

DIVISION 2.

COUNTY PROPORTIONATE FAIR-SHARE PROGRAM FOR TRANSPORTATION*

* **Editors Note:** Ord. No. 06-60, § 1, adopted November 14, 2006, added §§ 62-607--62-618. Designation as division 2 is at the discretion of the editor.

Sec. 62-607. Short title, authority and applicability.

(a) This subchapter, comprised of sections 62-607--62-618, shall be known and may be cited as the Brevard County Proportionate Fair-Share Program for Transportation.

(b) The board of county commissioners has the authority to adopt this division pursuant to Florida Constitution Article VIII and F.S. chs. 125 and 163.

(c) The board of county commissioners is required to adopt this subchapter by and in a manner consistent with F.S. § 163.3180(16).

(d) The county proportionate fair-share program for transportation shall apply to all developments in the county that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the county concurrency management system, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of section 62-611.

(e) The proportionate fair-share program for transportation does not apply to developments of regional impact (DRIs) using proportionate fair-share under F.S. § 163.3180(12), or to developments exempted from concurrency as provided in section 62-601 and/or F.S. ch. 163.3180, regarding exceptions and de minimis impacts.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-608. Purpose and intent.

The purpose of this division is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-609. Findings.

The board of county commissioners finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and the county 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 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 board of county commissioners to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the CIE.
- (5) Is consistent with F.S. § 163.3180(16), and supports the goals, objectives and policies in the county comprehensive plan.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-610. Definitions.

As used in this division, the following words shall have the following meanings, unless some other meaning is plainly intended:

Capital improvements element (CIE) shall mean the required element of a local government's comprehensive plan that fulfills the requirements of F.S. § 163.3177(3). The capital improvements element as used in the proportionate fair-share program for transportation may refer to the capital improvements element of the county's comprehensive plan or to the capital improvements element of the comprehensive plan of another local government in the county that is subject to the proportionate fair-share program for transportation.

Concurrency management system (CMS) shall mean the land development regulations that contain the policies, procedures and methodologies used to measure the impact of new development on the adopted level of service on the roadway network in the county and is consistent with the requirements of F.S. § 163.3180. The concurrency management system includes the land development regulations adopted by the county and can include those adopted by another local government within the county that is subject to the county proportionate fair-share program for transportation.

Transportation impact fees shall mean those impact fees imposed by the county through the county transportation impact fee ordinance as codified in sections 62-801--62-819.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-611. General requirements.

(a) An applicant may choose to satisfy the transportation concurrency requirements of the county or another local government in the county that is subject to the county proportionate fair-share program for transportation 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 of the county or local government with jurisdiction over the proposed development.
- (2) The five-year schedule of improvements in the CIE or the long-term schedule of improvements for an adopted long-term CMS includes a transportation improvement(s) that, upon completion, will provide sufficient capacity to accommodate the additional traffic generated by the proposed development. The provisions of subsection (b) 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 improvements.

(b) The board of county commissioners may, at its sole discretion, choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program for transportation by contributing to an improvement that, upon completion, will provide sufficient capacity to accommodate the additional traffic generated by the proposed development, but is not contained in the five-year schedule of improvements in the CIE or a long-term schedule of improvements for an adopted long-term CMS, where the following apply:

- (1) The board of county commissioners or another local government in the county adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of improvements in the CIE or long-term schedule of improvements for an adopted long-term CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the board of county commissioners or city council of the local government with jurisdiction, and determined to be in compliance with F.S. § 163.3180(16)(b)1., provided 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.
- (2) If the funds allocated for the five-year schedule of capital improvements in the CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the board of county commissioners or city council of a local government in the county that is subject to the proportionate fair-share program for transportation 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 improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share component must 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 capital improvements element update.

(c) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the county for county maintained roadways, those of the FDOT for the state highway system, and the design standards of the applicable local government for all other roads.
(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-612. Intergovernmental coordination.

Pursuant to policies in the intergovernmental coordination element of the county comprehensive plan and applicable policies in East Central Florida Regional Planning Council's Strategic Regional Policy Plan, the county 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.
(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-613. Application process.

(a) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the county proportionate fair-share program for transportation pursuant to the requirements of section 62-611.

(b) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. 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.

(c) Eligible applicants shall submit an application to the county that includes an application fee established by the board of county commissioners by resolution and the following:

- (1) Name, address and phone number of owner(s), developer and agent;
- (2) Property location, including parcel identification numbers;
- (3) Legal description and survey of property;
- (4) Project description, including type, intensity and amount of development;
- (5) Phasing schedule, if applicable;
- (6) Description of requested proportionate fair-share mitigation method(s); and
- (7) Copy of concurrency application.

(d) The county shall review the application and certify that the application is sufficient and complete within 15 business 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 section 62-611, then the applicant will be notified in writing of the reasons for such deficiencies within 15 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 45 calendar days of receipt of the written notification, then the application will be deemed abandoned. The county manager may, in his/her discretion, grant an extension of time not to exceed 60 calendar days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(e) Pursuant to F.S. § 163.3180(16)(e), 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.

