

# **APPENDIX G**

## ***Infrastructure Concurrency Program***

## **CONCURRENCY MANAGEMENT PROGRAM**

### **SHORT TITLE**

This Section shall be known and cited as the City of Athens Concurrency Management Program.

### **PURPOSE AND INTENT**

The purpose of this Section is to implement the goals, objectives, and policies in the City of Athens Comprehensive Plan adopted on \_\_\_\_\_ and amendments subsequent thereto; to ensure that necessary public facilities and services are available concurrent with the impacts of development; to ensure that development permits are issued in a manner which will not result in a reduction of the level of service below the adopted level of service standards in the Athens Comprehensive Plan; to adhere to and implement the schedule of capital improvements in the Athens Comprehensive Plan and other capital improvements as necessary to maintain the level of service standards in this Ordinance; to adopt reasonable land development regulations to protect the citizens of Athens from public nuisances, while at the same time ensuring that property owners have a reasonable, beneficial, and economic use of property and that no property rights are infringed.

The concurrency management system is intended to serve the long term interests of the citizens of Athens by implementing a managed growth perspective that monitors the capacity of important public facilities and services and maintains the high quality of life that the citizens of Athens now enjoy. The system does not, however, serve as a guarantee to any person or property owner that a particular level of service or amount of capacity currently exists or will exist in the future on a particular public facility at any given point in time.

### **ESTABLISHMENT OF CONCURRENCY MANAGEMENT SYSTEM DATA BASE**

This section establishes the monitoring and management program for the concurrency management program (CMP). The implementation of a concurrency management system makes it necessary for the City to construct a data base to monitor both development permits and the construction of development and available public facilities. These variables will determine whether level of service standards are being maintained and whether planned capacity is expected to meet demand.

On or before \_\_\_\_\_ of each year, the Concurrency Manager shall present a report on the concurrency management system data base to the Board of City Commissioners. The report will consist of an analysis of all available capacity for all mandatory facilities. The report will establish the existing capacity of all public facilities and planned expansion of all public facilities. The report will next account for all existing and committed development. The remainder will be the available capacity. Committed development is defined as exempt development and development with a valid reservation of capacity.

Inclusion of an individual development in the report identified as committed development does not grant or imply any vested rights for concurrency nor can the report be relied on for purposes of equitable estoppel. This report will act as a monitoring tool for facilities within geographic zones of the City.

The City's concurrency management system database shall be managed by the Planning and Engineering Department. The City Engineer shall assist in maintaining an ongoing, updated data base.

## **DEVELOPMENT REVIEW SYSTEM**

### **A. REVIEW SYSTEM COORDINATION**

Concurrency management review will take place on all final and preliminary development permits. Accordingly, the City Department which coordinates the general review of those development permits will also be responsible for coordination of concurrency review. The Building and Development Department, which coordinates the Technical Review Committee's agenda, will also be responsible for integrating the concurrency review received for conditional uses, planned developments, comprehensive development plans, preliminary subdivision plans, final subdivision plans, developments of regional impact and comprehensive plan amendments, and rezonings.

### **B. DEPARTMENTAL ROLES IN CONCURRENCY EVALUATION**

Concurrency review will occur for six facilities. These reviews will be conducted by the following Departments:

1. The Planning and Utilities Department will conduct the concurrency evaluation review (CER) for potable water, sewer, traffic circulation, solid waste, and parks.
2. The City Engineer will conduct the concurrency evaluation review for drainage.

## **REGULATORY PROGRAM**

### **A. PROHIBITIONS**

No development permit shall be approved without either a concurrency exemption, or a positive concurrency evaluation. Approved non-exempt final development permits will have capacity reserved for all six mandatory public facilities. Preliminary development permits must either reserve capacity or defer reservation by signing an affidavit acknowledging no rights to capacity. Comprehensive plan amendments and rezonings (non PUD) are prohibited from reserving capacity.

### **B. APPLICATION FILING**

All applications for development permits must include a request for either a concurrency exemption and/or a concurrency evaluation, with supporting documentation.

