

ORDINANCE NO. C-22-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING THE CITY OF FORT LAUDERDALE, FLORIDA UNIFIED LAND DEVELOPMENT REGULATIONS, SPECIFICALLY ARTICLE V. – DEVELOPMENT REVIEW CRITERIA, SECTION 47-25.2. ENTITLED “ADEQUACY REQUIREMENTS” AND AMENDING ARTICLE XIV – ADDITIONAL DEVELOPMENT REQUIREMENTS, SECTION 47-38C ENTITLED “EDUCATION MITIGATION” TO MAKE CONSISTENT WITH THE EDUCATION ELEMENT AND CAPITAL IMPROVEMENT ELEMENT OF THE CITY OF FORT LAUDERDALE 2020 COMPREHENSIVE PLAN AND IN COMPLIANCE WITH THE THIRD AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING, BROWARD COUNTY, FLORIDA, UPDATING THE SCHOOL LEVEL OF SERVICE STANDARDS, AND SCHOOL CAPACITY AVAILABILITY, AND PUBLIC SCHOOL CONCURRENCY PROVISIONS; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; PROVIDING FOR CODIFICATION AND SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, desires to amend Article V. – Development Review Criteria, of the City of Fort Lauderdale, Florida Unified Land Development Regulations (“ULDR”), specifically Section 47.25.2 entitled “Adequacy Requirements”, and Article XIV – Additional Development Requirements of the ULDR, specifically Section 47-38C entitled “Education Mitigation”; and

WHEREAS, the Planning and Zoning Board, acting as the local planning agency, at its meeting of December 15, 2021, (PZ Case UDP-T21011) found that the proposed text amendments for Sections 47-25.2 and 47-38C of the ULDR are consistent with the City’s Comprehensive Plan and the Planning and Zoning Board did recommended approval of said proposed text amendments to the City Commission; and

WHEREAS, notice was provided to the public that this ordinance would be considered at the City Commission meeting to be held on Tuesday, February 15, 2022, and Tuesday, March 1, 2022, at 6:00 o’clock P.M., in the City Commission Room, City Hall, Fort Lauderdale, Florida;

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Article V. – Development Review Criteria, of the ULDR, specifically Section 47.25.2 entitled “Adequacy Requirements” is hereby amended to read as follows:

Sec. 47-25.2. – Adequacy Requirements

* * *

J. Public Schools. For all development including residential units, the applicant shall be required to mitigate the impacts of such development on public school facilities in accordance with the Broward County Land Development Code or section 47-38C. Educational Mitigation, as applicable and shall provide ~~documentation~~ a school capacity availability determination letter (SCAD) from Broward County Public Schools indicating that either the requirements of public school concurrency have been satisfied or that the application is exempt or vested pursuant to Section 47-38C.2 of the ULDR to the city prior to the issuance of a development permit. ~~that such education mitigation requirement has been satisfied.~~

* * *

SECTION 2. That Article XIV. – Additional Development Requirements, Section 47-38C – Education Mitigation, of the City of Fort Lauderdale, Florida ULDR is hereby amended to read as follows:

Article XIV. – ADDITIONAL DEVELOPMENT REQUIREMENTS

. . .

SECTION 47-38C. - EDUCATION MITIGATION.

Sec. 47-38C.1. - Findings and purpose.

- (a) The City Commission of the City of Fort Lauderdale finds and determines that residential development activity within the city will create additional demand and need for school facilities within the city; and

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- (b) The Ceity Ceommission finds that because new residential development creates a need for public school facilities it should be subject to a fee representing its proportionate share of the cost of school facilities needed to service the growth and development activity.
- (c) The Ceity Ceommission adopts this section 47-38C. to impose education mitigation fees for public school facilities.
- (d) The Ceity Ceommission finds that the proposed amendment is consistent with and furthers the goals, objectives and policies of the Intergovernmental Coordination Element, Capital Improvements Element and the Education ~~Public Facilities School~~ Element of the City of Fort Lauderdale Comprehensive Plan.
- (e) Pursuant to the Capital Improvements Element and Education ~~Public School Facilities~~ Element of the City Comprehensive Plan (~~PSFE~~) and the ~~Amended~~ Interlocal Agreement for Public School Facility Planning (ILA) as amended, the Ceity, in collaboration with Broward County and the School Board of Broward 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 standards and that such facilities are available concurrent with the impact of proposed residential development.

