



Interoffice Memorandum

August 25, 2020

TO: Mayor Jerry L. Demings  
— AND —  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development  
Services Department

CONTACT PERSON: **Whitney E. Evers, Assistant County Attorney**

SUBJECT: September 1, 2020 – Public Hearing  
Chapter 30, Article XV, Multi-Jurisdictional Approval of  
Residential Rezoning and Comprehensive Plan Amendments

On July 7, 2020, the Board heard a discussion items regarding Capacity Enhancement Agreements (CEAs) and the impact of House Bill 7103 (2019) on the County's current school capacity process. Staff discussed the Orange County Charter, existing interlocal agreements, comprehensive plan policies, and code provisions that impact our overcrowding policy.

Any comprehensive plan amendment and/or rezoning in Orange County (including its municipalities) that increase residential density must go through a capacity review by Orange County Public Schools (OCPS). If there is insufficient capacity at an impacted school, the developer and OCPS must enter into a CEA. These agreements typically include provisions requiring the pre-payment of impact fees, a timing mechanism, and payment of a "capital contribution" in addition to school impact fees. However, House Bill 7103 now requires a credit against school impact fees on a dollar-for-dollar basis for any such contribution. This credit in essence means OCPS would not receive any additional monies to mitigate the impacts of additional students. A legislative fix for this issue was sought last session, but was not approved. Therefore, all CEA approvals are currently on hold.

In order to fix the current impasse, staff discussed various options with the Board at a work session on July 7, 2020, wherein the Board directed staff to amend Public Schools Facilities Element Policy 6.3.1 of the Comprehensive Plan, which requires a CEA in order for the Board to approve certain developer-related land use requests, and to abate the school capacity process temporarily via an amendment to Ch. 30 of the Orange County Code. The purpose of the abatement is to allow staff to pursue changes to the existing Interlocal Agreements in order to better define the multi-jurisdictional approval process currently contemplated in Ch. 30. The public hearing for transmittal of the amendment to Public Schools Facilities Element Policy 6.3.1 was heard by the PZC / LPA at its July meeting and by the Board on July 28, 2020.

Page Two

September 1, 2020 – Public Hearing

Chapter 30, Article XV, "Multi-jurisdictional Approval of Residential Rezonings and Comprehensive Plan Amendments."

Attached is a copy of the proposed Ordinance amending Chapter 30, Article XV, Orange County Code, entitled "Multi-jurisdictional Approval of Residential Rezonings and Comprehensive Plan Amendments." This ordinance was presented to the PZC / LPA at a public hearing on August 20, 2020, and was found consistent with the Comprehensive Plan.

Please contact Whitney Evers, Assistant County Attorney at 407-836-7321 or at [whitney.evers@ocfl.net](mailto:whitney.evers@ocfl.net), if you have any questions or comments.

**ACTION REQUESTED: Make a finding of consistency with the Comprehensive Plan and approve the ordinance amending Chapter 30, Article XV, Orange County Code, entitled "Multi-jurisdictional Approval of Residential Rezonings and Comprehensive Plan Amendments." All Districts**

JVW/AM:fb  
Attachment

C: Byron W. Brooks, AICP, County Administrator  
Chris Testerman, AICP, Deputy County Administrator  
Joel D. Prinsell, Deputy County Attorney

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ORDINANCE NO. 2020-\_\_\_\_\_

AN ORDINANCE AMENDING ARTICLE XV, "MULTI-JURISDICTIONAL APPROVAL OF RESIDENTIAL REZONINGS AND COMPREHENSIVE PLAN AMENDMENTS," CHAPTER 30, OF THE ORANGE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

*Section 1. Amendments; In General.* Article XV, Chapter 30 of the Orange County Code is hereby amended as set forth in Section 2 of this ordinance with all new wording being indicated by underlines and all deleted wording being shown by strike-throughs.

*Section 2. Amendments to Article XV, Multi-Jurisdictional Approval of Residential Rezonings and Comprehensive Plan Amendments.* Article XV is amended to read as follows:

ARTICLE XV

MULTI-JURISDICTIONAL APPROVAL OF RESIDENTIAL REZONINGS AND COMPREHENSIVE PLAN AMENDMENTS

Sec. 30-740. Scope; abatement.