1. For exemptions, the applicant shall provide documentation that demonstrates how the project meets the standards for the specific exemptions claimed pursuant to Section 5.6.
2. For concurrency evaluations, the applicant shall submit documentation that demonstrates the impact on all mandatory public facilities.
3. A completed application for a concurrency exemption or evaluation shall be submitted simultaneously with a development permit application in a form adopted by resolution of

the Board of City Commissioners and made available to the public. Each application shall be accompanied by a non-refundable fee established by resolution of the Board of City Commissioners.

### **C, DEPARTMENTAL REPORT**

The evaluating departments shall provide to the Planning and Engineering Department a departmental report for inclusion with the overall TRC comments. The evaluating departments will compare the information submitted in the application to the standards provided in this Section for a concurrency exemption or evaluation as appropriate. If the application is consistent with all applicable requirements, the report shall recommend approval, or approval with conditions. If the application is inconsistent with the requirements or fails to demonstrate consistency, the report shall specifically indicate this failure and recommend denial.

- I. With respect to requests for concurrency evaluation, the evaluating departments must identify the facilities impacted or necessary for the proposed development, indicate the existing level of service of the facilities impacted by the proposed development, indicate the extent of the impact generated by the proposed development, and indicate whether those existing or planned facilities have sufficient capacity, after accounting for existing and committed development , to serve the development at, or above, adopted levels of service. If planned facilities are necessary to service the proposed development, the date the facilities are proposed to be initiated and completed must be included.
2. With respect to requests for concurrency exemption, the evaluating departments must verify the existence and status of the previously approved development Permit, if any, and verify compliance with conditions of said development Permit.

### **D. REPORT BY CONCURRENCY MANAGER**

The Concurrency Manager will be responsible for compiling a concurrency report comprised of the departmental reports submitted to the Planning and Engineering Department for the TRC agenda. The Concurrency Manager will compare the information submitted in the application to the standards provided in this Section. If the application is consistent with all applicable requirements, the report shall recommend approval, or approval with conditions. If the request for development is inconsistent with the requirements or fails to meet concurrency standards, the report shall specifically indicate this failure and recommend denial.

- I. With respect to concurrency evaluations, the Concurrency Manager's report shall be consistent with Section \_\_\_\_\_ and in addition shall include the following additional analysis: A proposed schedule which compares the timetable of development for the development Permit, including the applicant's proposed discrete phases, construction initiation, and construction completion dates with the availability of the public facilities identified above, to assure that the proposed timetable is consistent with the availability of public facilities and the LOS standards for the public facilities are met prior to the identified impacts of the development in accordance with the public facility component standards and conditions specified herein for each and every public facility component. For multi phase preliminary development Permits proposing to develop in discrete geographical phases, the date of the proposed discrete phase approvals set forth in the

timetable of development shall be the date the evaluation standards are applied when performing the concurrency evaluation test for the preliminary development Permit.

2. If the finding of the Concurrency Manager is for denial of the application based on partially or totally insufficient available capacity, the applicant may propose any one of the following mechanisms to resolve the lack of available capacity for this project:
  - a. Withdraw the project and wait for sufficient capacity to become available through continued implementation of the capital improvements element.
  - b. Reduce the density and/or intensity of the proposed development to accommodate the available capacity of the public facilities at the adopted level of service standards. Such reduction may be in the form of a discrete geographical phase(s) or an overall reduction of density and/or intensity.
  - c. Request an ordinance expediting an improvement listed in the capital improvement element of the comprehensive plan with a concurrent binding development agreement and financial security acceptable to the City based on 100% of the impacts of that total development (not discrete phases) on the public facilities.
  - d. Request a comprehensive plan amendment adding an improvement to the capital improvement element of the comprehensive plan with a concurrent development agreement and financial security acceptable to the City based on 100% of the impacts that total development (not discrete phases) on the public facilities.
  - e. Fund and/or construct 100 percent of the necessary improvement.

## **STANDARDS FOR ISSUANCE OF A CONCURRENCY EXEMPTION**

### **A. PURPOSE**

Any development which is determined to be exempt will not be required to provide the facilities necessary to meet the concurrency provisions of the plan, but instead will be treated as committed development for which the City will assure concurrency, provided the conditions of the exemption and development Permit are maintained.

