

ORDINANCE NO: 2008-4

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, AMENDING THE MUNICIPAL CODE OF ORDINANCES, APPENDIX G, LAND DEVELOPMENT CODE, AMENDING CHAPTER 2 ENTITLED “DEFINITIONS”, BY ADDING DEFINITIONS FOR CONCURRENCY SERVICE AREA (CSA), CONCURRENCY SERVICE AREA LEVEL OF SERVICE STANDARDS, FLORIDA INVENTORY OF SCHOOL HOUSES (FISH); SCHOOL BOARD, SCHOOL DISTRICT AND SCHOOL DISTRICT FIVE-YEAR FACILITIES WORK PROGRAM; AMENDING CHAPTER 3, ENTITLED “CONCURRENCY MANAGEMENT SYSTEM” TO ADD PUBLIC SCHOOLS TO THE LIST OF PUBLIC FACILITIES FOR WHICH CONCURRENCY IS REQUIRED, TO ESTABLISH A CRITERIA FOR DETERMINING DI MINIMUS DEVELOPMENT NOT SUBJECT TO PUBLIC SCHOOL CONCURRENCY REVIEW, TO ESTABLISH A CRITERIA FOR DETERMINING RESIDENTIAL IMPACT ON SCHOOL FACILITIES, TO ESTABLISH PUBLIC SCHOOL FACILITIES AS ELIGIBLE FOR PROPORTIONATE FAIR SHARE PROGRAM AND TO ESTABLISH AN APPLICATION PROCESS FOR DETERMINING PUBLIC SCHOOL CONCURRENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, Constitution of the State of Florida, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, the Public School Facilities are a Concurrency requirement pursuant to Section 163.3180, Florida Statutes; and

WHEREAS, the City of Daytona Beach Shores is required to amend its Land Development Code to provide an implementation mechanism for school concurrency under Florida Law and the Volusia County Interlocal Agreement for Public School Facility Planning, executed June 27, 2007; and

WHEREAS, the definition of certain terms and words require defining in order to efficiently implement school concurrency; and

WHEREAS, the amendment items contained herein are consistent with the City’s proposed comprehensive plan amendments related to school planning and concurrency (DCA 07-PEFE1); and

WHEREAS, the City’s Planning and Zoning Board held a public meeting on February 12, 2008 and unanimously approved the proposed amendments contained herein; and

WHEREAS, Section 163.3202, Florida Statutes, provides further that the City shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses and ~~strikethrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, as follows:

SECTION ONE: The City Council of the City of Daytona Beach Shores hereby amends the Land Development Code, Chapter Two “Definitions”, as follows:

CHAPTER 2. DEFINITIONS

Section 2-2: General definitions.

Concurrency Service Area (CSA): For the purpose of measuring school concurrency, the specific geographic unit within a School District in which school concurrency is applied and measured.

Concurrency Service Area Level-of-Service Standards: For the purpose of determining school concurrency, the maximum acceptable percentage of school utilization, calculated by dividing the total number of students for all schools of each type in each Concurrency Service Area by the total number of permanent student stations for that type of school in each Concurrency Service Area.

FISH – Florida Inventory of School Houses: An official inventory report of all facilities owned by the School District.

Permanent Student Capacity: The estimated number of students that can attend an educational facility at any given time based upon a percentage of permanent student stations. In Volusia County portables are not included in permanent student capacity.

Permanent Student Station: The net square footage necessary to be provided for each student based on the instructional program of a particular educational facility. Permanent student stations in Volusia County do not include student stations in portables.

School Board: The governing body of the School District, a body corporate pursuant to Section 230.21, Florida Statutes, which operates, controls and supervises all free public schools within the School District and determines the rate of school district taxes within the limits prescribed of State law.

School District: The geographic unit created and existing pursuant to Section 4, Article IX of the State Constitution, for the control, organization, and administration of schools in Volusia County

School District Five-Year Facilities Work Program: The School District of Volusia County Five-Year Work Plan and Capital Budget, as authorized by Section 1013.35 Florida Statutes, detailing how the School District shall achieve and maintain the level-of-service for public school facilities.

