

**ARTICLE 8.6      PROPORTIONATE FAIR-SHARE PROGRAM [Enacted by Ord. 74-06 12/5/06]**

(A) **Purpose and Intent:** The purpose of this section 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 Section 163.3180(16), Florida Statutes. Proportionate Fair-Share payments shall be distinct and separate payments from and shall not be considered the same as impact fee payments. Impact fees are imposed by the City to replace capacity utilized by growth and to provide funding for long-range transportation plans. Proportionate fair-share is assessed to pay for specific deficiencies to the transportation network resulting from development and enabling development to meet level of service (LOS) concurrency requirements. Proportionate Fair-Share enables development to meet concurrency requirements by proportionately paying for improvement projects

(B) **Applicability:** The Proportionate Fair-Share Program shall apply to all developments that fail to meet the standards of this division on a roadway within the City that is not the responsibility of Palm Beach County or the Florida Department of Transportation (FDOT). The Proportionate Fair-Share Program does not apply to Developments of Regional Impact (DRI) using proportionate fair-share under Section 163.3180(12), Florida Statutes, projects exempted from this division, or for projects that received traffic concurrency approval prior to December 1, 2006

(C) **General Requirements:** An applicant may choose to satisfy the transportation concurrency requirements by making a proportionate fair-share contribution for impacts of new development on City roads that have or will have an LOS deficiency as defined in this division, pursuant to the following requirements:

1. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
2. Any improvement project proposed to meet the developer's fair-share obligation shall meet the City's design standards for locally-maintained roadways.
3. The scope of the project shall provide for no less than the capacity necessary to address the transportation concurrency needs for the next five years after the execution of the fair-share agreement.

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4. The road improvement necessary to maintain the adopted LOS is specifically identified for construction in the five-year schedule of capital improvements in the Capital Improvements Element (CIE) of the Comprehensive Plan. The provisions of subsection 4. a. may apply if a transportation project or projects are needed to satisfy concurrency and are not presently included within the City's CIE.
  - (a) If an applicant meets the criteria contained in subsection (c), and the City's CIE does not include the transportation improvements necessary to satisfy the LOS deficiency, then the City may allow transportation concurrency improvements and funding for the project through the proportionate fair-share upon compliance with the following criteria:
    - (1) The improvement shall not be contained in the first three years of the City's five-year schedule of capital improvements in the CIE;
    - (2) The City adopts by resolution a commitment to add the improvement funded by the developer's proportionate share assessment to the five-year schedule of capital improvements in the CIE at a point no later than the next scheduled annual update. To qualify for consideration under this section, the developer shall be required to submit for review and obtain the City's approval of the financial feasibility of the proposed improvement pursuant to Section 163.3180, Florida Statutes, consistent with the comprehensive plan, and in compliance with the provisions of this ordinance;
    - (3) The City agrees to enter into a binding proportionate fair-share agreement;
    - (4) The City agrees to amend the five-year schedule of capital improvements in the City's CIE at the next annual review or if the funds allocated for the five-year schedule of capital improvements in the City's CIE are insufficient to fully fund construction of a transportation improvement required by the CMS to make the project concurrent, the City may still enter into a binding proportionate fair-share agreement with the applicant; provided, however, that the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which shall, in the opinion of the City Commission, alleviate the concurrency concern and the CIE is amended accordingly at the next annual review.

## SECTION 8.6 (D)

(D) **Intergovernmental Coordination:** Pursuant to policies in the Intergovernmental Coordination Element of the Comprehensive Plan, the City shall coordinate with Palm Beach County and other affected jurisdictions, such as 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.

(E) **Application Process:**

1. In the event of a lack of capacity to satisfy transportation concurrency, the applicant shall have the opportunity to satisfy transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of subsection (c).
2. Eligible applicants shall schedule a meeting with the Planning and Zoning Department to discuss utilization of the Proportionate Fair-Share option. Eligible applicants shall submit a completed development application and all documentation requested by the City. The City shall establish applicable application fees for the cost of reviewing the application. If the impacted facility affects or is on the Strategic Intermodal System (SIS), or County roadway, then FDOT and Palm Beach County will be notified and invited to participate in the meeting.
3. The Planning and Zoning Department shall review the application and certify that the application is sufficient and complete within 14 working days. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the Proportionate Fair-Share Program as indicated in subsection (c), then the applicant will be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed withdrawn and all fees forfeited to the City.
4. Pursuant to Section 163.3180(16) (e), Florida Statutes, 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.

