

MAY 09 2006 KJ/VH/BS

INTERLOCAL AGREEMENT **REGARDING SCHOOL CAPACITY**

This Interlocal Agreement is entered into between the School Board of Orange County (hereinafter referred to as "**School Board**"), and any Local Government signatory hereto (hereinafter referred to as "**Local Government**").

WHEREAS, the School Board is constitutionally and legally responsible for the quality education of the public school children within Orange County, Florida, and

WHEREAS, the School Board, and Local Government recognize their respective obligations and responsibilities for the education, nurture and general well-being of the children within their communities; and

WHEREAS, the School Board and Local Government recognize the benefits that will flow to the citizens and students of their communities by assuring public school capacity exists for the education of the students in their communities; and

WHEREAS, Section 1013.33, Florida Statutes, requires the coordination of planning between the School Board and the respective local governing bodies to ensure that plans for construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services. Such planning requires, in part and without limitation, that the location of public educational facilities must be consistent with the comprehensive plan and implementing land development regulations of the appropriate local governing body; and

WHEREAS, the School Board and Local Government enter into this Agreement in fulfillment of the foregoing statutory requirements and in recognition of the benefits accruing to their citizens and students described above; and

WHEREAS, the School Board and Local Government have mutually agreed that coordination of school facility planning and comprehensive land use planning is in the best interests of the citizens of said Local Government; and

WHEREAS, the Local Government has jurisdiction for land use and growth management decisions within its jurisdictional boundaries; and

WHEREAS, the School Board has the responsibility to provide school facilities to ensure a quality public education to the residents of Orange County; and

WHEREAS, the School Board and Local Government agree that they can better fulfill

their respective responsibilities by working in close cooperation to ensure that quality public school facilities are available for the residents of the Local Government prior to any comprehensive plan change or rezoning of property that would permit or increase residential density; and

WHEREAS, Section 163.01, Florida Statutes, authorizes Local Government to enter into interlocal agreements for the benefit of the public,

NOW THEREFORE, be it mutually agreed between the School Board and Local Government that the procedures set forth below will be followed in coordinating land use and public school facilities planning:

Part 1. Incorporation of Preamble - The recitals are true, correct and are incorporated herein.

Part 2. Definitions

Applicant means any entity applying to a Local Government for rezoning or a comprehensive plan amendment that would increase residential density.

Comprehensive Plan Amendment means an amendment to a local government comprehensive plan pursuant to Chapter 163, Florida Statutes that would result in a net increase of ten (10) or more residential units.

Local Government means the governmental entity (whether county or municipality) that has zoning and comprehensive planning jurisdiction wherein the property seeking an increase in residential density is located.

OCPS means the Orange County Public School System, represented by and through the Orange County School Board.

OCSB means the elected body known as the Orange County School Board that governs the Orange County Public School System.

Rezoning means a request to change the zoning classification on property to a zoning classification that will result in a net increase of ten (10) or more residential units. Rezoning shall also mean any land use change not necessarily denoted or characterized as a rezoning (such as a change to a land use plan, master plan or development plan in a mixed use development, Development of Regional Impact, planned unit development, etc.) that would result in an entitlement to a net increase of ten (10) or more residential units on the property.

School Board Capacity Review Board shall mean three (3) representatives from the OCPS Citizen Construction Oversight and Value Engineering Committee (COVE) selected by the Chairman of COVE.

School Capacity shall mean the number of student stations in a permanent school facility based on the actual use of classroom space and the school's core capacity (size of cafeteria and other support facilities) required to meet the educational needs of the students as determined by October 15th of each year. Portables shall not be considered as permanent school facilities. In the event there is a facility change that provides added capacity (i.e. a new school, a rebuilt school or completion of an expansion) that occurs after October 15, then school capacity may be updated at those school facilities affected by the facility change prior to October 15.

School Development Review Committee shall mean representatives of the Planning and Government Relations, Pupil Assignment, Facilities, Finance, Real Estate, Transportation, and Safety Departments of OCPS.

Significantly affected local government jurisdiction shall mean a local government jurisdiction – either unincorporated Orange County, or a municipality within Orange County – in which 10% or more of the student population of a public school affected by a proposed comprehensive plan amendment or rezoning resides.

