

ORDINANCE NO. 2731-08

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE BY ADOPTING A NEW SUBSECTION 58-36.1 “PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES” IN CHAPTER 58, CONCURRENCY MANAGEMENT REGULATIONS, COMPLYING WITH CURRENT FLORIDA STATUTES INCLUDING, BUT NOT LIMITED TO, SECTION 163.3180 (16), BY ESTABLISHING PURPOSE AND INTENT, FINDINGS, APPLICABILITY, GENERAL REQUIREMENTS, APPLICATION PROCESS, DETERMINING PROPORTIONATE FAIR-SHARE OBLIGATION, IMPACT FEE FOR PROPORTIONATE FAIR-SHARE MITIGATION, PROPORTIONATE FAIR-SHARE AGREEMENTS, AND APPROPRIATION OF FAIR-SHARE REVENUES; AND PROVIDING FOR CODIFICATION, SEVERABILITY; AND AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 “Land Development Code”, Article II “Concurrency Management Regulations” of the Code of Ordinances is hereby amended and modified by adding new text to Section 58-41 to now be titled “Proportionate Fair-Share Option” but preserving and renumbering the current sections 58-41 through 58-43 accordingly to provide for inclusion of this new Section 58-41 to read as follows:

58-41: PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES

- 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 §163.3180(16), F.S.
- B. Findings:** The City Commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and that the City’s Proportionate Fair-Share Program:
1. Provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative and creative 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 expanding or improving 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 and transportation 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 improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element; and
5. Is consistent with §163.3180(16), F.S. and the City's Comprehensive Plan.

C. Applicability: The Proportionate Fair-Share Program shall apply to any development project in The City of Winter Park where the project's traffic impact study or the City engineer determines that there is insufficient capacity on one or more segments to satisfy the development project's transportation concurrency requirements. The Proportionate Fair-Share Program does not apply to Developments of Regional Impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in this concurrency chapter.

D. General Requirements.

1. An applicant whose project meets the criteria of Section 168.03 may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution, pursuant to the following requirements:
 - a. The proposed development is consistent with the comprehensive plan and applicable land development regulations, and
 - b. The five-year schedule of capital improvements in the City's Capital Improvements Element (CIE), which includes Federal, State, County and other local governments capital improvements, includes one or more transportation improvements that, upon completion, will provide sufficient capacity for the deficient segments to accommodate the traffic generated by the proposed development.
2. The City may choose to allow an applicant to satisfy transportation concurrency for a deficient segment, through the Proportionate Fair-Share Program, by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for the deficient segment is not contained in the 5-year schedule of capital improvements in the CIE where:
 - a. The City Commission holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the 5-year CIE, and
 - b. The City adopts, by ordinance, an amendment adding the improvement to the 5-year schedule of capital improvements in the CIE. To qualify for consideration under this section, the proposed improvement must be reviewed by the City Commission, and determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or

revenue sources to fund the improvement project are reasonably anticipated during a period not to exceed 10 years.

3. 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 concurrency, 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 of more projects which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, sufficiently benefit the impacted transportation system.
4. Transportation projects shall include, but not be limited to: highway related improvements such as roadway modification, roadway widening, intersection improvements; and system related improvements such as traffic management systems, transportation systems management, intelligent transportation systems, expansion of the transit fleet to increase service frequency, bus rapid transit and other fixed guideway corridors, transit service expansion to new areas, or other mobility projects improving the pedestrian and/or bicycle level of service.
5. Any improvement project proposed to meet a developer's fair-share obligation must meet design standards of the City for locally maintained roadways, Orange County for county maintained roads and of the Florida Department of Transportation (FDOT) for the state highway system.

E. Application Process.

1. Upon identification of a lack of capacity to satisfy transportation concurrency, the applicant may choose to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of Section 168.02.9.
2. Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with the City Manager or designee 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.
3. Eligible applicants shall submit an application to the City that includes an application fee as established by resolution and the following:
 - a. Name, address, and phone number of owner(s), developer and agent;
 - b. Property location, including parcel identification numbers;
 - c. Legal description and survey of property;
 - d. Project description, including type, intensity, and amount of development;
 - e. Phasing schedule, if applicable;
 - f. Description of requested proportionate fair-share mitigation method(s);
 - g. Copy of concurrency application;

- h. Copy of the project’s Traffic Impact Statement (TIS) or Traffic Impact Analysis (TIA); and
- i. Location map depicting the site and affected road network.

The application shall be submitted at the time of application for development plan review, Special Use Permit approval, subdivision or minor subdivision approval, or rezoning.