### **B. STANDARDS FOR EXEMPTION FOR DEVELOPMENT, DEVELOPMENT ALTERATIONS OR EXPANSIONS WHICH CREATE NO CONCURRENCY IMPACT**

The following shall be exempt from the requirements of this Article if the Planning Director or designer finds that no additional impact on concurrency public facilities is created:

- I. Construction of room additions to dwelling units that do not create additional dwelling units; or

2. Construction of accessory structures to dwelling units such as swimming pools, garages, pole barns, satellite dishes, greenhouses, screen enclosures, and fences; or
3. Changes in existing use of property or existing structures when the new use does not increase any impact on public facilities over the pre-existing use. No change in use will be considered exempt when the preexisting use has been discontinued for two years or more, in which case the use shall be considered a new use. For changes in the use of property when the new use increases the impact on public facilities, the existing intensity shall be exempt and any increase over the existing intensity shall not be exempt; or
4. Residential docking facilities for exclusive use by residents of the property on which dock facilities will be located. In this section, dock facilities refers to improvements over water and does not include a docking facility with water and sewer service; or
5. Replacement of an existing dwelling unit when no additional units are created; or
6. Replacement of a building or structure with a new building or structure of the same use when no additional impact on public facilities is created over the preexisting building or structure being replaced; or
7. Zoning map amendments to the designation of lowest density or intensity necessary to achieve consistency with the comprehensive plan; or
8. Other development Permits found not to authorize development that creates any additional impact on public facilities. The Concurrency Manager shall make specific findings in writing concerning each mandatory public facility.
9. Construction of mandatory public facilities identified in the CIE of the comprehensive plan, or the adopted capital improvement program shall be exempt from the requirements of this Article.

**C. STANDARDS FOR EXEMPTION OF DEVELOPMENT PERMITS APPROVED BEFORE THE ADOPTION OF THIS ARTICLE**

**I. FINAL DEVELOPMENT PERMITS**

Except where specific terms of the development permit state otherwise, all valid final development permits approved prior to the effective date of this Article shall be deemed to be approved final development permits. Capacity will be reserved for a period not to exceed that specified in Section \_\_\_\_\_ if the Owner/Applicant provides the information required in Section \_\_\_\_\_.

**2. PRELIMINARY DEVELOPMENT PERMITS**

Except where the specific terms of the development Permit state otherwise, all valid preliminary development permits approved prior to the adoption of this Article shall be deemed to be approved development permits. For the purposed of concurrency, the owner/applicant may elect to reserve capacity for the preliminary development permit pursuant to Section \_\_\_\_\_, regardless if review of the preliminary development permit or

subsequent final development permits would result in a positive concurrency evaluation. Capacity will be reserved for a period not to exceed that specified in Section \_\_\_\_\_.

**D. EFFECT OF CONCURRENCY EXEMPTION**

An exemption serves as a statement that the development subject to the exemption is excused from the terms of this Article, as long as the conditions of the development approval are maintained. An exemption does not have the effect of exempting the development from the payment of impact fees at building permit issuance or from the test of concurrency in the event the terms of the development permit are violated.

**E. ASSIGNABILITY AND TRANSFERABILITY**

An exemption is specific to the development permit and is assignable or transferable to the extent the development permit, or portions thereof, is assignable or transferable. Maintenance of a valid development permit is essential to the maintenance of a valid exemption. An exemption shall run with the land, consistent with the development permit on which it is based.

**F. APPEAL/ADMINISTRATIVE DETERMINATION**

An appeal from a determination that a development Permit does not meet the exemption criteria in Section \_\_\_\_\_ of this Article, or a claim that a development Permit is otherwise vested from the provisions of this Article, must be processed in accordance with the procedures and standards outlined in the land development code Article \_\_\_\_\_. Any allegation that a proposed development is vested from the provisions of this Article in a vested rights determination must be preceded by a request for and denial of a request for an exemption.

**STANDARDS FOR POSITIVE CONCURRENCY EVALUATION**

All non-exempt preliminary and final development permits must comply with minimum requirements for concurrency as set forth in the Athens Zoning Ordinance as amended. In addition, such development Permits must pass the following six public facility availability standards. The Concurrency Manager must make specific findings for each public facility with reference to substantial competent evidence from the reviewing department or appropriate service provider.