Student Generation Rate – Shall mean the number of students expected to be generated by residential units for elementary, middle and high schools. The Student Generation Rate is based on OCPS historical data on a county-wide district basis.

Part 3. School Capacity

Introduction.

School capacity standards are an indicator of the degree of service provided by the Orange County School Board for each school based on its operational capability. School capacity standards indicate the capacity per unit of demand for each public facility. The School capacity standards shall be used to determine if public schools can support the impact of new residential rezonings and provide quality education for the students therein. The Orange County School Board approves School capacity for the three levels of schools: elementary, middle and high schools.

The process for School Capacity Determination and/or Enhancement is as follows:

Step 1. School Capacity Determination Process.

The Local Government receives an application for a Rezoning or Comprehensive Plan Amendment. The application shall include a completed OCPS Capacity Determination Form. Attached hereto as Exhibit "A" is a current OCPS Capacity Determination Form, which may be amended from time to time.

Step 2. School Capacity Report Evaluation.

Within fifteen (15) days of its receipt of the application referenced in Step 1, the Local Government will provide OCPS the completed OCPS Capacity Determination Form and request a school capacity evaluation by OCPS. Local Government shall also provide OCPS any available information it may have regarding vested development or imminent development which may impact the affected schools.

Step 3. School Capacity Report Evaluation by OCPS.

Within fifteen (15) days of the receipt of an OCPS School Capacity Determination Form, OCPS shall provide the Local Government and Applicant with a written School Capacity Report. Attached hereto as Exhibit "B" is a sample of a School Capacity Report which form may be amended by OCPS from time to time. OCPS acknowledges that Local Government uses the School Capacity Report as competent substantial evidence of the availability of capacity at the affected schools in the School Capacity Report. OCPS agrees that, at a minimum, the School Capacity Report will contain the following information for the affected schools: permanent program capacity, actual enrollment (as of a specific date, with the date identified in the School Capacity Report), projected enrollment due to existing Capacity Enhancement Agreements and the additional students expected per school from the proposed rezoning or comprehensive plan amendment. The OCPS review process for School Capacity Reports shall be limited solely to school capacity issues and shall not include review of any other land use or development issues.

Step 4. Effect if School Capacity Evaluation Determines Capacity is Unavailable.

If the School Capacity Report indicates that school capacity does not exist, then within fifteen (15) days of date of Report, Applicant may submit a School Capacity Enhancement Application to OCPS with a copy to the Local Government. Attached hereto as Exhibit "C" is an OCPS School Capacity Enhancement Application that may be amended from time to time. Within fifteen (15) days of OCPS receipt of the completed application, OCPS and Applicant representatives shall meet (and Local Government representatives shall be invited) to discuss school capacity enhancement opportunities.

Step 5. School Development Review Committee

Within thirty (30) days of the meeting between OCPS and Applicant (and, where applicable, Local Government) representatives, the School Development Review Committee ("SDRC") shall meet, consider the matter and make a written

recommendation as to the criteria for a Capacity Enhancement Agreement or determine the reasons for the inability to create a Capacity Enhancement Agreement. The SDRC shall consider all reasonable options to mitigate the impacts caused by the proposed Rezoning or Comprehensive Plan Amendment.

Step 6. Capacity Enhancement Conference

Within fifteen (15) days of the SDRC meeting, OCPS and Applicant representatives shall meet (and Local Government representatives may be included) to review the SDRC recommendation. If a written Capacity Enhancement Agreement is reached, then within thirty (30) days thereafter, the written agreement shall be considered by the Orange County School Board for approval or denial. Within five (5) days of the School Board's decision, the Local Government and Applicant shall be notified in writing of the decision.

