

MODEL ORDINANCE PROTECTION OF CORRIDORS AND RIGHTS-OF-WAY

Notes to Users:

General:

This model ordinance is provided for adoption, in whole or in part, into the local land development code. Florida's local governments represent a range of size, character, and unique local situations. Thus, local governments should modify standards or procedures for consistency with local conditions and practice. Text in parentheses and italics is intended to be replaced with appropriate local terminology, such as the name of the jurisdiction, citations of plan policies, and so forth.

The model ordinance begins with general provisions and then provides the user with two options – the first option is intended for system wide application and the second option is a corridor protection overlay district. The system wide option includes numbered sections for consistency of proposed development with the long-range transportation map, right-of-way dedication, right-of-way preservation, and right-of-way acquisition. These are followed by an alternative option for designation of a corridor protection overlay district. Although a numbering system is provided here for the purposes of the model, the user should use a numbering system and format consistent with the local land development code, or other local land development regulations.

Relationship to the comprehensive plan:

This ordinance is intended to carry out the local government comprehensive plan. The user should examine the comprehensive plan to determine that an adequate planning foundation has been established for these regulations. If additional plan language is desirable, model plan language is provided as guidance for a plan amendment.

Issues related to access to corridors:

This model ordinance does not specifically address access management. The user is directed to the Model Land Development & Subdivision Regulations that Support Access Management.¹ In adopting corridor preservation regulations, the user should consider the CUTR/FDOT model access management regulations together with other regulations of this model ordinance.

Administrative procedures:

Separate administrative procedures are not specified in this model ordinance. The local government should integrate the regulations of this model ordinance into existing review and approval procedures for developments, because the preservation and protection measures are

¹ Williams, Kristine M., Daniel E. Rudge, Gary Sokolow, and Kurt Eichin, *Model Land Development and Subdivision Regulations That Support Access Management for Florida Cities and Counties*, CUTR and FDOT, 1994.

"triggered" by a development application in or near a protected corridor. For additional assistance on administrative procedures, the user is directed to the Model Land Development Code for Florida Cities and Counties,² Article XII, or Section 23 of the Model Land Development Regulations That Support Access Management.

The user should review variance procedures for the jurisdiction. Separate variance procedures are not included in this model ordinance, under the assumption that the opportunity would be available for variance from these provisions.

SECTION I. GENERAL PROVISIONS

1.1 FINDINGS

- A. The (city/county) has adopted within the (comprehensive plan) a Future Transportation Map, a Long-Range Traffic Circulation Map, (and/or) a Thoroughfare Corridor and Right-Of-Way Protection Map to assure (city/county)-wide continuity of the transportation system.

Note: The local government must have the Future Transportation Map pursuant to various provisions of 9J-5. It may choose to have a separate map for identifying corridors and rights-of-way to be protected, with a longer range time period than the Future Transportation Map. Each community may have a different name for the above maps. The appropriate maps should be referenced in this finding. However, it should be noted that the courts refer to the "Thoroughfare Map".

- B. It is in the best interests of the public and citizens of (city/county) to anticipate future needs in areas where right-of-way does not exist, in order to establish harmonious, orderly, efficient development of (city/county) and ensure a safe and efficient transportation system.
- C. The preservation, protection, or acquisition of rights-of-way and corridors is necessary to implement coordinated land use and transportation planning, to provide for future planned growth, and to ensure that the transportation system is adequate to meet future needs, and complies with the concurrency requirements of the (comprehensive plan) and this land development code.
- D. The interim use of land in future rights-of-way provides a means for economic use of land until that land is needed for transportation purposes.
- E. Future corridors and rights-of-way must be protected from permanent encroachment to ensure availability consistent with long-range plans for the (city/county).

Note: The user should include any additional findings that are appropriate to the local circumstances.

² McPherson, John, David Coffey, and Gail Easley, 1989. Model Land Development Code for Florida Cities and Counties. Florida Department of Community Affairs, Tallahassee.

