

## ORDINANCE NO. 531

**AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA, PROVIDING FOR A CLEAR METHOD WHEREBY THE IMPACTS OF DEVELOPMENT ON PUBLIC 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.; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.**

BE IT ENACTED BY THE PEOPLE OF THE CITY OF MEXICO BEACH, BAY COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Purpose: The purpose of this Ordinance is to describe the 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 §163.3180(16), F.S.

SECTION 2. Applicability: The Proportionate Fair-Share Program shall apply to all applicants for developments in the City of Mexico Beach ("City") that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility governed by the City Concurrency Management System as set out in Ordinance No. 532, as may be amended or superseded ("Concurrency Management Ordinance"), including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations.

SECTION 3. Exclusions: The Proportionate Fair-Share Program does not apply to a multiuse development of regional impact (DRI) using proportionate fair share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in the Comprehensive Plan, in Section 2006 of these regulations, and/or pursuant to the provisions of Chapter 163.3180, F.S., governing de minimis impacts. Also excluded are transportation improvements required for public safety, onsite roadway improvements, or offsite improvements otherwise required by these regulations for non-deficient roadway segments.

SECTION 4. Minimum Requirements for Proportionate Fair-Share Mitigation: Notwithstanding anything to the contrary in the Concurrency Management Ordinance, an applicant for development may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation only under the under the following conditions:

a. The proposed development is consistent with the comprehensive plan, this Ordinance, and applicable land development regulations.

b. The City 5-Year Capital Improvement Program (CIP) includes transportation improvements that, upon completion, will fully mitigate for the additional traffic generated by the proposed development.

c. If the City Concurrency Management System indicates that the capacity of the transportation improvement set forth in the CIP has already been consumed by the allocated trips of previously approved development, or the CIP does not reflect the transportation improvement needed to satisfy concurrency, then the provisions of Section 4.d. shall apply.

d. The City 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 fully mitigate for the additional traffic generated by the proposed development but is not contained in CIP as follows:

- i. The City Council votes to add the improvement to the CIP no later than the next regularly scheduled update of the CIP. To qualify for consideration under this section, the proposed improvement must be 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 section. The terms financial feasibility under this Ordinance mean that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate for the impacts of the proposed development on transportation facilities.
- ii. If the funds allocated for the CIP are insufficient to fully fund construction of a transportation improvement required by the concurrency management system, the City may enter into a Binding Proportionate Fair-Share Agreement with the applicant and as a condition of development approval authorize construction of that amount of development on which the proportionate fair share is calculated if the proposed proportionate fair-share mitigation will in the opinion of the City, or governmental entity maintaining the transportation facility, significantly benefit the impacted transportation system. Criteria governing this opinion include whether the proposed transportation improvements that would constitute proportionate fair-share mitigation are contained in an adopted short- or long-range transportation plan or program of the City, TPO, FDOT or local or regional transit agency. Proposed improvements not reflected in an adopted transportation plan or program that would significantly reduce access problems and congestion, trips or increase mobility in the impacted transportation system, such as new roads, additional right of way, service roads, operational improvements, improved network development, increased connectivity, roadway drainage, or transit oriented solutions, may also be considered at the discretion of the City. Any improvement or improvements funded by proportionate fair-share mitigation must be adopted into the CIP at the next regularly scheduled update of the CIP.

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

SECTION 5. Intergovernmental Coordination: Pursuant to policies in the Intergovernmental Coordination Element of the City comprehensive plan and applicable policies in the Transportation Planning Organization's Programs (such as the Unified Work Program, Transportation Improvement Program, Project Priorities, 2030 Long Range Transportation Plan, etc.) as amended, the City 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 6. Application Process: The Proportionate Fair-Share Program shall be governed by the following procedures.

a. Within 10 days of a determination of a lack of capacity to satisfy transportation concurrency, the applicant for development shall be notified in writing of the Proportionate Fair-Share Program and this Ordinance.

b. Prior to submitting an application for proportionate fair-share mitigation, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues.

c. Eligible applicants shall submit an application to the City that includes an application fee of \$600.00 and the following:

- i. Name, address, and phone number of owner(s), developer and agent;
- ii. Property location, including parcel identification numbers;
- iii. Legal description and survey of property;
- iv. Project description, including type, intensity, and amount of development;
- v. Phasing schedule, if applicable;
- vi. Description of requested proportionate fair-share mitigation method(s);
- vii. Estimated value of the proposed fair-share mitigation pursuant to this Ordinance, and
- viii. Copy of concurrency application.

d. The Planning Official shall review the application and determine that the application is sufficient and complete within 10 business days. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the Proportionate Fair-Share program and this Ordinance, then the applicant will be notified in writing of the reasons for such deficiencies within 20 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 60 business days of notification, the Planning Official shall deny the application. The Planning Official may grant an extension of time if requested in writing from the applicant not to exceed 60 business 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.

e. Pursuant to §163.3180(16)(e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation (FDOT). In such event, the applicant shall submit evidence that FDOT concurs with the proposed proportionate fair-share mitigation.

f. Within 60 business days from the date at which the application is deemed sufficient, complete, and eligible, the Planning Official shall evaluate the application pursuant to this Ordinance and thereafter shall notify the applicant in writing whether the proposed proportionate fair-share mitigation application and Certificate of Concurrence has been approved, approved with conditions, or denied. A copy of the notice shall be provided to the FDOT for any proposed proportionate fair-share mitigation proposed on any FDOT facility.

g. Appeals of decisions of the Planning Official pursuant to this Ordinance shall be as stated in Section 209 of these regulations and noticed as provided in Section 1803.

SECTION 7. Methodology for Determining Proportionate Fair-Share Mitigation: The following shall describe the methodology to determine proportionate fair-share mitigation.

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, and may include public funds if the use of public funds are authorized by the City Council.

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 among the forms of proportionate share mitigation.

c. The methodology to be used by the Planning Official to calculate an applicant's proportionate fair-share mitigation 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 level of service, multiplied by the construction*

cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service.”

OR

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

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 or have further degraded the LOS of an already deficient roadway segment;

SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment “i” per Section 4;

Cost<sub>i</sub> = 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 term “cumulative” used above 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 traffic impact analysis. All assumptions used in the proportionate fair-share calculation should be consistent with those used by City in its Concurrency Management System.

e. In the context of the formula for the proportionate fair-share calculation “development trips” apply only to those trips that trigger a concurrency deficiency or are adding trips to an existing deficient roadway segment.

f. For the purposes of determining proportionate fair-share mitigation, the City shall determine improvement costs based upon the actual cost of the improvement as obtained from the Capital Improvements Element, the CIP, the TPO 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:

- i. An analysis by the City of costs by cross section type that incorporates data from recent projects and is updated annually. In order to accommodate increases in construction material costs, project costs shall be adjusted by the inflation factor established by the United States Department of Commerce; or
- ii. 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.

g. If a proposed form of proportionate fair-share mitigation is other than financial then the value of the proportionate fair share mitigation improvement shall be determined using one of the methods provided in this section.

h. If the fair market value of an alternative form of fair-share mitigation is less than the total proportionate fair-share obligation as determined above, the applicant must pay the difference. The City is authorized to accept forms of proportionate fair share mitigation that exceed the actual values calculated above. Under no circumstances shall the City approve an application that obligates the City to compensate an applicant for proportionate fair-share mitigation that exceeds the value calculated above.

i. If the land or right-of-way dedication is proposed as a form of proportionate fair-share mitigation, the value of the land or right of way shall be the fair market value established by an independent appraisal approved by the City at the time of the application and at no expense to the City. The applicant shall supply a survey and legal description of the land or right of way and a certificate of title or title search of the land to the City at no expense to the City with the application, and shall at closing deliver clear title by warranty deed to the City.

