

ORDINANCE NO. 2008 - 07

**AN ORDINANCE OF SANTA ROSA COUNTY, FLORIDA, PROVIDING FOR A TRANSPORTATION PROPORTIONATE FAIR-SHARE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA ROSA COUNTY, FLORIDA:**

**SECTION 1. TITLE.** This Ordinance shall be known and may be cited as the “Santa Rosa County Transportation Proportionate Fair-Share Ordinance.”

**SECTION 2. PURPOSE AND INTENT.** The purpose of this ordinance 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 Section 163.3180(16), F.S.

**SECTION 3. FINDINGS.** The Commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and the County Proportionate Fair-Share Program:

(A) Provides 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) Allows 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;

(C) 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 congestion;

(D) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element.

4.1.D.2.1. through 4.1.D.7.; Objective 4.1.E, Policies 4.1.E.1 through 4.1.E.7.; Objective 4.1.G.; Objective 4.1.J, Policies 4.1.J.1. and 4.1.J.3.

**SECTION 4. APPLICABILITY.** The Proportionate Fair-Share Program shall apply to all developments in Santa Rosa County that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the Santa Rosa County Concurrency Management System, including facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations pursuant to the requirements of Section 7. The Proportionate Fair-Share Program does not apply to the following developments:

(A) Transportation concurrency exception areas and others exempted from concurrency as provided in Section 163.3180(5), F.S.,

(B) Developments of regional impact (DRIs) using proportionate share under Section 163.3180(12), F.S.

(C) Those with de minimus impacts on the roadway system as provided by Section 163.3180(6), F.S., and Santa Rosa County Comprehensive Plan Policy 4.1.D.3.

**SECTION 5. DEFINITIONS.** When used in this Ordinance, the following terms shall have the following meanings unless the content clearly requires. To the extent there is any conflict between the definitions set out below and the definitions set forth in Section 3.00.01 of the Santa Rosa County Land Development Code, the definitions contained in Section 3.00.01 prevail.

**“Capital Improvements Element”** shall mean the element of the County Comprehensive Plan which includes a schedule of capital improvements.

**“Concurrency”** shall mean transportation facilities needed to serve new development shall be in place or under actual construction within three years after the local government approves a building permit or its functional equivalent that results in traffic generation. Section 163.3180(2)(c), F.S. While Section 163.3180 addresses concurrency of other infrastructure as well, in this ordinance, concurrency refers to transportation.

**“Concurrency Administrator”** shall mean the County staff who administer the

development orders and development permits, (2) a requirement that the local government Capital Improvements Element sets forth a financially feasible plan which demonstrates that the adopted LOS will be achieved and maintained by the end of the planning period even if in a particular year such improvements are not concurrent, (3) a system for monitoring and ensuring adherence to the adopted LOS standards, the schedule of capital improvements, and the availability of transportation capacity, (4) guidelines for interpreting and applying LOS standards to applications for development orders and development permits and determining when the test for concurrency must be met, and (5) a requirement that the local government shall adopt land development regulations which specify and implement provisions of the concurrency management system and, as a minimum, provide a program that ensures that development permits are issued in a manner that will not result in a reduction in the levels of service below the adopted LOS standards for the affected facility.

**“Development of Regional Impact (DRI)”** shall mean a development which, because of its character, magnitude, or location would have a substantial effect upon the health, safety or welfare of citizens of more than one county. Chapter 380.06, F.S. establishes the procedure by which the review of these projects is to be coordinated by Florida’s Regional Planning Councils. Locally, the West Florida Regional Planning Council coordinates DRI reviews.

**“Developer Improvement”** shall mean one or more of the following: donation of right-of-way, construction of an improvement to an existing transportation facility, construction of a new transportation facility, improvement of an existing transportation service or implementation of a new transportation service.

**“Development Trips”** shall mean only those trips that trigger a concurrency deficiency to be included in the proportionate fair-share calculation.

**“Financial Feasibility”** shall mean that sufficient revenues are currently available or will be available from committed funding sources for the first three years, or will be available from committed or planned sources for years four and five, of a capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax

feasible for transportation and school facilities throughout the planning period addressed by the capital improvements schedule if it can be demonstrated that the level of service standards will be achieved and maintained by the end of the planning period even if in a particular year such improvements are not concurrent as required by Section 163.3180, F.S. (Section 163.3164 (32), F.S.) Financial feasibility shall be determined using professionally accepted methodologies and shall apply to the five-year planning period, except in the case of a long-term transportation or school concurrency management system, in which case financial feasibility requirements shall apply to the 10-year period or the 15-year period. (Section 163.3177 (2), F.S.)