**A. TRAFFIC CIRCULATION**

Each development permit shall be reviewed for available capacity at the level of service standard outlined in this Section. Each development permit must comply with one of the following standards:

1. Capacity is available at the appropriate level of service because the facilities are in place to service the proposed development.
2. Capacity is planned to be available at the appropriate level of service because the necessary facilities are:
  - a. Under construction, or

- b. Subject to a binding executed construction contract with a commencement date of less than 90 days, or
  - c. Scheduled to be initiated in the first year of the C.I.E. (current budget year) to be completed by the end of the first year of the C.I.E., or
  - d. Scheduled to be initiated no later than the second year of the Alabama Department of Transportation Work Program to be completed by the end of the fifth year of the work program, or
  - e. Scheduled to be initiated no later than the third year of the C.I.E. to be completed by the end of the fifth year of the C.I.E.; the Board's commitment to construct facilities scheduled in the C.I.E. must be reflected in a binding executed development agreement pursuant to the Athens zoning ordinance or development permit, or to service the proposed development, in which case the development permit may be approved subject to the condition that no building permit shall be issued for the development unless the necessary roadway facilities are either in place, under actual construction, or scheduled to be initiated in the first three years of the C.I.E. and completed before the end of the fifth year of the C.I.E..
3. The proposed development has a de minimus impact on the City's transportation system and is not subject to the transportation standard provided all of the following criteria are met:
- a. The development proposal is for an increase in density or intensity of less than or equal to twice the density or intensity of the existing development, or for the development of a vacant parcel of land, at a residential density of less than four dwelling units per acre or, for nonresidential uses, at an intensity of less than 0.1 floor area ratio. Isolated vacant lots in predominantly built residential areas where construction of a single family house would be the most suitable use, may be developed for single family residential under the de minimus exception even if smaller than one quarter acre in size; and
  - b. The transportation impact of the proposed development alone does not exceed 0.1 percent of the maximum service volume at the adopted level of service standard for the peak hour of the affected transportation facility; and
  - c. The cumulative total transportation impact from the de minimus exemptions does not exceed three percent of the maximum service volume at the adopted level of service standard of the affected transportation facility if the facility does not meet the minimum level of service standard.

**B. POTABLE WATER AND SANITARY SEWER**

Each development Permit shall be reviewed for available capacity at the level of service standard outlined in this Section. Each development Permit must comply with one of the following standards:

1. Evidence in the form prescribed by the City has been submitted from the applicable utility service provider that the proposed development is within the utility's service area and that capacity is available at the appropriate level of service because the facilities are in place to service the proposed development.
2. Evidence in the form prescribed by the City has been submitted from the applicable utility service provider that the proposed development is within the utility's service area and that capacity is planned to be available at the appropriate level of service because the necessary facilities are:
  - a. Under construction, or
  - b. Subject to a binding executed construction contract, with a commencement date less than 90 days, or
  - c. Scheduled to be initiated in the first year of the service provider's current budget year and to be completed by the end of the first year of the current budget, to service the proposed development, in which case the development Permit may be approved subject to the condition that no building permit shall be issued for the development unless the necessary potable water and sanitary sewer facilities are in place.
3. If within a service area, within a five year capital improvement plan, but not immediately available, the development Permit may be issued with both septic tanks and individual wells installed for temporary use, together with the installation of dry sewer and water lines for future service. Outside the urban service area, subject to appropriate permitting requirements, individual wells and septic tanks are permitted to meet the level of service requirements for potable water and sanitary sewer.

**C. PARKS AND RECREATION**

Each development Permit shall be reviewed for available capacity at the level of service standard outlined in this Section. Each development Permit must comply with one of the following standards:

1. Capacity is available at the appropriate level of service because the facilities are in place to service the proposed development.
2. Capacity is planned to be available at the appropriate level of service because the necessary facilities are:
  - a. Subject to a binding executed contract for acquisition, or
  - b. Scheduled to be acquired in the first year of the C.I.E. (current budget year), to service the proposed development, in which case the development Permit may be approved subject to the condition that no building permit shall be issued for the development unless the necessary park facilities are either in place, under contract, or scheduled to be acquired in the first year of the C.I.E.

