

TOWN OF GREENWOOD ORDINANCE NUMBER 2009-01

**AN ORDINANCE OF GREENWOOD, FLORIDA TO BE KNOWN AS THE
TRANSPORTATION PROPORTIONATE FAIR SHARE MITIGATION
ORDINANCE;**

WHEREAS, the Greenwood Town Council finds that adoption of a Proportionate Fair Share Ordinance is required to comply with Chapter 163.3180(16), F.S.; and

WHEREAS, the Greenwood Town Council finds that a transportation mitigation process and funding methodology is required; and

WHEREAS, the Greenwood Town Council further finds that it is necessary to describe how it shall affect Proportionate Fair Share Mitigation of transportation impacts consistent with the State of Florida's legislative intent.

NOW, THEREFORE, BE IT ENACTED By the Town of Greenwood, Jackson County, Florida, that:

1. Purpose and Intent.

The purpose of the Transportation Mitigation Proportionate Fair Share Program 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 Transportation Mitigation Proportionate Fair-Share Program, as required by and in a manner consistent with Chapter 163.3180(16), F.S.

2. Findings.

The Greenwood Town Council finds and determines that capacity on transportation facilities is a commodity that has a value to both the public and private sectors and that a Town adopted Transportation Mitigation Proportionate Fair-Share Program would:

- (A) Provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
- (B) Allow developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost to improve or construct a transportation facility;

- (C) Contribute to the provision of adequate public transportation facilities for future growth and promote a strong commitment to comprehensive transportation facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
- (D) Maximize the use of public funds for adequate transportation facilities to serve future growth and may, in certain circumstances, allow the Town to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Program; and
- (E) Be consistent with the requirements of Chapter 163.3180(16), F.S.

3. Applicability and Exclusions.

- (A) *Applicability.* The Transportation Mitigation Proportionate Fair-Share Program shall apply to all developments within the Town of Greenwood that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility monitored by the Town of Greenwood Transportation Concurrency Management System, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations.
- (B) *Exclusions.* The Transportation Mitigation Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under Chapter 163.3180(12), F.S., or to developments exempted from concurrency as provided in Chapter 163.3180, F.S., regarding exceptions and *de minimis* impacts. Also excluded are transportation improvements required for public safety and site access requirements. The Town of Greenwood reserves the right to choose which transportation improvements are to be included or excluded from the Transportation Mitigation Proportionate Fair-Share Program. If the Town chooses to exclude a transportation improvement from the Transportation Mitigation Proportionate Fair-Share Program, the developer may pay in full for all required transportation concurrency improvements in order to receive a development order. The Town of Greenwood reserves the right to deny approval of a development order for which improvements needed to meet concurrency requirements cannot be funded in by the developer.

4. General Requirements.

To satisfy transportation concurrency roadway deficiencies, an applicant may elect to participate in the Town's Transportation Proportionate Fair Share Program under the following conditions:

- (A) The proposed development is consistent with the Town's Comprehensive Plan and any applicable land development requirements identified in the Town's Land Development Regulation/Code.
- (B) The five-year schedule of capital improvements in the Town's Capital Improvements Plan (CIP) includes the necessary transportation improvement(s) that, upon completion, will satisfy the requirements of the Transportation Concurrency Management System to support the additional traffic estimated to be generated by a proposed land development project.
- (C) If the necessary transportation improvement(s) needed to satisfy concurrency are not presently contained within the five-year schedule of capital improvements in the Town's Capital Improvements Plan (CIP), the Town may choose to allow an applicant to satisfy transportation concurrency through the Transportation Mitigation Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will satisfy the requirements of the Transportation Concurrency Management System to support the additional traffic estimated to be generated by a proposed land development project, where the following apply:
 - (1) The Town Council's vote to add the improvement to the five-year schedule of capital improvements in the Town's Capital Improvements Plan (CIP) no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be determined to be financially feasible pursuant to Chapter 163.3180(16)(b)1, F.S., consistent with the Town's Comprehensive Plan, and in compliance with the provisions of the Town of Greenwood Land Development Regulations/Code. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed ten (10) years to fully mitigate impacts of the proposed land development project on the Town's transportation facilities.
 - (2) If the funds allocated for the five-year schedule of capital improvements in the Town's Capital Improvements Plan (CIP) are insufficient to fully fund construction of a transportation improvement required by the Transportation Concurrency Management System, the Town may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of a land development project 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 Town or other governmental entity(ies) maintaining the transportation facility(ies), significantly benefit the impacted transportation system.
 - (3) If there are no funds allocated for the project in the five-year schedule of capital improvements in the Town's Capital Improvements Plan (CIP) or the funds allocated are insufficient and the Town is unable or unwilling to pay for

- (4) the improvements needed to satisfy concurrency requirements, the developer may pay for all improvements in order to satisfy development order requirements.