**“Level of Service (LOS)”** for highways shall mean a quantitative stratification of the quality of service to a typical traveler on a facility into six letter grade levels with “A” describing the highest quality and “F” describing the lowest quality. The indicated LOS standards designate lowest acceptable operating conditions for the 100<sup>th</sup> highest volume hour in the year in the predominant flow direction. The 100<sup>th</sup> highest hour represents the typical peak hour during the peak season. (Rule 14-94.002, F.A.C.) The adopted LOS for roads in Santa Rosa County can be found in Article 5 of the Land Development Code.

**“Long Term Concurrency Management System”** shall mean a concurrency management system based on a 10 or 15-year schedule of capital improvements, rather than the traditional five-year schedule. Approval for a 15-year schedule must be obtained from the Florida Department of Community Affairs.

**“Maximum Service Volume”** shall mean the highest number of vehicles for a given level of service.

**“Multimodal Transportation District (MMTD)”** shall mean an area in which secondary priority is given to vehicle mobility and primary priority is given to assuring a safe, comfortable and attractive pedestrian environment with convenient interconnection to transit. Local government comprehensive plans may establish multimodal LOS standards within MMTDs pursuant to Section 163.3180(15), F.S.

**“Proportionate Fair-Share”** shall mean a contribution in the form of funds, right-of-

LOS standard, and no improvement is programmed within three years to achieve the adopted standard.

**“Strategic Intermodal System (SIS)”** shall mean the statewide and interregional transportation facilities and services pursuant to Section 339.64 -64, F.S. In Santa Rosa County, SIS facilities are I-10 and SR 87 from US 98 to I-10.

**“Transportation Concurrency Exception Area (TCEA)”** shall mean an area in which the local government may grant a transportation concurrency exception as provided in Chapter 163.3180(5), F.S.

**“Transportation Concurrency Management Area (TCMA)”** shall mean a geographically compact area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips. A TCMA may be designated in the local government comprehensive plan in accordance and Chapter 163.3180, F.S.

**“Transportation Improvement Program (TIP)”** shall mean the annually updated five-year program of transportation projects published by a TPO pursuant to Section 339.175 (6)(a), F.S.

**“Transportation Planning Organization (TPO)”** shall mean the organization established pursuant to Section 339.175, F.S. to develop, in cooperation with state and public transit operators, transportation plans and programs for metropolitan areas. Locally, the term “transportation planning organization” serves the function designated for a “metropolitan planning organization” in the Statute. Each Santa Rosa County Commissioner is a member of the Florida – Alabama Transportation Planning Organization (TPO).

**“Transportation Regional Incentive Program (TRIP)”** shall mean the grant program established by the State to improve regionally significant transportation facilities in regional transportation areas pursuant to Section 339.155 and Section 339.2819, F.S.

#### **SECTION 6. RULES OF CONSTRUCTION.**

For the purposes of administration and enforcement of this article, unless otherwise stated in this section, the following rules of construction shall apply:

(B) Words used in the present tense shall include the future and words in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(C) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and,” “or” or “either...or” the conjunction shall be interpreted as follows:

(1) *And* indicates that all the connected terms, conditions, provisions or events shall apply.

(2) *Or* indicates that the connected terms, conditions, provisions or events may apply singly or in any combination.

(3) *Either...or* indicates that the connected terms, conditions, provisions or events shall apply singly but not in combination.

(D) The word “includes” shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

#### **SECTION 7. GENERAL REQUIREMENTS.**

(A) An applicant may choose to satisfy the transportation concurrency requirements of the County 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 County Capital Improvements Element or the long-term schedule of capital improvements for an adopted long-term Concurrency Management System includes a transportation improvement(s) that, upon completion, will satisfy the requirements of the County transportation Concurrency Management System. The provisions of Section 7

(B) may apply if a project or projects needed to satisfy concurrency are not presently contained within the local government Capital Improvements Element

System, but is not contained in the five-year schedule of capital improvements in the Capital Improvements Element or a long-term schedule of capital improvements for an adopted long-term Concurrency Management System, where the following apply:

- (1) The County adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the Capital Improvements Element or long-term schedule of capital improvements for an adopted long-term Concurrency Management System not later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Santa Rosa Board of County Commissioners, and determined to be financially feasible pursuant to Section 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 within the planning period of the long term Concurrency Management System to fully mitigate impacts on the transportation facilities.
- (2) If the funds allocated for the five, 10 or 15-year schedule of capital improvements in the County Capital Improvements Element are insufficient to fully fund construction of a transportation improvement required by the Concurrency Management System, 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 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

(C) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the County for locally maintained roadways and those of FDOT for the state highway system.