**D. DRAINAGE**

Each development Permit shall be reviewed for available capacity at the level of service standard outlined in of this Section. Each development Permit must comply with one of the following standards:

1. Capacity is available at the appropriate level of service because the facilities are in place to service the proposed development.
2. Capacity is planned to be available at the appropriate level of service because the necessary facilities are:
  - a. Under construction, or
  - b. Subject to a binding executed construction contract, or
  - c. Scheduled to be initiated in the first year of the C.I.E. (current budget year) to be completed by the end of the first year of the C.I.E., or
  - d. Scheduled to be initiated no later than the third year of the C.I.E. to be completed by the end of the fifth year of the C.I.E.; the Board's commitment to construct facilities scheduled in the C.I.E. must be reflected in a binding executed development agreement pursuant to the Athens zoning ordinance or development permit, to service the proposed development, in which case the development permit may be approved subject to the condition that no construction plan approval shall be issued for the development unless the necessary drainage facilities are in place.

**E. SOLID WASTE**

Each development Permit shall be reviewed for available capacity at the level of service standard outlined in of this Section. Each development Permit must comply with one of the following standards:

1. Capacity is available at the appropriate level of service because the facilities are in place to service the proposed development.
2. Capacity is planned to be available at the appropriate level of service because the necessary facilities are:
  - a. Under construction, or
  - b. Subject to a binding executed construction contract, or
  - c. Scheduled to be initiated in the first year of the C.I.E. (current budget year) to be completed by the end of the first year of the C.I.E., or

- d. Scheduled to be initiated no later than the third year of the C.I.E. to be completed by the end of the fifth year of the C.I.E.; the Board's commitment to construct facilities scheduled in the C.I.E. must be reflected in a binding executed development agreement pursuant to the Athens zoning ordinance or a development permit, to service the proposed development, in which case the development permit may be approved subject to the condition that no construction plan approval shall be issued for the development unless the necessary solid waste facilities are in place.

#### **OPTIONS FOLLOWING POSITIVE CONCURRENCY EVALUATION.**

- A.** Following a positive concurrency evaluation, the applicant for a preliminary development permit may either defer capacity reservation until final pursuant to Section 5.9 below, or reserve capacity for all mandatory public facilities pursuant to Section 5.10 below. Following a positive concurrency evaluation for a final development permit, the Concurrency Manager shall reserve capacity for all mandatory public facilities pursuant to Section 5.12 below.
- B.** For purposes of this section, the following are considered preliminary development Permits: future land use map comprehensive plan amendments, development permits, PD rezoning, rezoning applications (non-PD), conditional use applications, and preliminary subdivisions.
- C.** For purposes of performing the evaluation test, future land use map changes and rezoning (non-PD), applications unaccompanied by other development permit requests shall be reviewed assuming that the maximum density or intensity for the land use and assuming that the impacts of development will occur within the time frame of the existing five year C.I.E.
- D.** The following are defined as final development permits for purposes of this section: final subdivision plan approvals and comprehensive development plans or any other development permit not listed in this definition which results in an immediate and continuing impact upon public facilities.

#### **PRELIMINARY DEVELOPMENT PERMIT - DEFERRAL OF CAPACITY RESERVATION.**

Except as provided in Section \_\_\_\_\_ below, preliminary development Permits obtain no rights to the approval of capacity for final development permits based upon a positive evaluation of the preliminary. No preliminary development permit will be approved unless the owner has executed an affidavit deferring public facilities reservation for such preliminary development permit or non-reserving phases thereof. The executed affidavit must be provided to the Concurrency Manager, seven (7) days prior to the Planning Commission's public hearing. The affidavit will indicate that the approval by the City of the preliminary development permit with a positive evaluation for concurrency confers no rights to obtain final development permits, nor any other rights to develop the property without a reservation of capacity. Further, the affidavit shall provide that the approval of the preliminary shall not be used by the owner in any way whatsoever as committing the City legally through the theory of equitable estoppel or any other legal theory, to approve a final development permit for the project without a positive evaluation and reservation of capacity.

## **PRELIMINARY DEVELOPMENT PERMIT - RESERVATION OPTION.**

**A.** An applicant for a preliminary development permit may elect to reserve capacity for all mandatory public facilities concurrent with the approval of the preliminary development permit. The intent to reserve capacity must be submitted to the Concurrency Manager in writing 7 days prior to the Planning Commission's public hearing. The applicant may, at his option, request reservation of public facility capacity for only a discrete phase of the preliminary development permit. In order to reserve capacity for a preliminary development permit or discrete phase thereof, the applicant shall:

- I.** Pay a reservation fee within 30 days after approval of the preliminary development Permit by the authorized agency. The approval of the development permit is conditioned on payment of the fees in full within the time specified. There shall be no extension of time to submit the required fees. The effect of non-payment of the fees is the expiration of capacity reservation.

