

ORDINANCE NO. _____
0-06-126

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An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, by creating a new Division 3, section 30-37 through 30-41, under Article III, relating to proportionate fair share for transportation concurrency; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

12

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

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14

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on September 21, 2006; and

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16

WHEREAS, the City Commission heard and approved this petition on October 23, 2006; and

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18

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

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WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

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23

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

25

26

Section 1. Subsection 30-37, City of Gainesville Land Development Code, is created and added to read as follows:

27

1 Sec. 30-37. Article III. Vested Rights Review, and Concurrency Management and Proportionate
2 Fair-Share

3
4 Division 3. Proportionate Fair-Share

5
6 Sec. 30-37. Intent and Purpose.

7
8 The purpose of this ordinance is to establish a method whereby the impacts of development on
9 transportation facilities can be mitigated by the cooperative efforts of the public and private
10 sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner
11 consistent with §163.3180(16), Florida Statutes (F.S.).

12
13 Sec. 30-38. Findings.

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

16 (a) Provides a method by which the impacts of development on transportation facilities can
17 be mitigated by the cooperative efforts of the public and private sectors;

18 (b) Allows developers of property outside the City’s Transportation Concurrency Exception
19 Area (TCEA) to proceed under certain conditions, notwithstanding the failure of transportation
20 concurrency, by contributing their proportionate fair-share of the cost of a transportation facility;

21 (c) Contributes to the provision of adequate public facilities for future growth and promotes a
22 strong commitment to comprehensive facilities planning, thereby reducing the potential for
23 moratoria or unacceptable levels of traffic congestion;

24 (d) Maximizes the use of public funds for adequate transportation facilities to serve future
25 growth, and may, in certain circumstances, allow the City to expedite transportation
26 modifications by supplementing funds currently allocated for transportation modifications in the
27 Capital Improvements Element (CIE).

28 (e) Is consistent with §163.3180(16), F.S., and Policies 1.2.1 and 1.2.6 in the City’s CIE.

29
30 Sec.30-39. Procedures.

31
32 (a) *Applicability.* The Proportionate Fair-Share Program shall apply to all developments
33 outside the City’s TCEA that have been notified of a lack of capacity to satisfy transportation
34 concurrency on a transportation facility in the City of Gainesville Concurrency Management
35 System (CMS), including transportation facilities maintained by the Florida Department of
36 Transportation (FDOT) or another jurisdiction that are relied upon for concurrency
37 determinations, pursuant to the requirements of Section 30-39. The Proportionate Fair-Share
38 Program does not apply to developments of regional impact (DRIs) using proportionate fair-share
39 under §163.3180(12), F.S. or to developments exempted or excepted from concurrency as
40 provided in the Concurrency Management Element of the Comprehensive Plan.

1
2 (b) General Requirements. An applicant may choose to satisfy the transportation
3 concurrency requirements of the City by making a proportionate fair-share contribution, pursuant
4 to the following requirements:

5
6 (1) The proposed development is consistent with the comprehensive plan and applicable land
7 development regulations.

8
9 (2) The 5-Year Schedule of Capital Improvements in the City’s CIE or the long-term
10 schedule of capital improvements for an adopted long-term Concurrency Management
11 System includes a transportation modification(s) that, upon completion, will satisfy the
12 requirements of the City’s transportation CMS. The provisions of Section 30-39 (b)(3) may
13 apply if a project or projects needed to satisfy concurrency are not presently contained within
14 the local government CIE or an adopted long-term schedule of capital improvements.

15
16 (3) The City may choose to allow an applicant to satisfy transportation concurrency through
17 the Proportionate Fair-Share Program by contributing to a transportation modification that,
18 upon completion, will satisfy the requirements of the City’s transportation CMS, but is not
19 contained in the 5-Year Schedule of Capital Improvements in the CIE or a long- term
20 schedule of capital improvements for an adopted long-term CMS, where the following apply:

21
22 1. The City adopts by resolution a commitment to add the transportation modification to
23 the 5-Year Schedule of Capital Improvements in the CIE or long-term schedule of capital
24 improvements for an adopted long-term CMS no later than the next regularly scheduled
25 update. Additionally, to qualify for consideration under this section, the transportation
26 modification caused by the Project must be determined to be financially feasible by the
27 City Commission on City roads, or the Metropolitan Transportation Planning
28 Organization (MTPO) on county and state roads, pursuant to §163.3180(16) (b) 1, F.S.,
29 consistent with the comprehensive plan, and in compliance with the provisions of the
30 City’s Proportionate Fair-Share Program. Financial feasibility for this section shall mean
31 that additional contributions, payments or funding sources are reasonably anticipated
32 during a period not to exceed 10 years to fully mitigate impacts on the transportation
33 facilities.

