

MODEL ORDINANCE FOR PROPORTIONATE FAIR-SHARE MITIGATION OF DEVELOPMENT IMPACTS ON TRANSPORTATION CORRIDORS

PROBLEM STATEMENT

Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development. To carry out transportation concurrency, local governments must define what constitutes an adequate level of service and measure whether the service needs of a new development outrun existing capacity and any scheduled improvements in the capital improvements element. If adequate capacity is not available, the local government cannot permit development unless certain conditions apply as provided for in statute, such as “de minimis” exemptions for developments having only minor impacts or concurrency exception areas to encourage infill and redevelopment.

The 2005 amendments to Florida’s growth management legislation directed local governments to enact by December 1, 2006 concurrency management ordinances that allow for “proportionate share” contributions from developers (i.e., toward meeting concurrency requirements). The intent of the proportionate fair-share option is to provide applicants for development an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

The Florida Department of Transportation (FDOT) was directed to develop a model ordinance for proportionate fair-share contributions for use by local governments by December 1, 2005. This model proportionate fair-share ordinance is the result of a collaborative effort between the FDOT, the Center for Urban Transportation Research (CUTR), a Technical Advisory Committee comprised of transportation and development professionals with experience in concurrency management, and a cross-section of Florida developers and their consultants.

OBJECTIVES

The objectives of the research included the following:

- **Assemble and Convene a Technical Committee:** A Technical Committee comprised of representatives from agencies with experience and expertise in fair share and/or concurrency management systems was assembled to provide input and advice on the proposed model ordinance. The Technical Committee convened twice during the course of the project.
- **Obtain Developers’ Input:** A roundtable was convened, with the FDOT project manager and representatives from the development community in attendance. The purpose of the roundtable was to obtain specific input from developers and/or their consultants with regard to (1) their experiences with fair share mitigation and (2) the conceptual approach(es) being considered for application in the preliminary draft ordinance.

- **Conduct Literature and Current Practice Review:** CUTR conducted a comprehensive review of the new legislation, literature, and current practices in proportionate-share mitigation of development impacts on transportation to provide a basis for developing the model ordinance specified in the new growth management legislation. A Technical Memorandum summarized the findings.
- **Develop Model Ordinance for Proportionate Share Mitigation:** CUTR developed a model ordinance for the assessment of proportionate-share mitigation to be used as a framework by local governments in complying with growth management legislation regarding proportionate fair share ordinances. The model reflected information gathered from the Technical Committee, the Developers' Roundtable, and an extensive list of interested parties; it was further refined using input received at a statewide workshop for local practitioners and interested parties.

FINDINGS AND CONCLUSIONS

This model ordinance provides a series of options that are intended as a framework for proportionate fair-share programs. The ordinance language sets forth the proportionate fair-share mitigation options in a manner consistent with and as required by Section 163.3180(16), Florida Statutes, and has been crafted to tie to existing local government concurrency management systems. Because conditions vary throughout the state, local governments would not be expected to adopt the ordinance verbatim, as it does not address all issues that may arise within a particular context. Rather, the model ordinance is a technical assistance product that local governments will need to adapt to their particular situations. The model ordinance contains some options that a local government may consider depending upon its needs. Local governments should obtain professional planning and legal assistance when adapting this model regulatory language to fit local needs.

BENEFITS

The model ordinance establishes a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, as required by and in a manner consistent with §163.3180(16), Florida Statutes. It would allow 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. Such an ordinance can 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 moratoria or unacceptable levels of traffic congestion. The model ordinance may, in certain circumstances, allow a local government to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element. It would also promote much greater levels of intergovernmental coordination in transportation concurrency management by encouraging the application of developer contributions toward local transportation projects of other agencies (e.g., FDOT, county, or transit).

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