwise be entitled to a refund, the appropriate traffic impact fee credit shall be recredited to the applicant. The capacity reservation fee may not be prorated over the three-year term of the capacity reservation certificate. No capacity reservation certificate shall be issued until and unless the required capacity reservation fee is paid in full. Failure to pay the capacity reservation fee within one hundred twenty (120) days from the date of issuance of the capacity encumbrance letter so that the capacity reservation certificate may be timely issued shall be deemed a withdrawal of the application for a capacity reservation certificate, and the CMO shall return the capacity to the available capacity bank.

The applicant shall be required to pay all impact fees due at the time of, and as a condition of, receiving a building permit, pursuant to the impact fee rate schedule in effect at the time a building permit is issued. However, the capacity reservation fee paid by the applicant shall be credited toward the impact fees due at time of issuance of the building permit on a dollar-for-dollar basis.

The capacity reservation fees collected pursuant to this section shall be kept separate from other revenue of the county. They shall be kept with road impact fees, but they shall be separately earmarked from road impact fees.

(2) Refund of unused flexible time frame reservation fee. Reservation fees shall be refundable as set forth in this paragraph. The CMO shall refund ninety (90) percent of the capacity reservation fee not applied as credit against impact fees in accordance with subsection 30-597(1). Refund shall be granted only if and to the extent that capacity reservation fees are subsequently received by the county from third parties in such amounts as are required to affect any requested refund. Those applicants awaiting refunds shall be placed on a list, and refunds shall be made to applicants in the order in which their names appear on such list, provided that funds are available to affect such refunds as specified in the preceding sentence.

(3) In the event legislation is passed eliminating transportation concurrency and providing for mobility requirements, applicants with existing capacity reservation certificates may be given the option to apply any existing capacity reservation fees towards any future mobility requirements. The specific terms of any such arrangement shall be memorialized in a development agreement approved by the board of county commissioners.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 92-21, § 2, 7-21-92; Ord. No. 96-15, § 22, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2009-32 , § 11, 11-3-09; Ord. No. 2011-02 , § 11, 3-8-11; Ord. No. 2012-07 , § 6, 3-6-12; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-598. - Transfer of certificates.

A capacity reservation certificate continues to be valid according to its specific terms and conditions only for the property specifically identified and described therein. Capacity may be reassigned or allocated within the boundaries of the property described in the capacity reservation certificate, but such reassignment or reallocation shall be accomplished only by the CMO following written application by the CMO. A capacity reservation certificate shall be deemed in all respects appurtenant to the real property described therein and to which it applies. A capacity reservation certificate may not be sold, assigned, transferred or conveyed separate or apart from the real property to which it relates and which is described in the capacity reservation certificate. Notwithstanding the preceding sentence, a capacity reservation certificate, and all rights and obligations appertaining thereto, may be collaterally assigned as security for a loan encumbering the real property described in, and which is the subject of, the capacity reservation certificate, provided that, as a precondition to the effectiveness of such collateral assignment, notice must be made to the CMO, utilizing a form prescribed by the CMO for such purpose, requesting return receipt from the CMO of such collateral assignment regarding all rights, duties and obligations under the capacity reservation certificate. The collateral assignment shall vest in the collateral assignee as security interest in the capacity reservation certificate, but the collateral assignee shall not be deemed to have acquired title to the capacity reservation certificate until and unless the collateral assignee acquires fee title in and to the property described in the capacity reservation certificate and the county receives written notice from the collateral assignee that it has acquired such fee simple interest, together with copies of such legal documents evidencing the acquisition of such fee title by the collateral assignee, at which time, the CMO shall reissue the capacity reservation certificate to the collateral assignee as fee simple title holder of the property. Once the CMO gives written authorization for the collateral assignment of a capacity reservation certificate, no refunds of capacity reservation fees with respect to such capacity reservation certificate shall be paid to the holder thereof without the prior written consent of the collateral assignee. The CMO shall not be required to furnish any written notices to the collateral assignee except with respect to an application for refund of capacity reservation fees by the holder of the capacity reservation certificate. Specifically, but not by way of limitation, the CMO shall not be required to notify the collateral assignee of the expiration of a capacity reservation certificate or nonpayment of any installment of a capacity reservation fee, notwithstanding that the effect of failure to pay such installment would be termination of the capacity reservation certificate and return of the capacity to the available capacity bank.

(Ord. No. 91-27, § 1, 12-10-91)

Sec. 30-599. - Capacity reservation fees for school concurrency certificates.

(1) Upon site plan approval and the payment of up to one-third (1/3) (as determined by the school board) of the capacity reservation fees or all proportionate share mitigation payments, the county shall issue a certificate of school concurrency reserving school capacity for a residential development for three (3) years.

(2) Each year on the anniversary date of the certificate of school concurrency, the applicant shall pay an additional portion (up to one-third (1/3), as determined by the school board) of the capacity reservation fees until such fees are paid in full. The applicant may prepay any capacity reservation fees required to be paid under this section.

(3) An applicant who has paid all capacity reservation fees and can demonstrate that the project is proceeding in good faith, may request approval from the county and the school board for an extension of the certificate of school concurrency for up to three (3) additional years. Any extension beyond the initial three-year extension requires de novo review by the county and school board of available school capacity.

(4) Any capacity reservation fees paid shall be credited against payment of school impact fees.

(5) If the county becomes aware of the failure of an applicant to meet any conditions of a certificate of school concurrency of the development, the county shall report such failure to the school board within forty-five (45) days of the date the county becomes aware of the failure.

(6) All capacity reservation fee refunds shall be made by the school board, unless the county is holding capacity reservation fees or school impact fees on behalf of the school board, and the superintendent or his or her designee directs the county to refund capacity reservation fees from such funds. The school board, at its discretion, may

charge a nonrefundable administrative fee for the processing of any refunds.

(Ord. No. 2010-11 , § 2, 9-21-10)

Secs. 30-600—30-610. - Reserved.

DIVISION 7. - CONCURRENCY ADMINISTRATION

Sec. 30-611. - Traffic counts.

On county-maintained roads, the county shall continue its traffic counting and monitoring program to ensure the traffic conditions are accurately reflected in the CMS, as follows:

(1) The county shall, at a minimum, conduct annual three-day traffic counts on all county-maintained functionally classified roads.

(2) The county shall establish a similar traffic counting monitoring program to supplement FDOT's traffic counts to provide PM peak hour/peak directional counts.

(3) All annual traffic counts shall be published by March first of each year and shall be made available to the public on the county website.

(Ord. No. 2006-06 , § 2, 5-23-06)

Sec. 30-612 - Capacity banks.

With respect to public school facilities, the school board shall maintain a capacity bank. Any encumbrance or reservation of public school capacity shall be made by the county based upon a recommendation received from the school board which recommendation will be based upon the capacity bank maintained by the school board.

With respect to each of the following public services or facilities: roads, mass transit, wastewater, potable water, solid waste, stormwater and parks, there are hereby established capacity banks, including, but not limited to, the available capacity bank, the encumbered capacity bank, and the reserved capacity bank. Only the CMO or his or her designee shall be authorized to transfer capacity among banks. Capacity refers to the ability or availability of a public facility or service to accommodate users, expressed in an appropriate unit of measure, such as gallons per day, average daily trip ends, or, for public schools, available school capacity. Available capacity represents a specific amount of capacity that may be encumbered or reserved by future users of a public service or facility. Capacity is withdrawn from the available capacity bank and deposited into an encumbered capacity bank when a capacity encumbrance letter is issued, and then into a reserved capacity bank when (i) a capacity reservation certificate is issued, (ii) a vested rights determination has become final or (iii) a building permit is issued.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-613. - Annual capacity availability reporting and monitoring.

