

## **TOWN OF CUTLER BAY**

Mayor Paul S. Vrooman  
Vice-Mayor Edward P. MacDougall  
Councilmember Timothy J. Meerbott  
Councilmember Ernest N. Sochin  
Councilmember Peggy R. Bell

Town Manager Steve Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Attorney Chad Friedman  
Town Clerk Erika Gonzalez-Santamaria

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

### **LOCAL PLANNING AGENCY AGENDA**

Wednesday, October 18, 2006  
7:00 PM

South Dade Government Center  
10710 SW 211 Street, Room 203  
Cutler Bay, Florida 33189

#### **I. CALL TO ORDER, ROLL CALL**

#### **II. PLEDGE OF ALLEGIANCE**

#### **III. ADDITIONS, DELETIONS, AND DEFERRALS**

#### **IV. CONSENT AGENDA**

A. October 4, 2006 – Minutes

#### **V. PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:**

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33G "SERVICE CONCURRENCY MANAGEMENT PROGRAM" TO PROVIDE FOR PROVISIONS RELATING TO PROPORTIONATE FAIR-SHARE MITIGATION FOR TRANSPORTATION; CREATING SECTION 33G-5.1 "PROPORTIONATE FAIR SHARE MITIGATION FOR TRANSPORTATION;" PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

#### **VI. ADJOURNMENT.**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY  
LOCAL PLANNING AGENCY MEETING  
MINUTES**

Wednesday, October 4, 2006  
7:00 PM

South Dade Government Center  
10710 SW 211 Street, Room 203  
Cutler Bay, Florida 33189

**I. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 7:35 p.m. Present were the following:

Councilmember Peggy R. Bell  
Councilmember Timothy J. Meerbott  
Councilmember Ernest N. Sochin  
Vice Mayor Edward P. MacDougall  
Mayor Paul S. Vrooman

Town Manager Steven Alexander  
Interim Town Attorney Mitchell Bierman  
Interim Town Attorney Chad Friedman  
Town Clerk Erika Gonzalez-Santamaria

**II. PLEDGE OF ALLEGIANCE:** There was no pledge of allegiance at this time.

**III. ADDITIONS, DELETIONS, AND DEFERRALS:** None at this time.

**IV. CONSENT AGENDA:** None at this time.

**V. PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR THE CLARIFICATION OF THE SCOPE OF THE MORATORIUM, AS SHOWN ON EXHIBIT "A," WHICH WAS ENACTED BY ORDINANCE 06-10, ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES AFFECTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; PROVIDING FOR A 90 DAY EXTENSION TO THE 120 DAY MORATORIUM; AND PROVIDING FOR AN EFFECTIVE DATE.**

Joe Corradino, Town Planning Consultant, gave an oral report and recommended approval of the ordinance.

The mayor opened the public hearing. There were no speakers present.

Councilmember Bell made a motion adopting staff's recommendation. The motion was seconded by Vice Mayor MacDougall and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. **ADJOURNMENT:** The meeting was officially adjourned at 7:45 p.m.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Local Planning Agency  
on this 18<sup>th</sup> day of October, 2006.*

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*Paul S. Vrooman, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

# Memo

To: Honorable Mayor and Town Council  
From: Chad Friedman, Assistant Town Attorney  
Date: October 11, 2006  
Re: Transportation Proportionate Fair-Share Mitigation

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The proposed ordinance amends the Town's Concurrency Management System, which is located in Chapter 33G of the Town Code of Ordinances. This ordinance provides for transportation proportionate fair-share mitigation options, methodologies, and procedures, which are necessary to meet the requirements of Senate Bill 360 ("SB 360"). During the 2005 legislative session, the Florida Legislature adopted SB 360, which made significant amendments to the Growth Management Act. One of these amendments directed local governments to enact an ordinance for assessing transportation proportionate fair-share mitigation by December 1, 2006.

