

ORDINANCE NO. 08-44

AN ORDINANCE OF THE COUNTY OF PINELLAS, AMENDING CHAPTER 134, THE GENERAL AND ADMINISTRATIVE PROVISIONS OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE, TO IMPLEMENT PUBLIC SCHOOL CONCURRENCY; PROVIDING FOR DEFINITIONS, PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THIS ORDINANCE AT THE PUBLIC HEARING AND/OR WITH OTHER RESPONSIBLE PARTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Section 163, Part II, Florida Statutes (F.S.), establishes the Local Government Comprehensive Planning and Land Development Act; and

WHEREAS, local government land development regulations are required to be consistent with, and implement, the adopted Comprehensive Plan; and

WHEREAS, Section 163.3177(12), F.S., was amended in 2005 to require all non-exempt counties and each non-exempt municipality within those counties to adopt and implement a public school facilities element and a school concurrency program; and

WHEREAS, Pinellas County is not exempt from the requirements of Section 163.3177(12), F.S., and must, along with the 12 non-exempt municipalities within the county, adopt a public school facilities element and implement school concurrency; and

WHEREAS, the School Planning Workgroup, comprised of representatives from the County, the 12 affected municipalities, the Pinellas Planning Council, and the Pinellas County School District, worked together to develop the Public School Facilities Interlocal Agreement, the required Public School Facilities Element and subsequently the proposed implementing Land Development Regulations; and

WHEREAS, on April 24, 2007, Pinellas County filed with the Pinellas County Clerk of the Circuit Court, an amendment to its existing Public Schools Interlocal Agreement to provide the foundation for a Public School Facilities Element, for sharing information, and for implementing school concurrency; and

WHEREAS, the Board of County Commissioners of Pinellas County, Florida subsequently amended the Pinellas County Comprehensive Plan on December 18, 2007, to include a Public School Facilities Element; and

WHEREAS, complementary changes are now required to the Zoning Provisions of the Pinellas County Land Development Code to implement school concurrency; and

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PINELLAS COUNTY
CLERK OF THE CIRCUIT COURT
STATE OF FLORIDA
FILED

WHEREAS, the Pinellas Schools Collaborative comprised of elected officials from Pinellas County, the twelve municipalities required to implement school concurrency, and the Pinellas County School District, has reviewed and authorized the Public School Facilities Element and the proposed Land Development Regulations for use by each local government; and

WHEREAS, the recommendations from the Pinellas County Local Planning Agency have been received and considered;

NOW THEREFORE BE IT ORDAINED, by the Board of County Commissioners of Pinellas County, Florida, in its regular meeting duly assembled on this 26 day of August, 2008, that:

SECTION I: PURPOSE AND INTENT

The purpose of school concurrency is to assure that there is available capacity for the number of anticipated students generated by residential site plan approvals in each Public School Concurrency Service Area.

SECTION II: ARTICLE VI, DIVISION 4, SECTION 134-262, DEFINITIONS OF THE PUBLIC SCHOOL FACILITIES CONCURRENCY PROCEDURES OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE, IS CREATED TO READ AS FOLLOWS:

DIVISION 4.

Sec. 134-262. Definitions of the Public School Facilities Concurrency Procedures

Additional Capacity means school facilities that will be in place or under actual construction within three years based on the Five-Year Work Program.

Available Capacity shall be calculated based on the following formula:
Available Capacity = [FISH School Capacity + Additional Capacity] – [Enrollment + Vested Students]

Concurrency Service Area means the areas of the county within which the level of service will be measured for school concurrency purposes, as adopted in the Public School Facilities Element of the Pinellas County Comprehensive Plan.

Development Order means any order granting, denying, or granting with conditions, an application for development.

Development Permit means any approved final site plan, building permit, zoning clearance, rezoning, special exception, variance, conditional use, or any other official action of the county having the effect of permitting the development of land.

Educational Plant Survey or the Five-Year Plant Survey means the systematic study of educational and ancillary plants of the School Board conducted at least every five years to evaluate existing facilities and plan for future facilities to meet proposed program needs. (see Section 1013.35, F.S.)

Effective Date means the date as of which school concurrency will be applied to residential site plans or final residential subdivision approvals, after the Public School Facility Element (PSFE) and land development regulations implementing the PSFE are in effect for all Partner Local Governments.

Enrollment means the official student enrollment count of the fall semester.