By October 1 of each year, the planning division shall complete an annual capacity availability report. This report shall include development permitting activity for the previous year and existing available capacity for the following public facilities: roads; mass transit; wastewater; potable water; solid waste; stormwater; parks and public schools. The report shall specify the capacity used for the previous year. For public schools, the capacity availability report shall use information reported annually to the CMO by the school board pursuant to the interlocal agreement. The annual capacity availability report shall contain, at a minimum:

(1) A summary of development activity (to include preliminary and final local development orders, vested development and exempted development).

(2) The total amount of existing capacity of the above specified public services and facilities (i.e., roads, mass transit, potable water, solid waste, stormwater, parks, and public schools), and the amount of such existing capacity whic

(a) Available capacity;

(b) Encumbered capacity;

(c) Reserved capacity.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-614. - Review process.

The office of the CMO shall serve as the clearinghouse for all aspects of the concurrency management system. Applications for capacity information letters (except for public schools), capacity encumbrance letters, and capacity reservation certificates shall be submitted to the office of the CMO. The CMO shall issue the requested letter or certificate or shall deny the request, as appropriate.

The office of the CMO shall maintain the official records for the county regarding capacity information letters (except for public schools), capacity encumbrance letters, and capacity reservation certificates.

The office of the CMO shall coordinate with the appropriate division or departments (or the school board for public schools) concerning the capacity analysis for each concurrency determination. The division or department (or school board) shall forward their comments regarding capacity availability to the office of the CMO.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2010-11 , § 2, 9-21-10)

Sec. 30-615. - Transportation concurrency exception area monitoring.

(1) Orange County shall monitor and evaluate the impacts of approved development in the AMA and of projects that promote public transportation on adjacent county-maintained roads and the state highway system. That information shall be reported in the county's annual capacity availability report for the concurrency management system and shall be available upon request.

(2) Orange County shall monitor the success of AMA strategies on a districtwide basis using the following performance measures. Evaluation of the AMA using these performance measures shall begin in 2015.

Mobility Strategy	Measure	Target
Support alternative modes of transportation	Transit shelters in the AMA	Increase number of transit shelters
	Sidewalk coverage near transit stops in the AMA	Increase percentage of roadways with sidewalks (on at least one (1) side) within ¼ mile of transit stops
	Pedestrian, bicycle and transit Quality/LOS	Achieve grade C or better
	VMT in the AMA	Maintain or reduce amount per capita

	Accidents involving pedestrians and bicyclists in the AMA	Reduce annual number of accidents involving pedestrians and bicyclists in the AMA
Transportation network connectivity	Pedestrian connectivity index	Increase pedestrian connectivity index score by measuring link to node ratio

(Ord. No. 2013-13 , § 2, 5-21-13)

Secs. 30-616—30-619. - Reserved.

DIVISION 8. - CONCURRENCY APPEAL/MITIGATION PROCESS

Sec. 30-620. - Scope and purpose.

The purpose of this division is to provide a process for:

(1) Appeal of a denial of a capacity encumbrance letter.

(2) An applicant to obtain a capacity encumbrance letter by meeting the requisite level of service standards by proposing a mitigation plan which must be approved by the county.

(3) An applicant to obtain a capacity encumbrance letter for transportation by proposing a proportionate share contribution which must be approved by the county.

(4) An applicant may obtain a capacity encumbrance letter for public school facilities by proposing a proportionate share mitigation which must be approved by the school board and county.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 23, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-621. - When concurrency appeal/mitigation/proportionate share contribution procedures (transportation)/proportionate share mitigation (schools) apply.

The concurrency appeal/mitigation procedures described in this division shall apply in the following circumstances:

(1) An application has been denied; or

(2) The applicant has proposed a mitigation plan for his project in order to satisfy the adopted level of service standards; or

(3) An application has been denied for transportation facilities deficiencies only and the applicant has proposed to enter into a binding agreement to pay for or construct its proportionate share of required improvements ("proportionate share agreement"). Provided the proposed development is consistent with the CP, the applicant may satisfy the county's transportation concurrency requirements by entering into a proportionate share agreement, that may include, but shall not be limited to, the construction of intersection improvements, turn lanes, or signals, under the following circumstances:

(a) The proportionate share contribution may be the proportionate share of the cost of a transportation

improvement funded for construction in the county's five-year CIP, or in the ten-year capital improvements schedule (CIS) that, upon completion, will provide transportation facilities necessary to serve the development; or

(b) If a transportation improvement that, upon completion, would provide transportation facilities necessary to serve the proposed development is included in the county's LTTCMS , but is not included in the CIP or CIS the applicant may pay for or construct its proportionate share of an improvement, provided it is sufficient to accomplish one (1) or more mobility improvements.

(c) If there is no transportation improvement available under subsection (a) or (b) hereof, the applicant may propose construction of, or a proportionate share contribution to, a transportation improvement that, in the opinion of the governmental entity or entities maintaining the transportation facilities, is sufficient to accomplish one (1) or more mobility improvements. If the county accepts construction of, or a proportionate share contribution to, such transportation improvement, the county will add the transportation improvement to the CIP at the next available opportunity.

(4) *Schools.* An application for a school capacity encumbrance letter has been denied and the applicant proposes proportionate share mitigation to address the project's impacts. The proposed project must be otherwise consistent with the Comprehensive Plan and the proposed proportionate share mitigation shall fall within one (1) of the following categories:

(a) The project will be served by a school improvement that, upon completion, will satisfy the requirements of the county concurrency management system, is included in the district facilities work program (which is included in the five-year CIP in the county CIE); or

(b) The applicant proposes a proportionate share mitigation or contribution to an improvement, approved by the county and school board, that will satisfy the requirements of the county concurrency management system, but is not currently contained in the district facilities work program (that is included in the five-year CIP). The school board and county shall commit to add the improvement to the district facilities work program and five-year CIP no later than the next regularly scheduled update of the school district facilities plan and CIE.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 24, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-622. - Submittal of appeal/mitigation plan/ proportionate share contribution agreement (transportation)/proportionate share mitigation agreement (schools).

(1) *Application.* An application for an appeal of a denial of a request for a capacity encumbrance letter, a mitigation plan, a proportionate share contribution agreement, or a proportionate share mitigation agreement (schools) shall include:

(a) Name, address, and phone number of owner(s), developer and agent:

(b) Property location, including parcel identification numbers;

(c) Legal description and survey of property;

(d) Project description, including type, intensity and amount of development;

(e) Phasing schedule, if applicable;

(f) Description of request (appeal, mitigation plan, proportionate share (transportation), or proportionate share mitigation (schools));

(g) Copy of application for capacity encumbrance letter;

(h) Copy of approved traffic study (transportation) or development impact analysis (schools);

(i) Application fee; and

(j) Copy of capacity encumbrance denial letter.

(2) If the applicant is appealing a denial, an appeal application and fee which conforms to the submittal requirements of this division shall be submitted to the CMO. No appeal application shall be deemed accepted unless it is complete. A fee for filing an appeal application shall be established by resolution of the board of county commissioners.

(3) If the applicant proposes using the proportionate share option to satisfy the transportation concurrency requirements for development of a specific parcel:

(a) The applicant may attend a pre-application conference with the RAC to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted road is a state road, the FDOT will be invited to participate in the pre-application conference.

(b) The applicant shall submit the proportionate share application to the county.

(c) Within ten (10) business days, the applicant will be notified if the application is insufficient or incomplete. If such deficiencies are not remedied by the applicant within thirty (30) days of receipt of the written notification, then the application will be deemed abandoned. The CMO may grant an extension of time not to exceed sixty (60) days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to affect a cure.