1.2 INTENT AND PURPOSE

The intent of this ordinance is to preserve, protect, and/or acquire rights-of-way and transportation corridors that are necessary to provide future facilities and facility improvements to meet the needs of growth projected in the *(city/county)* comprehensive plan and to coordinate land use and transportation planning. These rights-of-way and corridors are part of a network of transportation facilities and systems, which provide mobility between and access to businesses, homes, and other land uses throughout the jurisdiction, the region, and the state. The *(governing body of city/county)* recognizes that the provision of an adequate transportation network is an essential public service. The plan for that transportation network is described in the *(city/county)* comprehensive plan, and implemented through a capital improvements program, other policies and procedures, and through regulations on land use and development as well as regulations to preserve and protect the corridors and rights-of-way for the transportation network. The purpose of this ordinance is to foster and preserve public health, safety, comfort, and welfare and to aid in the harmonious, orderly, and beneficial development of the *(city/county)* in accordance with the comprehensive plan.

1.3 RELATIONSHIP TO COMPREHENSIVE PLAN, OTHER PLANS, REGULATIONS, LAND STATUTES

- A. The adoption of this ordinance implements the following goals, objectives, and policies of the *(city/county)* comprehensive plan. In addition, this ordinance is a part of the land development code for *(city/county)*.

Note: The user should specify those objectives and policies of the local comprehensive plan which support this ordinance, including those contained in the future land use, transportation, and capital improvements elements.

- B. This ordinance is consistent with policies of the *(name)* Metropolitan Planning Organization and the policies of the Florida Department of Transportation set forth in the Florida Transportation Plan.

Note: The user should specify the MPO by name; if the local government is not within an MPO area, none of the references to MPO should be used. In addition, the user may wish to cite specific statutory authority for corridor designation as support for this implementing ordinance.

1.4 APPLICABILITY

This ordinance shall apply to all land within the jurisdiction of *(city/county)* which abuts or is located within existing or future corridors and rights-of-way as identified in *(insert name of appropriate plan, map, or other document that identifies applicability, such as the Future Transportation Map, Long Range Traffic Circulation Map, a Major Thoroughfare Map, or other document)*.

1.5 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, the validity of the remaining portions of this ordinance shall continue in full force and effect.

1.6 EFFECTIVE DATE

This ordinance shall be effective on *(date)*.

OPTION ONE

SECTION 2. CONSISTENCY OF PROPOSED DEVELOPMENT WITH LONG RANGE TRAFFIC CIRCULATION MAP

- A. All development shall be consistent with the Major Thoroughfare Map or Future Transportation Map.
- B. Conceptual, preliminary, and final site plans and preliminary or final subdivision plats submitted for review shall include information regarding the location of any corridors designated on the *(city/county)* Major Thoroughfare Map or Future Transportation Map which cross, abut, or are within 1000' of the property of the proposed project. During the review process, the *(name of reviewing body, such as Technical Review Committee, Development Review Committee, or Planning Commission)* shall consider the proximity of the proposed project to future corridors for purposes of assessing the impact, if any, of the project on future corridors.
- C. Either preliminary or final approval shall include findings regarding the consistency of the proposed project with the future corridor, and shall note any impacts that may be anticipated from the proposed project, along with recommendations for mitigating such impacts. If the proposed project is inconsistent with the future corridor location, it may be necessary for the applicant to modify the proposed project or to propose an amendment to the *(city/county)* comprehensive plan. However, it is intended that corridor locations shall have some flexibility so as to be compatible with proposed development, so long as the basic intent to provide continuity of the corridor is met.

Note: This section is concerned primarily with corridors where studies have not yet been done to establish the alignment. Most jurisdictions have within their development review process requirements to identify specific and detailed information regarding existing roads and planned improvements [within the TIP and/or the CIE]. Therefore, such information is not presented herein. The user is directed to such documents as the Model Land Development Code from DCA or the Model Land Development Regulations that Support Access Management from the Center for Urban Transportation Research for additional assistance in the latter situation.