Existing Level of Service is calculated based on the following formula:
$$\text{LOS} = [\text{Student Enrollment} + \text{Vested Students}] / [\text{FISH School Capacity} + \text{Additional Capacity}]$$

Five-Year Facilities Work Program or Five-Year Work Program means the document created by the School District to assist it as it plans, proposes, and prioritizes its current and five-year capital outlay needs. (see Section 1013.35, F.S.)

FISH (Florida Inventory of School Houses) means the inventory numbering system used by the Florida Department of Education for parcels, buildings, and rooms in public educational facilities.

Level-of-Service Standard means the minimum service level that will be provided by public school facilities in Pinellas County. The LOS Standard is applied consistently district-wide and is established within both the Public Schools Interlocal Agreement and the Public School Facilities Element.

District-wide Level-of-Service Standard: Student enrollment plus vested students divided by Florida Inventory of School Houses (FISH) School Capacity plus additional capacity does not exceed 100 percent. This level-of-service standard shall apply to each type of public school facility.

Local Government or Local Governments for the purposes of this manual means the County and all of the municipalities required to implement school concurrency.

Public School Facilities Element (PSFE) means the element required to be adopted in local government comprehensive plans by Section 163.3177 (12), F.S., for those communities that are required to implement a school concurrency program.

Public Schools Interlocal Agreement means the Interlocal Agreement filed with the Pinellas County Board Clerk on April 24, 2007 between the Pinellas County School Board, Pinellas County, and the twelve municipalities within

Pinellas County that are required to implement school concurrency per Section 163.31777(1), F.S., or as it may subsequently be amended.

Remodeling as defined in the Florida Building Code, Chapter 4, Section 423.5., means the changing of existing facilities by rearrangement of space and/or change of use.

Renovations as defined in the Florida Building Code, Chapter 4, Section 423.5., means the rejuvenating or upgrading of existing facilities by installation or replacement of materials and equipment. The use and occupancy of the spaces remain the same.

Residential Approval means a residential site plan or a final residential subdivision approval.

School Board means the elected body presiding over the schools of Pinellas County responsible for exercising all of the powers and duties associated with the District schools, in accordance with Chapter 1001 of the Florida Statutes.

School Capacity and Level of Service Report means the report prepared annually by the School District to calculate the existing level of service and the Available Capacity within each Concurrency Service Area.

School Concurrency Approval means the finding issued by the county that there is available capacity for all types of schools to serve a Residential Approval.

School District means the unit for the control, organization, and administration of schools in Pinellas County. The responsibility for the actual operation and administration of all schools needed within the district in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the Pinellas County School District.

Vested Students means the estimated number of students that would be generated from Residential Approvals after the Effective Date (see Section 13.a.i. of the Public Schools Interlocal Agreement) less the number of Vested Students represented by the dwelling units of the Residential Approvals that (1) received certificates of occupancy since the Effective Date when preparing the first School Capacity and Level of Service Report or since the preparation date of the previous Report when preparing the second and subsequent Reports and are located in a residential development that received School Concurrency Approval, or (2) had their School Concurrency Approval expire.

SECTION III: ARTICLE IV, DIVISION 4, SECTIONS 134-263 THROUGH 134-266, THE PUBLIC SCHOOL FACILITIES CONCURRENCY PROCEDURES

**PROVISIONS OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE, IS
CREATED TO READ AS FOLLOWS:**

134-263 Authority; Adoption of Legislative Findings

(a) This division is adopted in compliance with, and pursuant to, the local government comprehensive planning and land development regulation act, Section 163.3184, F.S.

(b) This division is adopted pursuant to the constitution and home rule powers in the Fla. Const. article VII, F.S. ch. 125 and article II of the Pinellas County Home Rule Charter.

(c) The legislative findings are as follows:

(1) Section 163.3177(12) was amended in 2005 to require all non-exempt counties and each non-exempt municipality within those counties to adopt and implement a public school facilities element and a school concurrency program;

(2) The county is not exempt from the requirements of Section 163.3177(12), F.S., and must, along with the 12 non-exempt municipalities within the county, adopt a public school facilities element and implement school concurrency; and

(3) The board of county commissioners adopted amendments to the Pinellas County Comprehensive Plan on December 18, 2007 to establish concurrency for public school facilities.

134-264 Purpose and Intent

The purpose of school concurrency is to assure that there is available capacity for the anticipated students in each Concurrency Service Area where residential units are created at the time those students need to go to school.