SECTION TWO: The City Council of the City of Daytona Beach Shores hereby amends the Land Development Code, Chapter 3 “Concurrency Management System” as follows:

CHAPTER 3. CONCURRENCY MANAGEMENT SYSTEM

Sec. 3-1. Purpose.

The purpose of this chapter is to set forth a system by which the public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of the development. The provisions of this chapter are designed to provide a systematic process for review and evaluation of all proposed development for its impact on public facilities and services, as required by the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, and Rule 9J-5.0055, Florida Administrative Code.

No final development order shall be granted for a proposed development until there is a finding that all public facilities and services included in this chapter have sufficient capacity at or above their adopted level-of-service (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development, as defined herein.

Sec. 3-2. General provisions.

3-2.1. Public Facilities and Services for which Concurrency is Required.

The provisions and requirements of this chapter shall apply only to those public facilities and services listed below:

1. Roads/Traffic Circulation.
2. Sanitary Sewer.
3. Solid Waste.
4. Stormwater Drainage.
5. Potable Water.
6. Recreation and Open Space.
7. Public Schools.

3-2.2. Development Subject to Concurrency Review.

Unless specifically exempted below, all applications for site development plan approval shall be subject to concurrency review as stated below.

1. *Vested Projects.* Projects which have valid development orders or permits prior to November 30, 1990, shall be exempt from concurrency assessment. This shall include all vacant single family, duplex, and single family attached dwelling lots which were platted and recorded prior to November 30, 1990. Residential lots of record, as defined herein, shall also be considered vested for the purposes of this chapter.

2. *Minimum Threshold.* The following development shall be exempt from the transportation and other applicable components of concurrency review:

a. Residential projects which would result in the creation of one (1) additional single family homesite;

b. Commercial, institutional or industrial expansions of up to ten (10) percent of the existing gross floor area, providing such expansion is estimated to generate less than one hundred (100) vehicle trips per day and create one (1) equivalent residential unit of utility demand or less; and

c. Construction of accessory buildings and structures which do not create additional public facility demand.

In no case, however, shall a development order be issued for a project which would impact a public facility for which a moratorium or deferral on development has been placed.

3. *Public Facilities.* Public facilities necessary to ensure the protection of the health, safety and general welfare of the citizens of the City of Daytona Beach Shores shall be exempt from concurrency review. This shall include all public facility construction projects included in the Capital Improvements Program required to meet any adopted level-of-service standard.

4. *Public Schools.* For the purposes of public school concurrency, the following developments are deemed to be “de minimus” and are not subject to public school concurrency review, as described below:

(a) Single family lots of record on a recorded plat, existing prior to February 1, 2008, the effective date of the school concurrency implementing ordinance, which otherwise would be entitled to build;

(b) Any residential development or any other development with a residential component that received approval of a final Development Order or functional equivalent prior to February 1, 2008, the effective date of the school concurrency implementing ordinance;

(c) Amendments to residential development approvals which do not increase the number of students generated by the development based on the student generation rates for each school type;

(d) Age-restricted developments that are subject to deed restrictions prohibiting the permanent occupancy by a resident under the age of fifty-five, which are recorded and irrevocable for a period of at least thirty years;

(e) Group quarters that do not generate students, including residential facilities such as jails, prisons, hospitals, bed and breakfasts, hotels and motels, temporary emergency shelters for the homeless, adult halfway houses, firehouse dorms, college dorms exclusive of married student housing, and religious non-youth facilities;

(f) Non-residential development; and

(g) The creation of subdivisions and/or single family lots equal to or less than ten (10) units, provided such lots and/or subdivisions are reported to the School District as part of the annual planning coordination process established by the Interlocal Agreement for Public School Facilities Planning, and these units are included by the School District in planning student allocations by school.

3-2.3. Minimum Requirements for Concurrency.

