

2006 NOV 20 PM 2: 55

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT; PROVIDING FINDINGS; AMENDING SECTION 201 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE TO PROVIDE CERTAIN DEFINITIONS; AMENDING THE MANATEE COUNTY LAND DEVELOPMENT CODE TO ESTABLISH PROCEDURES FOR PROPORTIONATE FAIR-SHARE MITIGATION AS REQUIRED PURSUANT TO SECTION 163.3180(16), FLORIDA STATUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida, as follows:

SECTION 1. Findings. The Board hereby finds and determines the procedures for proportionate fair-share mitigation established pursuant to this Ordinance:

- (a) Are consistent with and satisfy the requirements of Section 163.3180(16), Florida Statutes, and the 5-Year Capital Improvements Element set forth in the Comprehensive Plan and level-of-service provisions of Manatee County Comprehensive Plan.
- (b) Provide a method by which the impacts of development on public facilities can be mitigated by the cooperative efforts of the public and private sectors;
- (c) Contribute to the provision of adequate public facilities for future growth and promote a strong commitment to comprehensive facilities planning, thereby reducing the potential for development moratoria or unacceptable burdens upon public infrastructure; and
- (d) Maximize the use of public funds for adequate public facilities to serve future growth, and may, in certain circumstances, allow the County to expedite improvements by supplementing funds currently allocated for transportation in the Comprehensive Plan.

SECTION 2. Amendment to Section 201 of the Manatee County Land Development Code ("Land Development Code"). Section 201 of the Land Development Code is hereby amended to add the following definitions (to appear in alphabetical order among the existing definitions):

5-Year CIE shall mean the 5-Year schedule of transportation improvements set forth in the capital improvements element of the Comprehensive Plan.

LOS shall mean the level of service established for a transportation facility pursuant to the Comprehensive Plan.

SIS shall mean the strategic intermodal system of state highways established pursuant to general law.

Transportation CLOS shall mean a certificate of level of service compliance for transportation concurrency to be issued pursuant to Section 510, hereof.

Transportation CMS shall mean the concurrency management system established for transportation concurrency pursuant to Section 163.3180, Florida Statutes, and the Comprehensive Plan, and implemented pursuant to Sections 510 and 511, hereof.

SECTION 3. Amendment of Land Development Code to Establish Section 511. The Land Development Code is hereby amended to add Section 511 to read in its entirety as follows:

511. Proportionate Fair-Share Program.

511.1. Applicability. The proportionate fair-share mitigation procedures set forth in this Section 511 shall be available for any development project for which:

511.1.1. The applicant has filed, or intends to file, an application for a Transportation CLOS, or renewal or extension of an existing Transportation CLOS, in accordance with the requirements of Section 510, on or after December 1, 2006; and

511.1.2. The Planning Director has, pursuant to Section 511.4.1., issued a notice of intent to deny the application for Transportation CLOS, or the applicant anticipates that such a notice will be issued because the applicant expects to impact a deficient roadway.

The procedures set forth herein shall not be available for developments of regional impact (DRIs) using proportionate fair-share under Section 163.3180(12), Florida Statutes, or to developments exempted from transportation concurrency pursuant to general law.

511.2. General Requirements. An application to satisfy the County's transportation concurrency requirements through proportionate fair-share mitigation shall be subject to the following requirements:

511.2.1. The subject development project must be consistent with the Comprehensive Plan and this Code;

511.2.2. The improvement project proposed to meet the developer's fair-share obligation must meet design standards of the County for locally maintained roadways (and of the FDOT in the case of projects in the state highway system), as well as any conditions necessary to satisfy the requirements of the Comprehensive Plan and this Code; and

511.2.3. One of the following must apply:

511.2.3.1. The five-year schedule of capital improvements in the 5-Year CIE must include construction of a transportation improvement(s) that, upon completion, will satisfy the requirements of the Transportation CMS; or

