

ORDINANCE NO. 2009- 113

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING ARTICLE 10, CONCURRENCY REGULATIONS, OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE TO PROVIDE FOR THE ADDITION OF PUBLIC SCHOOL CONCURRENCY REVIEW PROCEDURES NECESSARY TO MEET THE STATE MANDATED REQUIREMENTS OF PUBLIC SCHOOL CONCURRENCY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Town of Miami Lakes (the "Town") adopted the Town of Miami Lakes Comprehensive Plan ("the Town Comprehensive Plan") by Ordinance 03-46 on December 19, 2003; and

**WHEREAS**, in 2005, the Florida Legislature adopted Senate Bill 360, which, in relevant part, required that all Florida school boards, counties and non-exempt local governments adopt the necessary comprehensive plan amendments to establish public school concurrency by 2008; and

**WHEREAS**, the Town of Miami Lakes adopted amendments to the Education Facilities, Intergovernmental Coordination and Capital Improvements Elements within the Comprehensive Plan establishing standards for public school concurrency by Ordinance 07-98 on November 18, 2008; and

**WHEREAS**, the legislation and related Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County require that all local governments amend their land development regulations and concurrency management systems as necessary to meet the new public school concurrency requirements; and

**WHEREAS**, the Town desires to amend the Town of Miami Lakes Land Development Code (“Town LDC”) to provide the necessary public school concurrency requirements consistent with the Town’s Comprehensive Plan; and

**WHEREAS**, since passage of public school concurrency legislation in 2005, the Town has been participating in a countywide intergovernmental effort to comply with and implement the new requirements; and

**WHEREAS**, the State’s requirements for public school concurrency became effective January 1, 2008; and

**WHEREAS**, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance at its February 17, 2009 meeting and voted to recommend approval of this request; and

**WHEREAS**, the Town Council has reviewed this Ordinance at a duly noticed hearing, considered the recommendations of the Local Planning Agency, the Town staff, and comments from the public, and determined that it is consistent with all policies contained in the Town’s Comprehensive Plan; and

**WHEREAS**, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, AS FOLLOWS:**

**Section 1. Recitals.** Each of the above stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Amendment to Article 10, Concurrency Regulations, of the Town LDC.**

Article 10, Concurrency Regulations, of the Town LDC is hereby amended to read as follows<sup>1</sup>:

**ARTICLE 10  
CONCURRENCY REGULATIONS**

**DIVISION 10.1 - Purpose.**

The purpose of this article is to ensure that the infrastructure necessary to serve new development is available concurrently with the impacts of that new development. Impact is measured against the adopted minimum acceptable levels of service with respect to: (a) roads, (b) sanitary sewer, (c) solid waste, (d) drainage, (e) potable water, and (f) parks and open space and (g) public schools.

**DIVISION 10.2 - TRANSPORTATION CONCURRENCY MANAGEMENT PROGRAM**

**(a) Title.**

This ~~article~~division shall be known as, and may be cited as, the “Town of Miami Lakes Transportation Concurrency Management Program.”

**(b) Legislative Intent.**

This ~~article~~division is intended to implement the comprehensive plan, by ensuring that development approved by the Town of Miami Lakes (the “Town”) shall not result in a reduction of roadway level of service below the standards contained in the Town of Miami Lakes Comprehensive Plan, as required by Chapter 163.3202(2)(g) of the Florida Statutes.

Nothing in this ~~article~~division shall be construed to be inconsistent or in conflict with the legislative intent of the adopted comprehensive plan and that legislative intent is hereby incorporated by reference and made a part of this ~~article~~division.

Nothing in this ~~article~~division shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380, Florida Statutes, or who has been issued a final development order, as defined in this ~~article~~division, prior to the adoption of this ~~article~~division, and where development has commenced and is continuing in good faith. Subdivisions or waivers of plat approved prior to July 1, 2005, and for which development has commenced and is continuing in good faith are hereby determined to be final development orders for purposes of this section. It is further determined that, for purposes of this section,

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<sup>1</sup> Additions to the text are shown in underline and deletions from the text are shown in ~~strikethrough~~.

development has commenced and is continuing in good faith if one of the following has occurred:

\* \* \*

3. The Town approved a final development order prior to the effective date of this articledivision.

\* \* \*

(c) **Definitions.**

The following words, terms, and phrases when used in this articledivision shall have the meanings ascribed to them in this articledivision, except where the context clearly indicates a different meaning:

\* \* \*

7. *Concurrency Management Database and Monitoring System Report (or "Concurrency Management Report")* means the technical administrative manual, adopted by reference in this articledivision, which sets forth the details of administrative procedures and methodology for determinations of concurrency.

\* \* \*

9. *Development* is any construction, structures, or alteration of the land surface, or use of land which requires authorization by the Town of Miami Lakes through issuance of a development order as defined in this articledivision.