The applicant may pay the reservation fee for a preliminary development Permit or a discrete phase by one of the two following methods:

- a.** Pay amount equal to 100 percent of the transportation impact fees as per the City's impact fee ordinance schedule. The fee may be recouped by the applicant by being credited to the transportation impact fee payments for individual building permits in the development until the reservation fee is depleted. If no final development permit application is submitted within 24 months after preliminary development permit approval, the applicant may request a refund, less a 2% administrative fee.
  - b.** Pay an amount equal to 20 percent of the transportation impact fees as per the City's impact fee ordinance schedule. The fee may be recouped by the applicant by being credited to the transportation impact fee payments for individual building permits in the development until the reservation fee is depleted. If no final development permit application is submitted within 24 months after preliminary development permit approval, the reservation fee is non-refundable.
- 2.** Submit no later than seven days prior to the Planning Commission hearing, a letter of availability from the appropriate utility service provider for the reserving development concurrent with the approval of the preliminary development permit or discrete phase reserving capacity. The effect of failure to submit the letter of availability is that the development permit shall not be approved.
  - 3.** Agree to a binding timetable of development for the project which shows development activity in each year following the anniversary date of the approval. The timetable of development must include dates for individual or phased comprehensive development plan completion and/or subdivision recordation and infrastructure completion. If the development for which reservation of capacity is requested will not be completed within five years, a development agreement must be entered into.

- B.** To maintain a valid reservation of capacity, preliminary development permits must comply with the terms and conditions of capacity reservation set forth in Section \_\_\_\_\_. below.

**FINAL DEVELOPMENT PERMIT CAPACITY RESERVATION,**

- A.** Following a positive concurrency evaluation for a final development permit, the City shall reserve capacity for all mandatory public facilities concurrent with the approval of the final development permit. If the development for which reservation of capacity is requested will not be completed within five years, a development agreement must be entered into. In order to have capacity reserved for a final development permit, the applicant shall:

- I.** Submit a copy of the following Department of Environmental Protection permit applications:
  - a. Application for a public drinking water facility construction permit, and
  - b. Application to construct domestic wastewater collection/transmission system.

Each application must include a signed commitment from the service provider that capacity is available. Specifically, for application #(1), Section III, statement by public water system supplying water for project, must be executed. For application #(2), Section D, treatment plant permittee, must be executed.

For those cases where no DEP permit is required, a letter from the utility may be submitted that confirms that construction plans for the onsite water and sewer system have been approved.

- 2.** Agree to a binding timetable of development for the project which shows development activity in each year following the anniversary date of the approval. The timetable of development must include dates for individual or phased construction commencement, and build-out.

- B.** To maintain a valid reservation of capacity, a final development permit must comply with the terms and conditions of capacity reservation set forth in Section \_\_\_\_\_ below.

**TERMS, EFFECT, AND SUSPENSION / REVOCATION OF RESERVATION OF CAPACITY.**

**A. TERMS**

To maintain a valid reservation of capacity, a preliminary or final development Permit must observe and strictly comply with all the terms and conditions of a development Permit, including maintenance of valid utility agreements and compliance with the timetable of development.

**I. TIMETABLE OF DEVELOPMENT**

The reservation of capacity shall remain valid provided the timetable for the development Permit, including initiation, phase approval and completion dates, are maintained.

## **2. MAINTENANCE OF VALID UTILITY AGREEMENTS**

Reservation of capacity for final development Permits shall remain valid provided a development maintains valid water and wastewater permits with the Department of Environmental Protection. Reservation of capacity for preliminary development Permits shall remain valid provided the development maintains evidence of the water and sewer providers ability to serve the reserving development.

### **B. EFFECT**

A reservation of capacity with conditions, pursuant to the terms of this article is a good faith commitment by the City to provide mandatory public facilities sufficient to service the proposed development concurrent with the impacts of development; however, when the development approval and reservation are conditioned on the completion of an improvement under construction, or under contract, or in the current budget or otherwise in the capital improvement element, and the commitment is not reflected in a binding executed development agreement, the City's commitment is to proceed in good faith, pursuant to a reasonable timetable. The City's commitment does not include a specific timetable for the completion of the improvement to facilitate building permits or construction of the development. The condition operates to meet the concurrency requirement by suspending the final stages of development until the public facilities are available. When the City's commitment is reflected in a binding executed development agreement, the City is bound to provide facilities pursuant to the terms of the agreement including a specific timetable and the City can only be excused from compliance in accordance with the terms of the development agreement.