134-265 Areas Embraced

The provisions of these divisions shall apply to any property within the unincorporated areas of the county.

134-266 Public School Concurrency Facilities Concurrency Procedures

(a) *Application for School Concurrency Review.*

The development tracking system is accessed by the county when an application for school concurrency review ('Application') is submitted to the county. A county representative shall then ascertain the completeness of the documentation, in a timely manner, to ensure that the required information is sufficient to accept the Application for school concurrency review.

(b) *Review of Application.*

(1) When the Application has been accepted, it shall be processed and reviewed in accordance with procedures adopted in Section 138.177. These procedures shall include a review of the Application for public school facilities identified in this division, as they may apply. In cases of site plans for Affordable Housing Developments, it is the intent of the board of county commissioners that these plans shall be given priority in the review system and, where possible, be reviewed by staff within two weeks of submittal by the applicant, consistent with the Affordable Housing review procedures in Section 138.177(C).

(2) If the Application is not reviewable as submitted, then the Application shall be returned to the property owner or representative clearly stating what the deficiencies are and why the Application cannot be further reviewed.

(c) *School Concurrency Applied.*

(1) When the review process for an Application is initiated, the county shall consider the most current adjusted information on Available Capacity provided by the county. If this information reveals that there is Available Capacity within each of the Concurrency Service Areas where the proposed Residential Approval would be located, then the county shall proceed under Section (2) below. If the information reveals that there is not Available Capacity within a Concurrency Service Area where the proposed Residential Approval would be located, then the county shall proceed under Section (3) below.

(2) Development Review Process when there is Available Capacity:

a. The county is authorized to issue a School Concurrency Approval for a residential site plan or final subdivision approval of less than 25 dwelling units without submitting a School Concurrency Application to the School District.

b. A School Concurrency Application for residential site plans or residential final subdivisions of 25 dwelling units or greater shall be submitted by the county to the School District and the county on a form provided by the School District.

c. Within 25 days of receipt from the county of a completed School Concurrency Application, the School District will review the Application and shall render a School Concurrency Determination stating whether there is Available Capacity for all types of schools to accommodate the estimated number of students that would be generated by the proposed Residential Approval and maintain the adopted Level-of-Service Standard. The School District may request assistance from the county in reviewing Applications.

d. If the School District determines that there is Available Capacity within the Concurrency Service Areas where the proposed Residential Approval would be located, then an adequate Level of Service would be provided within the Concurrency Service Areas and the Residential Approval shall be issued a School Concurrency Approval by the county.

e. If the School District determines that there is not Available Capacity within an affected Concurrency Service Area and the adopted Level-of-Service Standard would be exceeded, then the School District shall consider whether there is Available Capacity in the contiguous Concurrency Service Area(s).

1. If the School District determines that, in the aggregate, there is Available Capacity in the Concurrency Service Area and in the contiguous Concurrency Service Area(s) to accommodate the estimated number of students from the proposed Residential Approval, then an adequate Level of Service would be provided and the Residential Approval shall be issued a School Concurrency Approval by the county.

2. If the School District determines that, in the aggregate, there is not Available Capacity in the Concurrency Service Area and in the contiguous Concurrency Service Area(s) to accommodate the estimated number of students from the proposed Residential Approval, then an adequate Level of Service would not be provided for that type of school and the Residential Approval shall not be issued a School Concurrency Approval by the county.

3. If the School District determines that, in the aggregate there is not Available Capacity, then within 25 days after receiving the completed School Concurrency Application from the county, the School District shall identify the required proportionate share mitigation and recommend acceptable form(s) of mitigation in writing to the county and the applicant.

4. When the School District determines that there is not Adequate Capacity for a Residential Approval, then the county may only issue a School Concurrency Approval after the execution of a legally binding development mitigation agreement between the applicant, the county, and the School Board.

(3) Development Review Process when at least one Concurrency Service Area has no Available Capacity:

a. A School Concurrency Application shall be submitted by the county to the School District and the county for all Residential Approval, regardless of size, that are located within the Concurrency Service Area that has no Available Capacity. The School Concurrency Application shall be submitted on a form provided by the School District.

b. The development review process shall then follow the procedures in (2)e above.

(4) The county shall provide documentation of all School Concurrency Approvals to the county within thirty days of issuance.