\* \* \*

12. *Final Development Order* means any final plat or waiver of plat approved subsequent to the adoption of this articledivision; or any building permit authorizing construction of a new building, or the expansion of floor area, or the increase in the number of dwelling units contained in an existing building, or modifications to an existing building or site to accommodate a change in use for which a new certificate of use and occupancy are required; and any certificate of use or occupancy authorizing a change in the use or authorizing the initial use of a parcel or structure or portion thereof where there is no other final development order in effect

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(d) **Transportation Concurrency Management.**

(c) **Transportation Concurrency Review.**

\* \* \*

**1. Levels of transportation concurrency review.**

\* \* \*

b. **Concurrency Exemption.**

A determination by Town Engineer as to whether a proposed project is exempt from traffic concurrency pursuant to the terms of this ~~article~~division.

\* \* \*

**3. Exemptions.**

a. The following types of development shall be exempt from the requirements of this ~~article~~division, but only to the extent stated in an applicable certification of exemption provided by the Town Engineer:

\* \* \*

b. A development which meets the following *de minimis* impact thresholds is also exempt from the requirements of this ~~article~~division, but only to the extent stated in an applicable certification of exemption provided by the Town Engineer:

\* \* \*

**4. Previously Vested/Reserved Trips.**

a. Any development project that has a valid traffic concurrency reservation, where the project has continued in good faith toward the completion, or any development which has received concurrency approval from Miami-Dade County Public Works prior to the effective date of this ~~article~~division shall be considered vested for the period of the Miami-Dade County reservation or 12 months, whichever occurs first. Two extensions of no more than three months each (or a total of six months) may be granted by the Town Council.

\* \* \*

**7. Concurrency Review Process.**

\* \* \*

b. Appeals.

1. An applicant may appeal any final decision issued pursuant to this ~~article~~division by the Town Engineer by filing a written appeal to the Town Clerk's office within 14 calendar days after such decision. The Town Council shall hear such appeal at a public hearing with reasonable notice to the applicant and shall issue its opinion within a reasonable time after such hearing.

\* \* \*

3. All appellate decisions shall be based upon the criteria and standards contained in this ~~article~~division.

\* \* \*

### **DIVISION 10.3 – SCHOOL CONCURRENCY PROGRAM**

**(a) Title.**

This division shall be known as, and may be cited as, the “Town of Miami Lakes School Concurrency Program.”

**(b) General.**

Pursuant to the Education Facilities Element of the Town Comprehensive Plan (EFE) and the Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County (ILA), the Town, in collaboration with Miami-Dade County and the School Board of Miami-Dade County (School Board), shall ensure that public school facilities will be available for current and future students consistent with available financial resources and adopted Level of Service (LOS) standards and that such facilities are available concurrent with the impact of proposed residential development.

**(c) Applications Subject to a Public School Concurrency Determination.**

Public school concurrency review is required for all residential applications for development approval in order to identify the impacts of new residential development on the levels of service for public school facilities, except as exempted or vested under the provisions of Section 10.3(h) below. The Town shall not approve an application for a preliminary or final plat or any site plan (or functional equivalent), until the School Board has reported that the school concurrency requirement has been satisfied or unless the Town has determined that the application is exempt or vested. An application for a preliminary plat, final plat or any site plan (or functional equivalent) shall not be denied for the failure to achieve and maintain the adopted LOS standard for public school concurrency where:

1. adequate school facilities will be in place or under actual construction within three (3) years after the issuance of the final subdivision or site plan (or functional equivalent); or
2. the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development of the property subject to the preliminary plat, final plat or site plan (or functional equivalent) as provided in Section (g)2.b) below.

This shall not be construed to limit the authority of the Town to deny the preliminary plat, final plat or site plan (or functional equivalent) for reasons other than failure to achieve and maintain the adopted LOS standard for public school concurrency.

**(d) Level of Service Standards.**

The Level of Service standard (LOS) for public schools shall be the standard established within the Town's Comprehensive Plan.

**(e) Concurrency Service Areas (CSAs).**

The areas for the implementation of public school concurrency in the Town shall be known as Concurrency Service Areas (CSAs), which shall be defined in the Town's Comprehensive Plan.

**(f) Public School Preliminary Concurrency Analysis.**

The School Board shall conduct a Public Schools Planning Level Review of Comprehensive Plan Amendments, rezonings and Development of Regional Impact proposals or amendment that may affect student enrollment, enrollment projections, or school facilities. Said Planning Level Reviews and informational assessments are informational and shall not constitute a Public School Concurrency Review.

**(g) Public School Concurrency Review.**

**1. Application Submittal.**

Any applicant submitting an application with a residential component, that is not exempt or vested, shall be reviewed for public school concurrency at the time of preliminary plat, final plat or site plan (or functional equivalent). Applications for public school concurrency review shall be first submitted to the Town, who in turn shall transmit to the School District, via the computerized Concurrency Management System. Upon receipt of the application, the CMS will acknowledge receipt of the application and request payment of the applicable review fee be made by the applicant via the web. Upon payment of the applicable review fee, the CMS will conduct a review of the application.

