

\* Corrected March 19, 1991, to correct a clerical error in Section 9.3.1 to conform to the handwritten changes approved by the Board of County Commissioners immediately prior to adoption.

ORDINANCE NO. 91-6

AN ORDINANCE OF THE COUNTY OF ST. JOHNS, STATE OF FLORIDA TO BE KNOWN AS THE CONCURRENCY EXEMPTION ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCESS FOR AND STANDARDS APPLICABLE TO EXEMPTIONS FROM THE CONCURRENCY REQUIREMENTS OF THE COMPREHENSIVE PLAN; PROVIDING DEFINITIONS; PROVIDING AN APPEAL PROCESS; PROVIDING FOR THE ESTABLISHMENT OF ADMINISTRATIVE FEES FOR CONCURRENCY EXEMPTION DETERMINATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Growth Management Act of 1985, as amended, and F.A.C. Rule 9J-5, as amended, requires that local governments adopt comprehensive plans; and

WHEREAS, these statutory provisions and rules require, in part, that local governments set realistic and adequate levels of service for public facilities serving development and that the elements of the comprehensive plan be internally consistent including the relationship between the use and density/intensity of the land use element and the levels of service set for the public facilities and services; and

WHEREAS, these statutory provisions and rules require that no development order or development permit be issued unless facilities and services are available at the level of service standard adopted in the comprehensive plan to serve that development concurrent with the impact of the development; and

WHEREAS, St. Johns County has adopted the St. Johns County Comprehensive Plan ("Plan") pursuant to these statutory provisions and rules and other authority; and

WHEREAS, these statutory provisions and rules and the Plan require that land development regulations be adopted to implement the Plan; and

WHEREAS, the Concurrency Requirements of the Plan bear a substantial relationship to legitimate public purposes by preventing harm to, and promoting, the public health, safety, and welfare of

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the citizens of St. Johns County and constitute a strong rule of policy adopted for the benefit of the public; and

WHEREAS, the statutory provisions recognize that comprehensive plans and land development regulations should not be applied to abrogate vested rights; and

WHEREAS, certain developments, because of their size and intensity, will not have a significant impact on public facilities and level of service standards adopted in the Plan; and

WHEREAS, certain developments with development approvals existing as of the effective date of the Plan have already been accounted for in the comprehensive planning process; and

WHEREAS, the Planning and Zoning Agency and the Board of County Commissioners have reviewed the proposed Ordinance and have found that it is consistent with the Comprehensive Plan;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of St. Johns County as follows:

Section 1. Short Title.

This Ordinance shall be known as, and may be cited as, the "Concurrency Exemption Ordinance of St. Johns County, Florida."

Section 2. Authority.

This Ordinance is adopted pursuant to Florida Statute Chapters 125 and 163; F.A.C. Rule 9J-5; and the Florida and United States Constitutions.

Section 3. Applicability.

3.1 This Ordinance shall apply to all claims of exemption from, or vested rights or equitable estoppel as to ordinances and regulations adopted pursuant to the Plan, Objectives J.01.02. and J.01.05.

3.2 This Ordinance shall apply to the unincorporated area of St. Johns County only.

3.3 This Ordinance is not intended to apply to claims by property owners that the Plan or Land Development Regulations

constitute a taking of property for which compensation is due. However, if a property owner bases a taking claim in part or completely on facts that relate to the administrative process for or standards applicable to a Concurrency Exemption Determination, the owner must avail himself of the procedures set forth in this Ordinance prior to bringing any claim for an unconstitutional taking.

Section 4. Purpose.

The purposes of this Ordinance are: (1) to expedite the process of concurrency review by identifying types of development which shall be categorically exempt from the concurrency requirements of the St. Johns County Comprehensive Plan and implementing ordinances; (2) to prevent the waste of public resources that would result from processing applications for Certificates of Concurrency for projects with vested rights and for projects as to which the County is equitably estopped from applying the provisions of the Concurrency Management Ordinance; and (3) to provide a procedure for identifying, processing and estimating the impacts of exempt projects on the capacity of public facilities and services.