(d) Calculation of the project's proportionate share of the cost of the improvements using the following formula:

Proportionate Share =	$\frac{\text{Project Trips} \times \text{Cost}}{\text{Increase in Capacity}}$

(e) If the county has accepted right-of-way dedication for the proportionate share payment, credit for the dedication of the non-site related right-of-way shall be valued through an appraisal, at no expense to the county, from an MAI appraiser approved by the county. The value of the right-of-way to be conveyed by the owner shall be the total number of acres, and/or a fraction thereof, of the conveyed land multiplied by the appraised fair market value of the property. 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 county at no expense to the county. If the estimated value of the right-of-way dedication proposed by the applicant is less than the county estimated total proportionate share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(f) The applicant shall receive a credit on a dollar-for-dollar basis for impact fees and other transportation concurrency mitigation requirements. The credit shall be reduced by up to twenty (20) percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement.

(g) *Proportionate share agreement.* A developer's agreement addressing the terms of the proportionate share contribution (the proportionate share agreement) must be recommended by the RAC (except for school mitigation agreements which shall be recommended by the CMO to the board of county commissioners) and approved by the board of county commissioners.

(h) *Issuance of capacity encumbrance letter.* Upon approval of the proportionate share agreement by the board of county commissioners, and payment of proportionate share contribution, a capacity encumbrance letter will be issued for the amount of capacity to be created by the proportionate share contribution.

(4) *Schools.* In the event there is insufficient available school capacity within a school concurrency service area to meet the created by the proposed residential development, and the applicant and the school board have agreed upon mitigatio may include proportionate share mitigation) pursuant to subsection 30-563(c)(4) to satisfy the school concurrency requ for the proposed residential development, the following shall apply:

(a) *Agreement.* The applicant, the school board and the county must memorialize the agreed-upon mitigation by entering into a legally binding agreement to provide mitigation proportionate to the demand for public school facilities created by the actual development of the property.

(b) *Mitigation options.* Mitigation options that provide permanent capacity are subject to school board approval and may include, but are not limited to;

1. Contribution of land in conjunction with the provision of an additional school site meeting the county's school siting criteria, or adjacent land for expansion of an existing facility (the value of such land shall be calculated using the valuation standard of section 19.6(c) of the interlocal agreement);
2. Provision of additional permanent student stations through donations of buildings for use as primary or alternative learning facility, provided that such buildings meet the state requirements for educational facilities;
3. Provision of additional permanent student stations through the renovation of existing buildings for use as learning facilities;
4. Construction of permanent student stations or core facilities;
5. Construction of a school in advance of the time set forth in the district facilities work program;
6. Creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits;
7. Construction of a charter school designed in accordance with state requirements for educational facilities and providing permanent student stations. Use of a charter school for mitigation must include provisions for its continued existence, including, but not limited to, the transfer of ownership of the charter school property and/or operation of the school to the school board in the event of the closure of the charter school;
8. Contribution of funds or other financial commitments or initiatives acceptable to the school board to ensure that the financial feasibility of the district facilities work program can be maintained by the implementation of the mitigation options; or
9. Payment of proportionate share mitigation for the residential development. Such payment shall be based on the ability to meet the demand for school facilities created by the proposed residential development. The amount will be calculated utilizing the cost per student station allocation for each school type plus the cost of land acquisition, core and ancillary facility requirements and other infrastructure expenditures, including off-site improvements for school sites, as determined and published annually in the district facilities work program. The methodology used to calculate proportionate share mitigation shall be as follows:

   Proportionate Share Mitigation = (Development Impact - Available School Capacity) x Total Cost

   Where:

   Available School Capacity = (School Capacity x Adopted Level of Service) - (Enrollment + Reserved Capacity)

   School Capacity = Adjusted FISH capacity for the applicable school concurrency service area as programmed in the first three (3) years of the district facilities work program

   Enrollment = Student enrollment as counted in the most recent official October count

Total Cost = the cost per student station plus a share of the land-acquisition costs, additional core and ancillary facility costs and other anticipated infrastructure expenditures or the estimated cost of school infrastructure needed to provide sufficient permanent capacity to the impacted school concurrency service areas, and includes any cost needed to pay the interest to advance a school scheduled in the district facilities work program to an earlier year.

(c) *Impact fee credit.* Proportionate share mitigation shall be credited against the school impact fee to the extent that the mitigation payment funds a capacity-adding public school improvement that is eligible to be funded with school impact fees. The terms of the impact fee credit shall be established in the proportionate share mitigation agreement. The impact fee credit shall be calculated as follows:

Equivalent Residential Units (ERU) for which Proportionate Share Mitigation is provided x Impact Fee per Dwelling Unit

Where:

Net Development Impact = Development impact - Available Capacity

ERU = Net Development Impact divided by the Student Generation Rate

(d) Capacity enhancement contribution credit. To the extent the residential development is subject to a capacity enhancement agreement, the capital contribution paid pursuant to such agreement shall be a credit applied to the proportionate share mitigation applied herein.

(e) CMO. Following negotiation with the school board and the county attorney's office and approval by the school board, the applicant shall submit any proposed proportionate share mitigation agreement to the CMO for review and recommendation by the CMO to the board of county commissioners.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 96-15, § 25, 5-14-96; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-623. - Appeals.

The applicant may appeal decisions of the RAC and DRC.

(1) The applicant may appeal decisions of the RAC by requesting a hearing in letter form to the chairman of the DRC. Such request shall include a summary of the decision being appealed and the basis for the appeal. For appeals regarding decisions on the availability of school capacity, a copy of the request shall be submitted to the school board. The DRC shall consult with the school board in reviewing appeals regarding the availability of school capacity.

(2) Any decision of the DRC pursuant to this article may be appealed to the board of county commissioners by submitting a letter to the chairman of the DRC within thirty (30) days of the decision. For appeals regarding decisions on the availability of school capacity, a copy of the appeal request shall be submitted to the school board for its information.

(a) The board of county commissioners may deny or approve (with or without conditions) the application or may return the application to the appropriate committee for further consideration with or without comments or directions.

(b) The board of county commissioners shall review the application on the same basis and in accordance with the procedures of this division, and an approval issued by the board of county commissioners shall have the same effect as an approval by the respective committee and shall accordingly enable the CMO to issue a capacity encumbrance letter which may contain such conditions as the board of county commissioners may require.

(c) The board of county commissioners shall consult with and consider the recommendations of the school boa on school capacity.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Sec. 30-624. - Miscellaneous matters.

(1) The requirement that LOS be achieved and maintained shall not apply if proportionate share mitigation is used.

(2) The filing of an application under this division shall be without prejudice to the right of the applicant to assert a claim of vested rights under the county vested rights ordinance; provided, however, that upon the execution of a developer's agreement, the applicant shall be deemed to have waived any rights for his project under the county vested rights ordinance.

(Ord. No. 91-27, § 1, 12-10-91; Ord. No. 2006-06 , § 2, 5-23-06; Ord. No. 2010-11 , § 2, 9-21-10; Ord. No. 2013-13 , § 2, 5-21-13)

Secs. 30-625—30-635. - Reserved.

ARTICLE XIII. - EMINENT DOMAIN WAIVERS, EXCEPTIONS AND VARIANCES

Sec. 30-636. - Findings of fact.

The board of county commissioners hereby finds that the acquiring of private property by various governmental or public agency entities, so authorized, by law through the eminent domain process, through trial, or negotiations prior thereto, is an extremely costly and burdensome process. Allowing the appropriate county staff, pursuant to established guidelines, procedures and criteria, to grant waivers and exceptions from certain county land development codes or regulations, or to apply for variances on behalf of affected property owners serves a valid public purpose and promotes the general safety and welfare of the citizens and land owners of the county.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-637. - Intent.

It is the intent of this article to establish a fair procedure by which the appropriate county staff can grant waivers and exceptions to county land development, sign and engineering codes and regulations, or to seek such waivers or variances before the appropriate boards, in order that property owners who have been subjected to the condemnation process have a viable and fair alternative in preventing any adverse impact upon their property as a result of the condemnation process and allow the continued use of their property in a manner similar to its precon- demnation condition. Further, it is the intent of this article to establish procedures which will reduce the cost of acquisitions of real property needed for public improvements.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-638. - Authority of department managers.

