

080214

CITY
-----OF----- INTER-OFFICE COMMUNICATION
GAINESVILLE

Item Number: 2

TO: City Plan Board **DATE:** July 17, 2008

FROM: Planning Division Staff

SUBJECT: **Petition 88TCH-08PB. City Plan Board. Chapter 30; Article III, Division 3 Proportionate Fair-Share. Amend the Proportionate Fair-Share section of the Land Development Code to comply with recent changes in State law; clarify applicable multi-modal projects eligible for fair-share contributions; and correct scrivener's errors.**

Recommendation

Planning Division Staff recommends approval of Petition 88TCH-08PB.

Explanation

Per the requirements of State law, the City adopted a Proportionate Fair-Share ordinance in 2006. In 2007, House Bill 7203 amended some of the State requirements concerning Proportionate Fair-Share. The City delayed updating the Proportionate Fair-Share section of the Land Development Code because the Florida Department of Transportation (FDOT) was expected to release an updated model ordinance that reflected the HB 7203 amendments. Unfortunately, FDOT never released the updated model ordinance due to budget and time constraints.

City staff then noted that several proposed bills in the 2008 legislative session might create changes to the Proportionate Fair-Share regulations. Staff awaited the outcome of the 2008 legislative session to make Land Development Code changes. None of those bills passed during the 2008 session. As a result, it is timely that the City now update its Proportionate Fair-Share regulations to properly reflect current State law (based on HB 7203).

The major changes noted in HB 7203 that impact Proportionate Fair-Share are as follows.

1. State law now specifically states that proportionate fair-share mitigation improvements may address one or more modes of travel. This is a shift in emphasis from the prior focus, which was on road widening or new road construction. This direct recognition of multi-modal projects as being eligible for proportionate fair-

important tool for the City. The revisions proposed in this petition reflect this shift in available projects eligible for fair-share contributions.

2. The revised law also limits the developer's responsibility for fair-share mitigation to mitigating the development's impacts on the transportation system, and it clearly adds that the developer is not responsible for the additional cost of reducing or eliminating transportation backlogs.
3. Proportionate Fair-Share funding of any modifications that significantly benefit the impacted transportation system satisfies transportation concurrency requirements as a mitigation of the development's impact on the overall transportation system even if other impacted facilities continue to fail.

In addition, when staff reviewed the City's existing Proportionate Fair-Share regulations, several scrivener's errors were discovered that occurred during the codification process.

This petition amends the Proportionate Fair-share section of the Land Development Code to:

1. Update the City's code to reflect the State law changes made by HB 7203 in 2007
2. Correct the scrivener's errors that occurred in the codification process
3. Add clarification that large projects generating more than 1,000 average daily trips are eligible to make a proportionate fair-share contribution to a multi-modal project(s) (including, but not limited to, bicycle, pedestrian, and/or transit modifications).

Attachment 1 contains the proposed revisions to the Proportionate Fair-Share section of the Land Development Code

Impact on Affordable Housing

Not applicable

Respectfully submitted,



Ralph Hilliard
Planning Manager

RH:ORL

ATTACHMENT 1

Division 3. PROPORTIONATE FAIR-SHARE

Sec. 30-37. Intent and Purpose.

The purpose of this division is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the proportionate fair-share program, as required by and in a manner consistent with F.S. § 163.3180(16).

(Ord. No. 060494, § 1, 11-27-06)

Sec. 30-38. Findings.

The City Commission finds that transportation capacity is a commodity that has a value to both the public and private sectors, and that the City of Gainesville Proportionate Fair-Share Program:

- (1) Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
- (2) Allows developers of property outside the City's Transportation Concurrency Exception Area (TCEA) to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of a transportation facility project;
- (3) Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
- (4) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the City to expedite transportation modifications by supplementing funds currently allocated for transportation modifications in the Capital Improvements Element (CIE).
- (5) Is consistent with F.S. § 163.3180(16), and Policies 1.2.1 and 1.2.6 in the City's CIE.
- (6) Allows proportionate fair-share mitigation to be directed toward one or more specific transportation modifications reasonably related to the mobility demands created by a development and such modifications may address one or more modes of travel.

- (7) Limits proportionate fair-share contributions to ensure that a development meeting the mitigation requirements is not responsible for the additional cost of reducing or eliminating backlogs.
- (8) Recognizes that the City is not required to approve a development that is not otherwise qualified for approval pursuant to the Comprehensive Plan and Land Development Code.
- (9) Recognizes that the funding of any modification that significantly benefits the impacted transportation system satisfies transportation concurrency requirements as a mitigation of the development's impact upon the overall transportation system even if there remains a failure of transportation concurrency on other impacted facilities.

