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**CITY OF MARCO ISLAND**  
**ORDINANCE NO. 10- 06**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF MARCO ISLAND, AMENDING REGULATIONS IN CHAPTER 30, ARTICLE X, RELATED TO CONCURRENCY, INCLUDING BUT NOT LIMITED TO CONDITIONS FOR CONCURRENCY, CORRECTIONS TO PROVIDERS OF SERVICE, AND LEVEL OF SERVICE REPORTING; 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 provide that municipalities shall have the governmental, corporate, and proprietary home rule powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 1.02 of the Marco Island City Charter empowers the City to adopt, amend, or repeal ordinances, resolutions and codes as may be required for the benefit of residents and governance of the City; and

**WHEREAS**, changes to the City of Marco Island Comprehensive Plan in 2009 incorporated provisions related to the Ten Year Water Supply Facilities Plan, including a condition for concurrency applying specifically to potable water; and

**WHEREAS**, it is the intention of City Council to conform the language in its Code of Ordinances consistent with the Comprehensive Plan; and

**WHEREAS**, the Code as currently written requires a level of service report and hearing cycle during specific months of the year, which is not consistent with current practice or required by state law; and

**WHEREAS**, the Code as currently written requires a transmittal of the level of service report or annual inventory and update report to the State of Florida, Department of Community Affairs, which is not required by state law and which report is sent following the budget cycle as data and analysis for the annual update to the Capital Improvement Element of the Comprehensive Plan; and

**WHEREAS**, the proposed changes are intended to eliminate redundant or unnecessary reports, while adhering to State of Florida reporting requirements; and

**WHEREAS**, the concurrency provisions refer to potable water and sanitary sewer services as privately provided services and should be updated to reflect the fact that these services are provided by the City of Marco Island; and

47           **WHEREAS**, the Marco Island Planning Board, sitting as the Local Planning  
48 Agency, held a duly advertised public hearing on April 23, 2010 and determined that the  
49 proposed changes contained in this Ordinance are consistent with the City of Marco  
50 Island Comprehensive Plan and Florida law, and recommended adoption of this  
51 Ordinance to the City Council; and

52  
53           **WHEREAS**, after reviewing the City of Marco Island Planning Board's  
54 recommendation, the recommendation of City staff, and comments from the public, the  
55 City Council finds that the proposed amendments to its Code of Ordinances are in  
56 compliance and consistent with Florida law and its adopted Comprehensive Plan; and

57  
58           **WHEREAS**, the City Council further finds that adoption of this Ordinance is in  
59 the best interest of the residents of the City of Marco Island.

60  
61 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE**  
62 **CITY OF MARCO ISLAND, FLORIDA:**

63                           **SECTION 1. Recitals.**

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65           The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true,  
66 correct and reflective of the legislative intent underlying this Ordinance and are hereby  
67 made a specific part of this Ordinance.

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69                           **SECTION 2. Amendment and Adoption.**

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71           The amendments to the Code of Ordinances contained in this Ordinance are hereby  
72 amended or created and adopted as follows:

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74           **1. Sec. 30-712. Conditions for concurrency.**

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

82           (1) *Condition 1:* Required facilities are in place at the time a development order is  
83 issued, or a development order is issued subject to the condition that the necessary  
84 facilities will be in place when the certificate of occupancy is issued.

85           (2) *Condition 2:* The required facilities are under construction at the time a  
86 development order is issued.

87           (3) *Condition 3:* The required facilities are the subject of a binding contract executed  
88 for the construction of those facilities at the time a development order is issued.

89           Notwithstanding anything in this Section to the contrary, with respect to potable water, the  
90 sole condition will be the City's determination as to whether potable water supplied to serve  
91 the new development will be available no later than the anticipated date of issuance by the  
92 city of a certificate of occupancy or its functional equivalent.

93 **2. Sec. 30-717. General procedural guidelines; reporting requirements.**

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

95 (1) *Annual level of service report.* ~~By January of e~~Each year, the community  
96 development department shall compile a report which addresses the following in terms of  
97 the level of service for all services and facilities subject to the concurrency management  
98 section of the comprehensive plan:

99 a. Adopted level of service versus current level of service;

100 b. Current capital improvements program and potential capital improvements program  
101 options for maintaining level of service with a five-year timeframe;

102 c. Available or potential funding sources;

103 d. Current inventory of its facilities;

104 e. Current population and five-year projection, by year;

105 f. Comparison of the previous year's building permit activity to the past five years'  
106 inventory;

107 g. Potential developments, redevelopments or annexations which could have an impact  
108 on the current level of service; and

109 h. Relationship to the goals, objectives and policies of the comprehensive plan.