OCSB approval of a Capacity Enhancement Agreement shall constitute its certification that there will be sufficient capacity to handle the additional students generated by the proposed rezoning or comprehensive plan amendment, and OCSB acknowledges that the Local Government will rely on such certification that capacity will be available. Written notification to the Local Government of OCSB denial of a Capacity Enhancement Agreement shall be accompanied by a School Capacity Report for the affected school(s), which shall constitute OCSB's certification that school capacity is insufficient to handle the additional students generated. Notification of denial shall also be accompanied by a certification that OCSB and/or its staff have fully considered reasonable options to mitigate the impacts caused by the proposed rezoning or comprehensive plan amendment. Upon written request of the Local Government, OCPS shall provide a list of the options considered.

Step 7. Appeal

If OCPS and Developer do not reach a Capacity Enhancement Agreement and OCPS has determined that it will recommend to the OCSB that capacity will not exist, then Developer may appeal the OCPS staff recommendation to the Orange County School Board Capacity Review Board within thirty (30) days.

Within forty-five (45) days of filing the written notice of appeal, the Orange County School Board Capacity Review Board will hear the appeal and recommend approval or denial to the School Board.

Step 8. OCSB Action on Appeal

Within thirty (30) days of the Orange County School Board Capacity Review Board entering its

determination, OCSB will determine whether or not capacity will exist and /or under what conditions it will not exist. Within five (5) days of the OCSB determination, the Local Government and Applicant shall be notified in writing of the determination. If the determination is that capacity will not exist, the written determination shall contain a statement that OCSB has considered all reasonable options to mitigate the impacts caused by the proposed Rezoning or Comprehensive Plan Amendment, and OCPS shall provide any Significantly Affected Local Government Jurisdictions with a copy of the School Capacity Report indicating that school capacity will not be available

Part 3. Capacity Enhancement Agreements.

In negotiating a Capacity Enhancement Agreement, OCPS shall fully consider all reasonable options to mitigate the impacts on school capacity caused by the proposed rezoning or comprehensive plan amendment. Such capacity must be based on a financially feasible and educationally sound plan, and a Capacity Enhancement Agreement shall certify the same. A Capacity Enhancement Agreement shall also address the time at which school capacity will be available to handle the impacts caused by the proposed rezoning or comprehensive plan amendment.

OCSB shall use additional funds, where applicable, generated by Capacity Enhancement Agreements in a timely manner to provide school capacity in areas where the rezonings or comprehensive plan amendments subject to the specific Capacity Enhancement Agreements are located.

Part 4. Local Government Action on Rezoning/Comprehensive Plan Amendments.

Upon receipt of a final decision from the OCSB, the Local Government will process the rezoning/comprehensive plan amendment in accordance with its adopted schedules and procedures. Decision by the OCSB does not bind the Local Government or its agents to approve or deny the Rezoning or Comprehensive Plan Amendment report merely because school capacity is or is not available.

Part 5. Annual Report.

Annual School Capacity Reporting and Monitoring

OCPS shall complete an Annual Capacity Availability Report. This report shall evaluate development permitting activity for the previous one-year period and determine existing conditions with regard to available capacity for schools. The evaluation shall report on capacity used for the previous period and capacity available based on the five year Capital Improvements Program and each public facility using school standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public facility inventories, and revenue projections and shall, at a minimum, include:

- 1) A summary of development activity.
- 2) Capacity Reserved.
- 3) Capacity Used.
- 4) Capacity Available.
- 5) Five-year projected Capacity Analysis based on Capital Improvements Programs and land use projections.
- 6) Performance of School Capacity standards.
- 7) Recommendations to the Capital Improvements Program and Operating Budget.

Factors for Consideration in the Annual Report

In the Annual Report, the OCPS shall consider, at a minimum, the following.

- 1) Five-Year Capital Improvement Program
- 2) School Rezoning
- 3) Five-Year Growth Projections
- 4) Classroom and Core Capacity
- 5) Special/Magnet Programs
- 6) Transfers

Annual Evaluation of School Capacity

The findings of the Annual School Capacity Availability Report shall be considered in preparing the annual update to the Capital Improvements Program, and proposed amendments to the Capital Improvements Program.

This report shall be made available to the County and municipality for their consideration at least 30 days before the report is presented to the OCSB and local governments shall have 30 days to submit comments prior to the report being presented to the OCSB.