The managers of departments or their designee, having jurisdiction over land development, signs, and engineering codes, ordinances, regulations, or resolutions, shall have the authority to grant waivers or exceptions, or to seek variances on behalf of owners of property from applicable codes, ordinances, regulations, or resolutions. The department manager or his designee shall provide a copy of the determination letter to the county attorney's office if the property is in a condemnation lawsuit, or to the real estate management department in pre-suit negotiations, that the waiver or exception does not adversely affect the public health, safety or welfare.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-639. - Application for waivers, exceptions and variances.

(a) The condemning authority, or the landowner, may apply in writing to the appropriate department manager or his designee for a determination that the granting of the waiver or exception will not result in a condition which adversely affects the health, safety or welfare of the general public.

(b) The appropriate department manager or designee shall, within thirty (30) days of receipt of the application, issue a signed letter to all parties granting or denying the waiver or exception.

(c) If the waiver or exception is denied by the appropriate department manager or designee, the owner or condemning authority may apply for, at no cost to the owner, a variance before the appropriate board.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-640. - Waivers, exceptions and variances.

If, as a result of a governmental taking, either by negotiation or condemnation, existing lots, parcels, structures, or uses of land become nonconforming with the provisions of the County Code, the following provisions shall apply:

(1) Existing characteristics of use which become nonconforming or increase in nonconformity as a result of a taking, including but not limited to, minimum lot size, setbacks, open space, off-street parking, landscape requirements, drainage and retention shall be required to meet code requirements to the greatest extent possible, to the satisfaction of the appropriate department manager or his designee. Thereafter, the existing characteristics of use shall be deemed conforming. Any further expansion or enlargement thereof shall be in accordance with all applicable code requirements.

(2) In granting any waiver or exception to code requirements, the manager or designee of the department having jurisdiction over the specific area of the code or land development regulation shall:

a. Determine that the requested exception or waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties.

b. The requested exception or waiver shall not adversely affect the safety of pedestrians or operators of motor vehicles.

c. Preserve code-required off-street parking requirements to the greatest extent practicable. The reconfiguration, reduction, or removal of landscape and/or open space requirements may be considered to preserve off-street parking.

(3) If any legally existing structures (principal or accessory), or vehicular use area must be relocated as a direct result of the governmental taking, or as a result of safety concerns, if allowed to remain after the taking, then the appropriate department manager, or his designee, and the building official may allow the relocation of the structure on the remaining property, so as to comply with all applicable regulations to the greatest extent practicable, as determined by the appropriate department manager or designee. If the relocation results in substandard characteristics of use, it shall be deemed thereafter to be conforming. Any future expansion or enlargement thereof shall be in accordance with all applicable code requirements.

(4) Legally existing structures (principal or accessory) or vehicular use areas which become nonconforming or increase in nonconformity according to subsection (1), which are thereafter damaged or destroyed, other than by voluntary demolition, to an extent of more than seventy-five (75) percent of assessed value at the time of destruction can be restored but only to predestruction condition. Any expansion or enlargement that does not increase the nonconformity of a characteristic of use shall be permitted in accordance with all applicable code requirements. Where expansion or enlargement increases the nonconformity of a characteristic of use, relief from appropriate county board(s) is necessary.

(5) If the structure to be relocated harbors a nonconforming use, the zoning manager and building official may permit the relocation pursuant to this section, if the appropriate department manager or designee determines that public harm will not result.

(6) Where part of a principal structure is taken, the reconstruction of the taken structure (same size and use) may be permitted. The reconstruction must meet code to the greatest extent possible, to the satisfaction of the appropriate department manager or designee and building official. The reconstructed structure shall thereafter be deemed conforming.

(7) Any alterations, repairs or rehabilitation work necessitated by a governmental or public agency acquisition or condemnation of real property may be made to any existing structure, building, electrical, gas, mechanical or plumbing system without requiring the building, structure, plumbing, electrical, mechanical or gas system to comply with all the requirements of the technical codes provided that the alteration, repair or rehabilitation work conforms to the requirements of the technical codes for new construction. The building official shall determine the extent to which the existing system shall be made to conform to the requirements of the technical codes for new construction.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-641. - Signs.

A sign which is located on a parcel that is subject to condemnation action by a governmental or public agency may be allowed to be relocated on the remaining portion of the parcel in accordance with the following:

(1) The sign is to be relocated on the remaining parcel in such a manner as to meet the setback and distance separation requirements. If due to the size and/or configuration of the remaining parcel setback and distance separation requirements cannot be met, then, subject to the zoning manager's discretion, the sign may be relocated so as to comply with such regulations to the greatest extent practicable as determined by the zoning manager.

(2) Any existing nonconformity of a sign, other than setback or distance separation, shall not be increased upon relocation.

(3) If the sign to be relocated is a nonconforming sign, upon proof submitted by the applicant and subject to the determination by the zoning manager that public harm would not occur, then such sign may be relocated pursuant to this subsection notwithstanding the provisions of subsection 31.5-12(a) of the county sign ordinance as codified in chapter 31.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-642. - Authority for staff to testify at judicial proceedings on the likelihood of variances.

(a) The appropriate department manager, or his designee, is hereby authorized to testify in judicial proceedings as to the likelihood of whether a variance from county codes or regulations would be granted or the reasons the department manager has granted the waiver or exception.

(b) In testifying, the department manager or his designee is specifically authorized to employ the following criteria:

(1) History of similar variances, waivers or exceptions being granted by the appropriate boards in and for Orange County, Florida.

(2) Analysis of why the variance, waiver or exception would not adversely affect surrounding property owners.

(3) Analysis of the hardship imposed by the condemnation action initiated by the governmental or public agency.

(4) Analysis of any and all other criteria normally considered by the appropriate boards or departments in granting similar variances, waivers or exceptions and how those criteria relate to the subject and neighboring

properties.

(5) That the granting of a variance, waiver or exception would not adversely affect the public health, safety or welfare.

(Ord. No. 95-18, § 1, 7-11-95)

Sec. 30-643. - Code violations threatening public health, safety and welfare.

(a) The provisions of this article shall not be interpreted to allow for the continued existence of building or other safety code violations that are determined to be an immediate threat to the public health, safety or welfare.

(b) The appropriate building officials and inspectors are hereby authorized to take any and all necessary steps to enforce all applicable building and safety codes even though the subject property is part of a condemnation action.

(Ord. No. 95-18, § 1, 7-11-95)

Secs. 30-644—30-699. - Reserved.

ARTICLE XIV. - VILLAGE LAND USE CLASSIFICATION IMPLEMENTATION DIVISION

DIVISION 1. - GENERALLY

Sec. 30-700. - Purpose and intent.

(a) Orange County, through its Comprehensive Plan, Future Land Use Element, Goal FLU4 and its associated Objectives and Policies, has created a village land use classification to realize the long range planning vision for West Orange County created through the Horizon West planning process. The village land use classification has been designed to address the need to overcome the problems associated with, and provide a meaningful alternative to, the leap-frog pattern of sprawl now occurring in western Orange County and eastern Lake County; create a better jobs/housing balance between the large concentration of employment in the tourism industry and the surrounding land uses; create a land use pattern that will reduce reliance on the automobile by allowing a greater variety of land uses closer to work and home; and replace piecemeal planning which reacts to development on a project by project basis with a long-range vision that uses the village as the building block to allow the transition of this portion of the county from rural to urban use through a specific planning process that utilizes a creative design approach to address regional, environmental, transportation, and housing issues.

(b) This article addresses and provides the regulatory framework upon which the village land use classification is to be implemented. In addition to the provisions of this article, the specific area plan (SAP) for each specific village within the village land use classification should be consulted (see Chapter 38).

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Secs. 30-701—30-709. - Reserved.