Section 5. Definitions.

Except as otherwise provided herein, the definitions in the St. Johns County Concurrency Management Ordinance shall apply to this Ordinance, and are hereby incorporated by reference. Unless the context clearly indicates otherwise, the terms set forth below shall have the meaning indicated below for purposes of this Ordinance.

5.1 Applicant means one who makes an application for a Concurrency Exemption Determination pursuant to Section 7 of this Ordinance.

5.2 Application means an application meeting the requirements of this Ordinance, in the form established and containing such information as required by the Department.

5.3 Board means the Board of County Commissioners of St. Johns County, Florida.

5.4 Categorically Exempt Project means a project which meets the criteria for exemption from the Concurrency Management

Ordinance pursuant to Section 6 of this Ordinance.

5.5 Committee means the Concurrency Review Committee.

5.6 Complete means an application that includes all of the information required by this Ordinance, the application form or by the Department.

5.7 Comprehensive Plan or Plan means the St. Johns County Comprehensive Plan adopted pursuant to the provisions of St. Johns County Ordinance No. 90-53, as may be amended from time to time.

5.8 Concurrency Exemption Determination means a Decision by the Department, the Committee or the Board by which a Parcel is granted a Determination of Concurrency Exemption and is thereby exempt from the Concurrency Management Ordinance.

5.9 Concurrency Requirements means the provisions of the Comprehensive Plan and the implementing land development regulations requiring that public facilities for traffic circulation, mass transit, sanitary sewer, potable water, recreation/open space, solid waste, and drainage are available at the adopted levels of service concurrent with the impact of Development.

5.10 County means St. Johns County, Florida.

5.11 Department means the Planning and Zoning Department of St. Johns County.

5.12 Effective Date means September 14, 1990, the effective date of the St. Johns County Comprehensive Plan.

5.13 Final Decision means the final decision of the Board on an application for a Concurrency Exemption Determination.

5.14 Final Local Development Order means a currently valid building permit issued by the Building Department.

5.15 Master Property Owner's Association means a Property Owner's Association in which membership is mandatory with the ownership of property subject to the Master Property Owner's Association and which has the authority to represent and bind the members by such representation.

5.16 Property Owners Association means a non-profit organization created pursuant to Florida law consisting of real property owners or representatives of the owners in matters of common interest affecting their property.

5.17 Vested means vested pursuant to Florida law.

Section 6. Categorical Exemptions. Upon request, the Department will issue a Concurrency Exemption Determination for categorically exempt projects. The following are categorically exempt from the Concurrency Management Ordinance:

6.1 Subdivisions that have been approved by the Board and recorded prior to June 19, 1978, as defined in Article XVI, the grandfather clause of the Residential Subdivision Regulations for St. Johns County, Florida, Ordinance No. 78-38, as amended;

6.2 Subdivisions that have received final plat approval by the Board pursuant to Section 72.0 of the Residential Subdivision Regulations for St. Johns County, Florida, Ordinance No. 78-38, prior to the effective date of this Ordinance.

6.3 Planned Special Developments and portions of Planned Unit Developments that have received final development plan approval by the Board prior to the effective date of this Ordinance.

6.4 Projects with final local development orders issued prior to the effective date of this Ordinance; and

6.5 Projects or parts of Projects within and consistent with current valid development orders for Developments of Regional Impact issued pursuant to Florida Statutes, Section 380.06 prior to September 14, 1990 including:

6.5.1 Projects with binding letters of interpretation from the Florida Department of Community Affairs pursuant to Florida Statutes Section 380.06(20), specifying that the Project has vested rights;

6.5.2 Projects for which development has been authorized by a preliminary development agreement entered into

pursuant to Florida Statutes, Section 380.06(8);

