

**CITY OF MARCO ISLAND
ORDINANCE 07-02**

AN ORDINANCE TO AMEND CHAPTER 30, ARTICLE X, CONCURRENCY MANAGEMENT, OF THE MARCO ISLAND LAND DEVELOPMENT CODE BY CREATING SECTION 30-722, TRANSPORTATION PROPORTIONATE FAIR-SHARE; TO PROVIDE FOR PROPORTIONATE FAIR-SHARE MITIGATION OF DEVELOPMENT IMPACTS ON TRANSPORTATION CORRIDORS IN THE CITY OF MARCO ISLAND; CONSISTENT WITH CHAPTER 163.3180(16), F.S.; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions, and codes as may be required for the good governing of the City; and

WHEREAS, the City staff has been requested by the City Council to draft amendments to the Land Development Code (LDC); and

WHEREAS, following a public hearing, the Planning Board considered the recommendation of staff and public input and recommended that proposed text amendments to the City's Land Development Code be adopted; and

WHEREAS, after considering the recommendation of the Planning Board and the City staff and following two advertised public hearings on the subject, the City council has determined it is in the best interest of the City of Marco Island to adopt the proposed text amendments to the City's Land Development Code relating to the Board of Zoning Appeals; and

WHEREAS, the City of Marco Island is required to adopt a Proportionate Fair-share Mitigation Ordinance for mitigation of development impacts on transportation corridors within the City pursuant to Chapter 163.3180(16), F.S.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

Section 1. That Article X of the Marco Island Land Development Code shall be amended to create Section 30-722, Transportation Proportionate Fair-share, to provide

for proportionate fair-share mitigation of development impacts on transportation corridors in the City of Marco Island as follows:

Section 30-722. TRANSPORTATION PROPORTIONATE FAIR-SHARE

Sec. 30-723. Purpose and Intent.

The purpose of this Article 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 Chapter 163.3180(16), F.S.

Sec. 30-724. Applicability.

The Proportionate Fair-Share Program shall apply to all developments in the City of Marco Island that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the City Concurrency Management System, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations. The 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.

Sec. 30-725. General Requirements.

- (a) An applicant may choose to satisfy the transportation concurrency requirements of the City of Marco Island 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.
 - (2) The five-year schedule of capital improvements in the City of Marco Island CIE or the long-term schedule of capital improvements for an adopted long-term CMS includes a transportation improvement(s) that, upon completion, will satisfy the requirements of the City of Marco Island transportation CMS. The provisions of Section 30-725 (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 capital improvements.
- (b) The City of Marco Island may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program

by contributing to an improvement that, upon completion, will satisfy the requirements of the City of Marco Island transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:

- (1) The City of Marco Island adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital 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 City manager or designee, 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 funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.
- (2) If the funds allocated for the five-year schedule of capital improvements in the City of Marco Island CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the City of Marco Island 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 City of Marco Island for locally maintained roadways and those of the FDOT for the state highway system.

Sec 30-726. Intergovernmental Coordination.

Pursuant to policies in the Intergovernmental Coordination Element of the City of Marco Island comprehensive plan and applicable policies in the

Southwest Florida Regional Planning Council Regional Plan, the City of Marco Island shall coordinate with affected jurisdictions, including Collier County and 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.

Sec. 30-727. 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 Proportionate Fair-Share Program pursuant to the requirements of Section 30-725.
- (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 SIS, then the FDOT and Collier County will be notified and invited to participate in the pre-application meeting.
- (c) Eligible applicants shall submit an application to the City of Marco Island that includes any application fee as may be included in the City's Schedule of Fees 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 City Manager or designee shall review the application and certify that the application is sufficient and complete. 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 30-725, 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 Marco Island City 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 effect a cure.

- (e) Pursuant to §163.3180(16) (e), F.S., 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 City of Marco Island or the applicant with direction from the City of Marco Island 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 days from the date at which the applicant received the notification of a sufficient application and no fewer than 30 days prior to the City Council meeting when the agreement will be considered.
- (g) The City of Marco Island shall notify the applicant regarding the date of the City Council meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Marco Island City Council.

Sec. 30-728. Determining 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 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

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

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 30-725;

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 City of Marco Island 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 City of Marco Island of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the City Council. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; 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 City of Marco Island 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 City of Marco Island 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 120 percent of the most recent assessed value by the Collier County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the City of Marco Island and at no expense to the City of Marco Island. 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 of Marco Island at no expense to the City of Marco Island. If the estimated value of the right-of-way dedication proposed by the applicant is less than the City of Marco Island 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.

Sec. 30-729. Impact Fee Credit for Proportionate Fair-Share Mitigation.

- (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 capital infrastructure improvements contemplated by Collier County's Impact Fee Ordinance.
- (b) 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 owed by the applicant will be reduced per the Proportionate Fair-Share Agreement as they become due per the City of Marco Island 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 Collier County pursuant to the requirements of the Collier County Impact Fee Ordinance.
- (c) Major projects not included within Collier County's Impact Fee Ordinance or created under Section 30-725 (b) (1) and (2) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the Collier County's discretion for impact fee credits.
- (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 unless provided for within Collier County's Impact Fee Ordinance.