DIVISION 2. - ADEQUATE PUBLIC FACILITIES IN THE VILLAGE LAND USE CLASSIFICATION

Sec. 30-710. - Purpose; intent; short title.

The purpose of this division is to implement certain provisions of the village land use classification policies in the future land use element of the Orange County Comprehensive Plan as amended. Provisions of those policies and this article focus particularly on the related purposes of achieving efficiency in providing public services and encouraging desirable development patterns. It is more specifically the purpose of this article to establish a performance measure of the actual availability and adequacy of public facilities to serve new development. It is more specifically the purpose of this division to establish a performance measure of public facilities to serve new development, as an alternative to the use of the urban service area as the primary means of determining the availability of public facilities to serve new development in the village land use classification as established by the Comprehensive Plan. This article may be cited as the "Adequate Public Facilities Ordinance" (APFO).

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-711. - Relationship to other requirements.

This division provides for a review of the adequacy of public facilities early in the development approval process. It complements but does not replace or supersede various requirements related to the same or similar public facilities including but not limited to those now contained in Chapter 30, Article XII, Concurrency Management, Chapter 23, Impact Fees, or Chapter 34, Subdivision Regulations, of this Code.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-712. - Adequate public facilities standards established.

All development within any village shall provide adequate public facilities (APF) as described in the following standards and as shown on the adopted specific area plan (SAP). Provision of APF is established through several mechanisms including but not limited to the concurrency management system, impact fees, special taxing districts, capital improvements programs, the village SAP, and this APFO.

(a) *General standards.* Prior to commencing development within any village, the following standards shall be found to have been met:

(1) *Water and sewer service:* Facilities, or a capital improvements plan and financing program to provide adequate facilities, to serve the development in accordance with the level-of-service standards established by Chapter 30, Article XII, Concurrency Management, of this Code. In addition to the financing program for any capital improvements plan, connection or plant investment fees otherwise applicable in the county will apply to the development for the purpose of financing necessary expansion of the treatment plant and other parts of the system(s) outside the development, but serving the development as well as other parts of the county.

(2) *Roads:* Facilities, or a capital improvements plan and financing program to provide adequate roads, to serve the development in accordance with Chapter 30, Article XII, Concurrency Management, of this Code. All road rights-of-way for roads internal to the development shall be planned for dedication at the time of subdividing each phase of the development shown on the SAP. For projects in which private roads are proposed, in addition to the financing program for any capital improvement plan, impact fees otherwise applicable in the county will apply to the development for the purpose of financing necessary expansion of the major roadways outside the developments but serving the development as well as other parts of the county. The primary road(s) serving a village shall meet the design standards of at least minor collector with level-of-service "D" before the issuance of the first building permit in a village. Impact fee credits for provision of road improvements shall be in accordance with Chapter 23, of this Code.

(3) *Parks:* Dedication of, or reservation and program for financing purchase of, open areas of neighborhood center and a village green, all as required by village land use classification policies of the future land use

element. In addition to the financing program for any capital improvements plan, impact fees otherwise applicable in the county will apply to the development for the purpose of financing regional park and recreation facilities. The developer or other party dedicating the site may receive impact fee credit, if applicable and in accordance with Chapter 23, for the cost of such land dedicated for park purposes.

(4) *Schools:* Dedication of, or reservation and program for financing purchase of, school sites as shown on the adopted SAP. In addition to the financing program for any capital improvements plan, impact fees otherwise applicable in the county will apply to the development for the purpose of financing school construction, as well as acquisition of sites for and construction of high schools. Impact fee credits for dedication of the school site shall be in accordance with Chapter 23 of this Code and the provisions of the Comprehensive Plan, or as established by a developer's agreement with Orange County Public Schools or the Orange County Board of County Commissioners (BCC).

(5) *Transit:* The village center included in each SAP and other locations in the Town Center SAP shall include a planned transit stop, with appropriate shelter and separation from conflicting transportation systems. Major roadways, including those to neighborhood centers, shall include the "transit-friendly" provisions required by the village land use classification amendment to the future land use element.

(6) *Fire/rescue:* Dedication of, or reservation and program for financing purchase of, station site(s) in or near the village center district. In addition to the financing program for any capital improvements plan, impact fees otherwise applicable in the county will apply to the development for the purpose of financing station construction as well as other capital needs.

(b) *Village Planned Development (PD) Land Use Plan (LUP) or Town Center Planned Development (PD) Unified Neighborhood Plan (UNP) standards.* All required adequate public facilities lands within any particular development, in accordance with the ratios established by the SAP, shall be identified in a developer's agreement ("APF agreement") and conveyed to the County prior to, or in conjunction with, PD approval, unless otherwise addressed through the APF agreement in accordance with Section 30-714. As necessary, an APF agreement may be updated or amended at the time of Preliminary Subdivision Plan (PSP) or Development Plan (DP) approval by the Board of County Commissioners. In the event that APF land requirements cannot be met within a particular PD, or if the development does not contain any APF lands interior to the development, a payment or credit of an adequate public facility lands fee may be paid as described in Section 30-714. APF lands, as identified in the SAP, may include the following:

(1) Rights-of-way for arterial and collector roads to serve the development or village.

(2) Rights-of-way or sites for water, wastewater, and reclaimed water utilities to serve the particular development or village. Such rights-of-way or sites may be used for interim facilities, and may be conveyed to the county or some other nonprofit or public service commission-regulated entity acceptable to the county.

(3) One (1) elementary school and minimum five-acre neighborhood park site for each neighborhood.

(4) One (1) middle school or high school site and associated parks.

(5) Land for parks and community open space within each Village Center District and the Town Center SAP.

(6) Rights-of-way for off-road bicycle/recreation trails.

(7) Land for fire rescue stations to serve the village and/or other villages.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 99-10, § 1, 3-23-99; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-713. - Financing program.

(a) The SAP shall include a capital improvements plan for development/construction of all facilities required by Section 30-712. Such a plan shall include reasonable estimates of the cost of such facilities, prepared by a civil engineer,

with appropriate adjustments to the cost based on the projected date of construction of each facility.

(b) The SAP shall include a financing plan providing for the funding of the capital improvements program, using a formula to provide for apportionment of costs applicable to each development.

(c) The SAP shall include a land acquisition plan providing for the acquisition and, as applicable, financing of the acquisition, of all land required to be conveyed to the county or other public entities under the provisions of this article. Where the developer owns or has binding contracts to acquire land required for conveyance, the developer may provide for direct conveyance of such land.

(d) The APF lands identified by Section 30-712 may be financed by a variety of funding mechanisms including, but not limited to, the following:

(1) A municipal services taxing unit/municipal services benefit unit (MSTU/MSBU) may be established for all development within the village to fund the construction and/or maintenance of various public facilities as the developer or county may elect. The developer shall submit copies of all documents necessary to form such MSTU/MSBU as a condition of Preliminary Subdivision Plan (PSP) or Development Plan (DP) approval.

(2) Impact fees, connection fees, special taxing districts, and other appropriate capital improvements programs may also be utilized in the provision of adequate public facilities. Prior to approval of any Preliminary Subdivision Plan (PSP) or Development Plan (DP) within a particular village, the developer shall agree to participate in any special taxing district as may be necessary to fund the provision of adequate public facilities.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-714. - Conveyance of adequate public facilities lands.

(a) As a condition of approval for any Village Planned Development/Land Use Plan (PD/LUP) or Town Center Planned Development/Unified Neighborhood Plan (PD/UNP), the appropriate APF lands as established in the SAP shall be conveyed to the county. The ratio of land that is to be conveyed shall be established by the SAP as follows:

Specific Area Plan (SAP)	Net Dev. Acreage/ Required APF Acreage Ratio
Lakeside Village	6.50 acres/1.0 acre
Village of Bridgewater	5.50 acres/1.0 acre
Town Center	5.10 acres/1.0 acre
Village F	7.94 acres/1.0 acre
Village H	7.60 acres/1.0 acre
Village I	7.25 acres/1.0 acre

(b) The conveyance of APF land to the county or some other entity acceptable to the county shall be made by either fee simple deed or easement as acceptable to the county.