511.2.3.2. The County chooses, in its discretion, to allow an applicant to satisfy transportation concurrency through proportionate fair-share mitigation by contributing to an improvement that, upon completion, will satisfy the requirements of the Transportation CMS, but is not contained in the five-year schedule of capital improvements in the 5-Year CIE, where the following apply:

511.2.3.2.1. The County adopts, by resolution, a commitment to add the improvement to the five-year schedule of capital improvements in the 5-Year CIE no later than the next regularly scheduled update of the 5-Year CIE. Such resolution shall include a finding by the Board of County Commissioners that the proposed improvement is (a) financially feasible pursuant to Part II, Chapter 163, Florida Statutes, (b) consistent with the Comprehensive Plan, and (c) in compliance with the provisions of this Section.

511.2.3.2.2 In the case of a transportation improvement for which funds allocated for the five-year schedule of capital improvements in the 5-Year CIE are insufficient to fully fund construction, the County 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 is sufficient to pay for one or more improvements which will, in the opinion of the County (and FDOT, in the case of improvements to the state highway system), significantly benefit the impacted transportation system. The improvement(s) funded by the proportionate fair-share component must be adopted into the 5-Year CIE at the next annual capital improvements element update.

511.3. Intergovernmental Coordination. Pursuant to policies in the Intergovernmental Coordination Element of the Comprehensive Plan and applicable policies in the Tampa Bay Strategic Regional Policy Plan and other adopted regional plans for transportation,

the County shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the County's jurisdiction.

511.4. Application Process.

511.4.1. Any notice of intent to deny an application for Transportation CLOS because of lack of transportation capacity shall identify in writing any deficient impacted transportation facilities.

511.4.2. An applicant shall file with the Planning Director a request to undertake proportionate share mitigation pursuant to this Section and, in the case of an application to undertake mitigation by improving a state road, provide notice of such to the Florida Department of Transportation ("FDOT").

511.4.3. A pre-application meeting may be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is a State or federal facility, then FDOT will be notified and invited to participate in the pre-application meeting.

511.4.4. An applicant shall submit a formal application to the County that includes the application fee established pursuant to the County's fee ordinance, 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 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 Transportation CLOS application; and
- (h) Such other items as may be required by the County Administrator.

511.4.5. The County Administrator shall review the application and determine whether the application is sufficient, complete, and consistent with requirements of this Section. If an application is determined to be insufficient, incomplete or inconsistent with the requirements of this Section, 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 abandoned. The Planning Director may grant an extension of time to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to affect a cure.

511.4.6. For any application to undertake proportionate fair-share mitigation for development impacts to facilities on the SIS, the applicant shall submit evidence satisfactory to the County of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

511.4.7. 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 by the applicant with direction from the County, and delivered to the appropriate parties for review, including a copy to FDOT for any proposed proportionate fair-share mitigation on a SIS facility.

511.4.8. The County shall provide reasonable notice to the applicant of the date of the Board meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Board.

511.5. Determining Proportionate Fair-Share Obligation.

511.5.1. 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. So long as the mitigation obligation of an applicant is determined in accordance with Section 511.5.3., hereof, the County shall retain the discretion to determine which form of mitigation is acceptable.

511.5.2. 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 regardless of the method of mitigation.

511.5.3. Pursuant to Section 163.3180(12), Florida Statutes, the methodology used to calculate an applicant's proportionate fair-share obligation shall be:

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

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 [§511.2];

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 or years each will be incurred.

511.5.4. 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 5-Year CIE (subject to any inflation or cost increase factors set forth in the 5-Year CIE). Where such information is not available, improvement cost shall be determined using one of the following methods:

511.5.4.1. For projects to improve roads other than State and federal roads, an estimate by the County of project costs based upon an engineer’s conceptual design acceptable to the County. In order to accommodate increases in construction material costs, project costs shall be [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]; and

511.5.4.2. For projects to improve State or federal roads, 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.

511.5.5. 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.