The type of improvement(s) considered for funding by this provision will be at the discretion of the Town. Also, any improvement(s) funded by proportionate fair-share under this provision must be adopted into the five-year capital improvements schedule of the Town's Capital Improvements Plan (CIP) at the next annual update of the CIP.

- (D) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the Town for locally maintained roadways, of the County on County maintained roadways, and those of the Florida Department of Transportation for State Highway System.

5. Intergovernmental Coordination.

Pursuant to Objectives in the Intergovernmental Coordination Element of the Town of Greenwood Comprehensive Plan, the Town shall coordinate with affected jurisdictions (in accordance with Sec. 11), 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 or Memorandum of Understanding (MOU) may be established with other affected jurisdictions for this purpose.

6. Application Process.

The Transportation Mitigation Proportionate Fair-Share Program shall be administered according to the following procedures:

- (A) Consistent with the Town's development review process of the Town of Greenwood Land Development Regulations/Code), 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 Transportation Mitigation Proportionate Fair-Share Program.
- (B) Prior to submitting an application for a transportation mitigation 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 transportation facility is on the Strategic Intermodal System (SIS), then the Florida Department of Transportation (FDOT) will be notified and invited to participate in the pre-application meeting, pursuant to Chapter 163.3180(16)(e), F.S.

(C) Eligible applicants shall submit an application to the Town that includes an application fee in accordance with the Town's fee schedule and the following:

- (1) Name, address and phone number (and email if available) of owner(s), developer(s), and agent(s);
- (2) Property location and size, including parcel identification numbers;
- (3) Copy of the recorded deed, including the legal description;
- (4) Boundary Survey of the property;
- (5) Project description, including type, intensity and amount of development;
- (6) Phasing schedule, if applicable;
- (7) Description of requested proportionate fair-share mitigation method(s); and
- (8) Copy of transportation concurrency analysis and Town-issued letter notifying the applicant of a lack of capacity.

(D) The Town staff shall review the application and certify that the application is sufficient and complete within 30 working days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Transportation Mitigation Proportionate Fair-Share Program, then the applicant will be notified in writing of the reasons for such deficiencies within 30 working days of submittal of an application. If the applicant does not remedy such deficiencies within 60 days of receipt of the written notification, then the application will be deemed abandoned. The Town Council 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.

Any Preliminary Concurrency Certificate that was issued by the Town shall remain valid while the Proportionate Fair Share Agreement is under review.

(E) Pursuant to Chapter 163.3180(16)(e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System (SIS) requires the concurrence of the Florida Department of Transportation (FDOT). The applicant shall submit evidence of an agreement between the applicant and 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 Town and delivered to the applicant and the jurisdiction maintaining the transportation facility that is subject of the agreement, for review (i.e. Jackson County or FDOT for any proposed proportionate fair-share mitigation on a Strategic Intermodal System (SIS) facility), no later than 90 days from the date at which the applicant received the notification of a sufficient application and no fewer than 21 days prior to the Town Council meeting when the agreement will be considered.
- (G) The Town shall notify the applicant regarding the date of the Town Council meeting and when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until formally approved by the Town Council.
- (H) A Preliminary Certificate of Transportation Concurrency shall remain valid while an application for a transportation mitigation proportionate fair-share agreement, consistent with Section 6 is being processed. However it does not infer or constitute development approval.