(c) An option on conveyance of APF lands may be provided through a developer's agreement between the county and

the property owner. The option agreement shall contain a provision that the property owner agrees to relinquish control of the property to the county upon demand by the county after reasonable notice as established in the agreement. The property owner may continue to use the property in a manner not inconsistent with the county's intended use prior to the county's demand. Further, the option agreement shall provide that the developer shall not proceed beyond five percent (5%) of the project's approved PD entitlements prior to either:

(1) The option being exercised and the property being conveyed; or

(2) The developer paying the appropriate fee in lieu of conveyance as described in subsection (d) below.

(d) In the event that APF land requirements cannot be met within a particular PD, or if the PD does not contain APF lands, the developer may pay a fee to the County equal to the value of the ratio of required APF lands established by the SAP and subsection (a), above. The fee shall be based on the average fair market value of land within the adopted village SAP as established by an independent appraiser. The fair market value will be established by resolution of the BCC and shall be increased annually in accordance with the consumer price index.

(e) A combination of conveyance of APF lands and fees as established in subsections (a) through (d) above may be utilized to satisfy the requirements of adequate public facilities lands.

(f) There shall be established an adequate public facilities fund account for each village to be used exclusively for the acquisition, construction, and maintenance of adequate public facilities in the village in accordance with this article and the village SAP.

(g) Notwithstanding the provisions addressed in subsections (a) through (f) above, property owners/developers within the Village F, Village H, and Village I SAPs shall be responsible for reimbursing other property owners/developers within the applicable village who, by virtue of providing more than the required APF acres needed to develop their property, have surplus APF acreage credits. In the event that APF land requirements cannot be met within a particular PD and if the subject property owner(s)/developer(s) do not control excess APF acreage credits derived from other PDs within the applicable village, the subject property owner(s)/developer(s) shall obtain required APF acreage credits from the surplus APF owners/developers, in lieu of paying a fee to the county pursuant to Subsection (d) above. The amount of such payment shall not exceed that which would otherwise be paid to the county under the provisions described in Subsection (d) above, unless agreed to by all affected parties.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 99-10, § 1, 3-23-99; Ord. No. 2014-05 , § 1, 2-11-14)

Secs. 30-715—30-724. - Reserved.

DIVISION 3. - TRANSFER OF DEVELOPMENT RIGHTS IN THE VILLAGE LAND USE CLASSIFICATION

Sec. 30-725. - Purpose; intent; short title.

(a) National literature on the subject of transfer of development rights ("TDR") (specifically American Planning Association PAS Report No. 401, page 4) recognizes that a workable TDR program must include:

(1) Sufficient restrictions on sending areas to give rise to TDR sales/transfers;

(2) Designation of receiving sites with infrastructure capability and sufficient development demand to make additional density increases attractive to developers;

(3) Recognition of the economic and financial conditions that underpin a TDR market and determine the value of TDR to both sellers and buyers;

(4) A TDR program design that is simple and understandable and that does not require complex approvals;

(5) Commitment to an educational effort to inform landowners, developers, realtors, bankers/financiers, and attorneys about the program.

(b) In the county, it is the county's intent to develop through this division a program through which TDR will be utilized to p greenbelts within each village in a designated village land use classification.

(c) TDR will be utilized to ensure that each neighborhood within a village is built at sufficient density to support and make viable:

(1) The elementary school, which is the focal point/center of the community;

(2) Investment in capital improvements within the village;

(3) The avoidance of urban sprawl by creating a compact development pattern to enhance pedestrian and transit feasibility.

(d) It must be noted that TDR is not the sole means but is one (1) option applicable to the preservation of greenbelt and other important natural and agricultural areas.

(e) This division may be cited as the "Transfer of Development Rights Ordinance" or "TDR Ordinance."

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-726. - Implementation.

(a) *Specific Area Plan (SAP).*

(1) The village land use classification requires that a SAP be adopted prior to implementation of the provisions of this division.

(2) Detailed village boundaries are established through the applicable SAP. The SAP will generally designate, but is not limited to, the following:

a. Sending areas (designated Upland Greenbelts, as defined hereinbelow, and wetlands);

b. Receiving areas (designated uplands and developable/neighborhoods and districts);

c. Overall density for the village;

d. Open space.

(3) The SAP sets parameters of potential sending/receiving areas but is not a detailed construction/development plan.

(4) Planned Development/Land Use Plans (PD/LUPs) or Planned Development/Unified Neighborhood Plans (PD/UNPs) within the SAP shall depict conceptual locations for density transfer, if needed.

(b) *Transferring density.*

(1) Density may only be transferred within the boundaries of one (1) village as established by and in conformance with the SAP applicable in that particular village.

(2) Onsite (internal) density transfers: Through the PD approval or amendment process, and without the use of TDR, onsite (internal) density transfers may be accomplished on properties within the same PD only. However, the resulting density for any affected PD district or parcel shall not fluctuate beyond the maximum average increase or reduction as otherwise allowed by this section, and shall promote the village planning principle of having higher density/intensity land uses within or in close proximity to the village center and neighborhood center districts.

(3) Transfer of development rights:

a. This division provides the mechanism by which appropriate densities within the SAP will be maintained when property is in multiple ownership and will provide the mechanism by which density on individual parcels may be increased or decreased. Sending areas will be established and implemented by the recording of conservation/agricultural/development rights easements, or other instrument(s) acceptable to the county. Receiving and sending areas will include a listing of transferred density not to be

retransferred, via title or deed restrictions. Receiving areas will be established to provide areas in which TDR credits may be placed. TDR credits shall be obtained if increased density and/or intensity, beyond what is allowed or required by the SAP, are sought within any PD parcel.

b. TDR value will be assigned to all designated Upland Greenbelts and preserved wetlands in a village as follows:

Lakeside Village:

1. Upland Greenbelts — eleven (11) dwelling units (DU) acre.
2. Wetlands — one (1) DU/three and one half (3.5) acres.

Village of Bridgewater:

1. Upland Greenbelts — seventeen and one-tenth (17.1) dwelling units (DU)/acre.
2. Wetlands — one (1) DU/two and nine-tenths (2.9) acres.

Village F:

1. Upland Greenbelts — seventeen and one-tenth (17.1) dwelling units (DU)/acre.
2. Wetlands — one (1) DU/two and nine-tenths (2.9) acres.

Village H:

1. Upland Greenbelts — twenty-five and five-tenths (25.5) dwelling units (DU)/acre.
2. Wetlands — one (1) DU/two and nine-tenths (2.9) acres.

Village I:

1. Upland Greenbelts — thirty-eight and nine-tenths (38.9) dwelling units (DU)/acre.
2. Wetlands — one (1) DU/two and nine-tenths (2.9) acres.

Town Center:

1. Upland Greenbelts — seventeen and one-tenth (17.1) dwelling units (DU)/acre.
2. Wetlands — one (1) DU/two and nine-tenths (2.9) acres.

NOTE: The assigned TDR value is for TDR implementation only. TDR value does not affect future land use map (FLUM) density established by the Comprehensive Plan and TDR value does not give an independent or vested right to build:

1. In wetlands;
2. In sending areas;
3. Any structure or have any use that is out of compliance with the SAP; or
4. Prior to rezoning to PD district.

(c) *Sending areas.*

(1) Sending areas are areas to be preserved as Upland Greenbelts or conservation areas (wetlands) designated for preservation in the SAP. Upland Greenbelts are those areas around the perimeter of the village established to provide a unique sense of space within the village and those areas within a village to provide, preserve, establish, and enhance natural green space and wildlife corridors.