Sec.30-39. Procedures.

(a) *Applicability.* The Proportionate Fair-Share Program shall apply to all developments outside the City's TCEA that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the City of Gainesville Concurrency Management System (CMS), including transportation facilities maintained by the Florida Department of Transportation (FDOT) or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section 30-39. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under F.S. §163.3180(12) or to developments exempted or excepted from concurrency as provided in the Concurrency Management Element of the Comprehensive Plan.

(b) *General Requirements.* An applicant may choose to satisfy the transportation concurrency requirements of the City by making a proportionate fair-share contribution, pursuant to the following requirements:

- (1) The proposed development is consistent with the comprehensive plan and applicable land development regulations.
- (2) The 5-Year Schedule of Capital Improvements in the City's CIE or the long-term schedule of capital improvements for an adopted long-term Concurrency Management System includes a transportation modification(s) that, upon completion, will satisfy the requirements of the City's transportation CMS. The provisions of subsection (b)(3) may apply if a project or projects needed to satisfy concurrency are not presently contained within the ~~local government~~ City's CIE or an adopted long-term schedule of capital improvements.
- (3) The City may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to a transportation modification that, upon completion, will satisfy the requirements of the City's

transportation CMS, but is not contained in the 5-Year Schedule of Capital Improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:

- a. The City adopts by resolution a commitment to add the transportation modification to the 5-Year Schedule of Capital Improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. Additionally, to qualify for consideration under this section, the transportation modification caused by the Project must be determined to be financially feasible by the City Commission ~~on~~ for city roads transportation facilities, or the ~~Metropolitan Transportation Planning Organization (MTPO) on county and state roads~~ relevant governmental entity maintaining the impacted transportation facility, pursuant to F. S. § 163.3180(16) (b) 1., consistent with the comprehensive plan, and in compliance with the provisions of the City's Proportionate Fair-Share Program. Financial feasibility for this section shall mean that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.
- b. If the funds allocated for the 5-Year Schedule of Capital Improvements in the CIE are insufficient to fully fund construction of a transportation modification required by the CMS, the City may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more projects which ~~will~~, in the opinion of the City governmental entity or entities maintaining the transportation facilities: (i) are reasonably related to the mobility demands created by the development, and (ii) will significantly benefit the impacted transportation system (also referred to as system-wide transportation projects) even if there remains a failure of concurrency on other impacted facilities. The governmental entity or entities maintaining the impacted transportation facilities shall provide its opinion as to (i) and (ii) in writing.
- c. The system-wide transportation projects mentioned in Sec. 30-39 (b)(3)~~2~~. b. shall include, but not be limited to: the Traffic Management System (TMS), expansions of the transit fleet to increase service frequency, bus rapid transit corridors, transit service expansion to new areas, park and ride facilities for the transit system, or other mobility projects improving the transit, pedestrian and/or bicycle level of service.
- d. The modification or modifications funded by the proportionate fair-share component shall be adopted into the 5-year Capital Improvements Schedule of the comprehensive plan or the long-term schedule of capital improvements for an adopted long-term concurrency management system at the next annual CIE update.

e. Any modification and/or project proposed to meet the developer's fair-share obligation must meet design standards of the City on City roads or MTPO for locally maintained roadways and those of the FDOT for the state highway system.

(c) *Application Process.* Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified of the opportunity to satisfy transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of Section 30-39.

(1) Prior to submitting an application for concurrency certification that involves a proportionate fair-share agreement, a pre-application staff conference shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. The pre-application meeting may be held in conjunction with a traffic study meeting. If the impacted facility is on the Strategic Intermodal System (SIS), then the FDOT will be notified and invited to participate in the pre-application meeting.

(2) The applicant shall submit a completed application for concurrency certification ~~and a proportionate fair share agreement application~~ at the time of application for development plan review, special use permit approval, subdivision or minor subdivision approval, or Planned Development rezoning that includes:

Name, address and phone number of owner(s), developer and agent;

Phasing schedule, if applicable;

Trip generation and trip distribution; and,

Description of the proportionate fair-share mitigation method(s) that will be provided.

(3) Pursuant to F. S. § 163.3180(16) (e), proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the ~~concurrency~~ concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(4) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding Proportionate Fair-Share Agreement will be prepared by the City Manager or designee and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a SIS facility, or Alachua County for any proposed proportionate fair-share mitigation on a County-maintained facility, or any other municipality whose road facility is significantly impacted and for which proposed proportionate fair-share mitigation is required. No proportionate fair-share agreement will be effective until fully executed by the applicant and the City Manager or designee. The agreement shall specify the date or dates on which payments, dedications, and/or completed construction of projects by the developer are due.