(5) Continued Validity of a School Concurrency Approval:

A School Concurrency Approval shall be valid for purposes of the issuance of development orders or permits for 24 months from the date of issuance by the county. Once a development order or permit has been issued, the School Concurrency Approval shall be valid until a certificate of occupancy is issued or the development order or permit is no longer in effect.

(d) *School Capacity and Level of Service Report:*

(1) Each year, the School District shall prepare a School Capacity and Level of Service Report (the "Report") to calculate the Existing Level of Service and the Available Capacity within each Concurrency Service Area.

(2) Available Capacity shall include the school facilities that will be in place or under construction within three years, according to the Five-Year Work Program and shall be calculated based on the following formula:

Available Capacity = [FISH School Capacity + Additional Capacity] – [Enrollment + Vested Students]

(3) The county shall be notified by the local governments when new dwelling units have received certificates of occupancy and when the School Concurrency Approval for a Residential Approval has expired. The county shall provide this information to the School District for inclusion in the annual Report.

(e) *Mitigation.*

(1) If capacity is not available, the applicant may choose to satisfy the public school facilities concurrency requirements of the county by making a proportionate fair share contribution, pursuant to the following requirements:

a. Acceptable forms of mitigation may include, without limitation, the following:

1. Contribution of land;
2. The construction of public school facility;
3. Expansion of an existing public school facility;
4. Payment for land acquisition or the expansion or construction of a public school facility;
5. The creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits;
6. Charter schools will be recognized as public school facilities and will serve to expand the capacity of the School District. Charter schools are a potential option for mitigating the impact that new Residential Approvals may have on public school facilities.

b. The following standards shall apply to any mitigation required by the School District:

1. Proposed mitigation must be directed toward a permanent school capacity improvement identified in the Five-Year Work Program, with the exception of charter schools, that satisfies the estimated demands created by the proposed Residential Approval;
2. Relocatable classrooms will not be accepted as mitigation;
3. Mitigation shall be proportionate to the demand for public school facilities estimated to be created by the proposed Residential Approval;

c. The Proportionate Share Mitigation amount shall be calculated using the following formula for each school level:

Multiply the number of additional new student stations required for mitigation of the estimated demand for public school facilities created by the proposed Residential Approval by the average cost per student station using the actual construction cost being experienced by the School District for student stations at the time when proportionate share mitigation is accepted plus the inclusion of land costs, if any.

(2) Development Mitigation Agreement

a. The development mitigation agreement shall provide for the required mitigation to mitigate the impacts of the proposed development on public school facilities.

- b. Upon notification by the School District that a proposed development project is subject to public school facilities concurrency regulations and is eligible to participate in the proportionate share program, the applicant and the county shall be notified within 21 days in writing of such during the site plan review process.
- c. In order to move forward in the development process, if the applicant chooses to exercise this concurrency option, a meeting shall be held to discuss eligibility, Application submittal requirements, potential mitigation options, and related issues. The applicant and the School District shall attempt to negotiate a development mitigation agreement which shall provide for the required mitigation to mitigate the impacts of the proposed development on public school facilities. The county shall be a party to this agreement.
- d. After a mitigation project is identified and agreed upon by the applicant and the School District, a development mitigation agreement will be prepared by the applicant with direction from the School District. The final agreement, after approval by the School Board, will become a part of the final site plan submittal. Final approval of the site plan and agreement rests with the county administrator. If the applicant and the School Board are unable to agree on an acceptable form of mitigation, the conflict resolution provision provided in Section 14 of the Public Schools Interlocal Agreement may be utilized.
- e. The development mitigation agreement shall include the applicant's commitment to continue to renew the development mitigation agreement until the mitigation is completed as determined by the School Board or as determined through the conflict resolution procedures provided for in Section 14 of the Public Schools Interlocal Agreement, if applicable.
- f. Upon execution of a development mitigation agreement, the applicant shall receive public school facilities concurrency approval or functional equivalent.
- g. If the applicant chooses to not continue with their project, the applicant may submit a letter to the School District to withdraw from the development mitigation agreement at any time prior to the execution of the agreement.
- h. A development mitigation agreement can be amended or cancelled by mutual consent of the parties to the agreement or by their successors in interest.

(3) Cross Jurisdictional Impacts

- a. In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the county will notify the other local government in writing if the proposed mitigation is located in a different jurisdiction, and allow the opportunity for the other local government to comment on mitigation proposals.

(f) Vesting.

For the purposes of meeting the Level-of-Service Standard, Residential Approvals, development orders, and permits approved for any property prior to the Effective Date shall be vested and shall not require a School Concurrency Approval.