7. Determining Proportionate Fair-Share Obligation.

This section establishes the methodology for determining the proportionate fair-share obligation of the applicant:

- (A) Pursuant to Chapter 163.3180(16)(c), F.S., 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) Pursuant to Chapter 163.3180(16)(c), F.S., 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 in Section 163.3180 (12), F.S. 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

$$\text{Proportionate Fair-Share} = 3(\text{Development Trips}_i)/(\text{SV Increase}_i)] * \text{Cost}_i]$$

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 Transportation Concurrency Management System or have further degraded the level of service (LOS) of an already deficient roadway segment (only those trips that trigger a concurrency deficiency, as identified in the applicant’s submitted Transportation Concurrency Analysis, would be included in the proportionate fair-share calculation);

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment “i” per Section 4 that will maintain the adopted level of service (LOS) on roadway segment “i”;

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) The context of the term “cumulative” in Section 7(C), includes only those trips from the stage or phase of a development being considered in the application. The trips expected to reach the failing roadway for this calculation are those identified in the development’s transportation concurrency analysis. All assumptions used in the proportionate fair-share calculation shall be consistent with the provisions of the Town’s transportation concurrency review procedures and the maintenance of the Transportation Concurrency Management System.

(E) For the purposes of determining proportionate fair-share obligations, the Town shall determine improvement costs based upon actual cost of the improvement as obtained from the Capital Improvements Plan (CIP) or the Florida Department of Transportation’s Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:

(1) An analysis by the Town of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the Town Council. In order to accommodate increases in construction material costs, project costs shall be adjusted by the inflation factor established by FDOT’s Long Term Construction Cost Inflation Forecast; or

- (2) The most recent issue of FDOT *Transportation Costs*; locally available data from recent projects on right-of-way 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.
- (F) If the Town 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.
- (G) If the fair-market value of an alternative form of fair-share mitigation is less than the total proportionate fair-share obligation as determined by one of the methods provided in this section, the applicant must pay the difference. The Town may accept forms of proportionate fair-share mitigation that exceeds the actual value calculated by one of the methods provided in this section. However, under no circumstances shall the Town approve an application that obligates the Town to compensate an applicant for proportionate fair-share mitigation that exceeds the value calculated by one of the methods provided in this section.
- (H) If the Town has accepted right-of-way dedication as a form of proportionate fair-share mitigation, credit for the dedication of the related right-of-way shall be valued on the date of the dedication at 115 percent of the most recent assessed value by the Jackson County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the Town and at no expense to the Town. The applicant shall supply a certified survey and legal description of the land and certificate of title or title search of the land to the Town at no expense to the Town. If the estimated value of the right-of-way dedication proposed by the applicant is less than the Town estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference.

8. Impact Fee Credit for Proportionate Fair-Share Mitigation.

At which time the Town adopts an impact fee ordinance related to transportation facilities, the following provisions shall apply:

- (A) 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 transportation improvement contemplated by a Town impact fee ordinance. Credits will be applied toward the portion of the applicant's transportation impact fees that would have been used to fund the improvement on which the proportionate fair-share mitigation is calculated. If the proportionate fair-share mitigation is based on only a portion of the

- (B) development's traffic, the impact fee credit will be limited to that portion of the impact fees on which the proportionate fair-share mitigation is based.
- (C) 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 owned by the applicant will be reduced per the Proportionate Fair-Share Agreement as they become due per an applicable Town-adopted 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 Town pursuant to the requirements of the applicable Town-adopted impact fee ordinance.
- (D) 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.

9. Proportionate Fair-Share Agreements.

- (A) Upon execution of a Proportionate Fair-Share Agreement, and having satisfied all other requirements for a transportation concurrency determination, the applicant shall receive a Certificate of Transportation Concurrency. Should the applicant fail to apply for the appropriate building permit(s) within 12 months of the execution of the Proportionate Fair-Share Agreement, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.
- (B) Payment of the proportionate fair-share or other contribution necessary to meet concurrency requirements is due in full prior to issuance of the Final Development Order or execution of the final plat and shall be non-refundable. If a building permit is applied for more than 12 months from the date of execution of the Proportionate Fair-Share 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 8 and adjusted accordingly.
- (C) All developer improvements authorized under a Proportionate Fair-Share Agreement must be completed prior to issuance of the appropriate building permit(s), or as otherwise established in a binding agreement that is accompanied by proportionate fair-share contributions (in the form of a security instrument approved by the Town Council) that are sufficient to ensure the completion of all required improvements.

- (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 execution of the final plat.
- (E) Any requested change to a land development project subsequent to the issuance of the 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) Applicants may submit a letter to withdraw from the Proportionate Fair-Share Agreement at any time prior to the execution of the Agreement, or the issuance of a Certificate of Transportation Concurrency. The application fee and any associated advertising costs to the Town will be non-refundable.
- (G) By approval of the Town Council, the Town may consider joint applications for proportionate fair-share mitigation to facilitate collaboration among multiple applicants on improvements to a shared transportation facility. Such applications may include coordination with other jurisdictions through inter-local agreements.

