

Attachment 1
Proportionate Fair-Share Ordinance

Article III. Vested Rights Review, and Concurrency Management and Proportionate Fair-Share

Division 3. Proportionate Fair-Share

Sec. 30-37. Intent and Purpose.

The purpose of this ordinance 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 §163.3180(16), Florida Statutes (F.S.).

Sec. 30-38. Findings.

(a) 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;

(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 §163.3180(16), F.S., and Policies 1.2.1 and 1.2.6 in the City's CIE.

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, 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 §163.3180(12), F.S. 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 (CMS) includes a transportation modification(s) that, upon completion, will satisfy the requirements of the City's transportation CMS. The provisions of Section 30-39 (b)(3) may apply if a project or projects needed to satisfy concurrency are not presently contained within the local government 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:

1. The City adopts, by resolution or ordinance, a commitment to add the 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. To qualify for consideration under this section, the proposed modification must be: reviewed by the City Commission and/or the Metropolitan Transportation Planning Organization (MTPo) and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S.,

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.

2. 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 governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system.

3. The system-wide transportation projects mentioned in Sec. 30-39 (b)(3)2. 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, or other mobility projects improving the pedestrian and/or bicycle level of service.

4. 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.

5. Any modification and/or project proposed to meet the developer's fair-share obligation must meet design standards of the City and/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 meeting 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 §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the 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. 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 §163.3180 (16) (c), F.S., 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.

(1) As provided in §163.3180 (16) (c), F.S., 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.

(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 Section 163.3180 (12), F. S., 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

$$\text{Proportionate Fair-Share} = \sum \left[\left[\frac{\text{Development Trips}_i}{\text{SV Increase}_i} \right] \times \text{Cost}_i \right]$$

Where:

Development Trips_i = Those 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:

1. 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

2. 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.

3. 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.

4. 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 approved by the City and at no expense to the City. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the City at no expense to the City. 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.

(4) Pursuant to the provisions of Section 30-39 (b)(2), 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. 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 Multi-modal Transportation Districts (MMTD), the proportionate fair-share assessments shall be based on the expected costs and transportation benefits of all the required multi-modal modifications within the MMTD. The proportionate fair-share assessment shall be based on the percentage of proposed development 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.

(c) *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 for the execution of the Agreement, 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 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 development 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 or certificates of occupancy.

(3) Dedication of necessary right-of-way for facility improvements/modifications pursuant to a proportionate fair-share 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. Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the 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 local government, 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 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)2.

(2) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., 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. 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 average daily trips; 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) 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.

(d) 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 Section 163.3180(16), F.S. 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.

(c) 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.

APPENDIX A: METHOD FOR COST ESCALATION

This Appendix contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages.

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n;

Cost_0 = The cost of the improvement in the current year;

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{-1} + \text{Cost_growth}_{-2} + \text{Cost_growth}_{-3}] / 3$$

Where:

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

Cost_growth_{-1} = The growth rate of costs in the previous year;

Cost_growth_{-2} = The growth rate of costs two years prior;

Cost_growth_{-3} = The growth rate of costs three years prior

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

Item No.: 6

TO: City Plan Board **DATE:** September 21, 2006

FROM: Planning Division Staff

SUBJECT: Petition 136TCH-06PB, City Plan Board. Amend the City of Gainesville Land Development Code to adopt a Proportionate Fair-Share Ordinance for transportation concurrency to meet the new State requirements.

Recommendation

Planning Division staff recommends approval of Petition 136TCH-06PB.

Explanation

This petition creates a new proportionate fair-share ordinance (see Attachment 1) as required by Chapter 163.3180(16) Florida Statutes. The new ordinance must be adopted by December 1, 2006.

The 2005 amendments to Florida's Growth Management legislation require that each local government enact an ordinance that will allow developers to meet transportation concurrency requirements on failing roadways through a proportionate share contribution under certain conditions. The developer must contribute a fair share of the cost of improving the impacted transportation facility.

