

CITY OF MARCO ISLAND
ORDINANCE 02-09

AN ORDINANCE TO ESTABLISH A NEW CONCURRENCY MANAGEMENT PROGRAM AND MONITORING REQUIREMENTS TO SUPERCEDE, SUPPLEMENT AND/OR REPLACE THE ADEQUATE PUBLIC FACILITIES DIVISION OF THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO DEVELOPMENT ON MARCO ISLAND; ESTABLISHING PURPOSE AND INTENT; PROVIDING FOR CONDITIONS FOR CONCURRENCY; ESTABLISHING CONDITIONS FOR SUSPENSION OF DEVELOPMENT ORDERS; ESTABLISHING RESPONSIBILITY OF IMPLEMENTATION; PROVIDING FOR IMPLEMENTATION STRATEGY; PROVIDING FOR MONITORING; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING FOR RECREATIONAL FACILITIES; PROVIDING FOR SOLID WASTE, POTABLE WATER, SANITARY SEWERAGE AND STORMWATER DRAINAGE; PROVIDING FOR TRAFFIC CIRCULATION; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provides that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when prohibited by law; and

WHEREAS, Chapter 163, Florida Statutes, requires municipalities to adopt Land Development Regulations within one year of Comprehensive Plan approval; and

WHEREAS, the State's Growth Management Legislation requires municipalities to develop, implement and monitor a concurrency management program to ensure consistency of new development with adopted level of service standards (LOS) contained in the Comprehensive Plan; and

WHEREAS, the Marco Island Planning Board, as the Local Planning Agency, has conducted all required public hearings related to this ordinance, and has forwarded this ordinance to City Council with a recommendation of approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION ONE: PURPOSE AND INTENT

The purpose of this ordinance is to establish a management and monitoring system to evaluate and coordinate the timing and provision of necessary public facilities to service development pursuant to adopted LOS (level of service) standards, to establish a regulatory program that ensures that adequate public facilities are available to serve development concurrent with when the impacts of development occur on the public facilities.

SECTION TWO: CONDITIONS FOR CONCURRENCY

Required facilities include any improvement or public facility which is required to maintain the prescribed LOS parameters to serve current city residents and projected new residents as a result of a given project. Required facilities for a proposed development shall be identified by the owner or developer and reviewed for concurrency by the city in compliance with the adopted comprehensive plan. Concurrency requirements for a proposed project will be met if any of the following three conditions are met for each of the level of service requirements for required facilities:

1. Condition 1: Required facilities are in place at the time a development order is issued, or a development order is issued subject to the condition that the necessary facilities will be in place when the certificate of occupancy is issued.
2. Condition 2: The required facilities are under construction at the time a development order is issued.
3. Condition 3: The required facilities are the subject of a binding contract executed for the construction of those facilities at the time a development order is issued.

SECTION THREE: CONDITIONS FOR SUSPENSION OF DEVELOPMENT ORDER

A development order issued with any of the conditions listed in Section 2 shall not be granted a certificate of occupancy unless the required facilities are in place, or without a recommendation from the Planning Board and City Council approval.

SECTION FOUR: RESPONSIBILITY FOR IMPLEMENTATION

1. The community development department shall coordinate the implementation strategy for purposes of this ordinance and will annually provide the city manager with the following:
 - a. Current population projections for a five-year period;
 - b. Building permit activity for the past five years;
 - c. Annual level of service report; and
 - d. Additional information as requested.
2. The building official shall utilize 2.16 as the standard for calculating "persons per dwelling unit" for residential structures. This standard shall be applied to building permit applications to assess the additional growth and its impact on adopted levels of service for all facilities and public infrastructures.

SECTION FIVE: IMPLEMENTATION STRATEGY

The following implementation strategy is in place to ensure that the goals, objectives, policies and program established in the capital improvements element of the comprehensive plan will be achieved:

1. *Development order review.* When a development order is requested, the applicant will outline the required facilities, as related to level of service, for the proposed development, and how these facilities shall be provided concurrently.
2. *Building permit review.* When a building permit is applied for, the applicant will outline the required facilities, as related to level of service, for the proposed development, and how these facilities shall be provided concurrently.
3. *Annual budget.* The city's annual budget will identify projects which are targeted to maintain the level of service. Projects which are targeted for level of service maintenance but are unfunded or removed from the annual budget may cause the revocation of any development order or building permit which was issued upon the construction of that project.
4. *Comprehensive plan amendments.* Reports to the Florida Department of Community Affairs concerning amendments to the comprehensive plan due to emergencies, annexation, developments of regional

impact, and selected small developments will report on changes, if any, to adopted goals, objectives, policies and programs in the capital improvements element.