This article shall be effective throughout the unincorporated area of Orange County, and within each municipality in Orange County as provided by Section 704 B.2. of the Orange County Charter; provided, however, that from September , 2020, to March , 2021, or until such time as this section is further amended by the Board, whichever is later, this article shall only apply to those projects for which a legally sufficient application for a Capacity Enhancement Agreement was submitted prior to July 1, 2019.

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**Sec. 30-741. Definitions.**

As used in this article, the terms listed below shall have the meanings as set forth below:

*Administrative rezoning:* A rezoning initiated by a local government jurisdiction.

*Applicant:* The individual or entity submitting a request for proposed rezoning or comprehensive plan amendment.

*Capacity enhancement agreement:* An agreement between the school board and an applicant providing for sufficient capacity to accommodate the additional students that will be generated by a proposed rezoning or comprehensive plan amendment that also serves to certify to a significantly affected local government jurisdiction that the school board will have sufficient capacity to accommodate the additional students generated by the proposed rezoning or comprehensive plan amendment.

*Comprehensive plan amendment:* An amendment to a local government's comprehensive plan pursuant to F.S. ch. 163, including an amendment to the future land use map, which will result in a net increase of Residential Units on the property that is the subject of the amendment.

*County:* Orange County government.

*De minimis impact:* A comprehensive plan amendment or rezoning that would, if approved, result in a net increase of less than ten (10) residential units. However, a comprehensive plan amendment or rezoning for a property shall not be deemed to have a de minimis impact if, when the impact for such property is aggregated with a previous de minimis impact determination for adjacent property, the number of units equals or exceeds ten (10) residential units, and the subject property is in the same ownership or chain of title as the subject adjacent property.

*Interlocal agreement regarding school capacity:* An agreement entered into by the school board and Orange County or affected municipalities that establishes the process for determining the availability of school capacity and the roles and responsibilities of the respective parties in determining and resolving school capacity issues and the process for creating capacity enhancement agreements.

76 *Orange County:* All of the geographical area contained  
within the boundaries of Orange County, including both  
incorporated and unincorporated area.

78 *OCPS:* Orange County Public Schools, the Orange County  
school district.

80 *Residential unit:* Single-family or multifamily dwelling  
82 unit, attached or detached dwelling, house of conventional  
construction, mobile home, manufactured home, and any other  
84 structure used for permanent residence or for dwelling purpose,  
regardless of whether occupied by an owner or tenant.

86 *Rezoning:* A change in zoning classification that will result  
in a net increase of residential units on the property that is the  
88 subject of the rezoning. The term "rezoning" shall also mean any  
land use change not necessarily denoted or characterized as a  
90 rezoning (such as a change to a land use plan, master plan or  
development plan in a mixed use development, development of  
92 regional impact, planned unit development, etc.) that will result in  
a net increase of residential units on the property.

94 *School board:* The school board of Orange County, Florida,  
the governing body of Orange County Public Schools.

96 *Significantly affected local government jurisdiction:* A  
local government jurisdiction, either unincorporated Orange  
98 County, or a municipality within Orange County, in which ten (10)  
percent or more of the student population of a public school that is  
100 affected by a proposed comprehensive plan amendment or  
rezoning resides.

102 **Sec. 30-742. Effectiveness of comprehensive plan  
amendments and rezonings.**

104 (a) In order for a comprehensive plan amendment or  
rezoning to become effective, the governing boards of all  
106 significantly affected local government jurisdictions must approve  
a comprehensive plan amendment or rezoning when OCPS cannot  
108 certify to the governing bodies of all significantly affected local  
government jurisdictions that the affected public school or schools,  
the attendance zone(s) for which is (are) located within more than  
110 one (1) significantly affected local government jurisdiction, can  
accommodate the additional students resulting from the increase in  
112 residential density.

114 (b) The basis for not approving a comprehensive plan  
amendment or rezoning by the governing body of a significantly

116 affected local government jurisdiction (other than the jurisdiction  
in which the comprehensive plan amendment or rezoning would  
118 occur) shall be limited to school capacity and the time at which  
such school capacity shall be available.