Proportionate fair-share options afford developers the opportunity to proceed with development, under certain conditions, despite a failure in roadway concurrency.<sup>1</sup> This "pay as you go" system requires the developer to mitigate a proposed development's impact on roadway

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<sup>1</sup> Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development.

level of service by making a financial contribution<sup>2</sup> to a qualifying project which alleviates the development's impact on level of service. The developer's contribution is enforced by a legally binding agreement, which will require payment of the proportionate fair-share contribution to be due in full prior to issuance of the final plat or building permit, whichever occurs first. By requiring the developer to enter into a legally binding agreement, this will ensure that there will be adequate roadway capacity concurrent with the impacts of the proposed development. It is recommended that the Town Council approve the proposed ordinance as it meets all of the requirements imposed by SB 360.

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<sup>2</sup> Financial contributions may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33G "SERVICE CONCURRENCY MANAGEMENT PROGRAM" TO PROVIDE FOR PROVISIONS RELATING TO PROPORTIONATE FAIR-SHARE MITIGATION FOR TRANSPORTATION; CREATING SECTION 33G-5.1 "PROPORTIONATE FAIR SHARE MITIGATION FOR TRANSPORTATION;" PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the 2005 Florida State Legislature adopted amendments to the state growth management program which directed local governments to comply with a requirement that "proportionate share contributions" be accepted from developers in satisfaction of statewide transportation concurrency requirements by December 1, 2006; and

**WHEREAS**, the Town of Cutler Bay (the "Town") Proportionate Fair-Share Program will 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; and

**WHEREAS**, the Town Council finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors; and

**WHEREAS**, the Town Council finds that adoption of this ordinance is consistent with Section 163.3180, Florida Statutes and the Miami Dade County Comprehensive Plan, which now functions as the Town's Comprehensive Plan; and

**WHEREAS**, the Town Council, in its capacity as the Local Planning Agency, has reviewed the proposed ordinance and recommends approval; and

**WHEREAS**, the Town finds that this ordinance is in the best interests of the residents of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS<sup>1</sup>:**

**Section 1. Findings.** The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Service Concurrency Management Program.** Chapter 33G "Service Concurrency Management Program" is hereby amended to read as follows:

**Chapter 33G SERVICE CONCURRENCY MANAGEMENT PROGRAM**

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<sup>1</sup> Additions are indicated by underlining; deletions are indicated by ~~strikethrough~~.

\* \* \*

**Sec. 33G-3. Definitions.**

Except as otherwise provided in this chapter, the following definitions shall apply to this chapter.

\* \* \*

(11) *Financial feasibility.* Sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the Comprehensive Plan that are necessary to ensure that adopted Level-of-Service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements.

\* \* \*

(20) *Proportionate fair-share mitigation for transportation.* A developer may choose to satisfy all concurrency requirements by contributing or paying their calculated fair-share if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the Capital Improvements Element of Comprehensive Plan or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the Capital Improvements Element; or programmed for construction in the 5-year capital facility plan or work program of the agency having responsibility for the transportation improvement.

\* \* \*

(24) *Strategic Intermodal System (SIS).* A statewide network of high-priority transportation facilities, including the state's largest and most significant commercial service airports, spaceport, deepwater seaports, freight rail terminals, passenger rail and intercity bus terminals, rail corridors, waterways and highways.

\* \* \*

**Sec. 33G-5. Procedures.**

(1) As provided herein, no development order shall be issued where levels of service (LOS) for all public services and facilities will not meet or exceed LOS standards or where the issuance of the development order would result in a reduction in the level of service for any service or facility below LOS standards, except under the following conditions:

\* \* \*



(6) No development order shall be issued by the Town Council or a Town ~~any County board, agency or department~~ unless the following conditions are met:

\* \* \*

(b) *Intermediate development orders:*

1. Unless otherwise provided by this chapter, intermediate development orders may be approved only if all services and facilities (roads, transit, water, sewer, parks, solid waste, and flood protection) meet or exceed LOS standards and the development authorized by issuance of the intermediate development order must not result in a reduction of any LOS below LOS standards; or the facilities necessary to accommodate the impacts of the proposed development at or above the applicable standards as established in the CDMP are:

a. Programmed in the five-year schedule of improvements in the Capital Improvement Element or Transportation Improvement Program; or

b. Consistent with the CDMP and contained in the adopted five-year capital improvements program of the applicable other service provider; or

c. Consistent with the CDMP and the applicant agrees in a recordable written instrument that no final development order will be requested unless the necessary facilities are programmed or contracted within the time frames specified in Section 33G-5(6)(c); or

d. Satisfied through proportionate fair share mitigation for transportation as set forth in Section 33G-5.1.

\* \* \*

(c) *Final development orders:*

1. Unless otherwise provided by this chapter, final development orders may be approved only if all services and facilities (roads, transit, water, sewer, parks, solid waste, and flood protection) meet or exceed LOS standards and the development authorized by issuance of the final development order must not result in a reduction of any LOS below LOS standards; or if the subject development is located inside the Urban Development Boundary and:

\* \* \*

b. For roads and transit, the facilities necessary to accommodate the impacts of the proposed development at or above the applicable standards as established in the CDMP are:

\* \* \*

(8) Must be contracted for construction no later than thirty-six (36) months after issuance of a certificate of use and occupancy if the development is located within the Urban Development Boundary, and no later than the date of issuance of a certificate of use and occupancy if the development is located outside the Urban Development Boundary; or

(9) Satisfied through proportionate fair share mitigation for transportation is provided as outlined in Section 33G-5.1.

\* \* \*

**Sec. 33G-5.1. Proportionate fair share mitigation for transportation.**

(1) Applicability.

The Proportionate Fair-Share Program shall apply to all developments in the Town that have been notified of a lack of capacity to satisfy transportation concurrency on one or more transportation facilities in accordance with the Town Concurrency Management Program, including transportation facilities maintained by the Florida Department of Transportation (FDOT) or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section 33G-5.1(2) below. The Proportionate Fair-Share Program does not apply to Developments of Regional Impact (DRIs) using proportionate fair share under Section 163.3180(12), Florida Statutes, or to developments exempted from concurrency as provided for in this Chapter.

(2) General Requirements.

(a) An applicant whose project meets the criteria of subsection 33G-5.1(1) may choose to satisfy transportation concurrency requirements by making a proportionate fair share contribution, pursuant to the following requirements:

(1) The proposed development is consistent with the Comprehensive Development Master Plan (CDMP) and applicable land development regulations; and

(2) The five-year schedule of capital improvements in the Town's Capital Improvements Element (CIE) includes one or more transportation improvements that, upon completion, will satisfy the requirements of the Town's Concurrency Management Program. The provisions of Section (b) below may apply if a project or projects needed to satisfy concurrency are not presently contained within the Town's CIE.

(b) The Town may choose to allow an applicant to satisfy transportation concurrency for a deficient segment(s), through the Proportionate Fair-Share Program, by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment(s) sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for

the deficient segment(s) is not contained in the five-year schedule of capital improvements in the CIE where:

(1) The Town Council holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the five-year CIE; and

(2) The Town Council adopts by Resolution the Proportionate Fair Share Agreement directing Town staff to file an amendment adding the improvement(s) to the five-year schedule of capital improvements in the CIE, no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Town Council, and determined to be financially feasible, consistent with the CDMP, and in compliance with the provisions of this section.

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

(3) Application Process.

(a) Upon the notification of a lack of capacity to satisfy transportation concurrency, an applicant may choose to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of subsection 33G-5.1(2)

(b) Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with the Public Works Department to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the Strategic Intermodal System (SIS), then FDOT will be notified and invited to participate in the pre-application meeting.

