



**DECLARATION RELATING TO THE HB 7103 IMPACT
ON SCHOOL OVERCROWDING MITIGATION**

WHEREAS, the vision of The School Board of Orange County, Florida is “**To ensure every student has a promising future;**” and

WHEREAS, the mission statement of The School Board of Orange County, Florida is “**With the support of the community, we create enriching and diverse pathways that lead our students to success;**” and

WHEREAS, the School Board of Orange County, Florida (School Board) stands by its vision and mission; therefore, the students and parents are at the heart of the School Board’s position in response to 2019 HB 7103; and

WHEREAS, the School Board has a long, positive history of working with local governments and the development community to plan for and seek adequate funding to increase school capacity in an effort to keep pace with the growth of our community. To put this into perspective, in 2000, pre-Martinez Doctrine, the population in Orange County, Florida was approximately 900,000 residents and now, in 2020, the population is estimated at 1,350,000, an increase of 450,000 residents over twenty (20) years. In 2000, the OCPS student population was 151,000 students enrolled in 169 school facilities. In 2020, the OCPS student population is 215,000 students enrolled in 199 school facilities, an increase of 64,000 students and thirty (30) school facilities; and

WHEREAS, the School Board’s ability to accommodate this growth was a result of the School Board, local governments, and citizens placing a high value on education and endeavoring to ensure that new development was responsible for its share of the cost of the new student capacity required; and

WHEREAS, through the last twenty (20) years, the community has seen the Martinez Doctrine, the School Capacity Charter Amendment, and the Interlocal Agreements guide the way to the ongoing and ever-present coordination between the School Board, the local governments, and the development community; all were designed to ensure that school capacity is available for growth; and

WHEREAS, the School Board invested in each of the processes as a partner and it intends to continue that same partnership in support of its vision and mission; and

WHEREAS, in 2000, at a pivotal moment in Orange County history, then Mayor Martinez, issued a memorandum, known as the Martinez Doctrine, directing his staff, prior to placing any future land use map (“FLUM”) amendments or rezonings on the agenda before the Orange County

Board of County Commissioners (Orange County Commission), to seek certification from Orange County Public Schools (OCPS) of available school capacity for the anticipated increase in students. In the event that there is not sufficient capacity, staff was further directed to recommend denial of the application; and

WHEREAS, the Martinez Doctrine did not restrict the authority of the Orange County Commission to approve of such applications, nor did the Martinez Doctrine have any authority over or impact on the actions of municipalities within Orange County; and

WHEREAS, in 2003, a multifamily development was approved by a municipality against the strong opposition of parents whose students were in an impacted and significantly overcrowded school; however, none of those parents resided within the limits of the municipality so they lacked any representation on this decision which adversely affected their children; and

WHEREAS, in 2004, the citizens of Orange County overwhelmingly voted (73.8%) in favor of a School Capacity Charter Amendment that addressed school capacity and overcrowding (School Capacity Charter Amendment); the citizens reapproved same in 2012 (65.9%); and

WHEREAS, the School Capacity Charter Amendment applies County-wide and requires that all residential Future Land Use Map (FLUM) and rezoning applications for which OCPS cannot certify it will have adequate capacity for the students anticipated to be generated from the unvested units must be jointly approved by all significantly affected local governments for the change in FLUM or zoning designation to become effective; and

WHEREAS, the School Capacity Charter Amendment did not reference Capacity Enhancement Agreements (CEA), nor did it contemplate that CEAs would be used as a means of satisfying capacity or bypassing the joint approval process; and

WHEREAS, in 2006, the Orange County Commission adopted Ordinance No. 2006-01, Section 1, to codify the actions of the citizens and to define the threshold for a “significantly affected local government” as any government within which ten percent (10%) or more of the student population is affected by the proposed new development; and

WHEREAS, in 2008, the Orange County Commission entered into the Amended Interlocal Agreement for Public School Facility Planning and Implementation of Concurrency (2008 ILA) by and between the School Board of Orange County, the City of Orlando, the City of Apopka, the City of Ocoee, the City of Winter Garden, and the Town of Oakland to formalize the process for implementing the 2004 School Capacity Charter Amendment, implement concurrency, implement the statutorily required coordination of OCPS’s Capital Improvement Plan, establish a uniform methodology to address school capacity mitigation - the Capacity Enhancement process, and establish the adopted the level-of-service for capacity at adjusted Florida Inventory of School Houses (FISH) 110% for Elementary Schools, 100% for Middle Schools, and 100 % for High Schools within the three (3) year work program; and