SECTION 8. Certificate of Concurrency for Proportionate Fair-Share Mitigation: Upon approval of an application for proportionate share mitigation, the following requirements shall apply:

a. Upon approval of an application for proportionate fair-share mitigation the City shall issue to the applicant a Certificate of Concurrency governing concurrency for transpiration facilities, which shall explicitly set forth the proportionate fair-share mitigation required by this Ordinance. Conditions of development order approval or a fully executed Binding Proportionate Fair-Share Agreement may also accompany the approval.

b. Should the applicant fail to apply for a building permit within 12 months of the date of the Certificate of Concurrency, then the Certificate of Concurrency and the approval of the application for proportionate share mitigation shall be considered null and void, and the applicant shall be required to reapply. The Planning Official may grant an extension of up to an additional 12 months if requested in writing from the applicant showing good cause for the extension.

c. Payment of the proportionate fair-share mitigation funds are due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than 12 months from the date of the issuance of the Certificate of Concurrency, then the proportionate fair-share mitigation 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 7 and adjusted accordingly.

d. If an applicant enters into a binding agreement or receives a development order which requires road improvements as a condition of development approval, such improvements must be completed prior to issuance of a certificate of acceptance or a final plat approval. A presentment bond payable to the City sufficient to ensure the completion of improvements shall be obtained.

e. Dedication of land or right-of-way for facility improvements to the City as proportionate fair-share mitigation must be completed prior to issuance of the certificate of acceptance or recording of the final plat.

f. Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share mitigation to the extent the change would generate additional traffic that would require mitigation. In such event, the applicant for development must submit an application pursuant to this Ordinance.

g. Applicants may submit a letter to withdraw from the Proportionate Fair-Share Program at any time prior to the issuance of the Certificate of Concurrency. The application fee and any associated advertising costs to the City will be nonrefundable.

h. The City may consider joint applications for proportionate fair-share mitigation to facilitate collaboration among multiple applicants on improvements to a shared transportation facility, and may coordinate with other jurisdictions on Proportionate Fair-Share Mitigation through interlocal agreements.

SECTION 9. Appropriation of Fair-Share Revenues: At the time the proportionate fair-share mitigation funds are received pursuant to this Ordinance, the proportionate fair-share mitigation funds shall be deposited as follows:

a. Proportionate fair-share mitigation funds shall be placed in the appropriate project account for funding of scheduled improvements in the CIP, or as otherwise established in the terms of the Certificate of Concurrency, or condition on development approval. At the discretion of the City, proportionate fair-share revenues may be used for operational improvements prior to construction of a project from which the proportionate fair-share funds were derived. Proportionate fair-share mitigation funds may also applied to the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

b. In the event a scheduled facility improvement is removed from the CIP, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that in the decision of the City would mitigate the impacts of development.

c. 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., then the City may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share mitigation and public contributions and seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Such coordination shall be ratified by the City through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

SECTION 10. Impact Fee Credit for Proportionate Fair-Share Mitigation: The following requirements shall apply regarding impact fee credits and proportionate share mitigation.

a. Proportionate fair-share mitigation shall be applied as a credit against impact fees only when a transportation facility has a segment for which the local government transportation impact fee is being applied. Credits will be given for that portion of the applicant's transportation impact fees that would have been used to fund the improvements on which the proportionate fair-share mitigation is calculated. If the proportionate fair-share mitigation is based on only a portion of the development's traffic, the credit will be limited to that portion of the impact fees on which the proportionate fair-share mitigation is based.

b. Impact fee credits for the proportionate fair-share mitigation will be determined when the transportation impact fee is calculated for the proposed development. If the applicant's proportionate fair-share mitigation 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 City pursuant to the requirements of the City impact fee ordinance.

c. The proportionate fair-share mitigation 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 mitigation for a proposed development cannot be transferred to any other location.

SECTION 11. Severability. If any section, paragraph, sentence, or clause hereof or any provision of this Ordinance is declared to be invalid or unconstitutional, the remaining provisions of this Ordinance shall be unaffected thereby and shall remain in full force and effect.


SECTION 12. Repealer. All ordinances, resolutions and charter provisions or parts thereof of the City of Mexico Beach in conflict with this Ordinance are hereby repealed.

SECTION 13. Effective Date. This Ordinance shall take effect upon passage and publication as required by law.

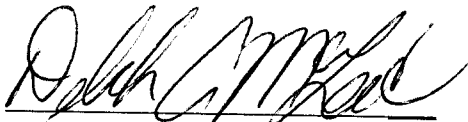


Passed, Approved and Adopted in a meeting of the City Council of the City of Mexico Beach on this 9<sup>th</sup> day of January, 2007.

CITY OF MEXICO BEACH, FLORIDA

  
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William A. Cathey, Mayor

ATTEST:

  
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Deborah A. McLeod, City Clerk