Sec. 47-38C.2. – Public School Concurrency, Applicability, Review Procedure, and Fees.
~~imposed, applicability.~~

- ~~(a) Educational mitigation requirement for residential development. Any application for a building permit for one (1) or more new residential units is subject to educational mitigation requirements as provided herein.~~

~~(1) Downtown Regional Activity Center (Downtown RAC)~~

- ~~A. Residential units are subject to the Education Mitigation Agreement executed between the city, School Board of Broward County, and Broward County, as amended from time to time.~~
- ~~B. The mitigation amount per residential unit shall be outlined in the Education Mitigation Agreement, as approved and amended from time to time. The mitigation amount per residential unit shall be based on following:~~

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- ~~(1) Residential units allocated from the Downtown RAC land use amendment for three thousand (3,000) units, as adopted in 2006, shall pay a mitigation amount not less than one thousand four hundred forty-nine dollars (\$1,449.00) per unit.~~
- ~~(2) Residential units allocated from the Downtown RAC land use amendment for five thousand (5,000) units, as adopted in 2017, shall pay a minimum cost per unit based upon the January 2016 school impact fee for mid-rise and high-rise units, and an actual cost per unit at time of payment based upon the Broward County Education Impact Fee schedule applicable at time of payment review.~~

~~C. On or before the issuance of a building permit by city for any of the dwelling units referenced in the Education Mitigation Agreement, the applicant shall pay to the school board the amount determined for compliance with the Education Mitigation Agreement as described above in Section 47-38C.2(a)(1).B.~~

~~D. County determination of adequacy required. The applicant shall present documentation of the payment and notice to the city prior to submission of an application for a building permit. The city shall not issue a building permit or certificate of occupancy for residential development within the Downtown RAC, without first receiving proof that Broward County has determined that the student station cost was paid as required and that the payment was adequate.~~

~~E. Notice to school board. The city shall notify the superintendent of the school board or his or her designee of approval of any site plan or plat for residential development within the Downtown RAC, which notice shall include the location of the project and the number and type of dwelling units.~~

~~(2) Other areas except Downtown RAC.~~

- (a) ~~A. Applications subject to a public school concurrency determination.~~ The city shall not approve an application for a site plan, plat, replat, plat note amendment, findings of adequacy or any development plan (an "application"), that generates one (1) or more students or is not exempt or vested from the requirements of public school concurrency (hereinafter referred to as a "residential development"), until the school board has reported that the public school concurrency requirement has been satisfied.

(b) Review Procedure.

- (1) Public School Impact Application (PSIA). Any applicant submitting a development application with a residential component, that is not exempt or vested pursuant to Section 47-38C.2 of the ULDR, is subject to public school concurrency and shall be required to submit a public school impact application (PSIA) directly to the school board for review.
- (2) School Capacity Availability Determination Letter (SCAD). The applicant shall provide to the City a school capacity availability determination letter (SCAD) indicating that either the requirements of public school concurrency have been satisfied or that the application is exempt or vested pursuant to Section 47-38C.2 of the ULDR prior to issuing a building permit for a residential development.

(c) B. Exemptions and vested development.

- (1) Exemptions. The following residential plats and site plans (or functional equivalent) shall be exempt from the requirements of public school concurrency:
 - A. All residential plats and site plans (or functional equivalent) which generates less than one student in the relevant Concurrency Service Areas ("CSA"). Such development shall be subject to the payment of school impact fees.
 - B. Any amendment to or replat of a residential plat or amendment to a residential site plan (or functional equivalent) which generates less than one additional student. Such development shall be subject to the payment of school impact fees.
 - C. Any age restricted community with no permanent residents under the age of eighteen (18). Exemption for an age restricted community shall only be available subject to a recorded Restrictive Covenant limiting the age of all permanent residents to eighteen (18) years and older.
 - D. As may otherwise be exempted by Florida Statutes.

~~b. An application for age restricted communities with no permanent residents under~~

~~the age of eighteen (18). Exemption for an aged restricted community shall only be available subject to a recorded restrictive covenant prohibiting the residence of school aged children in a manner not inconsistent with federal, state or local law or regulations.~~

- ~~c. A Development of Regional Impact (DRI) with a development order issued before the effective date of Senate Bill 360 (July 1, 2005) or an application submitted before May 1, 2005.~~
- ~~d. As may otherwise be exempted by Florida Statutes.~~

(2) Vested development. The following residential applications shall be vested for ~~from~~ the requirements of public school concurrency:

A. Any residential site plan (or functional equivalent) that has received final approval, which has not expired prior to the effective date of public school concurrency.