Under previous State law, local governments could not issue development orders for developments impacting roads operating at a deficient level of service (LOS) unless certain Comprehensive Plan tools had been implemented such as Transportation Concurrency Exception Areas (TCEAs), Multi-Modal Transportation Districts (MMTDs), or Transportation Concurrency Management Areas (TCMAs). The City of Gainesville implemented a TCEA to address our transportation concurrency deficiencies in 1999 and updated it in 2005 to add an additional Zone C.

The State now has added proportionate fair-share as a new tool for meeting transportation concurrency requirements outside of TCEAs, MMTDs, or TCMAs. Proportionate fair-share is a pay-as-you-go method that does not require immediate resolution of the roadway LOS deficiency, but transportation projects satisfying the LOS deficiencies on these facilities must be programmed for improvement in the 5-Year Schedule of Capital Improvements or a long-term concurrency management system.

There are several key aspects to the Proportionate Fair-Share Ordinance, especially as it applies to the City of Gainesville. These are:

1. Proportionate fair-share will apply only to developments and roadways outside the City's TCEA.
2. Proportionate fair-share will apply only to road segments operating at a deficient LOS.
3. The proposed proportionate fair-share ordinance does not apply to Developments of Regional Impact (DRI). Transportation concurrency related to DRIs is handled under separate statutory requirements.
4. The transportation facility or road segment to which proportionate fair-share contributions or payments will be applied must be identified in the City's 5-Year Schedule of Capital Improvements. Transportation projects shown in the 5-Year Schedule must be demonstrated to be financially feasible.
5. Proportionate fair-share contributions can be in the form of payments, right-of-way dedication, and/or complete or partial construction of an actual transportation project (such as lane additions or new road facilities).
6. The City, in the future, may have to amend the Comprehensive Plan to adopt a Long-Term Concurrency Management System for deficient roads outside the TCEA. This technique allows up to 10 years to deal with significant transportation backlogs and may include interim LOS standards. However, the system must be designed to correct the existing deficiencies, which would rely upon the proportionate fair-share contributions.
7. These transportation projects must enhance the capacity of the roadway and may involve adding travel lanes or creating a new reliever road on the transportation network.
8. If a project to improve roadway LOS is not shown in the 5-Year Schedule of Improvements, the City has the option of allowing a developer to use the proportionate fair-share program under the following conditions:
 - a. The City Commission adopts by resolution or ordinance a commitment to add the required project to the 5-Year Schedule of Capital Improvements no later than the next regularly scheduled update of the Capital Improvements Element.

- b. The project must be reviewed by the City Commission and determined to be financially feasible, which means that the 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.
 - c. The project must be determined by the City Commission to be consistent with the City's comprehensive plan.
- 9. If the funds shown in the 5-Year Schedule of Capital Improvements are not sufficient to fully fund a required improvement in roadway LOS, the City may still enter into a binding proportionate fair-share agreement if the proportionate fair-share amount provided for in the agreement is sufficient to pay for one or more transportation projects which will, in the opinion of the City or the governmental entity maintaining the transportation facility, significantly benefit the impacted transportation system. This system-wide project must be incorporated in the next update of the 5-Year Schedule of Capital Improvements.
- 10. System-wide transportation projects may include items such as the Traffic Management System, expansion of the transit fleet to increase service frequency, bus rapid transit corridors, transit service expansion to new areas, or other mobility projects providing a better pedestrian and/or bicycle level of service.
- 11. The City's ordinance recognizes that smaller developments will be more likely to contribute to system-wide transportation projects because the proportionate fair-share from these developments will not be able to fund major transportation lane expansion or new road network construction. Smaller developments are defined as generating fewer than 1,000 average daily trips or 100 peak hour trips, whichever produces the lesser square footage or number of units.
- 12. Intergovernmental coordination is necessary because developments in city limits may impact County-maintained roads (example, SW 20th Avenue) or State roads (example, US 441). An ordinance provision allows for interlocal agreements or Memoranda of Understanding with other governmental entities.
- 13. Developers will be required to sign proportionate fair-share agreements, which will be legally binding.
- 14. Proportionate fair-share revenues may be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).
- 15. A method is included for cost escalation to estimate the growth in costs for the construction of transportation projects.