**2. Public School Concurrency Determination.**

The School Board will issue a school determination as to whether adequate school capacity exists for a proposed development based upon the adopted Level of Service standard, Concurrency Service Areas, and other standards set forth in the ILA.

**a) If Concurrency Has Been Met.**

The School Board's determination shall indicate the total number of residential units, the number of seats reserved at each of the three school types, the date of issuance, the expiration date and the assigned Master Concurrency Number.

**b) If Concurrency Has Not Been Met.**

When sufficient capacity is not available to meet some or all of the impacts created by the application, the School Board's determination shall indicate why the development is not in compliance, and shall offer the applicant an opportunity to negotiate with the School District and the Town for a Proportionate Share Mitigation Option listed within the Town's Comprehensive Plan. If sufficient capacity in the affected or contiguous concurrency service area is not available to address the impacts of a proposed development, either:

i. the project must provide capacity enhancement sufficient to meet its impacts through Proportionate Share Mitigation. The Proportionate Share Mitigation shall be guaranteed through a legally binding development agreement entered into between the School Board, the Town, and the applicant and executed prior to issuance of the preliminary plat, final plat, site plan or functional equivalent;

ii. a condition of approval of the preliminary plat, final plat or site plan (or functional equivalent) shall be that the project's impacts shall be phased and building permits shall be delayed to a date when capacity enhancement and LOS can be assured; or

iii. the project must not be approved.

**c) Final Town Action.**

The Town shall, within 10 days of final action regarding the application for preliminary plat, final plat, site plan or functional equivalent, send written notice to the School Board indicating that the application was granted final approval or denied.



**(h) Exemptions and Vested Development.**

1. The following types of developments shall be exempt from the requirements of public school concurrency. Such developments shall nevertheless be subject to the payment of school impact fees.
  - a) Developments that result in a total impact of less than one (1) student in any level or type of school; and
  - b) Developments with covenants restricting occupancy to exclude school age children (e.g., 55 and over).
  
2. The following types of developments shall be considered vested from the requirements of public school concurrency:
  - a) Developments with a valid, unexpired site plan, final plat or functional equivalent, as of December 31, 2007;
  - b) Developments that have executed and recorded covenants or have provided monetary mitigation payments, as of December 31, 2007, under the School Board's current voluntary mitigation procedures;
  - c) Any Development of Regional Impact for which a development order was issued, pursuant to Chapter 380, Florida Statutes, prior to July 1, 2005. Also, any Development of Regional Impact for which an application was submitted prior to May 1, 2005.
  
3. To be exempt or vested from the requirements of public school concurrency, an applicant seeking such a determination shall be required to submit documentation with the application to the Town which shall include written evidence sufficient to verify that the subject development meets the exemptions stated herein, and as such, is exempt from the requirements of public school concurrency. The Town shall transmit or provide written information to the School Board indicating that the units in the application are exempt or vested.

**(i) Term of Public School Concurrency Determination Reservation.**

1. The term of a Public School Concurrency Determination Reservation issued by the School Board to the applicant, its successors, or assigns shall run concurrent with the term of the approval of the site plan, preliminary plat or final plat (or functional equivalent), as issued by the Town, unless otherwise provided for in the Proportionate Share Mitigation agreement. Requests for extensions of a Public School Concurrency Determination Reservation may be submitted to the Town and will be considered when the applicant demonstrates that development has commenced on a timely basis and is continuing in good faith and the School

Board receives documentation from the Town that the applicant, its successors, or assigns are progressing in good faith through the Town's review process. In no event shall a Public School Concurrency Determination Reservation be valid for more than six (6) years.

**(j) Appeal.**

An appeal of any determination made with regard to this article shall be considered as an appeal of an administrative decision. Such appeals shall follow the procedures set forth in Article 3(h) of the Town LDC.

**Section 3. Repeal of Conflicting Provisions.** All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Town Land Development Code.** It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town LDC and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Article", "Division" or other appropriate word.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Councilmember Mary Collins, who moved its adoption on first reading. The motion was seconded by Councilmember George Lopez and upon being put to a vote; the vote was as follows:

Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Nick Perdomo	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

PASSED AND ADOPTED on first reading this 17<sup>th</sup> day of February, 2009.

The foregoing Ordinance was offered by Councilmember Mary Collins, who moved its adoption on second reading. The motion was seconded by Councilmember Michael Pizzi, and upon being put to a vote, the vote was as follows:


Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador	<u>absent</u>
Councilmember Nick Perdomo	<u>absent</u>
Councilmember Nancy Simon	<u>absent</u>

PASSED AND ADOPTED this 17<sup>th</sup> day of March, 2009.

  
MICHAEL PIZZI  
MAYOR

ATTEST:  
  
DEBRA EASTMAN, MMC TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR USE ONLY BY THE TOWN OF MIAMI LAKES:

  
WEISS, SEROTA, HELFMAN, PASTORIZA,  
COLE & BONISKE, P.L.  
TOWN ATTORNEY