Part 6. School Concurrency

The Agreement is not intended by any signatory hereto to be construed as an Interlocal Agreement implementing school concurrency under Section 163.3180, Florida Statutes.

Part 7. School Capacity Ordinance and Modification of Agreement

This Agreement is entered into pursuant to sections 30-740 through 30-743, Orange County Code (the "School Capacity Ordinance") and must remain in force for the School Capacity Ordinance to be effective. The School Board and Local Government agree to be bound by the terms and conditions of this Agreement, which may only be modified or amended in writing with the approval of the School Board and the Board of County Commissioners.

Part 8. Remedies

The School Board and Local Government each agree that the remedy for breach of this Agreement by one of the parties shall be limited to the right of a non-breaching party to seek declaratory and injunctive relief.

Part 9. Effective Date

The effective date of this Agreement (the "Effective Date") shall be the date upon which both the School Board and Orange County have properly executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized representatives set forth above.

SCHOOL BOARD OF ORANGE COUNTY FLORIDA

By: Karen Ardaman

Karen Ardaman, School Board Chairman

STATE OF FLORIDA
COUNTY OF ORANGE

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Karen Ardaman, Chairman of the School Board of Orange County, Florida, known to me to be the person described in and who executed the foregoing, this 21 day of June, 2006. She is personally known to me or has produced _____ has identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 21 day of June, 2006.

Janet L. Brushwood
Notary Public

Print Name: Janet L. Brushwood

My Commission Expires: April 13, 2010

Approved _____ Not Approved _____

Frank Gruppenbacher

General Counsel

Orange County Public Schools

Date 6/24/06





ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Richard T. Crotty*
Richard T. Crotty
Orange County Mayor

Date: 5-11-06

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Martha O. Haynie*
Deputy Clerk

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

MAR 21 2006 JWH/BS

EFFECTIVE DATE

MAY 09 2006

ORDINANCE NO. 2006-04

AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA; APPLYING WITHIN MUNICIPALITIES IN ORANGE COUNTY, FLORIDA AND WITHIN UNINCORPORATED ORANGE COUNTY, FLORIDA; PROVIDING THAT COMPREHENSIVE PLAN AMENDMENTS OR REZONINGS THAT INCREASE RESIDENTIAL DENSITY MAY REQUIRE APPROVAL OF ADDITIONAL LOCAL GOVERNMENTS TO BECOME EFFECTIVE; PROVIDING FOR EXCEPTIONS FOR COMPREHENSIVE PLAN AMENDMENTS OR RESIDENTIAL REZONINGS WITH *DE MINIMIS* IMPACTS; REQUIRING AN INTERLOCAL AGREEMENT REGARDING SCHOOL CAPACITY BETWEEN ORANGE COUNTY AND THE ORANGE COUNTY SCHOOL BOARD FOR THE ORDINANCE TO BECOME EFFECTIVE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Creation of Article XV, Chapter 30. Article XV, Chapter 30, Multi-Jurisdictional Approval of Residential Rezonings and Comprehensive Plan Amendments, Orange County Code, is hereby created to read as follows:

**ARTICLE XV. MULTI-JURISDICTIONAL APPROVAL OF
RESIDENTIAL REZONINGS AND COMPREHENSIVE
PLAN AMENDMENTS**

Sec. 30-740. Scope.

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.

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 Chapter 163, Florida Statutes, 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 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 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.

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

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

Residential Unit: Single-family or multifamily dwelling unit, attached or detached dwelling, house of conventional

construction, mobile home, manufactured home, and any other structure used for permanent residence or for dwelling purpose, regardless of whether occupied by an owner or tenant.

Rezoning: A change in zoning classification that will result in a net increase of Residential Units on the property that is the subject of the Rezoning. The term "Rezoning" shall also mean any land use change not necessarily denoted or characterized as a Rezoning (such as a change to a land use plan, master plan or development plan in a mixed use development, Development of Regional Impact, planned unit development, etc.) that will result in a net increase of Residential Units on the property.

School Board: The School Board of Orange County, Florida, the governing body of Orange County Public Schools.