WHEREAS, in 2008, the Orange County Commission, the City of Orlando, and select municipalities amended each of their comprehensive plan policies to prohibit the approval of a

developer-initiated comprehensive plan or rezoning for unvested development where school capacity is not available; and

WHEREAS, in 2010, the First Amendment to the Interlocal Agreement for Public School Facility Planning and Implementation of Concurrency (2010 ILA) was entered into by and between the School Board, the Orange County Commission, the City of Orlando, the City of Belle Isle, the City of Maitland, the City of Oakland, the City of Ocoee, the City of Windermere, and the City of Winter Park; and

WHEREAS, in 2011, the First Amended and Restated Interlocal Agreement For Public School Facility Planning and Implementation of Concurrency (2011 ILA) was entered into by and between the School Board, the Orange County Commission, the City of Orlando, the City of Maitland, the City of Winter Park, and the City of Oakland; and

WHEREAS, sections 8.7(c) of the 2008 ILA and 10.7(c) of the 2011 ILA state, “[i]f the individual school impacted by the proposed Residential Development fails to meet the adopted Level of Service as of the date of the School Capacity Determination, the mitigation required pursuant to the Capacity Enhancement Agreement shall be used to ensure that the overcrowding existing at the time of the submittal of a complete Development Application shall not be aggravated;” and

WHEREAS, the 2008 ILA and 2011 ILA also include a formula for calculating a mitigation fee (the CEA Fee), based on collecting the full capital cost associated with the estimated students to be generated by the unvested units taking into account the impact fees to be paid. However, upon review, the formula does not guarantee that OCPS will have sufficient revenues in time to provide the permanent capacity necessary to “ensure that the overcrowding existing at the time of the submittal of a complete Development Application shall not be aggravated”, as required in sections 8.7(c) and 10.7(c) of the 2008 ILA and 2011 ILA, respectively; and

WHEREAS, the 2019 Legislature approved HB 7103, which requires that impact fee credits be given for “any contribution” related to public education facilities. This results in OCPS no longer receiving any funds or school site contributions above the impact fees for a development; and

WHEREAS, even if OCPS collects a CEA fee under the CEA program, OCPS will be required to give a credit against the impact fees due which is equal to the mitigation payment. This reduces the overall amount of impact fees collected, thereby rendering OCPS unable to enter into CEAs certifying that capacity will be available when, in fact, OCPS is not receiving any additional funds to mitigate the impacts of additional students; and

WHEREAS, in 2019, the School Board authorized the School Board Chair to send a letter to Governor DeSantis requesting a veto of HB 7103 to allow time for all parties involved to understand the implications this bill would have in Orange County; and

WHEREAS, Governor DeSantis signed HB 7103 into law on June 28, 2019 and it became effective July 1, 2019; and

WHEREAS, efforts by OCPS and the Orange County Commission to seek a legislative solution have failed; and

WHEREAS, OCPS, in compliance with the School Capacity Charter Amendment, shall continue to certify to local governments whether capacity exists for the proposed developments within three years of the approval; and

NOW, THEREFORE, the School Board of Orange County, Florida does hereby declare that the impact of the 2019 HB 7103 on the CEA program makes it impossible to mitigate the impacts of school overcrowding from new development that would cause or exacerbate school overcrowding where the needed capacity will not be available within three (3) years. Accordingly, the School Board can no longer execute CEAs and developers must rely on, and the citizens of Orange County are entitled to, the process prescribed by the voters for joint approval of all FLUM and rezoning applications that cause or exacerbate school overcrowding.

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Teresa S. Jacobs, Chair

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Teresa Jacobs, Chair
The School Board of Orange County, Florida

DocuSigned by:

Barbara M. Jenkins

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Barbara M. Jenkins, Superintendent
The School Board of Orange County, Florida

Declaration made at June 23, 2020 School Board meeting.