It is suggested that this language, or a modification of this language, be included in the section of the local government land development code which deals with development review, whether site plan review, major development review, or subdivision plat review.

SECTION 3. RIGHT-OF-WAY DEDICATION

- A. Projects proposed adjacent to or abutting a right-of-way for which improvements are shown in the current five-year Capital Improvements Program, shall, as a condition of approval, dedicate lands within the project site which are necessary for that right-of-way to *(city/county)*. Such dedication shall occur by recordation on the face of the plat, deed, grant of easement, or other method acceptable to *(city/county)*. Land to be dedicated shall be only that shown by engineering study and/or design to be necessary for the planned improvements. The amount of land required to be dedicated also shall not exceed the amount that is roughly proportionate to the transportation impacts to be generated by the proposed project unless the landowner is to be compensated in some fashion for any additional dedicated land.

Note: This section provides for the mandatory dedication of right-of-way for projects proposed adjacent to roads with planned improvements within the next five years [the time period of the adopted Capital Improvements Element]. The local government may prefer to use three years to coincide with the time period used for concurrency determinations. The important feature is that the planned improvement be considered imminent, as opposed to long range and therefore potentially less certain.

Local governments must tailor their dedication requirements to comply with Dolan v. City of Tigard, 1994 WL 276693 (June 24, 1994). In Dolan, the United States Supreme Court held that mandatory dedications of land as a condition of development approval must be related both in nature and extent to the impact of the proposed development. Although the Court stated that no precise mathematical calculation is required, it held that the amount of the dedication must be roughly proportionate to the project's impacts.

- B. The value of dedicated right-of-way shall be a credit against transportation impact fees assessed to the proposed project. In the event that the impact fees calculated for the proposed project are greater than the lands within the project site (the site prior to any dedication or other set-aside) needed for future right-of-way, only the amount of land representing a value approximately equal to the impact fee shall be required to be dedicated.

Note: Generally, credits for right-of-way donations are offered only when the impact fee ordinance included right-of-way costs in the computation of the impact fee structure.

- C. The *(reviewing agency)* may consider the transfer of development rights, based on the gross density or intensity allowable on the site prior to any set-aside for future right-of-way. The transfer will be from land to be dedicated to other portions of the site. Approval of transfer of development rights may include consideration of variances from site design standards necessitated by the increased net density or intensity of the portions of the site receiving the transfer of development rights.

Note: The provision for transfer of development rights is based upon a transfer within the site, rather than to another parcel of land. Should the local government have a TDR program that

allows parcel-to-parcel transfer or the issuance of TDR certificates, paragraph (C) should be modified for consistency.

- D. The (*reviewing agency*) may grant approval of transportation capacity (for concurrency purposes) based upon the approved density or intensity for the project. Such preliminary approval of transportation concurrency and capacity shall be specified as a total number of vehicle trips allowable for the site. The preliminary concurrency approval shall be valid for three years, and eligible for renewal for a period of two years.

Note: The concurrency approved should be expressed in the same terms as the concurrency calculations in use by the local government, which may or may not be vehicle trips. In addition, there should be a specific expiration date, consistent with the concurrency management system in place for the local government.

SECTION 4. RIGHT-OF-WAY AND CORRIDOR PRESERVATION

4.1 PROTECTION FROM ENCROACHMENT

- A. Corridors designated in the (*city/county*) comprehensive plan shall be protected from encroachment by structures, parking areas, or drainage facilities except as otherwise allowable in this ordinance and the comprehensive plan.
- B. Where an alignment has been established by engineering study and/or design, the setbacks of section (*cross-reference to that portion of the local government land development regulations which identify setbacks from roads and rights-of-way*) shall be considered sufficient for preservation of the right-of-way.
- C. Where an alignment has not been established, the following techniques shall be considered for protecting the corridor from encroachment:
- (1) The applicant may propose and (*city/county*) shall establish an approximate alignment, consistent with the need to provide continuity of the corridor as well as to meet conceptual site planning needs of the project.
 - (2) The approximate alignment shall be the basis for applying normal setbacks as specified in section (*cross-reference number*). When the specific alignment is later established through engineering study and design, the setback may be reduced through administrative approval up to, but not exceeding, 10.0% of the otherwise required setback, provided that such reduction is necessitated solely by the final alignment of the right-of-way.