B. a. Any residential plat or site plan application located within a previously approved comprehensive plan amendment or rezoning which is subject to a mitigation agreement in accordance with the following:

1) ~~4.~~The mitigation to address the impact of the new students anticipated from the development has been accepted by the school board consistent with School Board Policy 1161, entitled "Growth Management", as may be amended from time to time; and

2) ~~2.~~A declaration of restrictive covenant has been properly executed and recorded by the developer, or the development is located within a boundary area that is subject to an executed and recorded tri-party agreement consistent with School Board Policy 1161, as may be amended from time to time; and

~~3. The applicant provides a letter from the school board or other evidence acceptable to the county verifying 1. and 2. above. Other evidence may include documentation as specified in the tri-party agreement.~~

- 3) Any residential site plan (or functional equivalent) which is included within a residential plat or development agreement for which school impacts have been satisfied for the dwelling units included in the proposed site plan (or functional equivalent).
- ~~b. An application which includes property located within a plat or is the subject of a development agreement for which school impacts have been satisfied for the dwelling units included in the proposed application. This includes any application approved between February 2, 1979 and the effective date of the Public School Facilities Element of the Comprehensive Plan and this section, which have not expired. In the transmittal of an application to the school board, the city shall include written information indicating that the units in the application are vested.~~
- ~~c. An application that has received final approval, and which has not expired, prior to the effective date of the Public School Facilities Element of the city's Comprehensive Plan.~~
- ~~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 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.~~
- (d).G. Level of service standards. The level of service standard (LOS) shall be one hundred ten (110) percent of the permanent Florida Inventory of School Housing (FISH) capacity for each Concurrency Service Area (CSA). The LOS shall be achieved and maintained within the period covered by the five-year schedule of capital improvements contained in the effective School Board Five-Year Adopted District Educational Facilities Plan (DEFP). The minimum level of service (LOS) for public school facilities shall be as follows:
- (1) School Type A is a bounded elementary, middle or high school that has the equivalent of at least 10% of its permanent Florida Inventory of School Houses (FISH) capacity available onsite in relocatable classrooms. The LOS for School Type A shall be 100% gross capacity (including relocatable classrooms).

- (2) School Type B is a bounded elementary, middle or high school that has less than the equivalent of 10% of its permanent FISH capacity available onsite in relocatable classrooms. The LOS for School Type B shall be 110% permanent FISH capacity.
- (3) The LOS shall be achieved and maintained within the period covered by the five-year schedule of capital improvements contained in the effective Five-Year Adopted District Educational Facilities Plan (DEFP).
- ~~(e) D.~~ *Concurrency service areas (CSA's).* The areas for the implementation of public school concurrency in Broward County shall be known as concurrency service areas (CSA), and such CSA's shall be the approved school boundaries for elementary, middle and high schools as annually adopted by the school board. For the purposes of public school concurrency, such CSA's shall be effective on the first day of the school year, and end on the last day before the beginning of the next school year.
- ~~(f) E.~~ *Student generation rates.* The Broward County adopted student generation rate(s) contained in the Broward County Land Development Code, ~~Section 5-182(m)(6) "Student Generation Rates,"~~ as amended, shall be utilized to determine the potential student impact anticipated from the residential development proposed in submitted applications.

~~F. Review Procedure.~~

- ~~1. Public School Impact Application (PSIA). Any applicant submitting a development application with a residential component, that is not exempt or vested, is subject to public school concurrency and shall be required to submit a public school impact application (PSIA) for review by the school board. Evidence of acceptance of the PSIA and payment of the applicable application fee to the school board shall be required prior to acceptance of the development application by the city.~~
- ~~2. School Capacity Availability Determination Letter (SCAD).~~
 - ~~a. No application for a residential development or amendments thereto shall be approved by the city, unless the residential development is exempt or vested from the requirements of public school concurrency, until a school capacity availability determination (SCAD) Letter has been received from the school board confirming that capacity is available, or if capacity is not available, that proportionate share~~

~~mitigation has been accepted by the school board. The school board shall send the SCAD Letter to the applicant, the Broward County Development Management Division if the application relates to a plat, and the city, no later than forty-five (45) days after acceptance of the completed PSIA.~~

