

# DRAFT

10-30-08

ORDINANCE NO. \_\_\_\_\_  
0-08-68

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code relating to Proportionate Fair-Share for transportation concurrency, by amending sections 30-38 and 30-39 to: be consistent with state law by providing additional findings, provide for multi-modal and system-wide transportation improvement projects, and limit the developer's responsibility with respect to transportation backlogs; by correcting scrivener's errors; by revising the transit assessment area cost calculation; by amending section 30-40 to correct a scrivener's error; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**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

**WHEREAS**, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on July 17, 2008; and

**WHEREAS**, notice was given and publication made as required by law and a Public Hearing was then held by the City Commission on September 2, 2008; and

**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

**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.

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

**Section 1.** Section 30-38, City of Gainesville Land Development Code, is amended in its entirety to read as follows:

**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 modification 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 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 funding of any modification that significantly benefits the impacted transportation system can satisfy 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.

**Section 2.** Section 30-39, City of Gainesville Land Development Code, is amended in its entirety to read as follows:

## Section 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 this section. 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 five-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 city's 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 five-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(s) to the five-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 proposed transportation modification ~~caused by the project~~ must be: determined to be financially feasible by the city commission or for city transportation facilities, roads, or by the governmental entity or entities maintaining the impacted transportation facility Metropolitan Transportation Planning Organization (MTP) or for county and state roads, 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 ten years to fully mitigate impacts on the transportation facilities.

- b. If the funds allocated for the five-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 facility, (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 (also referred to as system-wide transportation projects). In order for the city to enter into the proportionate fair share agreement, the governmental entity or entities maintaining the impacted transportation facilities must provide written findings to the city as to (i) and (ii).
- c. The system-wide transportation projects as mentioned in subsection ~~30-39(b)(3)2b.~~ and subsection 30-39(b)(4) 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 program component ~~shall be adopted into the five-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 Metropolitan Transportation Planning Organization (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 concurrence ~~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, 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 modification(s) reasonably related to the

mobility demands created by the development and such modification(s) 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<sub>i</sub> = 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<sub>i</sub> = Service volume increase provided by the eligible improvement/modification to roadway segment "i" per this section;

Cost<sub>i</sub> = Adjusted cost of the ~~improvement~~ modification 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 modification costs based upon the actual cost of the ~~improvement~~/modification as obtained from the CIE, the MTPOT/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
- 2 a. An analysis by the city manager or designee of costs by cross section type that
- 3 incorporates data from recent projects and is updated annually and approved by
- 4 the city manager or designee. In order to accommodate increases in construction
- 5 material costs, project costs shall be adjusted by an inflation factor; or
- 6
- 7 b. The most recent issue of *FDOT Transportation Costs*, as adjusted based upon the
- 8 type of cross-section (urban or rural); locally available data from recent projects
- 9 on acquisition, drainage and utility costs; and significant changes in the cost of
- 10 materials due to unforeseeable events. Cost estimates for state road improvements
- 11 not included in the adopted FDOT Work Program shall be determined using this
- 12 method in coordination with FDOT District 2.
- 13
- 14 c. If the city has accepted an ~~improvement~~/modification project proposed by the
- 15 applicant, then the value of the ~~improvement~~/modification shall be determined
- 16 using one of the methods provided in this section.
- 17
- 18 d. If the city has accepted right-of-way dedication for the proportionate fair-share
- 19 payment, credit for the dedication of the non-site related right-of-way shall be
- 20 valued on the date of the dedication by fair market value established by an
- 21 independent appraisal provided to the city by the applicant, at the applicant's ~~its~~
- 22 ~~own cost and expense.~~ The appraisal is subject to review and approval by the ~~and~~
- 23 ~~approved by~~ city. The applicant, at its own expense, shall supply to the city: a
- 24 certified survey and legal description of the land and an owner's title policy
- 25 insuring the city for the appraised value. If the right-of-way dedication is for
- 26 either a county-maintained or FDOT roadway facility, the dedication shall be to
- 27 the appropriate agency and under the same provisions as listed above. If the
- 28 estimated value of the right-of-way dedication proposed by the applicant is less
- 29 than the city-estimated total proportionate fair-share obligation for that
- 30 development, then the applicant must also pay the difference. Prior to purchase or
- 31 acquisition of any real estate or acceptance of donations of real estate intended to
- 32 be used for the proportionate fair-share, public or private partners should contact
- 33 the FDOT for essential information about compliance with federal law and
- 34 regulations.
- 35

36 (4) At the discretion of the city, the proportionate fair-share obligation, as calculated in sec.

37 30-39(d), can be used to fund system-wide transportation project(s) as described in

38 section 30-39(b)(3)c. that, in the opinion of the governmental entity or entities having

39 maintenance authority over the impacted transportation facility, (i) are reasonably

40 related to the mobility demands created by the development, and (ii) will significantly

41 benefit the impacted transportation system even if there remains a failure of

42 concurrency on other impacted facilities. In order for the city to enter into the

43 proportionate fair share agreement, the governmental entity or entities maintaining the

44 impacted transportation facilities must provide written findings to the city as to (i) and

45 (ii).

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(54) Pursuant to the provisions of subsection (b)(3)~~b2.~~ and ~~c3.~~, 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 transportation 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.

a. The TMS cost shall be calculated as follows:

1. Average the daily traffic counts per TMS corridors within city limits and sum them;
2. Translate to peak hour trips using the locally derived 9.1 percent ratio per city studies;
3. Calculate the TMS cost minus corridors outside city limits;
4. Divide the sum of all p.m. peak hour corridor counts into the TMS cost within the city limits to obtain a cost per peak trip.

b. 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~~) of capital and operating costs for enhancements to existing transit service routes that demonstrate the need for service expansion (i.e., full buses, high productivity, customer requests); 5 years of capital and operating costs for new transit service routes).

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).

(65) 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~~ modification at the time of payment, pursuant to subsection 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~~ modification(s). It is the intent of this section that any required ~~improvements/modification(s)~~ 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~~ If a 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, the applicant 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~~ modifications 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 percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

(1) In the event a scheduled facility ~~improvement~~ modification 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 is found to ~~would~~ mitigate the impacts of development pursuant to the requirements of subsection 30-39(b)(3)2b.

(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 subsection 30-39(b)(3) a-1. and b-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.

**Section 3.** Subsection 30-40(d) is amended in its entirety to read as follows:

- (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.

**Section 4.** It is the intention of the City Commission that the provisions of Sections 1, 2 and 3 of this ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or relettered in order to accomplish such intentions.

**Section 5.** If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

**Section 6.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

**Section 7.** This ordinance shall become effective immediately upon final adoption.

# DRAFT

10-30-08

1 PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008.  
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6 \_\_\_\_\_  
7 PEGEEN HANRAHAN  
8 MAYOR  
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10 ATTEST:

Approved as to form and legality

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13 \_\_\_\_\_  
14 KURT M. LANNON  
15 CLERK OF THE COMMISSION

\_\_\_\_\_   
MARION J. RADSON  
CITY ATTORNEY

16  
17 This Ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

18 This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2008.  
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