(d) *Determining Proportionate Fair-Share Obligation.* As provided in F.S. § 163.3180 (16) (c), the proportionate fair-share mitigation method for transportation concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities. Construction and contribution of facilities shall be subject to final inspection and approval by the appropriate governmental agency. Proportionate fair-share mitigation may be directed toward one or more specific transportation modifications/projects reasonably related to the mobility demands created by the development and such modifications/projects may address one or more modes of travel.

(1) As provided in F.S. § 163.3180 (16) (c), a development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation. Proportionate fair-share mitigation shall be limited to ensure that a development meeting the requirements of this section mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs.

(2) The methodology used to calculate an applicant's proportionate fair-share obligation ~~for roadway widening or new roadway construction~~ shall be as provided for in F. S. § 163.3180 (12), as follows:

“The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS.”

OR

Proportionate Fair-Share = $\Sigma[(\text{Development Trips}_i) / (\text{SV Increase}_i)] \times \text{Cost}_i$

Where:

Development Trips_i = Those net, new peak hour trips from the stage or phase of development under review that are assigned to roadway segment “i” and have triggered a deficiency per the CMS;

SV Increase_i = Service volume increase provided by the eligible improvement/modification to roadway segment “i” per Section 30-39;

Cost_i = Adjusted cost of the improvement to segment “i”. Cost shall include all improvements/modifications and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

(3) For the purposes of determining proportionate fair-share obligations ~~for roadway widening or new roadway construction~~, the City shall determine improvement/modification costs based upon the actual cost of the improvement/modification as obtained from the CIE, the MTPO/TIP or the FDOT Work Program. Where such information is not available, improvement/modification cost shall be determined using one of the following methods:

- a. An analysis by the City Manager or designee of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the City Manager or designee. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; or
- b. The most recent issue of FDOT *Transportation Costs*, as adjusted based upon the type of cross-section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program shall be determined using this method in coordination with FDOT District 2.
- c. If the City has accepted an improvement/modification project proposed by the applicant, then the value of the improvement/modification shall be determined using one of the methods provided in this section.
- d. If the City has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication by fair market value established by an independent appraisal provided to the City by the applicant, at its own cost and expense and approved by City. The applicant, at its own expense, shall supply to the City: a certified survey and legal description of the land and an owner's title policy insuring the City for the appraised value. If the right-of-way dedication is for either a County-maintained or FDOT roadway facility, the dedication shall be to the appropriate agency and under the same provisions as listed above. If the estimated value of the right-of-way dedication proposed by the applicant is less than the City-estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.
- e. At the discretion of the governmental entity or entities having maintenance authority over the impacted transportation facility, the proportionate fair-share obligation, as calculated in (d), can be used to fund a multi-modal transportation project(s) (including, but not limited to, the Traffic Management System (TMS), expansions of the transit fleet to increase service frequency, bus rapid transit

corridors, transit service expansion to new areas, park and ride facilities for the transit system, or other mobility projects improving the transit, pedestrian and/or bicycle level of service) that: (i) are reasonably related to the mobility demands created by the development, and (ii) will significantly benefit the impacted transportation system even if there remains a failure of concurrency on other impacted facilities. The governmental entity or entities maintaining the impacted transportation facilities shall provide its opinion as to (i) and (ii) in writing.

(4) Pursuant to the provisions of Section 30-39 (b)(3)2. b. and ~~3. c.~~, the City, at its discretion, may allow smaller developments generating fewer than 1,000 average daily trips (ADT) or 100 peak hour trips (whichever produces the smaller development size in terms of square footage or residential units) to contribute proportionate fair-share funds to system-wide projects. The development shall contribute to both the TMS and the transit system, and all proportionate fair-share calculations shall be based on the total number of peak hour trips. For the purposes of determining proportionate fair-share obligations for system-wide transportation projects such as the TMS or transit services, the City shall determine improvement/modification costs based upon the actual cost of the improvement/modification as obtained from the City's Public Works Department and Regional Transit Service. These costs shall be updated annually.

1. The TMS cost shall be calculated as follows:

- a. Average the daily traffic counts per TMS corridors within city limits and sum them;
- b. Translate to peak hour trips using the locally derived 9.1% ratio per City studies;
- c. Calculate the TMS minus corridors outside city limits;
- d. Divide the sum of all p.m. peak hour corridor counts into the TMS within the city limits to obtain a cost per peak trip.