Sec. 30-730. Proportionate Fair-Share Agreements.

- (a) Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a City certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months or timeframe provided in the local CMS of the execution of the 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 contribution is due in full prior to issuance of the final development order or recording of the final plat 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 Section 30-728 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) Applicants 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 City of Marco Island will be non refundable.
- (g) The City of Marco Island may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

Sec. 30-731. Appropriation of Fair-Share Revenues.

- (a) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the City of Marco Island CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, 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 50% local match for funding under the FDOT TRIP.
- (b) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the

construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section 30-725 (b) (2).

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, F.S., and then the City of Marco Island 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 the FDOT TRIP. Such coordination shall be ratified by the City of Marco Island through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

- (c) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under Section 30-728, the City of Marco Island shall reimburse the applicant for the excess contribution using one or more of the following methods:
 - (1) An impact fee credit account may be established for 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 City of Marco Island.
 - (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.
 - (3) The City of Marco Island may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the City of Marco Island and the applicant.

Sec. 30-732. Optional Provisions.

- (a) Cross Jurisdictional Impacts
 - (1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the City of Marco Island may enter an agreement with Collier County or the Florida Department of Transportation 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. This Ordinance may be amended as necessary in the future to reflect any such agreements.

- (2) A development application submitted to the City of Marco Island subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:
- a. All or part of the proposed development is located within 1 mile of the area which is under the jurisdiction, for transportation concurrency, of Collier County or the Florida Department of Transportation; and
 - b. Using its own concurrency analysis procedures, the City of Marco Island concludes that the additional traffic from the proposed development would use five percent or more of the adopted peak hour Level of Service maximum service volume of a regional transportation facility within the concurrency jurisdiction of Collier County or Florida Department of Transportation ("impacted regional facility"); and
 - c. The impacted regional facility is projected to be operating below the level of service standard, adopted by Collier County or Florida Department of Transportation, when the traffic from the proposed development is included.
- (3) Upon identification of an impacted regional facility pursuant to subsections 2 (a) – (c), the City of Marco Island shall notify the applicant and Collier County or Florida Department of Transportation 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.
- a. Collier County or Florida Department of Transportation shall have up to ninety (90) days in which to notify the City of Marco Island of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. Collier County or Florida Department of Transportation must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Chapter 163.3180(16), F.S. Should Collier County or Florida Department of Transportation 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 City of Marco Island.
 - b. If the subject application is subsequently approved by the City of Marco Island, 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 Collier County or Florida Department of Transportation has been satisfied. The City of Marco Island may require Collier County or Florida Department of Transportation to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

- (4) Proportionate Share Program for TCEAs, TCMAs, and MMTDs. Within the any local TCMAs, and/or MMTDs, and/or TCEAs, the City of Marco Island hereby establishes a proportionate fair-share assessment, based on the expected costs and transportation benefits of all the programmed improvements within that District, and based on the expected trip generation of the proposed development.

Sec. 30-733. Method for Cost Escalation.

This Section contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages.

$$Cost_n = Cost_0 \times (1 + Cost_growth_{3yr})^n$$

Where:

- Cost_n = The cost of the improvements in year n;
- Cost₀ = The cost of the improvement in the current year;
- Cost_{growth}_{3yr} = The growth rate of costs over the last three years;
- n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$Cost_growth_{3yr} = [Cost_growth_{-1} + Cost_growth_{-2} + Cost_growth_{-3}] / 3$$

Where:

- Cost_{growth}_{3yr} = The growth rate of costs over the last three years;
- Cost_{growth}₋₁ = The growth rate of costs in the previous year;
- Cost_{growth}₋₂ = The growth rate of costs two years prior;
- Cost_{growth}₋₃ = The growth rate of costs three years prior.

Section 2. That is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered to accomplish such intention.

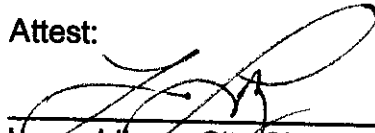
Section 3. If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 4. That all sections or part of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict therewith, be and the same are hereby repealed to the extent of such conflict.

Section 5. This ordinance shall take effect immediately upon approval by the Marco Island City Council on second reading and public hearing.


Passed in open and regular session through roll call vote of the City Council of the City of Marco Island, Florida, this 22nd day of January 2006.

Attest:



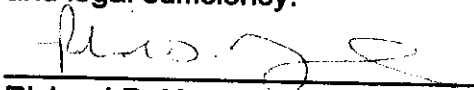
Laura Lizan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY: 

Terri DiSciullo, Chairwoman

Approved as to form
and legal sufficiency:



Richard D. Yovanovich, Esquire
City Attorney