To ensure that public facilities and services necessary to support development are available concurrent with the impacts of said development, the following standards must be met:

1. The necessary facilities and services are in place at the time a development permit is issued, or a development permit is issued subject to the condition that the necessary facilities and services will be in place by a specified date when the impacts of the development are anticipated to occur; or
2. The necessary facilities are under construction at the time a development permit is issued; or
3. The necessary facilities and services are the subject of a binding executed contract for the construction of the facilities or the provision of services at the time the development permit is issued; or
4. The necessary facilities and services have been included in the Capital Improvement Program and are programmed for construction prior to or concurrent with the impacts of the proposed development; or
5. In the case of road facilities, the necessary improvements are committed in the first three years of the applicable adopted Florida Department of Transportation Five Year Work Program, or the Volusia County Five Year Transportation Plan.
6. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, Florida Statutes, or an agreement or development order issued pursuant to Chapter 380, Florida Statutes, or any other development agreement entered into between the city and a developer. The agreement must guarantee that the necessary facilities and services will be in place prior to or concurrent with the impacts of the development.

7. In the case of public school facilities, a certificate of school concurrency may be issued under the following circumstances:

(a) Permanent student capacity is currently available (the level-of-service standard is not exceeded) for each school type.

(b) Permanent student capacity is not currently available (level-of-service standard exceeded) in the impacted Concurrency Service Area (CSA), but there is permanent student capacity available in an adjacent CSA.

(c) Permanent student capacity is neither available (level-of-service standard exceeded) in the impacted CSA, nor in the adjacent CSA. However, there is a capacity improvement in the first three years of the School District's Five-Year Facilities Work Program that will address capacity needs.

In the event that there is not sufficient capacity available to serve the proposed development, the applicant/property owner, the School District and the City may enter into negotiations in an effort to mitigate the impact from the development, as further described in Section 3-5.6 of this Chapter.

3-2.4. Concurrency Administration.

The Concurrency Manager shall be responsible for the following four primary tasks associated with administration of this chapter:

1. Creating and maintaining an inventory of existing public facilities capacities and deficiencies;
2. Determining concurrency of minor development applications;
3. Providing advisory concurrency assessments and recommending conditions of approval to the planning and zoning board and city council for major development applications; and
4. Annually reporting the status of all public facilities capacities covered under this chapter to the planning and zoning board and city council, the city manager and the public.

5. In the case of public school facilities, the School District shall prepare and provide the department with reports on enrollment capacity and maintain and publish data that identifies existing capacity, projected annual capacity, including the reservation of future capacity, consistent with the Interlocal Agreement for Public School Facilities Planning. The School District shall also prepare and provide the department with school concurrency reviews regarding the impacts of proposed development on public school facilities. The department will include this information in concurrency assessments and recommending conditions of approval to the city council for development applications.

Sec. 3-3. Adopted level-of-service standards.

The adopted level-of-service standards for those public facilities for which concurrency is required shall be as established in the city's comprehensive plan, and as follows:

3-3.1. Roads/Traffic Circulation.

1. Arterials (A1A)--LOS "D." Level-of-Service D consists of high-density yet stable flow. The ability to select a desired speed and to change lanes is severely restricted, and the driver or passenger experiences a fair level of comfort and convenience. Small increases in traffic flow can cause operational problems at this LOS. Average travel speeds for vehicles at LOS "D" is ≥ 17 mph.
2. City, County and State Collectors--LOS "E." Level-of-Service E represents unstable flow and indicates that the road is at or near capacity. Speeds are generally reduced to a low (≥ 13 mph), but relatively uniform value during peak periods. Ability to change lanes is extremely difficult and is generally accomplished by forcing another vehicle to slow down to accommodate such maneuvers. Comfort and convenience is poor and driver frustration is high. Small increases in traffic volume or other minor problems such as a stalled vehicle can cause traffic to come to a complete stop for relatively long periods.
3. The FSUTMS (Florida Standard Urban Transportation Modeling System) and the standard Florida Department of Transportation methods for evaluation of LOS and capacity shall be used, subject to modifications based on travel speed studies.

3-3.2. Sanitary Sewer.