34
35 2. If the funds allocated for the 5-Year Schedule of Capital Improvements in the CIE are
36 insufficient to fully fund construction of a transportation modification required by the
37 CMS, the City may still enter into a binding proportionate fair-share agreement with the
38 applicant authorizing construction of that amount of development on which the
39 proportionate fair-share is calculated if the proportionate fair-share amount in such
40 agreement is sufficient to pay for one or more projects which will, in the opinion of the
41 City, significantly benefit the impacted transportation system (also referred to as system-
42 wide transportation projects).

43
44 3. The system-wide transportation projects mentioned in Sec. 30-39 (b)(3)2. shall
45 include, but not be limited to: the Traffic Management System (TMS), expansions of the

1 transit fleet to increase service frequency, bus rapid transit corridors, transit service
 2 expansion to new areas, or other mobility projects improving the pedestrian and/or
 3 bicycle level of service.

4
 5 4. The modification or modifications funded by the proportionate fair-share component
 6 shall be adopted into the 5-year Capital Improvements Schedule of the comprehensive
 7 plan or the long-term schedule of capital improvements for an adopted long-term
 8 concurrency management system at the next annual CIE update.

9
 10 5. Any modification and/or project proposed to meet the developer's fair-share
 11 obligation must meet design standards of the City on City roads or MTPO for locally
 12 maintained roadways and those of the FDOT for the state highway system.

13
 14 (c) Application Process. Upon notification of a lack of capacity to satisfy transportation
 15 concurrency, the applicant shall also be notified of the opportunity to satisfy transportation
 16 concurrency through the Proportionate Fair-Share Program pursuant to the requirements of
 17 Section 30-39.

18
 19 (1) Prior to submitting an application for concurrency certification that involves a
 20 proportionate fair-share agreement, a pre-application staff conference shall be held to discuss
 21 eligibility, application submittal requirements, potential mitigation options, and related
 22 issues. The pre-application meeting may be held in conjunction with a traffic study meeting.
 23 If the impacted facility is on the Strategic Intermodal System (SIS), then the FDOT will be
 24 notified and invited to participate in the pre-application meeting.

25
 26 (2) The applicant shall submit a completed application for concurrency certification and a
 27 proportionate fair-share agreement application at the time of application for development
 28 plan review, special use permit approval, subdivision or minor subdivision approval, or
 29 Planned Development rezoning that includes:

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

31 Phasing schedule, if applicable;

32 Trip generation and trip distribution; and,

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

34
 35 (3) Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for
 36 development impacts to facilities on the SIS requires the concurrency of the FDOT. The
 37 applicant shall submit evidence of an agreement between the applicant and the FDOT for
 38 inclusion in the proportionate fair-share agreement.

39
 40 (4) When an application is deemed sufficient, complete, and eligible, the applicant shall be
 41 advised in writing and a proposed proportionate fair-share obligation and binding
 42 Proportionate Fair-Share Agreement will be prepared by the City Manager or designee and

1 delivered to the appropriate parties for review, including a copy to the FDOT for any
2 proposed proportionate fair-share mitigation on a SIS facility or Alachua County for any
3 proposed proportionate fair-share mitigation on a County-maintained facility. No
4 proportionate fair-share agreement will be effective until fully executed by the applicant and
5 the City Manager or designee. The agreement shall specify the date or dates on which
6 payments, dedications, and/or completed construction of projects by the developer are due.

7
8 (d) *Determining Proportionate Fair-Share Obligation.* As provided in §163.3180 (16) (c),
9 F.S., the proportionate fair-share mitigation method for transportation concurrency impacts may
10 include, without limitation, separately or collectively, private funds, contributions of land, and
11 construction and contribution of facilities. Construction and contribution of facilities shall be
12 subject to final inspection and approval by the appropriate governmental agency.

13
14 (1) As provided in §163.3180 (16) (c), F.S., a development shall not be required to pay more
15 than its proportionate fair-share. The fair market value of the proportionate fair-share
16 mitigation for the impacted facilities shall not differ regardless of the method of mitigation.