2. The transit costs shall be calculated as follows:

Development's net, new peak hour trip generation X (TAA Costs/TAA new peak trips) /CF where,

TAA Cost = Transit Assessment Area Cost (first 3 years)

TAA new peak trips = the new transit trips available in the peak hour based on the enhancements

CF = the conversion factor of person-trips to vehicle trips (= the current vehicle occupancy rate per the local transportation model is 1.09).

(5) If the City designates any Multimodal Transportation Districts (MMTD), the proportionate fair-share assessments shall be based on the expected costs and transportation benefits of all the required multimodal modifications within the MMTD. The proportionate fair-share assessment shall be based on the percentage of proposed development net, new peak hour trips divided by the total number of trips projected for the MMTD multiplied by the cost to provide all needed mobility modifications within the MMTD.

(e) *Proportionate Fair-Share Agreements.* Upon execution of a proportionate fair-share agreement (Agreement), the applicant shall receive a City Certificate of Preliminary and/or Final Concurrency (as appropriate). Should the applicant fail to apply for a development permit within the timeframe provided in the Land Development Code, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.

(1) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order, special use permit, second reading of the PD ordinance, or recording of the final plat, whichever is the first to occur, and shall be non-refundable. If the payment is submitted more than 12 months from the date of execution of the Agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to Section 30-39(d) and adjusted accordingly.

(2) All developer improvements/modifications authorized under this section must be completed prior to issuance of a building permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements/modification be completed before issuance of building permits.

(3) Dedication of necessary right-of-way for facility improvements/modifications pursuant to an Agreement must be completed prior to issuance of the final development order or recording of the final plat.

(4) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation. Any requested change to a development project that reduces its traffic impact subsequent to a development order and prior to the issuance of a certificate of occupancy may request that the proportionate fair-share agreement be amended and the contribution reduced to reflect the revised mitigation required, if the City has not appropriated the funds. Applicants may submit a letter to withdraw from the Proportionate Fair Share Program at any time prior to the execution of an Agreement.

(f) *Appropriation of Fair-Share Revenues.* Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements/modifications in the City's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the City, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

(1) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another modification within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section 30-39(b)(3) ~~b~~.

(2) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in F.S. § 339.155, the City may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. Such coordination shall be ratified by the City Commission through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

(g) *Impact Fee Credit for Proportionate Fair-Share Mitigation.* If the City adopts transportation impact fees, the following provisions shall apply:

(1) Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the City's impact fee ordinance.

(2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the Proportionate Fair-Share Agreement as they become due per the City's impact fee ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the City pursuant to the requirements of the City impact fee ordinance.

(3) Major projects not included within the City's impact fee ordinance or created under Section 30-39(b)(3) ~~1. and 2.~~ a. and b. which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government's discretion for impact fee credits.

(4) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the City's impact fee ordinance.

Sec. 30-40. Intergovernmental Coordination.

(a) *Cross jurisdictional impacts.* Pursuant to policies in the Intergovernmental Coordination Element of the City of Gainesville Comprehensive Plan, the City shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

(b) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the City may enter into an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.

(c) A development application submitted to the City subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:

1. All or part of the proposed development is located within .25 mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government or generates more than 1,000 net, new ADT; and,
2. Using its own concurrency analysis procedures, the City concludes that the additional traffic from the proposed development would use five percent or more of the adopted peak hour LOS maximum service volume of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and,
3. The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.

(d) Upon identification of an impacted regional facility pursuant to Section 30-40 (b) (c) 1.-3., the City shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.

(e) The adjacent local government shall have up to thirty (30) days in which to notify the City of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of F.S. § 163.3180(16). Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the City.

(f) If the subject application is subsequently approved by the City, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. (Ord. No. 060494, § 1, 11-27-06)

Appendix A.

(remains in its entirety)

ENROLLED

HB 7203, Engrossed 3

2007 Legislature

505 equivalent pursuant to its home rule regulatory powers, except
506 as provided in this part.

507 (16) It is the intent of the Legislature to provide a
508 method by which the impacts of development on transportation
509 facilities can be mitigated by the cooperative efforts of the
510 public and private sectors. The methodology used to calculate
511 proportionate fair-share mitigation under this section shall be
512 as provided for in subsection (12).

513 (a) By December 1, 2006, each local government shall adopt
514 by ordinance a methodology for assessing proportionate fair-
515 share mitigation options. By December 1, 2005, the Department of
516 Transportation shall develop a model transportation concurrency
517 management ordinance with methodologies for assessing
518 proportionate fair-share mitigation options.