Ninety (90) gallons per capita per day (gpcd). For local collection/transmission capacity or Port Orange's treatment capacity of 250 gallons per equivalent residential unit per day (gal/ERU/day), whichever is more restrictive, shall be the established LOS standard.

3-3.3. Solid Waste.

Ten (10) pounds per capita per day.

3-3.4. Stormwater Drainage.

Twenty-five (25) year, twenty-four (24) hour design storm event.

3-3.5. Potable Water.

The greater amount of potable water required to meet:

- a. Ninety-five (95) gallons per capita per day (gpcd) average city-wide at peak occupancy; or
- b. For the Port Orange service area, 110 gal/capita/day per permanent resident for residential units and one (1) gallon per square foot/day for commercial accounts. Port Orange has a reserved capacity of one million gallons per day average daily flow (ADF) for the Daytona Beach Shores service area; or
- c. For the Daytona Beach service area, 150 gal/capita/day per permanent resident plus thirty-five (35) percent additional for peak flow. Daytona Beach has committed to provide all potable water required by new and existing development at a minimum of 20 psi. A reserved capacity will be requested prior to January 1, 1991 for the Daytona Beach Shores service area.

3-3.6. Recreation/Open Space.

TABLE INSET:

Facility	Unit of Measure
Playgrounds	1 per 10,000 people
Neighborhood Park	1 per 10,000 people
Community Park	1 per 25,000 people
Children's Play Areas	1 per 1,000 people
Baseball/Softball Field	1 per 15,000 people
Golf (9 Hole Course)	1 per 20,000 people
Tennis Courts	1 per 20,000 people
Football/Soccer Field	1 per 30,000 people
Swimming Pool	1 per 10,000 people
Community Center	1 per 20,000 people
Exercise Trail	1 per 14,000 people
Nature Study Trail	1 per 14,000 people

The City of Daytona Beach Shores shall not allow the conversion of park and recreational open space areas into other public or private uses, except where the public interest overrides the preservation of these uses.

3-3.7. Public schools.

Consistent with the Public School Facilities Element of the Comprehensive Plan and the Interlocal Agreement for Public School Facilities Planning, the uniform, district-wide level-of-service standards for public schools are set as follows using FISH capacity, based on the traditional school calendar:

1. Elementary Schools: 115% of permanent FISH capacity for the concurrency service area.
2. K-8 Schools: 115% of permanent FISH capacity for the concurrency service area.
3. Middle Schools: 115% of permanent FISH capacity for the concurrency service area.
4. High Schools: 120% of permanent FISH capacity for the concurrency service area.
5. Special Purpose Schools: 100% of permanent FISH capacity.

3-3.7.8. Degraded Level-of-Service.

Notwithstanding the foregoing, the prescribed levels-of-service may be degraded during construction of new facilities, if upon completion of the new facilities the prescribed level-of-service will be met.

Sec. 3-4. Facility specific requirements.

3-4.1. Traffic Analysis Required.

All new developments which are anticipated to generate five hundred (500) or more trips during the peak hour of the use shall be required to submit a traffic analysis which identifies the development's impact on the city's transportation system. The Concurrency Manager may also require the submission of a traffic analysis for developments whose site location, anticipated total trip generation, circulation patterns or other such factors warrant a more extensive review of traffic impacts. This analysis shall include the following:

1. Total projected average daily trip ends for the proposed development.*
2. Average projected peak-hour trip ends generated by the development.*
3. Design capacity of the accessed road(s).
4. Analysis of traffic distribution on the road network including all links impacted by more than ten (10) percent of project traffic or five hundred (500) trips per day, whichever is greater.*
5. Projected percentage of truck and bus traffic.
6. Necessary operational improvements to the city's transportation system in order to maintain the appropriate level-of-service for the roadway.
7. Other related information as required by the city.

*The Institute of Traffic Engineers (ITE) Trip Generation Manual shall be used to calculate these estimates. Adjustments to these estimates may be made, based on special trip generation information supplied by the applicant.

3-4.2. Sanitary Sewer.