(f) 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 county or the applicant with direction from the county 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 calendar days from the date at which the applicant received the notification of a sufficient application and no fewer than 14 calendar days prior to the board of county commissioners' meeting when the agreement will be considered.

(g) The county shall notify the applicant regarding the date of the board of county commissioners' meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the board of county commissioners and executed by all parties.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-614. Determination of proportionate fair-share obligation.

(a) 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.

(b) 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.

(c) The methodology used to calculate an applicant's proportionate fair-share obligation 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

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

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 to roadway segment "i" per section E;
Cost _i =	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, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

(d) For the purposes of determining proportionate fair-share obligations, the county shall determine improvement costs based upon the actual cost of the improvement as obtained from the CIE, the MPO/TIP or the FDOT Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:

- (1) An analysis by the county of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the board of county commissioners. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor established by or acceptable to the county; 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 the FDOT district.

(e) If the county has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.

(f) If the county 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 at 125 percent of the most recent assessed value by the county property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the county and at no expense to the county. The applicant shall supply a drawing and legal description of the land and a certificate of title or title policy insuring title of the land to the county at no expense to the county. If the estimated value of the right-of-way dedication proposed by the applicant is less than the county 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.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-615. Impact fee credit for proportionate fair-share mitigation.

(a) Proportionate fair-share mitigation contributions shall be applied as a credit against transportation impact fees assessed by the county on the project. Credits will be awarded for that portion of the transportation impact fees that would have been used to fund the improvements on which the proportionate fair-share contribution is calculated. The portion of the transportation impact fee used to fund said improvements shall be calculated by the ratio of the total amount of transportation impact fees used to fund the improvements on which the proportionate fair-share contribution is based to the total amount of transportation impact fees used to fund all improvements within the transportation impact fee benefit district in which the project is located that are listed in the adopted schedule of improvements in capital improvements element.

(b) At the time that the proportionate fair-share contribution is determined, the county will calculate the transportation impact fee obligation for the proposed development and calculate the portion of the transportation impact fee used to fund the improvements on which the proportionate fair-share contribution is based. The transportation impact fee credit shall not exceed 100 percent of the portion of the transportation impact fee obligation that is creditable to the development or 100 percent of the proportionate fair-share contribution, whichever is less.

(c) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. For that reason, the transportation impact fee credit based upon proportionate fair-share contribution for a proposed development cannot be transferred to any other location or development.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-616. Proportionate fair-share agreements.

(a) Upon execution of a proportionate fair-share agreement (agreement) the applicant shall receive written acknowledgement of concurrency approval from the county or the local government with jurisdiction over the proposed development. Should the applicant fail to apply for a building permit within one year of the effective date of the agreement, then the agreement shall be considered null and void, and the applicant shall be required to reapply in accordance to the provisions of section 62-613.

(b) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or, if a plat is involved, recording of the final plat and shall be non-refundable. If the payment is submitted more than 12 months from the effective date 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 62-614 and adjusted accordingly.

(c) All developer improvements authorized under this ordinance 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 be completed before issuance of building permits or certificates of occupancy.

(d) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.

(e) 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.

(f) An applicant 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 to the county will be non-refundable.

(g) The county may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-617. Appropriation of proportionate fair-share revenues.

(a) Proportionate fair-share revenues shall be deposited in a project account established to fund projects listed in the schedule of improvements in the CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the county, 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 requisite local match for funding under the FDOT Transportation Regional Incentive Program (TRIP) or other grant program.

(b) In the event a scheduled facility improvement is removed from the schedule of improvements in the CIE, then any proportionate fair-share revenues collected for its construction may be applied toward the construction of another improvement that would mitigate the impacts of development pursuant to the requirements of subsection 62-611(b)(2).

(c) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation as calculated pursuant to section 62-614, the county shall reimburse the applicant for the excess contribution using one or more of the following methods:

- (1) An account may be established on behalf of the applicant for the purpose of reimbursing the applicant for the amount of the excess contribution. The account shall be funded with proportionate fair-share payments from future applicants who impact the same facility. A capital recovery agreement shall be prepared by the county and fully executed to formalize this arrangement.
- (2) The county may directly compensate the applicant for the excess contribution through payment or some combination of means that are mutually acceptable to the county and the applicant.

(Ord. No. 06-60, § 1, 11-14-06)

Sec. 62-618. Cross jurisdictional impacts.

(a) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the county may enter 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.

(b) A development application submitted to the county 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 one mile of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government; and
- (2) Using its own concurrency analysis procedures, the county 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.

(c) Upon identification of an impacted regional facility pursuant to section 62-618 (b)(1)--(3), the county 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.

- (1) The adjacent local government shall have up to 90 days in which to notify the county of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of F.S. § 163.3180(16). Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the county.

- (2) If the subject application is subsequently approved by the county, 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. The county may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

(Ord. No. 06-60, § 1, 11-14-06)

Secs. 62-619--62-700. Reserved.