(g) Credits.

(1) After the Effective Date, any property with existing dwelling units that are demolished or destroyed shall receive a credit for the estimated number of students generated from existing dwelling units. Credits may not be transferred to another property but may be used on abutting property if part of the same

Residential Approval. The applicant will be required to provide proof of such existing uses in a form acceptable to the county administrator or his/her designee.

(2) The application of credits for public school capacity attributable to the number of student seats generated by a previous and existing on-site residential use may be used for a new Residential Approval, in the place of the capacity which would be generated by the new Residential Approval, in perpetuity from the Effective Date.

(h) Submittal of a New Site Plan.

(1) Consistent with the county's comprehensive zoning ordinance, and as accepted by the county administrator or his/her designee, modifications may be made to an already submitted site plan. A modification will not result in any extension to the validity time frame associated with a School Concurrency Approval issued for the initial site plan. If modifications increase the potential number of students that would be generated by the proposed residential approval, the modifications shall be subject to the school concurrency review in Section 134-266(c). The validity period for a School Concurrency Approval issued for modifications to a site plan shall be identical to the validity time frame associated with the School Concurrency Approval issued for the initial site plan. Modifications in demand on Available Capacity will be reflected in the development tracking system. If the county administrator or his/her designee determines that such modifications constitute substantial deviation, as defined in the comprehensive zoning ordinance, from the original site plan, submittal of a new site plan will be required. In such instances, the School Concurrency Approval issued for the original site plan submittal will no longer be valid, and the new site plan will be subject to the school concurrency review procedures in this Section.

(i) Review and Appeals.

(1) The review and appeal of a School Concurrency Determination issued by the county will be carried out in accordance with Sec. 134-234 of the Pinellas County Code.

SECTION IV: SEVERABILITY

If any section, paragraph, clause, sentence, or provision of the Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgement shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect therefore shall be confined to the section, paragraph, clause, sentence, or provision immediately involved in the controversy in which such judgement or decree shall be rendered.

SECTION V. INCLUSION IN THE CODE

The provision of this Ordinance shall be included and incorporated in the Pinellas County Land Development Code, as an amendment thereto, and shall be

appropriately renumbered to conform to the uniform numbering system of the Pinellas County Land Development Code.

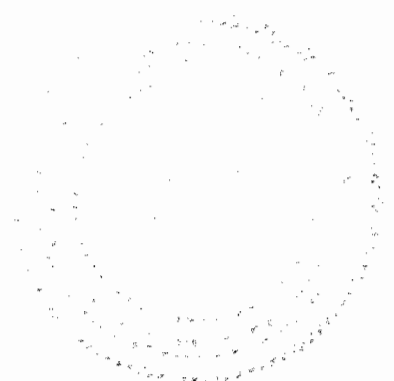
SECTION VI. FILING OF ORDINANCE; EFFECTIVE DATE

Pursuant to Section 125.66, F.S., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon notice of filing of the Ordinance with the Department of State.

Genplan/school planning workgroup/school concurrency/PSFE LDR ordinance

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By *[Handwritten Signature]*
Attorney



STATE OF FLORIDA

COUNTY OF PINELLAS

I, KEN BURKE, Clerk of the Circuit Court and Ex-officio Clerk to the Board of County Commissioners, in and for the State and County aforesaid, DO HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance adopted by the Board of County Commissioners of Pinellas County, Florida, on August 26, 2008 relative to:

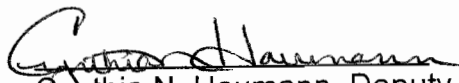
ORDINANCE NO. 08-44

AN ORDINANCE OF THE COUNTY OF PINELLAS, AMENDING CHAPTER 134, THE GENERAL AND ADMINISTRATIVE PROVISIONS OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE, TO IMPLEMENT PUBLIC SCHOOL CONCURRENCY; PROVIDING FOR DEFINITIONS, PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THIS ORDINANCE AT THE PUBLIC HEARING AND/OR WITH OTHER RESPONSIBLE PARTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND ESTABLISHING AN EFFECTIVE DATE

IN WITNESS WHEREOF, I hereunto set my hand and official seal this September 2, 2008.

KEN BURKE
Clerk of the Circuit Court
and Ex-officio Clerk to the
Board of County Commissioners

By:


Cynthia N. Haumann, Deputy Clerk