The following generation standards shall be used to estimate the sanitary sewer demand of a proposed development:

1. *Residential.* Ninety (90) gallons per capita per day (gpcd). For local collection/transmission capacity or Port Orange's treatment capacity of 250 gallons per equivalent residential unit per day (gal/ERU/day), whichever is more restrictive, shall be the established LOS standard.
2. *Motel/Hotel.* Ninety (90) gallons per capita per day (gpcd). For local collection/transmission capacity or Port Orange's treatment capacity of 250 gallons per equivalent residential unit per day (gal/ERU/day), whichever is more restrictive, shall be the established LOS standard.

3. *Commercial and Institutional.* One tenth (1/10) gallon per square feet [foot] of gross building area (GBA).

3-4.3. *Solid Waste.*

1. *Generation Standards.* The following standards shall be used to estimate the volume of solid waste anticipated to be generated by a proposed development.

- a. Residential and Hotel/Motel--Ten (10) pounds per capita per day.
- b. Commercial and Institutional--Ten (10) pounds per capita per day.

Volusia County will annually assure by letter that the LOS stated above can be accommodated by Volusia County landfill(s).

2. *Hazardous Waste.* Commercial and institutional developments which are potential hazardous waste generators shall be responsible for coordinating with Volusia County for disposal of such waste. Written approval must be obtained from the County and submitted to the city that the hazardous waste to be generated by the proposed development can be accommodated at the County's landfill or directed to an alternative licensed disposal facility.

3-4.4. *Stormwater Drainage.*

A stormwater drainage plan based on the stormwater management requirements of this Code shall be prepared by a registered engineer for all developments. Such plans shall incorporate the level-of-service design storm, and shall be approved as meeting said standard by the city's consulting engineer.

Level-of-service Standard--Twenty-five (25) year, twenty-four (24) hour design study event.

3-4.5. *Potable Water.*

The following use standards shall be used to estimate the potable water needs of proposed developments:

- a. Ninety-five (95) gallons per capita per day (gpcd) average city-wide at peak occupancy; or
- b. For the Port Orange service area, 110 gal/capita/day per permanent resident for residential units and one (1) gallon per square foot/day for commercial accounts. Port Orange has a reserved capacity of one million gallons per day average daily flow (ADF) for the Daytona Beach Shores service area; or
- c. For the Daytona Beach service area, 150 gal/capita/day per permanent resident plus thirty-five (35) percent additional for peak flow. Daytona Beach has committed to provide all potable water required by new and existing development at a minimum of 20 psi. A reserved capacity will be requested prior to January 1, 1991 for the Daytona Beach Shores service area.

Additionally, commercial and institutional developments shall provide the city with a description and estimate of water use needs for any special processes involving potable water.

3-4.6. *Recreation and Open Space.*

1. *Residential Developments.* Recreational impacts of proposed residential developments shall be based on the anticipated total number of persons residing in the development, calculated by using the population figures per dwelling unit as follows:

TABLE INSET:

Unit Type	Number per Unit
Single Family	2.6
Duplex/SF Attached	2.4
Multi-Family	2.0

2. *Commercial and Institutional Developments.* Commercial and institutional developments shall not be assessed as having an impact on recreational facilities. The city may, however, require the provisions of recreational facilities as part of planned unit developments.

3. *[Use Standards.]* The following use standards shall be used to estimate the recreational needs of planned residential development.

TABLE INSET:

Facility	Unit of Measure
Playgrounds	1 per 10,000 people
Neighborhood Park	1 per 10,000 people
Community Park	1 per 25,000 people
Children's Play Areas	1 per 1,000 people
Baseball/Softball Field	1 per 15,000 people
Tennis Courts	1 per 20,000 people
Football/Soccer Field	1 per 30,000 people
Swimming Pool	1 per 10,000 people
Community Center	1 per 20,000 people
Exercise Trail	1 per 14,000 people
Nature Study Trail	1 per 14,000 people

3-4.7. Public schools.

(1) All development applications subject to school concurrency review as required by this chapter shall include a completed School Planning and Concurrency Application to be submitted to the School District by the applicant/property owner.