6.5.3 Projects with local government development orders issued pursuant to Florida Statutes, Section 380.06(6);

6.5.4 Projects with incremental development orders issued pursuant to Florida Statutes, Section 380.06(21)(b) and within a Master Development Order;

6.5.5 Development of Regional Impact Projects or parts of projects with only the following authorizations shall not be categorically exempt: a written agreement with the Northeast Florida Regional Planning Agency entered into pursuant to a preapplication conference; a recommendation and regional report submitted by the Northeast Florida Regional Planning Council, including the recommendations submitted by other agencies as a part of the regional report during the local government review process under Florida Statutes Section 380.06; or a master development order issued pursuant to Florida Statutes Section 380.06(21) without incremental development orders.

#### Section 7. Procedure for Concurrency Exemption Determination.

7.1 Necessity for Application. All Projects other than those granted a Concurrency Exemption Determination or which are categorically exempt shall be subject to the Concurrency Management Ordinance.

7.2 Submission of Application. A verified application for a Concurrency Exemption Determination may be submitted by the Owner, or the Agent of the Owner or a Master Property Owners Association (hereinafter collectively referred to as an "Applicant") to the Department within two (2) years of the effective date of this Ordinance.

7.3 Contents of Application.

7.3.1 Form. The application shall be made by the Applicant on a form established for such purpose by the

Department.

7.3.2 Information. (a) The Applicant shall complete the form and submit all relevant information required thereby, together with copies of all Development Orders, contracts, appraisals, reports, or other documents or materials upon which the Applicant's claim is based.

(b) The Application shall include a legal description of the Property. (c) Nothing herein shall be construed as a limitation on the authority of the Department, committee, or the Board to require additional relevant information to be provided by the Applicant.

7.3.3 Waiver. The information and documentation requirements specified in this section may be waived by the Department in whole or in part if information and/or documentation in the files of the County conclusively demonstrate that a Parcel or Project qualifies for a Concurrency Exemption, and there is no other contrary information.

7.4 Completeness of Application. Within ten (10) working days after initial submission of an Application, the Department shall determine whether it is complete and shall so notify the Applicant in writing.

7.4.1 Complete Application. If the Application is determined to be complete, the Department shall schedule the Application for consideration at the next available meeting of the Committee in accordance with its by-laws.

7.4.2 Incomplete Application. If the Application is determined to be incomplete, written notice shall be sent by the Department to the Applicant identifying all additional or revised information required, which shall be submitted by the Applicant within sixty (60) days from the date of mailing of the notice. Within ten (10) days after receipt of such additional information, the Department shall determine whether the additional information submitted by the Applicant allows for a determination of completeness. If then determined to be complete, the Department shall so notify the Applicant and shall schedule the Application for consideration at

the next available meeting of the Committee. If still determined to be incomplete, the Department shall send notice in writing to the Applicant indicating whether initially required information has not yet been provided or whether the additional information provided has raised additional questions. The Applicant may, within thirty (30) days from the date of mailing of the notice, elect to submit additional information and/or respond to questions or to submit the Application to the Committee as provided in Section 7.5. If the Applicant chooses to submit additional information, the Department shall schedule the Application for consideration at the next available meeting of the Committee within ten (10) days after receipt of such additional information. If the Applicant chooses to submit the Application to the Committee, the Department shall schedule the Application for consideration at the next available meeting of the Committee.

7.5 Determination and Order of Concurrency Review Committee.

7.5.1 Review of Application and Approval, Conditional Approval or Denial of Concurrency Exemption Determination. The Committee shall approve or deny in whole or in part the Application for a Concurrency Exemption Determination based upon the criteria set forth in Section 8 herein. The Committee shall consider the application and shall render a decision within thirty (30) working days of the meeting. The decision of the Committee shall be in writing and shall refer specifically to the Property or portion of Property to which it applies. The decision may contain reasonable conditions necessary to effect the purposes of this Ordinance and the concurrency requirements of the Plan. The decision shall state that it is subject to expiration in accordance with this or subsequent ordinance(s). The decision shall be filed with the Department and a copy shall be provided to the Applicant.