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5. 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 agreement will be prepared by the applicant 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, no later than 60 days from the date at which the applicant received the notification of a sufficient, complete, and eligible application. If the agreement is not received by the City within these 60 days, then the application will be deemed withdrawn and all fees forfeited to the City.
6. No proportionate fair-share agreement will be effective until approved by the City Commission.

### (F) **Determining Proportionate Fair-Share Obligation:**

1. Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.
2. A development eligible for participation under the Proportionate Fair-Share Program 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.
3. The methodology used to calculate a development's proportionate fair-share obligation shall be as provided for in Section 163.3180(12), Florida Statutes, 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 =  $\sum [ [(Development\ Trips_i) / (SV\ Increase_i)] \times Cost_i ]$

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Where:

Development Trips<sub>i</sub> = Those trips from the stage or phase of development under review that are assigned to roadway segment “i” and have triggered a deficiency per TPS;

SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment “i” per Section (c);

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

4. For the purposes of determining proportionate fair-share obligations, the City Engineer shall determine improvement costs based upon the actual and/or anticipated cost of the improvement in the year that construction will occur.
5. If an improvement is proposed by the applicant, then the value of the improvement shall be based on an engineer’s certified cost estimate provided by the applicant and reviewed by the City Engineer or other method approved by the City Engineer.
6. If the City has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the right-of-way shall be valued on the date of the dedication at 115 percent of the most recent assessed value by the Property Appraiser, or at the option of the applicant and in-lieu of the 115 percent of assessed value option, by fair market value established by an independent appraisal approved by the City at no expense to the City. This appraisal shall assume no approved development plan for the site. All right-of-way dedicated shall be part of a roadway segment that triggered the deficiency per TPS and shall not be site-related. 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 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 shall 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. The City shall also have the option of requiring an environmental assessment for right-of-way dedication.

## **SECTION 8.6 (G)**

### **(G) Impact Fee Credit for Proportionate Fair-Share Mitigation:**

1. Proportionate fair-share contributions shall be applied as a credit against road 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 impact fees imposed by the County and collected by the City, in accordance with the Palm Beach County Traffic 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 pursuant to the Citywide Impact Fees Division contained in this chapter. Once the credit has been exhausted, payment of road impact fees shall be required for each permit issued. The impact fee credit shall be established when the proportionate fair-share contribution is received by the City, or when the fair-share amount is secured by Performance Security.
3. The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed project. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed project cannot be transferred to any other project.

### **(H) Proportionate Fair-Share Agreements:**

1. Upon execution of a proportionate fair-share agreement ("Agreement"), the applicant shall receive a certificate of concurrency approval. Should the applicant fail to apply for a development building permit within 18 months, then the Agreement and the certificate of concurrency approval shall be considered null and void, and the applicant shall be required to reapply.
2. Payment of the proportionate fair-share contribution is due in full no later than the issuance of the first building permit, and shall be non-refundable. If the payment is submitted more than 90 days from the date of execution of the Agreement, then the proportionate fair-share cost shall be recalculated at the time of payment, pursuant to subsection (f), and adjusted accordingly.
3. In the event an Agreement requires the applicant to pay or build 100 percent of one or more road improvements, all such improvements shall be commenced prior to the issuance of a building permit and assured by a binding agreement that is accompanied by a

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Performance Security, as determined by the City, which is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before the issuance of Certificates of Occupancy.

4. Dedication of necessary rights-of-way for facility improvements pursuant to a proportionate fair-share agreement shall be completed prior to the issuance of the first building permit but shall not include a building permit issued for a dry model.
5. Any requested change to a development 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.
6. Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs paid to the City will be non-refundable.
7. The City may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

### (I) **Appropriation of Fair-Share Revenues:**

1. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIE, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may be used as the 50 percent local match for funding under the FDOT TRIP, or any other matching requirement for state and federal grant programs as may be allowed by law.
2. 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 improvement within that same corridor or County Impact Fee Benefit Zone that would mitigate the impacts of development pursuant to the requirements of subsection (c) 3.