Significantly Affected Local Government Jurisdiction: a local government jurisdiction – either unincorporated Orange County, or a municipality within Orange County – in which 10% or more of the student population of a public school that is affected by a proposed Comprehensive Plan Amendment or Rezoning resides.

Sec. 30-742. Effectiveness of Comprehensive Plan Amendments and Rezonings.

(a) In order for a Comprehensive Plan Amendment or Rezoning to become effective, the governing boards of all

Significantly Affected Local Government Jurisdictions must approve a Comprehensive Plan Amendment or Rezoning when OCPS cannot 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 one Significantly Affected Local Government Jurisdiction, can accommodate the additional students resulting from the increase in residential density.

(b) The basis for not approving a Comprehensive Plan Amendment or Rezoning by the governing body of a Significantly Affected Local Government Jurisdiction (other than the jurisdiction in which the Comprehensive Plan Amendment or Rezoning would occur) shall be limited to school capacity and the time at which such school capacity shall be available.

(c) A local government jurisdiction may, with written approval of OCPS and the consent of the applicant, elect to defer consideration of school capacity from adoption of a Comprehensive Plan Amendment for a property until such time as the local government jurisdiction considers a Rezoning for the property. In such a case, the Comprehensive Plan Amendment may become effective without the approval of other significantly affected local jurisdictions.

(d) This section shall not apply to a Comprehensive Plan Amendment or Rezoning with a *de minimis* impact. Such a Comprehensive Plan Amendment or Rezoning shall be presumed not to create an adverse impact on any affected public school.

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

Sec. 30-743. Interlocal Agreement Regarding School Capacity.

(a) The County and the School Board shall enter into an Interlocal Agreement Regarding School Capacity which includes the following:

(1) the School Board shall respond to a local government's request for a school capacity report within an agreed-upon time period.

(2) if the school capacity report indicated that there is insufficient capacity, and the applicant requesting the Comprehensive Plan Amendment or Rezoning proposes a Capacity Enhancement Agreement, the School Board shall approve or deny the Capacity Enhancement Agreement within an agreed-upon time

period. Approval by the School Board of a Capacity Enhancement Agreement shall constitute its certification that sufficient school capacity will exist to handle the additional students generated by 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 constitute the School Board's certification of insufficient school capacity.

(3) the Capacity Enhancement Agreement shall take into account the time at which school capacity will be available.

(4) the School Board shall use funds collected pursuant to a capacity enhancement agreement to provide school capacity.

(5) a School Board certification of insufficient school capacity when an applicant has made a capacity enhancement proposal, shall require the School Board to demonstrate that it has considered options to mitigate the impacts created by the rezoning or Comprehensive Plan Amendment.

(b) The City of Orlando, as the most populous municipality within Orange County, along with the County and the School Board, shall be a party to the Interlocal Agreement

Regarding School Capacity negotiations. Any other municipality within the County may request to be a party to the Interlocal Agreement Regarding School Capacity negotiations. To the extent that negotiations with individual cities are successful, they may be parties to the Interlocal Agreement Regarding School Capacity. To the extent that negotiations with individual municipalities, including the City of Orlando, are unsuccessful, they will not be parties to the Interlocal Agreement Regarding School Capacity.

(c) If the Interlocal Agreement Regarding School Capacity negotiations between the County, School Board and the City of Orlando, as the largest city within the County, reach an impasse, the parties shall enter mediation.

(d) The failure of any municipality, including the City of Orlando, to enter into the Interlocal Agreement Regarding School Capacity will not prevent the execution and implementation of the Interlocal Agreement Regarding School Capacity between the County and the School Board.

Sec. 30-744. Remedies.

A Significantly Affected Local Government Jurisdiction may bring a lawsuit in the circuit court of Orange County, Florida, for declaratory and/or injunctive relief to restrain, enjoin, or otherwise prevent a violation of this ordinance.

Sec. 30-745 – 30-750. Reserved.

Section 2. Effective Date. This ordinance shall become effective on the effective date of the Interlocal Agreement Regarding School Capacity, but no sooner than as provided by general law.

ADOPTED THIS 9th DAY OF May, 2006.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Richard T. Crotty

Richard T. Crotty
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: Martha O. Haynie

Deputy Clerk