(2) Sending areas for TDR purposes have the assigned TDR value as follows:

Lakeside Village:

a. Upland Greenbelts — eleven (11) DU/acre;
b. Wetlands — one (1) DU/three and one-half (3½) acres;

Village of Bridgewater:

a. Upland Greenbelts — seventeen and one-tenth (17.1) DU/net developable acre;
b. Wetlands — one (1) DU/two and nine-tenths (2.9) acre;

Village F:

a. Upland Greenbelts — seventeen and one-tenth (17.1) DU/net developable acre;
b. Wetlands — one (1) DU/two and nine-tenths (2.9) acre;

Village H:

a. Upland Greenbelts — twenty-five and five-tenths (25.5) DU/net developable acre;
b. Wetlands — one (1) DU/two and nine-tenths (2.9) acre;

Village I:

a. Upland Greenbelts — thirty-eight and nine-tenths (38.9) DU/net developable acre;
b. Wetlands — one (1) DU/two and nine-tenths (2.9) acre; and

Town Center:

a. Upland Greenbelts — five and eight-tenths (5.8) DU/net developable acre; and eight thousand seven hundred (8,700) square feet of non-residential per net acre;
b. Wetlands — one (1) DU/three and three-tenths (3.3) acre.

(3) The sending areas will be preserved through the recording of the appropriate easement or other instrument acceptable to the county, e.g.:
   a. Conservation easements, F.S. § 704.06;
   b. Agricultural use easements;
   c. Development right easements;
   d. Restrictive covenant.

(4) Sending areas are generally designated by the SAP and finally determined and established by the PD/LUP or PD/UNP. Any further changes to designated sending areas identified during the Preliminary Subdivision Plan (PSP) or Development Plan (DP) process, shall also be reflected and tracked through an amended PD/LUP or PD/UNP.

(d) *Receiving areas.*

(1) Receiving areas are areas to be developed at an overall minimum average density throughout the village as is designated in the applicable SAP. Specifically, receiving areas are tiered to allow different ranges of density in accordance with the neighborhood function as designated on the SAP. The base density of each receiving area shall be consistent with the base density of the underlying SAP designation. Base densities shall range from one (1) to twenty-five (25) DU/net developable acre.

(2) Each acre of receiving area must propose the conceptual density transfer at PD submittal, acquire any necessary TDR credits prior to PD approval and/or amendment, and provide a document submittal to establish the ability to develop over or below the base density assigned to the property.

(3) Receiving areas are generally designated by the SAP and finally determined and established by the PD/LUP or PD/UNP. Any further changes to designated receiving areas identified during the Development Plan (DP) process shall also be reflected on an amended PD/LUP or PD/UNP.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 99-10, 3, 3-23-99; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-727. - Applying TDR concept (excluding Town Center SAP).

(a) *Basic model example [based on three (3) DU/net developable acre land use category].*

(1) A twenty-acre (20-acre) property is designated as three (3) DU/net developable acre on the Lakeside Village SAP Recommended Land Use Plan.

(2) Without TDR, a PD rezoning would require this property to be developed with sixty (60) DU.

(3) Prior to PD/LUP submittal, the twenty-acre property receives development rights from a designated one-acre Upland Greenbelt buffer within the Lakeside Village SAP [eleven (11) DUs/net developable acre TDR value].

(4) Consistent with an associated TDR agreement, a TDR sending area easement is recorded for the affected sending area parcel/tract.

(5) An approved PD/LUP and recorded TDR agreement for the twenty-acre property shall declare how the TDR is applied, through the increase or decrease in the required density. With a density increase, the property may be developed with up to seventy-one (71) DU [sixty (60) DU plus eleven (11) TDR credits]; or with a density decrease, the property may be developed with no fewer than forty-nine (49) DU [sixty (60) DU minus eleven (11) TDR credits].

(b) *Increased density areas.*

(1) Certain areas within the village may be at higher densities:

a. Village centers; and

b. Other areas as established by SAP or PD.

(2) An applicant who desires to increase the required density must acquire the appropriate amount of TDR credits prior to PD approval or substantial change approval.

(3) There are a limited number of available TDR credits in each Village SAP neighborhood. Excluding the Town Center, which is addressed in Section 30-728 below, the maximum density increase per PD District is as indicated in the following chart; construction above the average density after the use of TDR within a PD District is prohibited.

TDR MAXIMUM INCREASE

Starting Maximum Density (DU/net developable acre)	Maximum Average Density Increase (DU/net developable acre)	Maximum Allowable Density after TDR (DU/net developable acre)
1.00	0.25	1.25
1.25	0.25	1.50
2.00	2.00	4.00
2.50	2.00	4.50
3.00	3.00	6.00
3.75	3.00	6.75
4.00	4.00	8.00
5.00	5.00	10.00

6.00	6.00	12.00
7.50	4.50	12.00
8.00	4.00	12.00
10.00	2.00	12.00
12.00	8.00	20.00
16.00	4.00	20.00
18.00	2.00	20.00
25.00	0.00	25.00

(4) No PD development permits will be issued until TDR credits are presented to and accepted by the county.

(5) Each PD using TDR shall submit a report summarizing the cumulative availability of TDR credits within the particular neighborhood. The amount of available density increases is that amount needed to preserve the maximum elementary school attendance, as documented in the SAP.

(c) *Decreased density areas.*

(1) An applicant who desires to decrease the required density must obtain the appropriate amount of TDR credits prior to PD approval or substantial change approval.

(2) There are a limited number of TDR credits in each Village SAP neighborhood. Excluding the Town Center, which is addressed in Section 30-728 below, the maximum density decrease per PD District is as indicated in the following chart; construction below the average density range after the use of TDR within a PD is prohibited.

TDR MAXIMUM DENSITY REDUCTION

Starting Minimum Density (DU/net developable acre)	Maximum Average Density Reduction (DU/net developable acre)	Minimum Allowable Density after TDRs (DU/net developable acre)
1.00	0.20	0.80
2.00	1.00	1.00
3.00	1.00	2.00
4.00	2.00	2.00
6.00	3.00	3.00

8.00	3.00	5.00
12.00	4.00	8.00
16.00	4.00	12.00
20.00	4.00	16.00

(3) Density reduction, if approved, becomes part of a recorded title or deed restriction and shall be reflected on the PD/LUP.

(4) Each PD using TDR shall submit a report summarizing the cumulative availability of TDR credits within the particular neighborhood. The amount of available density decreases is that amount needed to prevent urban sprawl and preserve the minimum elementary school attendance, as documented in the SAP.

(d) *Securing TDR transfers.*

(1) A PD condition of approval shall preclude the issuance of any development permit without the applicable amount of TDR credits being established over the property to be permitted. The PD/LUP or PD/UNP shall list proposed receiving and sending locations.

(2) At a minimum, any applicant representing a TDR receiving site shall present unrecorded TDR credits from the applicable TDR sending site, as part of the PD or substantial change application, in the form of a conservation easement, restrictive covenant, or other appropriate instrument. Such document(s) shall include a legal description and survey and shall indicate the affected acreage and density transferred. Form documents (templates) shall be available through the county.

(3) The sending site easement/covenant shall be recorded in the public records at the applicant's expense and may be reflected as a PD condition of approval.

(4) The county will formally accept the sending site easement/covenant at the time of receiving site plan approval.

(5) If the PD is not approved, the county will not accept the easement/covenant and shall return the unrecorded document to the applicant.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 99-10, § 4, 3-23-99; Ord. No. 2014-05 , § 1, 2-11-14)

Sec. 30-728. - Applying TDR concept in Town Center SAP (reserved).

Sec. 30-729. - County participation.

(a) Nothing in this division shall require the county to purchase, sell, or otherwise establish a TDR bank.

(b) Nothing in this division shall prevent the county from purchasing or selling TDR credits or otherwise establishing a TDR bank.