17
18 (2) The methodology used to calculate an applicant’s proportionate fair-share obligation for
19 roadway widening or new roadway construction shall be as provided for in Section 163.3180
20 (12), F. S., as follows:

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

27 OR

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

29 Where:

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

32
33 SV Increase_i = Service volume increase provided by the eligible
34 improvement/modification to roadway segment “i” per Section 30-39;

35
36 Cost_i = Adjusted cost of the improvement to segment “i”. Cost shall include all
37 improvements/modifications and associated costs, such as design, right-of-way
38 acquisition, planning, engineering, inspection, and physical development costs directly
39 associated with construction at the anticipated cost in the year it will be incurred.
40
41

1 (3) For the purposes of determining proportionate fair-share obligations for roadway
2 widening or new roadway construction, the City shall determine improvement/modification
3 costs based upon the actual cost of the improvement/modification as obtained from the CIE,
4 the MTPO/TIP or the FDOT Work Program. Where such information is not available,
5 improvement/modification cost shall be determined using one of the following methods:
6

7 1. An analysis by the City Manager or designee of costs by cross section type that
8 incorporates data from recent projects and is updated annually and approved by the City
9 Manager or designee. In order to accommodate increases in construction material costs,
10 project costs shall be adjusted by an inflation factor; or
11

12 2. The most recent issue of FDOT *Transportation Costs*, as adjusted based upon the type
13 of cross-section (urban or rural); locally available data from recent projects on
14 acquisition, drainage and utility costs; and significant changes in the cost of materials due
15 to unforeseeable events. Cost estimates for state road improvements not included in the
16 adopted FDOT Work Program shall be determined using this method in coordination
17 with FDOT District 2.
18

19 3. If the City has accepted an improvement/modification project proposed by the
20 applicant, then the value of the improvement/modification shall be determined using one
21 of the methods provided in this section.
22

23 4. If the City has accepted right-of-way dedication for the proportionate fair-share
24 payment, credit for the dedication of the non-site related right-of-way shall be valued on
25 the date of the dedication by fair market value established by an independent appraisal
26 provided to the City by the applicant, at its own cost and expense and approved by City.
27 The applicant, at its own expense, shall supply to the City: a certified survey and legal
28 description of the land and an owner's title policy insuring the City for the appraised
29 value. If the right-of-way dedication is for either a County-maintained or FDOT roadway
30 facility, the dedication shall be to the appropriate agency and under the same provisions
31 as listed above. If the estimated value of the right-of-way dedication proposed by the
32 applicant is less than the City-estimated total proportionate fair-share obligation for that
33 development, then the applicant must also pay the difference. Prior to purchase or
34 acquisition of any real estate or acceptance of donations of real estate intended to be used
35 for the proportionate fair-share, public or private partners should contact the FDOT for
36 essential information about compliance with federal law and regulations.
37

38 (4) Pursuant to the provisions of Section 30-39 (b)(3)2.and 3., the City, at its discretion, may
39 allow smaller developments generating fewer than 1,000 average daily trips (ADT) or 100
40 peak hour trips (whichever produces the smaller development size in terms of square footage
41 or residential units) to contribute proportionate fair-share funds to system-wide projects. The
42 development shall contribute to both the TMS and the transit system. For the purposes of
43 determining proportionate fair-share obligations for system-wide transportation projects such
44 as the TMS or transit services, the City shall determine improvement/modification costs

1 based upon the actual cost of the improvement/modification as obtained from the City's
2 Public Works Department and Regional Transit Service. These costs shall be updated
3 annually.

4
5 1. The TMS cost shall be calculated as follows:

6
7 a. Average the daily traffic counts per TMS corridors within city limits and sum them;

8
9 b. Translate to peak hour trips using the locally derived 9.1% ratio per City studies;

10
11 c. Calculate the TMS minus corridors outside city limits;

12
13 d. Divide the sum of all p.m. peak hour corridor counts into the TMS within the city
14 limits to obtain a cost per peak trip.

15
16 2. The transit costs shall be calculated as follows:

17
18 Development's net, new peak hour trip generation X (TAA Costs/TAA new peak trips)
19 /CF where,

20
21 TAA Cost = Transit Assessment Area Cost (first 3 years)

22
23 TAA new peak trips = the new transit trips available in the peak hour based on the
24 enhancements

25
26 CF = the conversion factor of person-trips to vehicle trips (= the current vehicle
27 occupancy rate per the local transportation model is 1.09).

28
29 (5) If the City designates any Multimodal Transportation Districts (MMTD), the
30 proportionate fair-share assessments shall be based on the expected costs and transportation
31 benefits of all the required multimodal modifications within the MMTD. The proportionate
32 fair-share assessment shall be based on the percentage of proposed development peak hour
33 trips divided by the total number of trips projected for the MMTD multiplied by the cost to
34 provide all needed mobility modifications within the MMTD.