(2) School District staff shall review development application information submitted and shall evaluate the impact of the proposed development on the school capacity provided in the School District's Five-Year Facilities Work Program, the impact on the adopted level-of-service standards for public schools, and the projected timing and delivery of public school facilities to serve the proposed development.

(3) School District staff shall provide a concurrency report to the City. The report shall detail whether or not school capacity will be available to serve the proposed development. The report shall include a Certificate of School Concurrency if sufficient capacity exists for the proposed development or it may set forth conditions required to satisfy the requirements of school concurrency, including proportionate share mitigation, as described Section 5.1 of this Chapter. The department will include this information in concurrency assessments and recommending conditions of approval to the city council for development applications.

Sec. 3-5. Concurrency review procedures.

The Concurrency Manager shall be responsible for conducting all concurrency reviews as required by this chapter. Concurrency review shall be initiated upon receipt of a completed concurrency review form provided by the city, accompanied by the appropriate fee. The Concurrency Manager may also conduct concurrency reviews for developments in the preapplication or conceptual development plan stage, and issue a non-binding letter of concurrency findings. Such requests for concurrency review shall require the submission of a review fee. Concurrency reviews for public school facilities shall be conducted by the School District as described in Section 3-5.6. of this Chapter.

3-5.1. Application.

All development applications subject to concurrency review as required by this chapter shall include a completed concurrency review form containing the following information:

1. Traffic Impact Study (when required).
2. Description and estimate of water use needs.
3. Description and estimate of wastewater generation.
4. Description and estimate of solid waste generation.
5. Stormwater drainage calculations and drawings.
6. A certification from Port Orange or Daytona Beach indicating sufficient potable water availability for the project.
7. A certification from Volusia County indicating sufficient solid waste capacity in the Volusia County Landfill for the project.
8. A stormwater discharge permit from the St. Johns River Water Management District, Volusia County, or Florida Department of Transportation, whichever agency is the appropriate permitting authority. The stormwater discharge permit shall include a certificate from the permitting authority that the stormwater system into which the proposed project will discharge stormwater runoff has sufficient capacity to accommodate the project.
9. For those projects proposing access to a road or highway under the jurisdiction of Volusia County or the Florida Department of Transportation, a driveway, curb-cut or other access permit shall be required from the appropriate agency. Such permit shall indicate the existing level of service from the access road serving the project, the latest average daily traffic count on such road, the average daily trip generation projections for the project, and the resulting level of service on the access road after taking into account such trip generation data.
10. Other information required by the Concurrency Manager to conduct a complete and accurate review.

3-5.2. Project Impact Assessment.

1. *Existing Conditions.* To conduct its assessment of the anticipated impacts of a proposed development on public facilities, the Concurrency Manager shall use its Inventory of Public Facilities Capacities as a base for the establishment of existing conditions.
2. *Impact Assessment.* Using its own information and that supplied by the applicant in compliance with Section 3-5.1 above, the Concurrency Manager shall calculate the anticipated impacts of a proposed development for all applicable public facilities listed in Section 3-2.1 of this chapter. The impacts of the proposed development shall then be assessed against the existing conditions established above.

3-5.3. Project Phasing/Timing of Improvements.

Public facility improvements associated with a phased development may likewise be phased, provided that all public facility improvements necessary to accommodate the impacts of the entire development are to be provided and a schedule established for their construction prior to the issuance of a building permit. The schedule of facility improvements shall ensure that all facility improvements necessary to accommodate the impacts of the developments (or portion thereof) for which a certificate of occupancy has been applied, shall be in place prior to the issuance of the certificate. Under no circumstances shall the final certificate of occupancy be issued for a project unless all required facility improvements required by the development order or development agreement have been completed.

3-5.4. Development Agreements.

It is the city's policy to provide the necessary infrastructure to meet minimum LOS standards. If the minimum requirements for concurrency as outlined in Section 3-2.3(1)--(5) cannot be met, concurrency may be achieved by guaranteeing necessary facility improvements in an enforceable development agreement, as permitted by Section 3-2.3(6). Said development agreement may include guarantees to construct required facility improvements, or to provide funds equivalent to the cost of providing such facility improvements.