519 (b)1. In its transportation concurrency management system,
520 a local government shall, by December 1, 2006, include
521 methodologies that will be applied to calculate proportionate
522 fair-share mitigation. A developer may choose to satisfy all
523 transportation concurrency requirements by contributing or
524 paying proportionate fair-share mitigation if transportation
525 facilities or facility segments identified as mitigation for
526 traffic impacts are specifically identified for funding in the
527 5-year schedule of capital improvements in the capital
528 improvements element of the local plan or the long-term
529 concurrency management system or if such contributions or
530 payments to such facilities or segments are reflected in the 5-
531 year schedule of capital improvements in the next regularly
532 scheduled update of the capital improvements element. Updates to

ENROLLED

HB 7203, Engrossed 3

2007 Legislature

561 (d) ~~Nothing in~~ This subsection does not shall require a
562 local government to approve a development that is not otherwise
563 qualified for approval pursuant to the applicable local
564 comprehensive plan and land development regulations.

565 (e) Mitigation for development impacts to facilities on
566 the Strategic Intermodal System made pursuant to this subsection
567 requires the concurrence of the Department of Transportation.

568 (f) ~~If In the event~~ the funds in an adopted 5-year capital
569 improvements element are insufficient to fully fund construction
570 of a transportation improvement required by the local
571 government's concurrency management system, a local government
572 and a developer may still enter into a binding proportionate-
573 share agreement authorizing the developer to construct that
574 amount of development on which the proportionate share is
575 calculated if the proportionate-share amount in such agreement
576 is sufficient to pay for one or more improvements which will, in
577 the opinion of the governmental entity or entities maintaining
578 the transportation facilities, significantly benefit the
579 impacted transportation system. ~~The improvement or~~ improvements
580 funded by the proportionate-share component must be adopted into
581 the 5-year capital improvements schedule of the comprehensive
582 plan at the next annual capital improvements element update. The
583 funding of any improvements that significantly benefit the
584 impacted transportation system satisfies concurrency
585 requirements as a mitigation of the development's impact upon
586 the overall transportation system even if there remains a
587 failure of concurrency on other impacted facilities.

588 (g) Except as provided in subparagraph (b)1., ~~nothing in~~

Petition 88TCH-08PB City Plan Board. Chapter 30; Article III Division 3 Proportionate Fair Share. Amend the Proportionate Fair-Share section of the Land Development Code to comply with recent changes in State law; clarify applicable multi-modal projects eligible for fair-share contributions; and correct scrivener's errors.

Onelia Lazzari, Concurrency Management Planner stated that she will not be discussing the scrivener's errors in hopes that the Board will accept that Staff has made the necessary corrections. Ms. Lazzari further stated that this petition is to update the city ordinance to comply with House Bill 7203 that was passed in 2007 that changed:

- allowing proportionate fair-share contributions for multiple modes of travel like pedestrian, bicyclists and transit
- the limitation of developer's responsibility of impacts or backlogs on roads
- developer's modification and improvement contributions would not have to pay for other deficiencies to meet the Transportation Concurrency requirements

Ms. Lazzari added that the multi-mobile projects that generate over a 1,000 trips are now eligible to contribute to the park-n-ride facilities and the transit level of improvements.

Jon Reiskind inquired what percentage of the city is not under the Transportation Concurrency Exception Area (TCEA). Ms. Lazzari stated that everything north of a quarter mile north of 53rd Avenue is outside of the TCEA and as the city annexes westward across the Interstate, those areas will also be outside of the TCEA. Mr. Reiskind further inquired if the TCEA is still needed or will it become chaos. Ms. Lazzari stated that under the current development and economic conditions it would add an enormous level of confusion to the system to try to amend it away; as it is a system that has been in place for 9 years and has served the communities well in funding multi-model projects.

Chair Cohen inquired what the process would be if the TCEA were to be reduced in size. Ms. Lazzari stated that it would take both a Comprehensive Plan and a Land Use Amendment. Chair Cohen further inquired if there are roads outside of the TCEA that are failing that have no funds to improve them and could put the City in the position of denying development rights. Ms. Lazzari stated absolutely as Proportionate Fair Share is available outside of the TCEA; however there must be projects that are available and be added to the Capital Improvements as a requirement. Ms. Lazzari further stated that inside the city limits there are very limited options for road widening or new road construction; and with the cost of new road construction skyrocketing, it makes it tougher for it to be financially feasible, as the size of our developments are not the same as those outside the city limits; however per House Bill 7203 one can contribute to sidewalk systems, transit or bicycle facilities.

Mr. Hilliard stated that RTS has been having internal workshops regarding Bus Rapid Transit within the city limits as the City's focus on any transportation will be on transit operations and not road widening.

Chair Cohen opened the floor for public comment and no one came forward.

Motion: Randy Wells	Seconded By: Laura High
Moved To: Approve.	Upon Vote: 6 - 0.