Note: It is the intent that corridors through vacant land be compatible with the proposed development, and that the specific alignment have flexibility, so long as the intent to provide continuity of the corridor as well as the ability of the future facility to function are both met.

- (3) Clustering of structures may be allowable in order to retain full development rights while sitting structures, so as to avoid encroachment into the corridor. Clustering of structures under this provision of *(local government code)* may include administrative approval to reduce setbacks between buildings within a project site, reduction of buffers within a project site, or variation of other site design requirements. This provision is not intended to reduce perimeter bufferyards designed to ensure compatibility of adjacent uses.

Note: This provision should be used where clustering is not already allowable in the site design standards of the local government. This ensures that clustering, which may reduce standards for space between buildings within a site, or result in a greater net density on the portion of the site developed, is allowable.

- (4) Reduction of required setbacks, other than adjacent to the corridor, may be considered, in order to ensure that the location of structures does not encroach into future corridors. A reduction of up to, but not exceeding, 10.0% of the otherwise required setback may be approved administratively, provided such reduction is necessitated solely by the proposed alignment of the corridor. Greater reductions must be reviewed by the *(name of reviewing agency which considers variances)*.

4.2 INTERIM USES TO BE RELOCATED

- A. The purpose of this section is to allow certain uses for a specified period of time within portions of a site designated as future right-of-way, or within a future corridor. The allowance of uses on an interim basis allows the property owner to make economic use of the property until such time as the right-of-way is needed for facilities or improvements.
- B. The following uses, directly related to the primary use of the project site, may be allowable on an interim basis:
 - (1) Stormwater retention, wet or dry, to serve the project site.
 - (2) Parking areas to serve the project.
 - (3) Entry features for the project such as signage, gatehouses, architectural features, fountains, walls, and the like.
 - (4) Temporary sales or leasing offices for the project site.
- C. The following conditions shall apply to the approval of interim uses specified in section 4.2.B:
 - (1) As a condition of preliminary or final development order, the applicant agrees to relocate these uses elsewhere on the project site. A developer's agreement shall specify the terms and conditions, including timing, of the relocation required by this section.

- (2) Relocation of approved interim uses shall be beyond the setback area, subject to the provisions of section 4.1.C (2) above.
 - (3) Relocation sites shall be identified on the development plans submitted with the preliminary or final development order application. Sites identified for future relocation shall be reserved for that purpose.
- D. The stormwater retention facility may, at the discretion of (*city/county and/or FDOT*), be incorporated into the design of the future transportation facility retention facilities. Should this option be chosen by the (*city/county and/or FDOT*), the developer need not relocate the storm water retention facility.

4.3 *INTERIM USES TO BE DISCONTINUED*

- A. The following interim uses, not necessarily directly related to the principal use of the site, may be allowable:
 - (1) Recreational facilities such as playgrounds, ball fields, outdoor courts, exercise trails, walking paths, bridal paths, and similar outdoor recreational uses.
 - (2) Produce stands, produce markets, farmers markets, and the like.
 - (3) Periodic uses such as boat shows, automobile shows, RV shows, "tent" sales, and the like.
 - (4) Periodic events such as festivals, carnivals, community fairs, and the like.
 - (5) Plant nurseries and landscape materials yards.
 - (6) Agricultural uses, such as pasture, crop lands, tree farms, orchards, and the like, but not including stables, dairy barns, poultry houses, and the like.
 - (7) Storage yards for equipment, machinery, and supplies for building and trades contractors, and similar outdoor storage.
 - (8) Outdoor advertising.
 - (9) Golf driving ranges.
 - (10) RV or boat storage yards.