3-5.5. Concurrency Findings.

Upon the conclusion of the concurrency review, the Concurrency Manager shall prepare a written set of findings concerning the proposed development. These findings shall include, but are not limited to:

1. The anticipated public facility impacts of the proposed development;
2. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards;
3. Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development;
4. The facility(s) improvement or additions necessary to accommodate the impact of the proposed development at the adopted level(s) of service standards(s) and the entity(s) responsible for the design and installation of all required facility improvements or additions; and
5. The date such facility(s) improvement or additions will need to be completed to be concurrent with the impacts on such facility(s) created by the proposed development;
6. No development permit shall be issued by the city if the development or construction contemplated by such development permit results in a reduction of a level of services for the affected public facilities below the level of services provided and established in the city's comprehensive plan.

3-5.6. Public school facilities concurrency review procedures.

(a) School Planning and Concurrency Application. All development applications subject to school concurrency review as required by this chapter shall include a completed School Planning and Concurrency Application to be submitted to the School District by the applicant/property owner. After review of the information provided School District staff shall provide a concurrency report to the City. The report shall detail whether or not school capacity will be available to serve the proposed development. The report shall include a Certificate of School Concurrency if sufficient capacity exists for the proposed development or it may set forth conditions required to satisfy the requirements of school concurrency including proportionate share mitigation. The department will

include this information in concurrency assessments and recommending conditions of approval to the city council for development applications.

(b) *Certificate of School Concurrency.* A Certificate of School Concurrency shall be issued if the impacts of the proposed development's projected student enrollment do not cause the adopted level-of-service (LOS) to be exceeded.

If the projected student growth from the development causes the adopted LOS to be exceeded in the particular concurrency service area (CSA) and that type of school and capacity exists in one or more contiguous CSA's, the development shall receive a certificate of school concurrency, provided that the adjacency is determined by the policies and conditions established by the School Board and included in the Interlocal Agreement for Public School Facilities Planning and the Public School Facilities Element of the Comprehensive Plan.

A Certificate of School Concurrency shall be valid for the duration of the final Development Order issued by the City, but no longer than two years. A Certificate of School Concurrency issued to an applicant/property owner shall be site-specific and not be transferable to other sites without the approval of the School District and the City.

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

(1) Mitigation shall be directed to projects on the School District's financially feasible work program that the School District agrees will satisfy the demand created by the proposed development and shall be assured by a legally binding mitigation agreement between the School District, the City, and the applicant. The mitigation agreement shall be executed prior to the City's issuance of the development order.

(2) The applicant/property owner's total proportionate-share obligation shall be calculated by multiplying the number of needed student stations generated from the proposed project, times the School District's current cost per student station, plus land cost for each type of school. [(number of needed student stations x cost per student station) + cost of land for each school type = proportionate-share obligation]

(3) The student generation rates used to determine the impact of a particular development shall be the student generation rates adopted in the most recent school impact fee study.

(4) The cost per student station shall be the most recent actual costs per student station, and capitalization costs if applicable, paid by the School Board for the equivalent school facility.

(5) Mitigation options must consider the School District's educational delivery methods and requirements and the State Requirements for Educational Facilities. The identified mitigation options are subject to negotiations between the applicant/property owner, the School District, and the City, and may include, but not be limited to, the following:

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

Sec. 3-6. Concurrency reservation.

3-6.1. Capacity Reservation.