### **C. SUSPENSION / REVOCATION / AMENDMENT**

#### **I. AUTOMATIC REVOCATION**

Failure to comply with a preliminary or final development Permit concurrency timetable shall have the effect of automatically terminating the reservation of capacity of the development permit or affected phase. The capacity previously reserved for the development will be returned to the City data base after sixty (60) days. The owner of the terminated capacity has no greater rights to the capacity lost by his/her failure to comply with the timetable of development than any other applicant for a development permit, unless applicant reclaims the capacity as described herein. Failure to comply with development permit conditions or periods of approval. Should a development Permit become null and void due to a violation of development permit conditions or a violation of non-concurrency periods of approval, the capacity previously reserved by the City will be returned to the City data base immediately after the development permit becomes null and void.

#### **2. OPPORTUNITY TO RECLAIM COMMITTED CAPACITY**

To reclaim committed capacity terminated by a concurrency timetable violation, the owner of the development permit must submit an amendment to the timetable, consistent with the land development code, within 60 days of the date the timetable violation occurred. If the development permit and the period of approval is otherwise still valid, the applicant need only at a minimum amend the concurrency timetable. If a

final development permit whereby the timetable of approval for the concurrency capacity and development permit are identical, the applicant may resubmit a final development permit application and a concurrency timetable amendment. The applicant has an affirmative duty to monitor timetable compliance and the City is not obligated to monitor timetable compliance or notify an applicant of the occurrence of a timetable violation. A timely request to extend the timetable of development may reclaim revoked public facility capacity by prepayment of 20% of the transportation impact fee for the reserving development within 30 days of the approval of the amendment. The approval of the development permit amendment is conditioned on payment of the fees in full within the time specified. There shall be no extension of time to submit the required fees. The effect of non-payment of the fees is the release of the revoked capacity and the development permit approval is rendered null and void. Notwithstanding the above, there shall be no more than 120 days between the timetable violation and the required prepayment of 20% of the transportation impact fees. For development permits that have become null and void due to a violation of conditions or a violation of non concurrency periods of approval, new capacity can only be obtained as a part of the reapplication process.

**3. AMENDMENT TO THE PROJECT TIMETABLE AND EXTENSION OF RESERVATION OF CAPACITY PRIOR TO VIOLATION OF TIMETABLE.5 \_\_\_\_\_**

If the applicant desires to amend the project timetable and extend reservation of capacity and the timetable has not been violated, the applicant must submit a request to amend the timetable, no less than 90 days prior to the occurrence of a timetable violation. A request to extend the timetable of development may extend reserved public facility capacity by payment of 20% of the transportation impact fee, for the reserving development within 30 days of the approval of the amendment by the Board of City Commissioners. The approval of the development permit amendment is conditioned on one payment of the fees in full within the time specified. There shall be no extension of time to submit the required fees. The effect of non-payment of the fees is the release of the reserved capacity.

**D. APPROVAL TIME PERIOD FOR RESERVATION OF CAPACITY**

Each development permit with a reservation of capacity is approved for a maximum period of the time. During this time, the terms as specified in Article \_\_\_\_\_ must be observed. Following the completion of the project or the phase thereof, that portion of the development will be transferred in the City's concurrency management data base from committed capacity to existing capacity and cannot be withdrawn from the applicant. The approval time periods for reservation of capacity are as follows:

**I. FINAL DEVELOPMENT PERMITS**

- a. Final subdivisions - capacity will be reserved for a period of 24 months. Within this time period, the plat must be recorded.
- b. Comprehensive development plans - capacity will be reserved for a period of 24 months. Within this time period, all buildings in the project must receive a certificate of occupancy.