7.5.2 Denial. If the Committee denies an application for a Concurrency Exemption Determination, the Department shall, within five days of receipt of the decision, notify the Applicant stating that that the application is denied and directing the Applicant to apply for a Certificate of Concurrency or to appeal to the Board as provided in Section 7.6 herein.



7.6 Hearing and Final Decision of the Board of County Commissioners.

7.6.1 Appeal to the Board of County Commissioners. Any Applicant who has been denied a Concurrency Exemption Determination by the Committee may file an appeal for review by the Board within fifteen (15) days after receiving notice of such denial as provided in Section 7.5.1 herein. The appeal shall be filed with the Department and shall include the information required in Section 7.3.2 herein. Nothing in this Ordinance shall require any public notification or advertisement of such hearing. Upon receipt of a complete appeal, the Department shall, within five (5) days, schedule the appeal for a hearing before the Board.

7.6.2 Final Decision of the Board. The Board shall approve in whole or in part or deny the Application for a Concurrency Exemption Determination based upon the Criteria set forth in Section 8 herein and the report of the County Attorney, or may postpone the matter for submission of additional information. If the matter is postponed for the submission of additional information, the applicant shall have sixty (60) days from the date of postponement to submit all additional or revised information specified by the County Attorney. The County Attorney shall consider the criteria set forth in Section 8 herein and shall issue a written recommendation to the Board within fifteen (15) working days of the date complete information, as determined by the Board, has been submitted. A Final Decision shall be made by the Board within thirty (30) working days of the issuance of the report of the County Attorney. The Final Decision of the Board shall be in writing, shall contain findings of fact and conclusions of law, and shall refer specifically to the Property or portion of Property to which it applies. The Final Decision may contain reasonable conditions necessary to effect the purposes of this Ordinance and the concurrency requirements of the Plan. The Final Decision shall state that it is subject to expiration in accordance with this or subsequent ordinance(s). The Final Decision shall be filed with

the Department and a copy shall be provided to the Applicant. The Final Decision of the Board shall be considered final for purposes of appeal. Review of the Final Decision of the Board shall be initiated by filing a petition for writ of certiorari with the Clerk of Courts within 30 days of the date of the Final Decision of the Board.

If a person decides to appeal any decision made by the Board with respect to any matter considered at the meeting or hearing, he will need a record of the proceedings, and for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

7.7 Withdrawal of Application. The Applicant may withdraw an Application for a Concurrency Exemption Determination at any time by submitting a written request to the Department. The withdrawal of an Application for a Concurrency Exemption Determination shall result in the forfeiture of all Administrative Fees paid by the Applicant for the processing of the Application.

Section 8. Criteria for Issuance of Concurrency Exemption Determinations.

8.1 Requirements for Common Law Vested Rights. The Applicant has the duty and responsibility to demonstrate that vested rights to proceed with the proposed Project without being subject to the Concurrency Management Ordinance have been legally established and/or to demonstrate that the County is equitably estopped from applying the the Concurrency Management Ordinance to the Proposed Project. The applicable legal requisites are: that the Applicant has made such a substantial change of position or has incurred such extensive obligations and expenses, acting in good faith and in reasonable reliance on a valid, unexpired act or omission of the County, that it would be highly inequitable or unjust to affect such rights by requiring the Applicant to conform to the requirements of the Concurrency Management Ordinance. If the Applicant is determined to have acquired vested rights, or if the County is determined to be equitably estopped from applying the Concurrency Management Ordinance to such Project, the Applicant

shall be granted a Concurrency Exemption Determination.

8.2. Modification of Exempt Projects. A Concurrency Exemption Determination may be granted for projects or parts of projects which are modifications of Categorical Exempt Projects or Projects with existing Concurrency Exemption Determinations regardless of whether the modifications are minor, major, or substantial deviations so long as the modification does not increase the impacts of the project on Public Facilities and Services or alter the location or timing of those impacts in a way that would result in the projected operating levels of service being reduced below the projected operating level of service without the modification, or in any way that would impact on any Public Facility or Service that was not previously impacted.