Note: It is the intent in this section to list those uses that have a relatively low investment in structural improvements to the site. However, the local government may wish to include other uses - such as mini-storage facilities or other warehousing - where the investment in structural improvements is amortized over a relatively short period of time. If such uses are included, additional language in the developer's agreement should specify that the eventual acquisition of the land for right-of-way does not include acquisition of the structures, nor does the future value of the land include value of the structures. The intent is to recognize that a potentially wider range of uses may be allowable provided that the developers agreement recognizes the discontinuance, and that the government is not willing to pay for the structures, but is willing to allow a long enough interim use period for the owner to amortize the investment.

B. The following conditions shall apply to interim uses specified in section 4.3.A:

- (1) As a condition of preliminary or final development order, the applicant agrees to discontinue these uses on the project site by a specified date. A developer's agreement shall specify the terms and conditions of both the approval of interim uses pursuant to this section and the discontinuance of interim uses as required in this section.

Note: It may be desirable to include a time period within the ordinance. Such period should be sufficient to allow economically feasible use of the site. Time periods may be as long as 10 or more years for new corridor locations. The designation of a date for discontinuance is most likely a negotiable issue and should be capable of being extended.

- (2) Bufferyards shall be provided, consistent with provisions of section (*cross-reference buffer section of the local land development code*), in order to ensure compatibility of interim uses with other uses adjacent or nearby.
- (3) Interim uses shall meet site design requirements for setbacks for the district.
- (4) Impervious surface ratios for interim uses shall not exceed 20.0% of the specified interim use site.

Note: Because the list of interim uses includes a wide range of intensities and impact, it may be desirable to specify a buffer rather than to rely on existing bufferyard standards. It may also be desirable to include conditions regarding locations of access drives, percent of the site to be devoted to the interim use, parking standards, lot area, and so on.

SECTION 5. RIGHT-OF-WAY ACQUISITION

5.1 VOLUNTARY DEDICATION OF FUTURE RIGHT-OF- WAY

- A. The provisions of this section apply to projects proposed adjacent to or abutting a future corridor or right-of-way for which improvements are anticipated beyond the five-year period of the Capital Improvements Program. A property owner may, at any time during the application process for preliminary, conceptual, or final approval of a project, voluntarily dedicate lands within the project site that are in the future corridor or right-of-way.
- B. Where an alignment has been established by engineering study or design, lands to be dedicated shall be within the designated future right-of-way.
- C. Where an alignment has not been established, an approximate alignment shall be established.

Note: It is the intent that corridors through vacant land be compatible with the proposed development, and that the specific alignment have flexibility, so long as the intent to provide continuity of the corridor as well as the ability of the future facility to function are both met.

5.2 PURCHASE OF FUTURE CORRIDORS AND RIGHTS-OF- WAY

- A. The (city/county/other agency) may enter into an agreement to purchase, in fee simple, the lands designated as a future corridor or right-of-way.
- B. The (city/county/other agency) may enter into an agreement to purchase the development rights to lands designated as a future corridor or right-of-way. Development rights are defined as either the number of residential units allowable on the portion of the site designated, or as the total floor area allowable in non- residential use of the portion of the site designated.

Note: If the local government has a program to purchase development rights, it should be referenced in this section. If no program exists, and the local government wishes to establish one for this purpose, the following issues should be addressed: method of establishing fair market value, timing of purchase, whether or not the rights purchased are available for purchase by other developers in other parts of the jurisdiction, and approval processes for the purchase.

- C. The (city/county/other agency) may enter into an agreement to purchase a perpetual easement including lands designated as a future corridor or right-of- way. Land included within the easement shall be either that land designated through engineering study or design as necessary for future right-of-way, or that land established as an approximate right-of-way. An approximate right-of-way shall be consistent with the need to provide continuity of the corridor as well as to meet conceptual site planning needs of the project.

Note: The agreement should specify the uses granted with the easement to the local government and the interim uses remaining with the property owner. If this section is to be used, the local government should establish a method for determining the value of the easement.