**2. PRELIMINARY DEVELOPMENT PERMITS WITH RESERVATION OPTION**

- a. Conditional uses - After the applicant elects to reserve capacity for a conditional use application pursuant to Article \_\_\_\_\_, capacity will be reserved for a period of 24 months. Within this time period, a comprehensive development plan must be obtained for the entire project.
- b. Planned developments - After the applicant elects to reserve capacity for a planned development application pursuant to Article \_\_\_\_\_, capacity will be reserved for the following time periods:

<b>TYPE OF PD</b>	<b>SIZE</b>	<b>RESERVATION PERIOD</b>	<b>SIZE</b>	<b>RESERVATION PERIOD</b>
Commercial	\$10 acres	5 years	< 10 acres	3 years
Industrial	20 acres	5 years	< 20 acres	3 years
Residential	100 acres or 500 units	5 years	< 100 acres 500 units	3 years
Mixed Use	20 acres	5 years	<20 acres	3 years

Within the aforelisted time period, comprehensive development plans must be approved and plats recorded for the entire project.

- c. Preliminary subdivision - After the applicant elects to reserve capacity for a preliminary subdivision application pursuant to Article \_\_\_\_\_, capacity will be reserved for a period of 24 months. Within this time period, a final Subdivision must be recorded and the infrastructure constructed.
- d. Approval periods which are requested to exceed five years, must be executed as a part of a developers agreement pursuant to Section\_\_\_\_\_.

**VARIANCE**

**A. PURPOSE**

A variance is intended to provide for some use of the property when the concurrency requirements of this Article for parks and recreation and transportation would otherwise provide for no use of the property. A variance is limited to requests for final development permits.

**B. APPLICATION AND REVIEW**

Within 10 days of the denial of a final development permit, a variance from the transportation and parks and recreation concurrency requirements of this Article may be requested. An applicant for a variance must submit materials which demonstrate that the requirements for a variance have been met. A variance can only be approved by the Board of City Commissioners at a public hearing.

### **C. STANDARDS FOR ADEQUATE PUBLIC FACILITIES VARIANCE**

A variance may be granted by the Board of City Commissioners only if all of the following criteria are met:

- 1.** A concurrency evaluation and request for reservation has been denied for the proposed final development permit;
  - a. No use of land will be provided without issuance of the variance.
  - b. No land use or zoning change is under consideration for the property subject to the variance request.
- 2.** The applicant submits two plans: (1) a concept plan for the entire parcel which is precluded from use by the concurrency constraints; and (2) a comprehensive development plan or preliminary subdivision plan for a discrete phase of the larger parcel. The land made part of the concept plan must include all contiguous lands either owned by the applicant or in which the applicant has any partial ownership or financial interest;
- 3.** The concept plan shall be used to ensure development pursuant to a variance is consistent with the larger proposed development as well as the City's comprehensive plan and the City's land development regulations. The concept plan does not constitute approval of a development permit and the applicant must sign an affidavit disclaiming any development rights concerning the concept plan; the review of a concept plan for development at the allowable density and or intensity shall in no way reserve capacity for public facilities;
- 4.** The concept plan must show enough detailed information to calculate overall net density and/or intensity and ensure the development of the variance can be integrated into the entire parcel of land in a logical and prudent development layout that is consistent with the comprehensive plan and the City's zoning ordinance and land development regulations;
- 5.** The CDP will contain the variance. The CDP must represent a discrete phase and shall allow no more than one (1) dwelling unit for each five acres of land or fifteen (15%) percent of the permitted density/intensity of a site pursuant to the existing zoning and land use designation, whichever is less;
- 6.** All available capacity for transportation, parks, mass transit, potable water, sanitary sewer, drainage and solid waste has been reserved for the CDP contained within the variance;
- 7.** There is sufficient capacity for potable water, sanitary sewer, drainage, and solid waste facilities to service the CDP;

- 8.** The CDP must demonstrate how a discrete phase of the land will be developed pursuant to the variance, consistent with the comprehensive plan and the City's zoning ordinance and land development regulations;
- D.** A variance, including the CDP and concept plan shall expire if development activity authorized in the variance has not commenced within six months of approval and all development is not complete, including the issuance of final certificate of occupancy within two (2) years of approval by the Board of City Commissioners.

**APPLICATION TO DEVELOPMENT AGREEMENTS.** The laws and policies set forth in the City of Athens Concurrency Management Program are essential to the public health, safety, or welfare, and this ordinance expressly provides that they shall apply to a development that is subject to a development agreement.