120 (c) A local government jurisdiction may, with written  
approval of OCPS and the consent of the applicant, elect to defer  
122 consideration of school capacity from adoption of a comprehensive  
plan amendment for a property until such time as the local  
124 government jurisdiction considers a rezoning for the property. In  
such a case, the comprehensive plan amendment may become  
126 effective without the approval of other significantly affected local  
jurisdictions.

128 (d) This section shall not apply to a comprehensive plan  
amendment or rezoning with a de minimis impact. Such a  
130 comprehensive plan amendment or rezoning shall be presumed not  
to create an adverse impact on any affected public school.

132 (e) This section shall not apply to an administrative  
rezoning that does not increase actual residential density, but  
134 merely makes the zoning district or category representative of the  
pre-existing development and pre-existing residential density in the  
area.

136 **Sec. 30-743. Interlocal agreement regarding school capacity.**

138 (a) The county and the school board shall enter into an  
interlocal agreement regarding school capacity which includes the  
following:

140 (1) The school board shall respond to a local  
government's request for a school capacity report within an agreed-  
142 upon time period.

144 (2) If the school capacity report indicated that  
there is insufficient capacity, and the applicant requesting the  
146 comprehensive plan amendment or rezoning proposes a capacity  
enhancement agreement, the school board shall approve or deny  
148 the capacity enhancement agreement within an agreed-upon time  
period. Approval by the school board of a capacity enhancement  
150 agreement shall constitute its certification that sufficient school  
capacity will exist to handle the additional students generated by  
152 the proposed comprehensive plan amendment or rezoning and that  
such capacity is based on a financially feasible and educationally  
sound plan. Denial of a capacity enhancement agreement shall

154 constitute the school board's certification of insufficient school  
155 capacity.

156 (3) The capacity enhancement agreement shall  
157 take into account the time at which school capacity will be  
158 available.

159 (4) The school board shall use funds collected  
160 pursuant to a capacity enhancement agreement to provide school  
161 capacity.

162 (5) A school board certification of insufficient  
163 school capacity when an applicant has made a capacity  
164 enhancement proposal, shall require the school board to  
165 demonstrate that it has considered options to mitigate the impacts  
166 created by the rezoning or comprehensive plan amendment.

167 (b) The City of Orlando, as the most populous  
168 municipality within Orange County, along with the county and the  
169 school board, shall be a party to the interlocal agreement regarding  
170 school capacity negotiations. Any other municipality within the  
171 county may request to be a party to the interlocal agreement  
172 regarding school capacity negotiations. To the extent that  
173 negotiations with individual cities are successful, they may be  
174 parties to the interlocal agreement regarding school capacity. To  
175 the extent that negotiations with individual municipalities,  
176 including the City of Orlando, are unsuccessful, they will not be  
177 parties to the interlocal agreement regarding school capacity.

178 (c) If the interlocal agreement regarding school  
179 capacity negotiations between the county, school board and the  
180 City of Orlando, as the largest city within the county, reach an  
181 impasse, the parties shall enter mediation.

182 (d) The failure of any municipality, including the City  
183 of Orlando, to enter into the interlocal agreement regarding school  
184 capacity will not prevent the execution and implementation of the  
185 interlocal agreement regarding school capacity between the county  
186 and the school board.

**Sec. 30-744. Remedies.**

188 A significantly affected local government jurisdiction may  
189 bring a lawsuit in the circuit court of Orange County, Florida, for  
190 declaratory and/or injunctive relief to restrain, enjoin, or otherwise  
191 prevent a violation of this article.

192 **Secs. 30-745—30-750. Reserved.**

194       **Section 3.    Effective date.** This ordinance shall become effective pursuant to general  
law.

196       **ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

198   **ORANGE COUNTY, FLORIDA**  
200   **By: Board of County Commissioners**

202   By: \_\_\_\_\_  
204   Jerry L. Demings  
  Orange County Mayor

206       **ATTEST:** Phil Diamond, CPA, County Comptroller  
            As Clerk of the Board of County Commissioners

210   By: \_\_\_\_\_  
212   Deputy Clerk

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