8.3 Other Grounds for Concurrency Exemption. A Concurrency Exemption Determination may be granted, absent a determination of vested rights and/or equitable estoppel pursuant to Section 8.1, above, if the Applicant demonstrates: (a) that prior development approvals granted by the County were subject to a thorough analysis of the impacts of the proposed Project on the applicable public facilities; and (b) that public facility conditions have not changed substantially since the issuance of the prior development approvals, or that the impacts on applicable public facilities have been specifically addressed in the Comprehensive Plan and the Five-Year Capital Improvements Program or that the prior development approvals have been expressly conditioned upon assuring concurrency; and (c) that such conditions make it unnecessary or unreasonable to apply the Concurrency Management Ordinance.

Section 9. Effect of Concurrency Exemption Determinations.

9.1 Effect on Concurrency Management Ordinance. Issuance of a Concurrency Exemption Determination shall relieve the Applicant from being subject to the provisions of the Concurrency Management Ordinance; provided, however, that the proposed Project shall be subject to all governmental requirements relating to availability and adequacy of public facilities which were in effect prior to the Effective Date of this Ordinance.

9.2 Effect on Other Governmental Requirements. A Concurrency Exemption Determination shall have no effect on other applicable governmental requirements.

9.3 Public Facilities Report. Within three (3) years of the Effective Date of this Ordinance, the Department shall determine whether adequate public facilities and services are available to support existing development, projected development, Categorically Exempt Projects and Projects with approved Concurrency Exemption Determinations at the Adopted Level of Service standards, and shall prepare a Public Facilities Report for public inspection.

9.3.1 Extension of Concurrency Exemption Determinations or Categorical Exemptions. If the Public Facilities Report indicates that adequate public facilities and services are available to support existing development, projected development, Categorically Exempt Projects and Projects with approved Concurrency Exemption Determinations at the Adopted Level of Service standards, the Board may determine that some or all Projects with Concurrency Exemption Determinations and all Categorically Exempt Projects shall be deemed exempt from the standards and requirements of the Concurrency Management Ordinance for an additional period of time.

9.3.2 Termination of Concurrency Exemption Determinations or Categorical Exemptions. If The Public Facilities Report indicates that adequate public facilities and services are not available to support existing development, projected development, Categorically Exempt Projects and Projects with approved Concurrency Exemption Determinations at the Adopted Level of Service standards, Projects with Concurrency Exemption Determinations or Categorically Exempt Projects that have not commenced construction shall thereafter become subject to the standards and requirements of the Concurrency Management Ordinance.

9.3.3 Notice and Hearing Required. Projects with Concurrency Exemption Determinations or Categorically Exempt Projects shall not become subject to the Concurrency Management Ordinance unless the Board specifies the additional period of time for which such Projects shall be exempt from the Concurrency Management Ordinance, or determines that such Projects are no longer

exempt from the Concurrency Management Ordinance, pursuant to an Ordinance or Resolution adopted in accordance with Florida Statutes Section 125.66(6), Laws 1990, c. 90-152, or any successor statutes or amendments thereto.

9.4 Duration.

9.4.1 Categorical Exemptions. Categorically Exempt Projects shall not be subject to the Concurrency Management Ordinance for a period of three (3) years from the effective date of this Ordinance, unless such period shall be extended by action of the Board as set forth in Section 9.3.

9.4.2 Concurrency Exemption Determinations. Projects which have received Concurrency Exemption Determinations shall remain exempt from the provisions of the Concurrency Management Ordinance for a period of not longer than three (3) years from the effective date of this Ordinance, unless such period is extended by action of the Board as set forth in Section 9.3. The duration of a Concurrency Exemption Determination shall be expressly included in the written decision of the Committee and, if applicable, the Final Decision of the Board and shall be shown on the Concurrency Exemption Determination Form; provided however, that if the Committee or the Board fail to include the duration of a Concurrency Exemption Determination in the Concurrency Exemption Determination Form, the duration shall be presumed to be three (3) years from the effective date of this Ordinance.