511.5.6. 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 in accordance with Section 807.8.6.3 hereof. 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 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 provide addition/mitigation in a value equal to 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 mitigation for projects funded in whole or in part with State or federal funds, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

511.6 Impact Fee Credit for Proportionate Fair-Share Mitigation

511.6.1. Proportionate fair-share mitigation made pursuant to this Section shall be applied as a credit against impact fees in accordance with the following requirements:

511.6.1.1. The mitigation provided by the applicant must be used to mitigate impacts to a transportation facility that is a component of the transportation facilities for which the applicant is required to pay transportation impact fees for the subject development.

511.6.1.2. The credit shall be an amount equal to the value of such mitigation, as determined pursuant to Section 511.5.

511.6.1.3. The credit shall be applied against only the portion of the applicant's impact fee that is a *pro rata* equivalent of the specific transportation facility in relation to the aggregate transportation facilities for which impact fees must be paid. The applicant shall still be responsible for paying the remaining impact fee obligation that corresponds to the transportation facilities for which no mitigation has been made, notwithstanding that the value of the mitigation may exceed the component of impact fees that correspond to the mitigated transportation facilities.

511.6.2. Impact fee credits for the proportionate fair-share contribution shall be determined at the time of approval of a proportionate fair-share agreement. Impact fees owed by the applicant shall be reduced per the applicable proportionate fair-share agreement as they become due per Section 807, or the County may collect impact fees from the applicant without reducing them and reimburse the applicant in an amount equal to such credit.

511.6.3. Major projects undertaken pursuant to Sections 511.2.3.1 and 2 which can demonstrate a significant benefit to the impacted transportation system may be eligible, pursuant to Section 807 of this Code, for impact fee credits notwithstanding that such projects are not included in the transportation facilities for which the applicant's impact fees are levied.

511.6.4. 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 authorized pursuant to Section 807.

511.7 Proportionate Fair-Share Agreements. All agreements for proportionate fair-share mitigation shall be approved in the form of development agreements pursuant to Section 1002 of this Code, and in accordance with the requirements of this Section 511.7. Additionally, an agreement for proportionate fair-share mitigation shall not be scheduled for consideration and approval by the Planning Commission or Board until the applicant has submitted an executed original agreement to the County in a form acceptable to the County Administrator and the County Attorney.

511.7.1. Upon execution of a proportionate fair-share agreement by the County, the applicant shall be eligible to receive a County Transportation CLOS, subject to the requirements of the Comprehensive Plan and this Code. Should the applicant fail to commence or complete development during the term of the Transportation CLOS, then the agreement shall automatically terminate, and the applicant shall be required to reapply.

511.7.2. Payment of the proportionate fair-share contribution is due in full no later than recording of the final plat or equivalent approval, or as otherwise provided in a proportionate fair-share agreement, 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 at the time of payment, pursuant to this Section, and adjusted accordingly.

511.7.3. All developer improvements authorized under this Section must be completed prior to recording of a final plat or equivalent approval, 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.

511.7.4. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to recording of the final plat or equivalent approval.

511.7.5. 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.

511.7.6. An applicant may submit a letter to withdraw its application at any time prior to its execution of the agreement. The application fee and any associated advertising costs to the County will be nonrefundable.

511.7.7. 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.

511.8 Appropriation of Fair-Share Revenues

511.8.1. Revenues received pursuant to this Section as proportionate fair-share mitigation shall be placed in the appropriate project account for funding of scheduled improvements in the 5-Year 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 for which the proportionate fair-share revenues were contributed. Proportionate fair-share revenues may also be used as the local match for funding under various FDOT cost-sharing programs.

511.8.2. In the event a scheduled facility improvement is removed from the 5-Year CIE, then the revenues collected for its construction may, in the discretion of the County, be applied toward the construction of another improvement that would mitigate the impacts of development pursuant to the requirements of Section 511.2.3.2.