5. *Annual level of service report.* Each individual facility or service with an adopted level of service will be annually monitored to ensure that the level of service is maintained. The specific details for each monitoring scheduling and report can be found in the specific guidelines for concurrency.

SECTION 6: MONITORING

1. City-owned Facilities and Services. Monitoring for each adopted level of service shall take place annually.
2. County and Privately-owned Facilities and Services. A monitoring report detailing available capacity, available capacity for the next five years, and proposed capital facilities expansions, shall be prepared by each non-City entity providing facilities and services by January of each year.

SECTION 7: GENERAL PROCEDURAL GUIDELINES; REPORTING REQUIREMENTS

(a) Report to planning board; planning board public hearing.

- (1) *Annual level of service report.* By January of each year the community development department shall compile a report which addresses the following in terms of the level of service for all services and facilities subject to the concurrency management section of the comprehensive plan:
 - a. Adopted level of service versus current level of service;
 - b. Current capital improvements program and potential capital improvements program options for maintaining level of service with a five-year timeframe;
 - c. Available or potential funding sources;
 - d. Current inventory of its facilities;
 - e. Current population and five-year projection, by year;

- f. Comparison of the previous year's building permit activity to the past five years' inventory
- g. Potential developments, redevelopments or annexations which could have an impact on the current level of service; and
- h. Relationship to the goals, objectives and policies of the comprehensive plan.

(2) *Conduct of hearing.* In February of each year, the planning board will hold a public hearing at which the board will discuss the current and adopted level of service for required public facilities. The annual level of service report shall be available to the board and the public at least two weeks before the public hearing. If the current level of service is below the adopted level of service policy standards, measures must be discussed by the board which either:

- a. Fund the necessary improvements to reestablish the adopted level of service within a two-year transition period;
- b. Adopt a lower level of service which would be consistent with current levels of service; or
- c. Cease issuing development orders which negatively impact the level of service until the adopted level of service is reestablished.

(3) *Notice of hearing.* Preparation for the public hearing will follow the advertising and public notice procedures which are currently followed for the planning boards' regular meetings.

(4) *Recommendation report.* The planning board shall make recommendations to the city council regarding the maintenance of the level of service of the facilities and services. This report shall be based on the recommendations of the Planning Board.

(b) Action by city council.

(1) *First reading.* The community development department shall present its annual level of service report and the planning board's recommendations to the city council at a public meeting in late March, or as soon as possible after the board makes its findings and recommendations. A Resolution will be presented which adopts the recommendations of the board, adopts the

recommendations of the boards with additional conditions, or modifies the recommendation of the board.

- a. If the current level of service is below the adopted level of service, measures must be addressed by the city council which either:
 1. Fund the necessary improvements to reestablish the adopted level of service within a two-year transition period;
 2. Adopt a lower level of service which would be consistent with the then existing level of service; or
 3. Cease issuing development orders which negatively impact the level of service until the adopted level of service is reestablished.

- (2) Second reading and public hearing. The annual level of service report and the board's recommendation report shall be presented by the city manager. At this time, level of service deficiencies and mitigation options shall be discussed. Where necessary, potential changes to the capital improvements program shall also be addressed.

At the conclusion of the public of the public hearing, the city council shall adopt a Resolution that adopts the recommendations of the board, adopts the recommendations of the boards with additional conditions, or modifies the recommendation of the board. The city council shall direct the community development director to notify the state of its actions.

(b) Reporting to state department of community affairs.

- (1) The community development director shall prepare a report to notify the state department of community affairs of the status of the level of service for the facilities and services. The state department of community affairs report shall be based on the annual level of service report, the recommendation report and the formal action of the city council. This report will serve as the Annual Update and Inventory Report (AUIR).
- (2) The state department of community affairs report shall be forwarded to the state as required by the growth management

legislation. Copies of the report shall be available to the public and city officials.