35
36 (e) Proportionate Fair-Share Agreements. Upon execution of a proportionate fair-share
37 agreement (Agreement), the applicant shall receive a City Certificate of Preliminary and/or Final
38 Concurrency (as appropriate). Should the applicant fail to apply for a development permit within
39 the timeframe provided in the Land Development Code, then the Agreement shall be considered
40 null and void, and the applicant shall be required to reapply.

41
42 (1) Payment of the proportionate fair-share contribution is due in full prior to issuance of the
43 final development order, special use permit, second reading of the PD ordinance, or recording
44 of the final plat, whichever is the first to occur, and shall be non-refundable. If the payment
45 is submitted more than 12 months from the date of execution of the Agreement, then the

1 proportionate fair-share cost shall be recalculated at the time of payment based on the best
2 estimate of the construction cost of the required improvement at the time of payment,
3 pursuant to Section 30-39(d) and adjusted accordingly.
4

5 (2) All developer improvements/modifications authorized under this section must be
6 completed prior to issuance of a building permit, or as otherwise established in a binding
7 agreement that is accompanied by a security instrument that is sufficient to ensure the
8 completion of all required improvements. It is the intent of this section that any required
9 improvements/modification be completed before issuance of building permits.
10

11 (3) Dedication of necessary right-of-way for facility improvements/modifications pursuant to
12 an Agreement must be completed prior to issuance of the final development order or
13 recording of the final plat.
14

15 (4) Any requested change to a development project subsequent to a development order may
16 be subject to additional proportionate fair-share contributions to the extent the change would
17 generate additional traffic that would require mitigation. Applicants may submit a letter to
18 withdraw from the Proportionate Fair Share Program at any time prior to the execution of an
19 Agreement.
20

21 (f) *Appropriation of Fair-Share Revenues.* Proportionate fair-share revenues shall be placed
22 in the appropriate project account for funding of scheduled improvements/modifications in the
23 City's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At
24 the discretion of the City, proportionate fair-share revenues may be used for operational
25 improvements prior to construction of the capacity project from which the proportionate fair-
26 share revenues were derived. Proportionate fair-share revenues may also be used as the 50%
27 local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).
28

29 (1) In the event a scheduled facility improvement is removed from the CIE, then the revenues
30 collected for its construction may be applied toward the construction of another modification
31 within that same corridor or sector that would mitigate the impacts of development pursuant
32 to the requirements of Section 30-39(b)(3)2.
33

34 (2) Where an impacted regional facility has been designated as a regionally significant
35 transportation facility in an adopted regional transportation plan as provided in Section
36 339.155, F.S., the City may coordinate with other impacted jurisdictions and agencies to
37 apply proportionate fair-share contributions and public contributions to seek funding for
38 improving the impacted regional facility under the FDOT TRIP. Such coordination shall be
39 ratified by the City Commission through an interlocal agreement that establishes a procedure
40 for earmarking of the developer contributions for this purpose.
41

42 (g) *Impact Fee Credit for Proportionate Fair-Share Mitigation.* If the City adopts
43 transportation impact fees, the following provisions shall apply:
44

1 (1) Proportionate fair-share contributions shall be applied as a credit against impact fees to
2 the extent that all or a portion of the proportionate fair-share mitigation is used to address the
3 same capital infrastructure improvements contemplated by the City’s impact fee ordinance.
4

5 (2) Impact fee credits for the proportionate fair-share contribution will be determined when
6 the transportation impact fee obligation is calculated for the proposed development. Impact
7 fees owed by the applicant will be reduced per the Proportionate Fair-Share Agreement as
8 they become due per the City’s impact fee ordinance. If the applicant’s proportionate fair-
9 share obligation is less than the development’s anticipated road impact fee for the specific
10 stage or phase of development under review, then the applicant or its successor must pay the
11 remaining impact fee amount to the City pursuant to the requirements of the City impact fee
12 ordinance.
13

14 (3) Major projects not included within the City’s impact fee ordinance or created under
15 Section 30-39(b)(3) 1. and 2. which can demonstrate a significant benefit to the impacted
16 transportation system may be eligible at the local government’s discretion for impact fee
17 credits.
18

19 (4) The proportionate fair-share obligation is intended to mitigate the transportation impacts
20 of a proposed development at a specific location. As a result, any road impact fee credit
21 based upon proportionate fair-share contributions for a proposed development cannot be
22 transferred to any other location unless provided for within the City’s impact fee ordinance.
23

