

Orange County Amends Code to Abate School Capacity For Certain Projects

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On September 1, 2020, the Orange County Board of County Commissioners (BCC) voted unanimously to approve an amendment to County Code to implement an abatement of school capacity enhancement review for pending residential projects. The amendment is part of the County's larger effort to reconcile the County's code, charter and Comprehensive Plan with HB 7103, a state law passed in 2019 that requires a credit against school impact fees on a dollar-for-dollar basis for any such contribution.

As a result of this statute, any capacity added under a Capacity Enhancement Agreement – under which developers pay the additional amount of needed capacity not covered by impact fees -- would be entirely offset by impact fee credits to the developer. The conflict between HB 7103 and the County's school capacity review process has stalled development applications for at least 17 projects.

According to staff, 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 County Code. The multi-jurisdictional approval process requires developers to receive the approval of all "significantly affected local governments," which is defined in the County's charter as any local government with more than 10% of the student population of an impacted school. The joint approval process has been available since 2004, but has never been utilized.

Under the amendment, any project "for which a legally sufficient application for a Capacity Enhancement Agreement was submitted" after July 1, 2019 does not need to adhere to the multi-jurisdictional approval process.

On September 22, 2020, the BCC will hold a public hearing to consider adoption of Comprehensive Plan Amendment (CPA) to implement an abatement of school capacity enhancement review for pending residential projects -- Amendment 2020-2-C-PSFE-1. In order for the CPA to become effective, the Comp Plan amendment must be transmitted to the

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Department of Economic Opportunity and then come back for adoption by the BCC. If adopted by the BCC, a 31-day period following adoption must run without an appeal being filed.

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