16. Proportionate fair-share should not be confused with transportation impact fees. The primary difference is that the proportionate fair-share payment established by Chapter 163.3180(16), F.S. addresses a specific road segment operating at a failing LOS; whereas transportation impact fees are imposed on each new development to pay for the development's impact on the entire transportation system. However, the new law does require that local governments provide transportation impact fee credits for proportionate fair-share contributions when all or a portion of the fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

Impact on Affordable Housing

It is difficult to assess the impact of this ordinance on affordable housing. If a developer is required to make a proportionate fair-share contribution to meet transportation concurrency requirements for a residential development, those costs may be passed on to future residents. Alternatively, if transportation concurrency would have prohibited the construction of the housing because of LOS issues, then this proposed ordinance may allow for the development of additional affordable housing units where they could not have otherwise been built.

Additionally, since this ordinance applies only to LOS deficient roadways outside the TCEA, it will probably have a very limited impact on affordable housing.

Respectfully submitted,



Ralph Hilliard
Planning Manager

RH:ORL

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Sec. 30-38. Findings.

(a) 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;

(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 §163.3180(16), F.S., and Policies 1.2.1 and 1.2.6 in the City's CIE.

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(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 (CMS) includes a transportation modification(s) that, upon completion, will satisfy the requirements of the City's transportation CMS. The provisions of Section 30-39 (b)(3) may apply if a project or projects needed to satisfy concurrency are not presently contained within the local government 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:

1. The City adopts, by resolution or ordinance, a commitment to add the 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. To qualify for consideration under this section, the proposed modification must be: reviewed by the City Commission and/or the Metropolitan Transportation Planning Organization (MTPO) and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S., 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.

2. 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 governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system.

3. The system-wide transportation projects mentioned in Sec. 30-39 (b)(3)2, 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, or other mobility projects improving the pedestrian and/or bicycle level of service.

4. 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.

5. Any modification and/or project proposed to meet the developer's fair-share obligation must meet design standards of the City and/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 meeting 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 §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the 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. 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 §163.3180 (16) (c), F.S., 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.

(1) As provided in §163.3180 (16) (c), F.S., 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.

(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 Section 163.3180 (12), F. S., 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

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

Where:

Development Trips_i = Those 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:

1. 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

2. 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.

3. 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.

4. 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 approved by the City and at no expense to the City. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the City at no expense to the City. 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.

(4) Pursuant to the provisions of Section 30-39 (b)(2), 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. 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 peak hour trip generation X ((TDP Cost/TDP Trips)/1.09)/2
where,

TDP Cost = Transit Development Plan Enhancement cost (first 3 years)

TDP Trips = the new transit trips available based on the enhancements

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

2 = division to avoid double-counting of trips in the assessment calculation.

(5) If the City designates any Multi-modal Transportation Districts (MMTD), the proportionate fair-share assessments shall be based on the expected costs and transportation benefits of all the required multi-modal modifications within the MMTD. The proportionate fair-share assessment shall be based on the percentage of proposed development 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 Concurrence (as appropriate). Should the applicant fail to apply for a development permit within the timeframe provided in the Land Development Code for the execution of the Agreement, 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 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 development 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 or certificates of occupancy.

(3) Dedication of necessary right-of-way for facility improvements/modifications pursuant to a proportionate fair-share 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. Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the 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 local government, 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 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)2.

(2) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., 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. 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 average daily trips; 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) 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.

(d) 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 Section 163.3180(16), F.S. 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.

(e) 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.

APPENDIX A: METHOD FOR COST ESCALATION

This Appendix contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages.

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n;
 Cost_0 = The cost of the improvement in the current year;
 $\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;
 n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{.1} + \text{Cost_growth}_{.2} + \text{Cost_growth}_{.3}]/3$$

Where:

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;
 $\text{Cost_growth}_{.1}$ = The growth rate of costs in the previous year;
 $\text{Cost_growth}_{.2}$ = The growth rate of costs two years prior;
 $\text{Cost_growth}_{.3}$ = The growth rate of costs three years prior.