24 Sec. 30-40. Intergovernmental Coordination.
25

26 (a) *Cross jurisdictional impacts.* Pursuant to policies in the Intergovernmental Coordination
27 Element of the City of Gainesville Comprehensive Plan, the City shall coordinate with affected
28 jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the
29 jurisdiction of the local government receiving the application for proportionate fair-share
30 mitigation. An interlocal agreement may be established with other affected jurisdictions for this
31 purpose.
32

33 (b) In the interest of intergovernmental coordination and to reflect the shared responsibilities
34 for managing development and concurrency, the City may enter into an agreement with one or
35 more adjacent local governments to address cross jurisdictional impacts of development on
36 regional transportation facilities. The agreement shall provide for application of the
37 methodology in this section to address the cross jurisdictional transportation impacts of
38 development.
39

40 (c) A development application submitted to the City subject to a transportation concurrency
41 determination meeting all of the following criteria shall be subject to this section:
42

1 1. All or part of the proposed development is located within .25 mile(s) of the area which is
2 under the jurisdiction, for transportation concurrency, of an adjacent local government or
3 generates more than 1,000 net, new ADT; and,
4

5 2. Using its own concurrency analysis procedures, the City concludes that the additional
6 traffic from the proposed development would use five percent or more of the adopted peak
7 hour LOS maximum service volume of a regional transportation facility within the
8 concurrency jurisdiction of the adjacent local government (“impacted regional facility”); and,
9

10 3. The impacted regional facility is projected to be operating below the level of service
11 standard, adopted by the adjacent local government, when the traffic from the proposed
12 development is included.
13

14 (d) Upon identification of an impacted regional facility pursuant to Section 30-40 (b) 1.-3.,
15 the City shall notify the applicant and the affected adjacent local government in writing of the
16 opportunity to derive an additional proportionate fair-share contribution, based on the projected
17 impacts of the proposed development on the impacted adjacent facility.
18

19 (e) The adjacent local government shall have up to thirty (30) days in which to notify the City
20 of a proposed specific proportionate fair-share obligation, and the intended use of the funds when
21 received. The adjacent local government must provide reasonable justification that both the
22 amount of the payment and its intended use comply with the requirements of Section
23 163.3180(16), F.S. Should the adjacent local government decline proportionate fair-share
24 mitigation under this section, then the provisions of this section would not apply and the
25 applicant would be subject only to the proportionate fair share requirements of the City.
26

27 (f) If the subject application is subsequently approved by the City, the approval shall include
28 a condition that the applicant provides, prior to the issuance of any building permit covered by
29 that application, evidence that the proportionate fair-share obligation to the adjacent local
30 government has been satisfied.
31
32
33

1 **APPENDIX A: METHOD FOR COST ESCALATION**

2
 3 *This Appendix contains a method to estimate growth in costs, through the computation of a*
 4 *three-year average of the actual cost growth rates. This will provide a growth rate that should*
 5 *be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to*
 6 *short term material shortages.*

7
 8 $Cost_n = Cost_0 \times (1 + Cost_growth_{3yr})^n$

9
 10 Where:

- 11 $Cost_n$ = The cost of the improvements in year n;
 12 $Cost_0$ = The cost of the improvement in the current year;
 13 $Cost_growth_{3yr}$ = The growth rate of costs over the last three years;
 14 n = The number of years until the improvement is constructed.

15
 16 The three-year growth rate is determined by the following formula:

17
 18 $Cost_growth_{3yr} = [Cost_growth_{.1} + Cost_growth_{.2} + Cost_growth_{.3}]/3$

19
 20 Where:

- 21 $Cost_growth_{3yr}$ = The growth rate of costs over the last three years;
 22 $Cost_growth_{.1}$ = The growth rate of costs in the previous year;
 23 $Cost_growth_{.2}$ = The growth rate of costs two years prior;
 24 $Cost_growth_{.3}$ = The growth rate of costs three years prior.

25
 26
 27 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
 28 this ordinance shall become and be made a part of the Code of Ordinances of the City of
 29 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered
 30 or relettered in order to accomplish such intentions.

31 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
 32 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way
 33 affect the validity of the remaining portions of this ordinance.

34 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
 35 such conflict hereby repealed.

D R A F T

10-31-06

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Section 5. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this ____ day of _____, 2006.

PEGEEN HANRAHAN
MAYOR

ATTEST: Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this ____ day of _____, 2006.

This Ordinance passed on second reading this ____ day of _____, 2006.