**SECTION 8. INTERGOVERNMENTAL COORDINATION.**

Pursuant to policies in the Intergovernmental Coordination Element of the County comprehensive plan, the County shall coordinate with affected jurisdictions, 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 may be established with other affected jurisdictions for this purpose.

**SECTION 9. 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 7.

(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 or any other road on the State Highway System, then the FDOT will be notified and invited to participate in the pre-application meeting.

(C) Eligible applicants shall submit an application to the County that includes an application fee of \$1,000 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 denial.

reasons for such deficiencies within 15 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 60 days of receipt of the written notification, then the application will be deemed abandoned. The 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 effect a cure.

(E) Pursuant to Section 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.

(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 County or the applicant with direction from the County 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 45 days from the date at which the applicant received the notification of a sufficient application and no fewer than 30 days prior to the Commission meeting when the agreement will be considered.

(G) The County shall notify the applicant regarding the date of the Commission meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Commission, or pursuant to staff approval for agreements less than or equal to the dollar values established by Ordinance 2005-37 Santa Rosa County Roadway Impact Fee Ordinance.

#### **SECTION 10. 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 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 of  $[(\text{Development Trips}_i) / (\text{SV Increase}_i)] \times \text{Cost}_i$

Where:

Development Trips<sub>i</sub> = 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<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment per Section 7;

Cost<sub>i</sub> = Adjusted cost of the improvement to segment “i”. Cost shall include all roadway 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 purpose of determining proportionate fair-share obligations, the County shall determine the improvement costs based upon the cost of the improvement as obtained from the Capital Improvements Element, the Transportation Planning Organization Transportation Improvement Program 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 County of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the Planning Director, Public Works Director, or County Engineer. In order to accommodate

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 FDOT District 3. Project costs shall be adjusted by an inflation factor from the FDOT Work Program Instruction.

(E) 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.

(F) 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 on the date of the dedication at one hundred 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 County and at no expense to the County. 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 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.

**SECTION 11. 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 the local government's impact fee ordinance.

(B) Impact fee credits for the proportionate fair-share contribution will be determined

or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the County pursuant to the requirements of the County impact fee ordinance. Proportionate fair-share may not be paid over seven years but must be paid at one time pursuant to Section 12.

(C) Major projects not included within the local government's impact fee ordinance or created under Section 7(B)(1) and (2) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government'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 the local impact fee ordinance.

**SECTION 12. PROPORTIONATE FAIR-SHARE AGREEMENTS.**

(A) Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a letter of concurrency approval. Should the applicant fail to apply for a building permit within 12 months, 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 building permit or recording of the final plat and shall be non-refundable unless the applicant retracts his development order and the trips are no longer vested in the concurrency management system. 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 9 and adjusted accordingly.

(C) All developer constructed improvements authorized under this ordinance must be completed prior to issuance of a building permit or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the

(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 building permit 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 County will be non-refundable.

(G) 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.

### **SECTION 13. 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 County Capital Improvements Element, 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 local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

(B) In the event a scheduled facility improvement is removed from the Capital Improvements Element, 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 Section 7(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 County may coordinate with other impacted jurisdictions and agencies to apply

**SECTION 14. PROPORTIONATE FAIR-SHARE PROGRAM FOR CONCURRENCY ALTERNATIVES.**

Within future TCEAs, TCMAAs, or MMTDs, Santa Rosa County 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.

**SECTION 15. SEVERABILITY.**

If any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

**SECTION 16. CODIFICATION.**

The provisions of this ordinance shall become and be made a part of the code of laws and ordinances of the County of Santa Rosa. The sections of this ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION 17. EFFECTIVE DATE.**

This Santa Rosa County Transportation Proportionate Fair-Share Ordinance shall take effect upon a copy of this ordinance being filed in the office of the Secretary of State within ten (10) ten days of enactment and shall take effect upon said filing.

**PASSED AND ADOPTED** by a vote of 5 yeas and 0 nays, and 0 absent of the Board of County Commissioners of Santa Rosa County, Florida, this 27<sup>th</sup> day of March, 2008.

**BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA**

By John Bros  
Chairman

**ATTEST:**

Mary M. Johnson  
Clerk

I, Mary M. Johnson, Clerk of Court of Santa Rosa County, Florida, do hereby certify that the same was adopted and filed of record and a copy deposited in the Postal Department of the United States of America for delivery by registered mail to the Secretary of State of Florida, on this 2<sup>nd</sup> day of April, 2008.