SECTION EIGHT: ADOPTED LEVEL OF SERVICE STANDARDS – CITY OWNED AND OPERATED FACILITIES AND SERVICES.

A. The City of Marco Island is currently responsible for facilities and service levels related to transportation, stormwater drainage, and community parks. The following adopted level of service (LOS) standards are contained in the comprehensive plan:

1. Transportation.

- a. Arterials – LOS D (except SR 951 from the Jolley Bridge to CR 92 – LOS C).
- b. Collector Roadways – LOS D.
- c. Local Roads – LOS D.

2. Stormwater Drainage.

The LOS design standard for new stormwater management facilities will be the ten (10) year, one (1) hour storm event, with a 3.3 inches/hour intensity duration. For existing and future drainage system components the following design LOS standard hierarchy is provided:

- a. LOS Standard A: Upstream (US) Ground Elevation – Upstream Hydraulic Grade Line (US HGL) > 0.5 Ft.
- b. LOS Standard B: US Ground Elevation – US HGL > 0.2 Ft.
- c. LOS Standard C: US Ground Elevation – US HGL > or = 0.0 Ft.
- d. LOS Standard D: US HGL < or = 5.2 Ft. NGVD*
- e. LOS Standard E: US HGL > 5.2 Ft. NGVD*

For existing drainage system components a level not to exceed the parameters of LOS shall be adopted.

(*) May be acceptable LOS standard at a limited number of roadway locations due to extreme topographical conditions.

3. Community Parks.

A. LOS Standard: 1.2882 acres of active parkland/1,000 permanent Residents.

B. Responsibility for monitoring. The public works director shall be responsible for monitoring and reporting activities relating to transportation and stormwater drainage facilities. The community development director shall be responsible for monitoring and reporting activities relating to community parks.

SECTION NINE: ADOPTED LEVEL OF SERVICE STANDARDS – COUNTY AND PRIVATELY OWNED AND OPERATED FACILITIES AND SERVICES.

A. Collier County is currently responsible for facilities and service levels related to solid waste. A private utility company is responsible for facilities and services related to potable water and sanitary sewers. The following adopted level of service (LOS) standards are contained in the comprehensive plan

1. Solid waste. The adopted LOS standard is the same as contained in the Collier County Growth Management Plan (GMP) which is described as follows:

a. 1.10 tons of solid waste per capita per year. (* Tons per capita is used to determine landfill disposal capacity, which is based on the average of the last five complete fiscal years actual lined cell tonnage activity).

b. A minimum of two (2) years of constructed lined landfill capacity at the calculated waste generation rate.

c. A minimum of ten (10) years of permissible landfill capacity at the calculated waste generation rate.

2. Potable water.

a. The adopted LOS standard for potable water will be 200 gallons per capita per day.

3. Sanitary sewer.

a. The adopted LOS standard for sanitary sewers is 100 gallons of wastewater treatment capacity per capita per day.

B. Responsibility for monitoring. The building official shall be responsible for monitoring and reporting activities relating to solid waste, potable water and sanitary sewers. The building official shall annually compile completed County issued notifications of mandatory garbage assessment forms received prior to the issuance of a certificate of occupancy. The private utility shall provide the building official with a report detailing available capacity for both potable water and sanitary sewer (wastewater) treatment.

SECTION TEN: CORRECTIONS FOR LOS STANDARD DEFICIENCIES.

The purpose of the annual level of service report is to ensure that adequate public facilities are in place to serve existing development, and that adequate capacity will be available to serve future development. The following safeguards are intended to ensure that LOS standards are maintained and future development can be accommodated.

1. Pursuant to adopted policies throughout the comprehensive plan, non-city entities responsible for the provision of facilities and services subject to LOS standards must notify the City in writing if they reach 80% of capacity in their adopted LOS standard within five year's of plan adoption, and any five year period thereon. Such entity must inform the City as to how and when the entity will take action to increase capacity to ensure continued compliance with adopted LOS standards.
2. For stormwater drainage and community parklands, the City shall monitor indices of possible or pending deficiencies, and will initiate corrective actions through the five-year capital improvement program to ensure continued compliance with adopted LOS standards.
3. For transportation related LOS standards, the public works department shall monitor traffic counts and traffic impact assessments (TIA) and traffic impact statements (TIS) to ensure continued compliance with adopted LOS standards.