9.5 Development of Regional Impact and Development Agreements. The provisions of Section 9.3 shall not apply to Projects authorized as Developments of Regional Impact pursuant to Fla. Statutes Chapter 380, nor to Projects with an approved Development Agreement pursuant to Florida Statutes Sections 163.3220 - 163.3243, which Projects shall be governed by the terms and conditions of the DRI approval or the Development Agreement.

9.6 Development Monitoring. Upon the issuance of a Concurrency Exemption Determination, the County shall record the impact on public facilities and services for which the Concurrency Management System is maintained; provided, however, that if the impact was previously included, it shall be removed where a Project is denied a Concurrency Exemption Determination or where the Concurrency Exemption Determination has expired or has been revoked.

9.7 Sale of Lots or Parcels. Nothing herein shall preclude the sale of a Parcel with a Concurrency Exemption Determination. A successor in interest shall have all the rights and responsibilities resulting from, and shall be bound by, the Concurrency Exemption Determination.

9.8 Amendment of Development Orders. The Concurrency Exemption Determination, shall not be construed as a limitation on the ability of the Owner or a successor in interest to seek an amendment of a Development Order; provided, however, that any increased impact resulting from such amendment may be subject to the Concurrency Management Ordinance.

9.9 Geographic Scope. The Concurrency Exemption Determination shall apply only to the particular Parcel(s) for which Application was made. In the case of developments of regional impact with preliminary development agreements, the exemption shall extend only to the preliminary development area identified in the agreement, and shall not extend to areas that are not included within the preliminary development area.

9.10 Reconsideration/Revocation of Concurrency Exemption Determination. A Concurrency Exemption Determination may be reconsidered and revoked by the Committee or the Board notwithstanding any other provision of this Ordinance, if the Committee or the Board determines that the decision on the Concurrency Exemption Determination was based on materially inaccurate or incomplete information and that correct and complete information was reasonably obtainable by the Applicant.

Section 10. Administrative Fees.

The Board, by resolution, shall establish a fee schedule for Concurrency Exemption Determinations and for other procedures established by this Ordinance.

Section 11. Amendments.

To the extent permitted by law, any portion of this Ordinance may be amended by resolution of the Board.

Section 12. Severability.

If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be invalid, unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 13. Effective Date.

This Ordinance shall take effect immediately upon receipt of official acknowledgement by the office of the Department of State of the State of Florida to the Clerk of the Board of County Commissioners that this Ordinance has been filed with that office, or on March 1, 1991, whichever is later.

PASSED AND DULY adopted by the Board of County Commissioners of St. Johns County, Florida, on the 20th day of February, 1991.



BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By *Ronald R. Arnold*  
CHAIRMAN

ATTEST: CARL "BUD" MARKEL, CLERK

BY: *Cheryl Kent*  
DEPUTY CLERK

Effective March 4, 1991

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St. Johns County

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FLORIDA DEPARTMENT OF STATE

Jim Smith  
Secretary of State

Room 2002, DIVISION OF ELECTIONS

The Capitol, Tallahassee, Florida 32399-0250  
(904) 488-8427

April 22, 1991

Honorable Carl "Bud" Markel  
Clerk of Circuit Court  
St. Johns County Courthouse  
Post Office Drawer 300  
St. Augustine, Florida 32085-0300

Attention: Amy Mulligan, Deputy Clerk

Dear Mr. Markel:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge your letter of April 18, 1991 and a corrected certified copy of St. Johns County Ordinance No. 91-6, which was received in this office on April 22, 1991. The previous copy was filed March 1, 1991.

Sincerely,

Liz Cloud, Chief  
Bureau of Administrative Code

LC/mb

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CLERK OF CIRCUIT COURT

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