- 4. The City Manager or designee shall review the application and certify that the application is sufficient and complete. Should the application require the City to use the professional services of a consultant, the applicant shall bear all expenses incurred by the City for use of such consultant services. 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 168.02.9, then the applicant shall 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 shall be deemed abandoned. The City Commission may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to affect a cure.
- 5. When an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the City or the applicant with direction from the City and delivered to the appropriate parties for review.
- 6. The City shall notify the applicant regarding the date of the City Commission meeting at which the agreement will be considered for final approval. 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, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in §163.3180 (16)(c), F.S. Construction and contribution of facilities shall be subject to final inspection and approval by the appropriate governmental agency.
- 2. 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 based on the form of mitigation as provided in §163.3180 (16)(c), F.S.
- 3. The methodology used to calculate an applicant’s proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), F. S., as follows: The cumulative number of peak hour, peak direction trips from the complete build-out of the proposed development, or build-out of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour directional maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated construction cost of the proportionate share project in the year that construction will occur. This methodology is expressed by the following formula:

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

(Note: In the context of the formula, the term “cumulative” does not include a previously approved stage or phase of a development.)

Where: Σ = Sum of all deficient links proposed for proportionate fair-share mitigation for a project.

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 concurrency management system;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment “**i**”;

Cost_i = Adjusted cost of the improvement to segment “**i**”. Cost shall consist of all improvements and associated costs, including design, right-of-way acquisition, planning, engineering, inspection, and physical development costs, directly associated with construction at the anticipated cost in the year that construction will occur.

4. For purposes of determining proportionate fair-share obligations, the City shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur. These costs will be determined or approved by the City’s public works department.
5. If the City has accepted an improvement project 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 approved by the City’s public works director or other method approved by the City’s public works director.
6. If the City has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 100 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 City and at no expense to the City. Said appraisal shall assume no approved development plan for the site. 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 (based on a City-approved appraisal) is less than the City estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. If the estimated value of the right-of-way dedication proposed by the applicant (based on a City-approved appraisal) is more than the City estimated total proportionate fair-share obligation for the development, then the City will give the applicant traffic impact fee credit for the difference, if available.
7. The City, at its discretion, may allow developments to contribute proportionate fair-share to system wide projects, either solely or in conjunction with highway related improvements. For the purposes of determining proportionate fair-share obligations for system wide transportation improvements such as transit service, the City shall determine improvement/modification cost based upon the actual cost of the improvement/modification as obtained from the City’s public works department. The transit costs shall be calculated as follows:

Development’s net, new peak hour trip generation **X** (Transit Service Cost/Transit Service New Peak Trips) / CF, where:

Transit Service Cost = actual cost of the service improvements within City (first 3 years)

Transit Service New Peak Trips = the new transit trips available in the peak hour based on the transit service or transit service enhancements

CF = the conversion factor of person trips to vehicle trips (the current vehicle occupancy rate per the local transportation model is 1.20, and should be confirmed before use).

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 mitigation payments for a development project shall be applied as a credit toward the traffic impact fees assessed to that development project.
2. Impact fee credits for a proportionate fair-share contribution will be determined when the traffic impact fee obligation is calculated for the proposed development. 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 must pay the remaining impact fee amount.
3. A proportionate fair-share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any traffic impact fee credit based upon proportionate fair-share contributions for a proposed development may not be transferred to any other location.
4. The amount of traffic impact fee (TIF) credit for a proportionate fair-share contribution may be up to but shall not exceed the project's proportionate fair-share amount and will be determined based on the following formula:

TIF Credit = [(Proportionate fair-share impacted roadways' VMT) ÷ (Total Project VMT)] X (Total Project Traffic Impact Fee Liability)

Where:

VMT (Vehicle miles of travel on a link) = (length of link) X (number of trips assigned to that link)

Total Project VMT = Total vehicle miles of travel on all links impacted by proportionate fair-share project

5. A proportionate fair-share impact fee credit shall be applied consistent with the following formula:

Applicant payment = [(Total project traffic impact fees assessed) + (Proportionate Share Payment)] – (TIF CREDIT)

H. Proportionate Fair-Share Agreements.

1. Upon executing a proportionate fair-share agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive concurrency approval for subject trips. Should the applicant fail to apply for building permits within the timeframe provided for in the City concurrency approval, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate share payment for a project is

made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.

2. Payment of the proportionate fair-share contribution for a project and payment of other impact fees assessed to that project shall be due and must be paid prior to the effective date of the proportionate fair-share agreement. The effective date shall be specified in the agreement and shall be the date the agreement is approved by the City Commission.
3. All developer improvements accepted as proportionate fair-share contributions must be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement and be accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. The security instrument shall conform to specifications set by the City Commission and approved by the City attorney. It is the intent of this section that any required improvements be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement.
4. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must occur prior to the effective date of the proportionate fair-share agreement.
5. Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.
6. Applicants may withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the City are nonrefundable.
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 City Capital Improvements Element, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).
2. In the event a scheduled facility improvement is removed from the CIP or CIE, then the proportionate fair-share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair-share contribution was made.


SECTION 2: This ordinance shall be incorporated into the City of Winter Park Land Development Code and any paragraph, number or letter, and any header may be changed or modified to implement the ordinance. Grammatical, typographical or other scrivener errors may be corrected and alterations and omissions not affecting the construction or meaning of this ordinance and the City Land Development Code may be made.

SECTION 3: If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 4: This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

ADOPTED this 11th day of February, 2008.

CITY OF WINTER PARK



Mayor David C. Strong

ATTEST:



City Clerk Cynthia S. Bonham