OPTION TWO

SECTION 2. CREATION OF A CORRIDOR PROTECTION OVERLAY DISTRICT

2.1 PURPOSE

The purpose of the corridor protection overlay district is to impose special development regulations on areas of (city/county) which have been designated in the (city/county comprehensive plan) as future transportation corridors. The general location of these corridors has been established through inclusion on the Future Transportation Map of the (city/county) comprehensive plan. In order to ensure the availability of lands within the corridor to meet

needs as shown in the comprehensive plan, additional review is required of proposed development which potentially lies within or adjacent to the designated corridor.

2.2 *PERMISSIBLE AND PROHIBITED USES*

The underlying uses, as determined by the applicable land use district on the Future Land Use Map and the (*zoning code or other use regulation*) remain undisturbed by the creation of this overlay district.

2.3 *DENSITY AND INTENSITY OF DEVELOPMENT*

The gross density and intensity of development shall be that allowable by the underlying land use and zoning district. However, as a condition of approval of the development, such density and intensity shall be transferred to portions of the site that lie outside the corridor. Such transfer may result in a greater net density on the developed portion of the project. This section is not intended to grant approval to the location of development in environmentally sensitive or otherwise protected lands within the project site. It is intended to allow approval of the transfer of development rights within the contiguous lands of the project, without additional review procedures beyond the review for a preliminary or final development order.

2.4 *SITE DESIGN REQUIREMENTS*

- A. In order to protect the future corridor from potential encroachment by structures, parking areas, or drainage facilities, setbacks will be required from the approximate alignment. This approximate alignment shall be consistent with the need to provide continuity of the corridor as well as to meet conceptual site planning needs of the project. The normal setbacks shall be as required by the underlying land use (*or zoning district - specify cross-reference to the appropriate section of the code*). When the final alignment is established through engineering study and design, the setback may be reduced through administrative approval up to, but not exceeding, 10.0% of the otherwise required setback, provided that such reduction is necessitated solely by the final alignment of the corridor.
- B. Clustering of structures may be allowable in order to retain full development rights while sitting structures so as to avoid encroachment into the corridor. Clustering of structures under this provision of the (*local government code*) may include administrative approval to reduce setbacks between buildings within a project site, reduction of buffers within a project site, or variation of other site design requirements. This provision is not intended to reduce perimeter bufferyards designed to ensure compatibility of adjacent uses.

2.5 *REVIEW OF PROPOSED DEVELOPMENT FOR CONSISTENCY WITH THE COMPREHENSIVE PLAN*

- A. Conceptual, preliminary, and final site plans and preliminary or final subdivision plats submitted for review shall include information regarding the location of any corridors

designated on the (city/county) Major Thoroughfare Map or Future Transportation Map which cross, abut, or are within 1,000 feet of the property of the proposed project. During the review process, the (name of reviewing body, such as Technical Review Committee, Development Review Committee, or Planning Commission) shall consider the proximity of the proposed project to future corridors for purposes of assessing the impact, if any, of the project on future corridors.

- B. Either preliminary or final approval shall include findings regarding the consistency of the proposed project with the future corridor, and shall note any impacts that may be anticipated from the proposed project, along with recommendations for mitigating such impacts. If the proposed project is inconsistent with the future corridor location, it may be necessary for the applicant to modify the proposed project or to propose an amendment to the (city/county) comprehensive plan. However, it is intended that corridor locations shall have some flexibility so as to be compatible with proposed development, so long as the basic intent to provide continuity of the corridor is met.

Note: If the local government chooses to use the Overlay District Option, it may nevertheless use this section alone. It may also use Section 3 (R.O.W. Dedication). If Section 4 is used, some modification may be necessary to acknowledge differences between the underlying land uses and the interim uses.

Source: Prepared by Hennigar & Ray, Inc., Hamilton Smith & Associates, and Apgar, Pelham, Pfeiffer & Theriaque, for the Florida Department of Transportation, as amended 12/1/01.