(c) Eligible applicants shall submit an application to the Pubic Works Department that includes an application fee, as established by resolution, 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);

- (7) Copy of concurrency application; and
- (8) Location map depicting the site and affected road network.

(d) Within 10 business days, the Public Works Department 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 subsection 33G-5.1(2), then the applicant shall be notified in writing of the reasons for such deficiencies within 10 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application shall be deemed abandoned.

(e) Pursuant to Section 163.3180(16)(e), Florida Statutes, proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. If a SIS facility is proposed for proportionate share mitigation, the applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(f) Once an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the applicant with direction from the Town and delivered to the Public Works Department for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on SIS facilities, no later than 60 days from the date at which the application was determined to be sufficient and no fewer than 14 days prior to the Town Council meeting when the agreement will be considered.

(g) The Public Works Department shall notify the applicant of the date, time, and location of the Town Council meeting at which the agreement will be considered for final action. No proportionate fair-share agreement(s) will be effective until approved by the Town Council.

(4) Determination of Proportionate Fair-Share Obligation.

(a) Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided for in Section 163.3180(16)(c), Florida Statutes.

(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 based on the form of mitigation as provided for in Section 163.3180 (16)(c), Florida Statutes.

(c) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180(12), Florida Statutes, as follows:

The amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume 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. This methodology is expressed by the following formula:

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

(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)

**Where:**

$\Sigma =$  Sum of all deficient links proposed for proportionate fair-share mitigation for a project.

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 "i";

Cost<sub>i</sub> = Adjusted cost of the improvement to segment "i". Cost shall consist of all improvements and associated costs, including design, right-of-way acquisition, planning, engineering, inspection, and physical development costs, directly associated with construction at the anticipated cost in the year that construction will occur.

(d) For purposes of determining proportionate fair-share obligations, the Town shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur.

(e) If the Town has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on Public Works Department cost estimate

and approved by the Town's Public Works Director, or other method approved by the Town's Public Works Director.

(f) If the Town 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% 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 Town Council and at no expense to the Town. 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 Town Council at no expense to the Town. If the estimated value of the right-of-way dedication proposed by the applicant, based on a Town-approved appraisal, is less than the Town estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to the purchase of acquisitions of any real estate intended to be used for proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(5) Impact Fee Credit for Proportionate Fair-Share Mitigation.

(a) Where mitigation is occurring on County roads, 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 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 County's 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 County pursuant to the requirements of the County impact fee ordinance.

(c) Major projects not included within the County's impact fee ordinance or created under Section 5.1(2) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the 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 the County's impact fee ordinance.

(6) Proportionate Fair-Share Agreements.

(a) The Town Council has the authority by resolution to enter into a Proportionate Fair-Share Agreement.

(b) Upon executing a proportionate fair-share agreement (Agreement), in a form acceptable by the Town, and satisfying other concurrency requirements, an applicant shall receive concurrency approval. Should the applicant fail to apply for a development order within (90 days) of receiving concurrency approval by the Town Council, the project's concurrency vesting shall expire, and the applicant shall be required to re-apply.

(c) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final plat or building permit whichever occurs first. If the payment is submitted more than 6 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. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given unless otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements.

(d) All developer improvements authorized under Section 5.1 must be completed as established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements.

(e) 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.

(f) Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.

(g) Applicants should submit a letter to withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the Town are nonrefundable.

(h) The Town may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(7) 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 Town's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the Town, 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 Transportation Regional Incentive Program (TRIP).

(b) In the event a scheduled facility improvement is removed from the CIE, then the proportionate fair share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair share contribution was made.

**Section 3. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Inclusion In The Code.** It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** This Ordinance shall be effective immediately upon adoption.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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PAUL S. VROOMAN, Mayor

Attest:

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ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk



APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE SOLE  
USE OF THE TOWN OF CUTLER BAY:

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WEISS, SEROTA, HELFMAN, PASTORIZA,  
COLE & BONISKE, P.A.  
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____