511.8.3. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, Florida Statutes, the County 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 a FDOT cost-sharing program. Such coordination shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

511.8.4. Where an applicant, in performance of an agreement approved pursuant to this Section 511, constructs a transportation facility that is set forth in the 5-Year CIE as required pursuant to Section 511.2.3.1., hereof, and the cost of such construction exceeds the applicant's proportionate fair-share obligation calculated under Section 511.5, the County shall reimburse the applicant for the excess contribution using one or more of the following methods:

511.8.4.1. Impact fee credits may be awarded to the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the County.

511.8.4.2. An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.

511.8.4.3. The County may compensate the applicant for the excess contribution through payment or other consideration, or combination thereof, acceptable to the County and the applicant.

SECTION 4. Codification. The publisher of the County's Land Development Code, the Municipal Code Corporation, is directed to incorporate the above amendments into the Land Development Code.

SECTION 5. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall become effective immediately upon filing in the Office of the Secretary of State in Tallahassee, Florida.

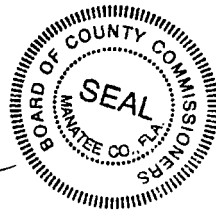
PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida this the 7th day of November, 2006.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: Joe McClash
Chairman

ATTEST: R.B. SHORE
Clerk of the Circuit Court

By: Rosa Romero
Deputy Clerk



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.
Witness my hand and official seal this 8th day of November, 2006
R.B. SHORE
Clerk of Circuit Court
By: R. Cavedo D.C.



STATE OF FLORIDA
DEPARTMENT OF STATE
STATE LIBRARY AND ARCHIVES OF FLORIDA

FILED FOR RECORD
R. B. SHORE

2006 NOV 20 PM 2: 54

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

SUE M. COBB
Secretary of State

JEB BUSH
Governor

November 15, 2006

Honorable R. B. "Chips" Shore
Clerk of Circuit Court
Manatee County
Post Office Box 25400
Bradenton, Florida 34206

Attention: Maggie Hamilton, Deputy Clerk

Dear Mr. Shore:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated November 8, 2006 and certified copies of Manatee County Ordinance Nos. 06-75, PDR-04-52(Z), 06-51, 06-69, 06-70, 06-71 and 06-81,* which were filed in this office on November 13, 2006.

As requested, the date stamped copies are being returned for your records.

Sincerely,

Liz Cloud
Program Administrator

LC/bpn
Enclosures

DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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ADMINISTRATIVE CODE AND WEEKLY
850.245.6270 • FAX: 850.245.6282

* Also includes Ordinance 06-76

From: ords@municode.com
Sent: Tuesday, November 28, 2006 10:51 AM
To: Quantana Acevedo
Subject: Acknowledgment of material received



Municipal Code Corporation
P.O. Box 2235
1700 Capital Circle SW. (32310)
Tallahassee, FL 32316-2235
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Manatee County, FL Land Development Code - 1990(12202)

Supplement 30

Recorded: **11/28/2006 10:45:31 AM**

We have received the following material through **E-Mail**.

Document	Adoption
Ordinance No. 06-51	11/7/2006
Ordinance No. 06-76	11/7/2006
Ordinance No. 06-75	11/7/2006

[Click here](#) to see the full list of recorded ordinances for the next supplement.

Or point your browsers at: <http://www.municode.com/disposition/dislist.asp?jobid=63455>

- Are you e-mailing us your ordinances? Send them to ords@municode.com
- Does your code need a legal review? We can help - e-mail for an estimate
- Ask us about electronic supplementation and our newest service N.O.W. posting ordinances in between supplements
- Need additional copies of your Charter? Zoning? Code? Binders? Divider Tabs?
- Also we have a GREAT new service where we provide Codes and Supplements to outside subscribers at no additional cost to the City. Contact our Distribution Department at dist@municode.com
- Looking for Records Management, imaging or indexing minutes services, we can help there too! Contact us for more information at info@mccinnovations.com.

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