10. Appropriation of Fair-Share Revenues.

This section establishes the methods for appropriating the revenue from proportionate fair-share contributions.

- (A) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the Town's Capital Improvements Plan (CIP), or as otherwise established in the terms of the Proportionate Fair-Share Agreement, Certificate of Transportation Concurrency, or other development approval conditions. At the discretion of the Town, proportionate fair-share revenues may be used for operational improvements prior to construction of the project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50% local match for funding under FDOT's Transportation Regional Incentive Program (TRIP).
- (B) In the event a scheduled facility improvement is removed from the Capital Improvements Plan (CIP), then the revenues collected for its construction shall be applied toward the construction of other transportation improvements in the CIP or the construction of another improvement within the Town that would mitigate the impacts of development pursuant to the requirements of Section 4(C)(2).

11. Cross Jurisdictional Impacts.

Consistent with the Intergovernmental Coordination Element in the Town's Comprehensive Plan, this section provides an opportunity for the Town to address the impacts of a proposed development near its border with Jackson County. It is intended as a means of managing development on regional transportation facilities.

(A) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the Town may enter into an agreement with Jackson County on regional transportation facilities. The agreement shall provide for the application of the methodology in this section to address the cross-jurisdictional transportation impacts of development.

(B) A development application submitted to the Town subject to transportation concurrency review meeting all of the following criteria shall be subject to this section:

- (1) All or part of the proposed development is located within 0.25 mile of the area which is under the jurisdiction, for transportation concurrency of the Town of Greenwood; and
- (2) Using its own concurrency analysis procedures, the Town concludes that the additional traffic from the proposed development would use five percent (5%) or more of the adopted peak hour maximum service volume at the adopted level of service (LOS) standard of a regional transportation facility within the concurrency jurisdiction of the adjacent local government; 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 the Town shall notify the applicant and Jackson County 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) Jackson County shall have up to 60 days in which to notify the Town of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. Jackson County must provide reasonable justification that both the amount of the payment and its intended use comply with requirements of Section 163.3180(16), F.S. Should Jackson County 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 Town.

- (2) If the subject application is subsequently approved by the Town, the approval shall include a condition that the applicant provides, prior to the issuance of any development order covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. The Town may require Jackson County to declare, in a resolution, ordinance or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

12. Aggregation.

Properties near and adjacent to the submitted application owned by the same property owner or owner(s) shall be reviewed for Aggregation.

The legal description for determining whether two (2) or more properties shall be considered separate or aggregated as provided in Chapter 380.065(14) F.S. and as stated in Rule 9J-2.0275, F.A.C., shall apply to all proposed land development projects in the Town of Greenwood.

13. Guarantee of adequate capacity.

Upon determination of adequate capacity as described in this article the Town shall guarantee to the developer availability of capacity in the types, amounts, or volumes specified in the final development order or development agreement. Such guarantees of available capacity shall be valid for a period of six months from the date the final development order is issued.

Any guarantee of adequate capacity shall become null and void in the event circumstances beyond the control of the Town cause adequate capacity to become unavailable. Such circumstances shall include, but not be limited to: acts of other governmental agencies; war; act of God; or, changes in laws, rules or other legislative actions.

14. SEVERABILITY. Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision of this ordinance is declared invalid, all other provisions thereof shall remain valid and enforceable.

15. REPEALER. All other ordinances or portions of ordinances in force at the time this ordinance becomes effective which are in conflict with any provisions hereof shall be deemed to have been repealed to the extent of any such conflict, otherwise to remain in full force and effect.

16. EFFECTIVE DATE. This Ordinance shall become effective upon its adoption by the Town Council as provided by law.

PRESENTED AND READ TO THE TOWN COUNCIL OF THE TOWN OF
GREENWOOD, FLORIDA ON THE 12th DAY OF May, 2009.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF
GREENWOOD, FLORIDA ON THE 9th DAY OF June, 2009.

ATTEST:

Suzanne M. NeSmith
Suzanne M. NeSmith, Town Clerk

Charles Sanders, Mayor
Charles Sanders, Mayor