(c) The Planning Division shall be responsible for monitoring all development approvals to ensure compliance with SAP density requirements and applicable use of TDR. TDR proposals which are deemed inconsistent with the SAP may be denied by the county.

(Ord. No. 97-10, § 1, 5-20-97; Ord. No. 2014-05 , § 1, 2-11-14)

Ord. No. 2014-05 , § 1, adopted Feb. 11, 2014, renumbered the former § 30-728 as § 30-729 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Secs. 30-730—30-739. - Reserved.

ARTICLE XV. - MULTI-JURISDICTIONAL APPROVAL OF RESIDENTIAL REZONINGS AND COMPREHENSIVE PLAN AMENDMENTS

Sec. 30-740. - Scope.

This article shall be effective throughout the unincorporated area of Orange County, and within each municipality in Orange County as provided by Section 704 B.2. of the Orange County Charter.

(Ord. No. 2006-04 , § 1, 5-9-06)

Sec. 30-741. - Definitions.

As used in this article, the terms listed below shall have the meanings as set forth below:

Administrative rezoning: A rezoning initiated by a local government jurisdiction.

Applicant: The individual or entity submitting a request for proposed rezoning or comprehensive plan amendment.

Capacity enhancement agreement: An agreement between the school board and an applicant providing for sufficient capacity to accommodate the additional students that will be generated by a proposed rezoning or comprehensive plan amendment that also serves to certify to a significantly affected local government jurisdiction that the school board will have sufficient capacity to accommodate the additional students generated by the proposed rezoning or comprehensive plan amendment.

Comprehensive plan amendment: An amendment to a local government's comprehensive plan pursuant to F.S. ch. 163, including an amendment to the future land use map, which will result in a net increase of Residential Units on the property that is the subject of the amendment.

County: Orange County government.

De minimis impact: A comprehensive plan amendment or rezoning that would, if approved, result in a net increase of less than ten (10) residential units. However, a comprehensive plan amendment or rezoning for a property shall not be deemed to have a de minimis impact if, when the impact for such property is aggregated with a previous de minimis impact determination for adjacent property, the number of units equals or exceeds ten (10) residential units, and the subject property is in the same ownership or chain of title as the subject adjacent property.

Interlocal agreement regarding school capacity: An agreement entered into by the school board and Orange County or affected municipalities that establishes the process for determining the availability of school capacity and the roles and responsibilities of the respective parties in determining and resolving school capacity issues and the process for creating capacity enhancement agreements.

Orange County: All of the geographical area contained within the boundaries of Orange County, including both incorporated and unincorporated area.

OCPS: Orange County Public Schools, the Orange County school district.

Residential unit: Single-family or multifamily dwelling unit, attached or detached dwelling, house of conventional construction, mobile home, manufactured home, and any other structure used for permanent residence or for dwelling purpose, regardless of whether occupied by an owner or tenant.

Rezoning: A change in zoning classification that will result in a net increase of residential units on the property that is the subject of the rezoning. The term "rezoning" shall also mean any land use change not necessarily denoted or characterized as a rezoning (such as a change to a land use plan, master plan or development plan in a mixed use development, development of regional impact, planned unit development, etc.) that will result in a net increase of residential units on the property.

School board: The school board of Orange County, Florida, the governing body of Orange County Public Schools.

Significantly affected local government jurisdiction: A local government jurisdiction, either unincorporated Orange County, or a municipality within Orange County, in which ten (10) percent or more of the student population of a public school that is affected by a proposed comprehensive plan amendment or rezoning resides.

(Ord. No. 2006-04 , § 1, 5-9-06)

Sec. 30-742. - Effectiveness of comprehensive plan amendments and rezonings.

(a) In order for a comprehensive plan amendment or rezoning to become effective, the governing boards of all significantly affected local government jurisdictions must approve a comprehensive plan amendment or rezoning when OCPS cannot certify to the governing bodies of all significantly affected local government jurisdictions that the affected public school or schools, the attendance zone(s) for which is (are) located within more than one (1) significantly affected local government jurisdiction, can accommodate the additional students resulting from the increase in residential density.

(b) The basis for not approving a comprehensive plan amendment or rezoning by the governing body of a significantly affected local government jurisdiction (other than the jurisdiction in which the comprehensive plan amendment or rezoning would occur) shall be limited to school capacity and the time at which such school capacity shall be available.

(c) A local government jurisdiction may, with written approval of OCPS and the consent of the applicant, elect to defer consideration of school capacity from adoption of a comprehensive plan amendment for a property until such time as the local government jurisdiction considers a rezoning for the property. In such a case, the comprehensive plan amendment may become effective without the approval of other significantly affected local jurisdictions.

(d) This section shall not apply to a comprehensive plan amendment or rezoning with a de mimimis impact. Such a comprehensive plan amendment or rezoning shall be presumed not to create an adverse impact on any affected public school.

(e) This section shall not apply to an administrative rezoning that does not increase actual residential density, but merely makes the zoning district or category representative of the pre-existing development and pre-existing residential density in the area.

(Ord. No. 2006-04 , § 1, 5-9-06)

Sec. 30-743. - Interlocal agreement regarding school capacity.

(a) The county and the school board shall enter into an interlocal agreement regarding school capacity which includes the following:

(1) The school board shall respond to a local government's request for a school capacity report within an agreed-upon time period.

(2) If the school capacity report indicated that there is insufficient capacity, and the applicant requesting the comprehensive plan amendment or rezoning proposes a capacity enhancement agreement, the school board shall approve or deny the capacity enhancement agreement within an agreed-upon time period. Approval by the school board of a capacity enhancement agreement shall constitute its certification that sufficient school capacity will exist to handle the additional students generated by the proposed comprehensive plan

amendment or rezoning and that such capacity is based on a financially feasible and educationally sound plan. Denial of a capacity enhancement agreement shall constitute the school board's certification of insufficient school capacity.

(3) The capacity enhancement agreement shall take into account the time at which school capacity will be available.

(4) The school board shall use funds collected pursuant to a capacity enhancement agreement to provide school capacity.

(5) A school board certification of insufficient school capacity when an applicant has made a capacity enhancement proposal, shall require the school board to demonstrate that it has considered options to mitigate the impacts created by the rezoning or comprehensive plan amendment.

(b) The City of Orlando, as the most populous municipality within Orange County, along with the county and the school board, shall be a party to the interlocal agreement regarding school capacity negotiations. Any other municipality within the county may request to be a party to the interlocal agreement regarding school capacity negotiations. To the extent that negotiations with individual cities are successful, they may be parties to the interlocal agreement regarding school capacity. To the extent that negotiations with individual municipalities, including the City of Orlando, are unsuccessful, they will not be parties to the interlocal agreement regarding school capacity.

(c) If the interlocal agreement regarding school capacity negotiations between the county, school board and the City of Orlando, as the largest city within the county, reach an impasse, the parties shall enter mediation.

(d) The failure of any municipality, including the City of Orlando, to enter into the interlocal agreement regarding school capacity will not prevent the execution and implementation of the interlocal agreement regarding school capacity between the county and the school board.

(Ord. No. 2006-04 , § 1, 5-9-06)

Sec. 30-744. - Remedies.

A significantly affected local government jurisdiction may bring a lawsuit in the circuit court of Orange County, Florida, for declaratory and/or injunctive relief to restrain, enjoin, or otherwise prevent a violation of this article.

(Ord. No. 2006-04 , § 1, 5-9-06)

Secs. 30-745—30-750. - Reserved.

ARTICLE XVI. - RESERVED

Footnotes:
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***Editor's note—** Ord. No. 2016-03 , § 1, adopted Jan. 26, 2016, repealed Art. XVI, §§ 30-751—30-761, which pertained to Jobs-to-Housing Linkage Program Ordinance for the Innovation Way Overlay and derived from Ord. No. 2010-05 , § 1, adopted April 20, 2010.*

Secs. 30-751—30-761. - Reserved.