Utilizing the abovementioned information, the public works director shall advise the city manager of any roadway segment that is forecast to be deficient in the adopted LOS standard within the ensuing five

years. The public works director shall base his report to the city manager on the following information, as deemed necessary to ensure accurate LOS monitoring of transportation facilities:

- a. A listing of roadway segments, by category, with their individual current and adopted level of services;
- b. Current and potential level of service deficiencies;
- c. Current capital improvements program and potential capital improvements program options for maintaining level of service with a five-year timeframe;
- d. Available or potential funding sources;
- e. Current population and five-year projection, by year;
- f. Comparison of previous year's building permit activity to past five years' inventory.
- g. Potential developments, redevelopments or annexations which could have an impact on the current level of service; and
- h. Relationship to the goals, objective and policies on the comprehensive plan.

Based on the advise of the public works director, the following actions may be initiated to ensure continued compliance:

- (1) If the current level of service for transportation facilities is measured at the adopted level of service or better, no mitigating action is required.
- (2) If the current level of service measured is nearing the next lower level of service, quarterly counts will be taken and analyzed for a peak hour/peak season count. If necessary, a detailed study of the capacity of the roadway segment, consistent with the 2000 (or the most current edition) DOT Highway Capacity Manual Data, will be undertaken concurrently with the collection of quarterly data.
- (3) If the current level of service measured is at the next lower level of service, and had been at the adopted level of service the previous year, quarterly counts will be taken and analyzed for a peak hour/peak season count.

- (4) If three consecutive quarterly counts, which may include the annual count, indicate that the roadway to be below the adopted level of service, then the roadway segment enters a transitional period at the beginning of the next fiscal year. During this period, the roadway may operate on one level below the adopted level of service for two years. Development orders may still be issued, provided that the improvements necessary to elevate the level of service have been planned, funded and adopted as part of the first two-year period of the capital improvements program. Construction for these improvements, including parallel facilities or improvements, must begin in or before the second year of the transition period.
- (5) No development orders negatively impacting the affected segment shall be issued until improvements are made to the existing roadway, or a parallel facility is constructed or improved to capture traffic from the affected segment.
- (6) If the measured level of service is at "F," the city shall cease issuing development orders that would serve to increase the volume of traffic on the affected segment.
- (7) A comprehensive plan amendment is required to change the level of service for any road segment, or defer or delay construction, beyond the two-year transitional period, which is necessary to maintain or reestablish an adopted level of service.

SECTION ELEVEN: REQUIREMENTS FOR ISSUANCE OF A DEVELOPMENT ORDER OR BUILDING PERMIT – CERTIFICATE OF ADEQUATE PUBLIC FACILITIES.

Before a development order or building permit is issued, a certificate of adequate public facilities shall be prepared. The certificate shall indicate the following information:

1. There is adequate capacity for the provision of potable water, sanitary sewer (if applicable), and solid waste collection for the project or new development. Compliance is deemed acceptable per letters from the private utility and Collier County.
2. There is adequate community parkland to accommodate the impacts of the new project or proposed development. Compliance is deemed acceptable per approval of plans by the community development department staff.

3. The roadway network can accommodate the new project or proposed development without a decrease in LOS standards. Compliance is deemed acceptable by the issuance of a right-of-way permit.
4. The stormwater management system complies with applicable LOS standards. Compliance is deemed acceptable by the approval of the building

SECTION TWELVE: INCORPORATION, CONFLICT AND SEVERABILITY

- [A] It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.
- [B] All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
- [C] If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION THIRTEEN: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 19th day of February, 2002.

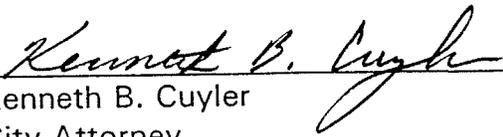
CITY OF MARCO ISLAND, FLORIDA

Attest:


A. William Moss
City Manager/City Clerk

By: 
E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:



Kenneth B. Cuyler
City Attorney