- ~~b. The school board shall determine the potential student impact from proposed residential development on the applicable CSA by performing the review procedure specified in School Board Policy 1161, as amended.~~
- ~~c. If the school board reviews an application and determines that sufficient permanent capacity is available at the adopted LOS standard to accommodate students anticipated from the development, the school board shall issue a SCAD Letter indicating that adequate school facilities exist to accommodate the student impact and that the proposed development satisfies public school concurrency requirements.~~
- ~~d. If the SCAD Letter states that the development has not satisfied public school concurrency requirements, the SCAD Letter shall state the basis for such determination, and the applicant shall have thirty (30) days to propose proportionate share mitigation to the school board.~~
- ~~e. If the applicant proposes proportionate share mitigation within the thirty-day (30) deadline, upon the subsequent acceptance of the proposed mitigation by the school board, and upon the execution of a legally binding document among the school board, the city, and the applicant, an amended SCAD Letter shall state that adequate capacity anticipated from the accepted proportionate share mitigation will be available to accommodate the student impact anticipated from the proposed development and that the proposed development satisfies public school concurrency requirements. The total amount committed for any mitigation option shall not be less than the school impact fees due for the proposed units as calculated based upon the adopted school impact fee schedule provided in section 5-182(m)(3) of the Broward County Code of Ordinances, as amended. The school impact fee for the development shall be considered included in the total proportionate share mitigation amount due or paid. If the school board does not accept the proportionate share mitigation, the amended SCAD Letter shall state the basis upon which the mitigation proposal(s) was rejected and why the development is not in compliance with public school concurrency requirements.~~

~~f. An applicant adversely impacted by a SCAD determination may appeal such determination by written request to the school board within the designated thirty-day (30) time period. A timely request for an appeal shall stay the requirement for an applicant to propose proportionate share mitigation until the appeal has been resolved.~~

~~g. If an application or approval expires, the SCAD Letter will no longer be valid.~~

(g)G. Expiration of concurrency/vesting. Once an approved plat, or site plan expires, the SCAD letter will no longer be valid. If an approval is to be extended, as may be permitted by the applicable Local Government, the applicant shall be required to provide written notice to the School District prior to any such expiration and provide documentation that the extension request was approved.

~~1. The public school concurrency approval for a residential development plan which shall be considered vested, unless the site plan approval expires as provided for within the City Code.~~

~~2. The public school concurrency approval for a plat shall be considered vested for up to five (5) years beginning from the date the developer received approval from Broward County. Vesting of a residential application beyond the five (5) years requires that one (1) of the following conditions are met within the five-year (5) period: 1) the issuance of a building permit for a principal building and first inspection approval or 2) substantial completion of project water lines, sewer lines and the rock base for internal roads. If the development was denied, the board shall deduct students associated with the development from its database.~~

(h)H. School impact fees. In order to provide lands, facilities, or funds to be used to meet the need for school sites and facilities created by residential development, a development applicant must convey land or provide facilities acceptable to the School Board or pay school impact fees per the Broward County Land Development Code in an account maintained by the Broward County. School impact fees may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(i) Downtown Regional Activity Center (Downtown RAC) Mitigation Fee for Residential Units

- (1) Downtown RAC residential units are subject to the Education Mitigation Agreement executed between the city, School Board of Broward County, and Broward County, as amended from time to time.
- (2) The mitigation amount per residential unit shall be outlined in the Education Mitigation Agreement, as approved and amended from time to time. The mitigation amount per residential unit shall be based on following:
 - A. Residential units allocated from the Downtown RAC land use amendment for three thousand (3,000) units, as adopted in 2006, shall pay a mitigation amount not less than one thousand four hundred forty-nine dollars (\$1,449.00) per unit.
 - B. Residential units allocated from the Downtown RAC land use amendment for five thousand (5,000) units, as adopted in 2017, shall pay a minimum cost per unit based upon the January 2016 school impact fee for mid-rise and high-rise units, and an actual cost per unit at time of payment based upon the Broward County Education Impact Fee schedule applicable at time of payment review.
- (3) Collection of the mitigation amount or the school impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.
- (4) County determination of adequacy required. The applicant shall present documentation of the payment and notice to the city prior to submission of an application for a building permit. The city shall not issue a building permit or certificate of occupancy for residential development within the Downtown RAC, without first receiving proof that Broward County has determined that the student station cost was paid as required and that the payment was adequate.
- (5) Notice to school board. The city shall notify the superintendent of the school board or his or her designee of approval of any site plan or plat for residential development within the Downtown RAC, which notice shall include the location of the project and the number and type of dwelling units.

SECTION 3. That if any clause, section or other part of this Ordinance shall be held invalid

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or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 4. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 5. That this Ordinance shall be in full force and effect ten (10) days from the date of final passage.

PASSED FIRST READING this ____ day of February, 2022.

PASSED SECOND READING this ____ day of March, 2022.

Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
DAVID R. SOLOMAN