If the concurrency findings in Section 3-5.5 reveal that the capacity of public facilities is equal to or greater than that required to maintain the adopted level-of-service for said facilities, the Concurrency Manager shall reserve, or recommend to city council the reservation of, public facility capacity necessary for the proposed development. Capacity reservations shall be made on a first-come, first-served basis, based on the date of project approval by the concurrency manager and the planning and zoning board. Concurrency shall be reserved in conjunction with a development order and shall be valid only for the specific land uses, densities, intensities and construction and improvement schedules contained in the development order and any applicable development agreements for the property. A finding of concurrency shall reserve public facility capacity for the project for one (1) year from the date of approval of the development order for planned unit developments and planned commercial developments; public facility capacity may be reserved for the first phase of the project for up to one (1) year from the date of approval of the conceptual plan and master development agreement. Should a request for extension be made to the approved site development plan in accordance with section 4-5, a new review for concurrency shall be made for each site development plan extension. Concurrency Reservation shall be extended upon a finding of concurrency as of the date of the planning and zoning board review of the application for an extension and shall be reestablished only if other projects submitted after initial reservation do not cause this project to overburden public facilities. Capacity reservations

for concurrency shall expire if the underlying development order or development agreement expires or is revoked.
(Ord. No. 91-5, § 2, 1-13-91)

3-6.2. Project Deferrals/Development Moratoriums.

If, at any time the city's inventory of public facilities capacities indicates that a public facility has dropped below its adopted level-of-service, then the city shall cease to issue development orders for projects which would impact the deficient facility(s) or area of facility operations. Such a suspension or moratorium on the issuance of development orders shall continue until such time as the adopted LOS standard is reestablished or the Comprehensive Plan is amended to reflect a lower, acceptable community standard for the facility(s) in question.

3-6.3. Concurrency Denials.

In the event that the city's concurrency review reveals that the proposed development would generate public facility impact beyond that which can be absorbed by available capacity, the city shall ensure that there is a financial or other legally binding commitment to ensure that public facilities necessary to correct the anticipated deficiency will be in place concurrent with the impacts of the proposed development. Should the city and/or a developer be unable to provide such assurances, the project shall be denied. Projects denied due to failure to meet requirements, but for which all other land development requirements have been met, shall be placed on a prioritized list for approval of development orders once facility improvements have been made.

3-6.4. Capacity Reservation for Public Purpose.

The city may reserve capacity for a particular land area or specific land use, providing such reservation is in accord with a specific development or redevelopment strategy identified in the Comprehensive Plan which serves an overriding public purpose. This would include such community development objectives as providing affordable housing or diversification of the tax base. Any such capacity reservation shall be noted in the annual report on public facilities and capacities made available to the city council and the public each November, as required by Section 3-7 below.

Sec. 3-7. Status report/required capital facilities improvements.

The Concurrency Manager shall regularly monitor the cumulative effect of all approved development orders and development permits on the capacity of public facilities. Commencing December, 1990 and on each December thereafter, the Concurrency Manager shall prepare and present to city council and the public a report on the Public Facilities Capacities and Level-of-Service Inventory for Concurrency Management. This report shall include the degree of any facility deficiencies and a summary of the impacts the deficiency(s) will have on the approval of future development orders. The Concurrency Manager shall then recommend a schedule of improvements necessary to prevent a deferral or moratorium on the issuance of development orders.

Sec. 3-8. Intergovernmental coordination.

3-8.1. Intergovernmental Communication.

The Concurrency Manager shall regularly transmit to adjacent municipalities, Volusia County, the School Board, Volusia County Growth Management Commission and the Volusia Council of

Governments, notice of all pending major development applications for which concurrency assessments are being conducted.

3-8.2. Developments of Multi-Jurisdiction Impact.

Developments which would impact a public facility in one (1) or more adjacent municipalities shall be subject to an intergovernmental review for concurrency. This review shall be conducted by designated officials from the affected municipalities and/or Volusia County.

3-8.3. Urban Service Area Agreements.

Provisions consistent with the purpose and intent of this chapter shall be included in all interlocal agreements executed after the effective date of this Code to which the city is a party.

SECTION THREE CODIFICATION: The provisions of this Ordinance, including its recital, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention of the word Ordinance” or similar words, may be changed to “Section”,” “article”, or other appropriate word; provided, however, that Sections 5, 6, 7, and 8 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this ordinance.

SECTION FOUR: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall take effect as provided by law.

CITY OF DAYTONA BEACH SHORES, FLORIDA

GREG NORTHRUP, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

SANDRA K. AMBROSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2008.
Adopted on second reading this _____ day of _____, 2008.