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

116 a. Fund the necessary improvements to reestablish the adopted level of service within a  
117 two-year transition period;

118 b. Adopt a lower level of service which would be consistent with current levels of  
119 service; or

120 c. Cease issuing development orders which negatively impact the level of service until  
121 the adopted level of service is reestablished.

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

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

128 (b) *Action by city council.*

129 (1) *First reading.* The community development department shall present its annual  
130 level of service report and the planning board's recommendations to the city council at a  
131 public meeting ~~in late March, or~~ as soon as possible after the board makes its findings  
132 and recommendations. A resolution will be presented which adopts the recommendations  
133 of the board, adopts the recommendations of the boards with additional conditions, or  
134 modifies the recommendation of the board.

135 a. If the current level of service is below the adopted level of service, measures must be  
136 addressed by the city council which either:

137 1. Fund the necessary improvements to reestablish the adopted level of service within a  
138 two-year transition period;

139 2. Adopt a lower level of service which would be consistent with the then existing level  
140 of service; or

141 3. Cease issuing development orders which negatively impact the level of service until  
142 the adopted level of service is reestablished.

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

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

152 (c) *Reporting to state department of community affairs.*

153 (1) The community development director shall ~~prepare a report to~~ notify the state  
154 department of community affairs of the status of the level of service for the facilities and  
155 services as directed by the state department of community affairs or as otherwise required  
156 by state law. ~~The state department of community affairs report shall be based on the~~  
157 ~~annual level of service report, the recommendation report and the formal action of the~~  
158 ~~city council. This report will serve as the annual update and inventory report (AUIR).~~

159 (2) ~~The state department of community affairs report shall be forwarded to the state as~~  
160 ~~required by the growth management legislation.~~ Copies of the level of service report shall  
161 be available to the public and city officials.

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163 3. **Sec. 30-718. Adopted level of service standards for city owned and operated**  
164 **facilities and services.**

165 The city is currently responsible for facilities and service levels related to transportation,  
166 stormwater drainage, ~~and~~ community parks, potable water and sanitary sewer. The  
167 following adopted level of service (LOS) standards are contained in the comprehensive  
168 plan:

169 (1) *Transportation.*

170 a. Arterials LOS D (except SR 951 from the Jolley Bridge to CR 92 LOS C).

171 b. Collector roadways LOS D.

172 c. Local roads LOS D.

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

177 a. LOS Standard A: Upstream (US) Ground Elevation Upstream Hydraulic Grade Line  
178 (US HGL) > 0.5 Ft.

179 b. LOS Standard B: US Ground Elevation US HGL > 0.2 ft.

180 c. LOS Standard C: US Ground Elevation US HGL > or = 0.0 ft.

181 d. LOS Standard D: US HGL < or = 5.2 ft. NGVD\*

182 e. LOS Standard E: US HGL > 5.2 ft. NGVD\*

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

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

187 (3) *Community parks.*

188 a. *LOS Standard.* 1.2882 acres of active parkland/1,000 permanent residents.

189 b. *Responsibility for monitoring.* The public works director shall be responsible for  
190 monitoring and reporting activities relating to transportation and stormwater drainage  
191 facilities. The community development director shall be responsible for monitoring and  
192 reporting activities relating to community parks.

193 (4) Potable water. The adopted LOS standard for potable water will be 200 gallons per  
194 capita per day.

195 (5) Sanitary sewer.

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

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

205

206 **4. Sec. 30-719. Adopted level of service standards for county and privately owned**  
207 **and operated facilities and services.**

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

212 (1) *Solid waste.* The adopted LOS standard is the same as contained in the county  
213 growth management plan (GMP) which is described as follows:

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

217 b. A minimum of two years of constructed lined landfill capacity at the calculated waste  
218 generation rate.

219 c. A minimum of ten years of permittable landfill capacity at the calculated waste  
220 generation rate.

221 (2) *Schools.* See Sections 30-733 to 30-735.

222 ~~(2) Potable water.~~ The adopted LOS standard for potable water will be 200 gallons per  
223 ~~capita per day.~~

224 ~~(3) Sanitary sewer.~~

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

227 ~~b. Responsibility for monitoring.~~ The building official shall be responsible for  
228 ~~monitoring and reporting activities relating to solid waste, potable water and sanitary~~  
229 ~~sewers. The building official shall annually compile completed county issued~~  
230 ~~notifications of mandatory garbage assessment forms received prior to the issuance of a~~

231 ~~certificate of occupancy. The private utility shall provide the building official with a~~  
232 ~~report detailing available capacity for both potable water and sanitary sewer (wastewater)~~  
233 ~~treatment.~~

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**SECTION 3. Inclusion in the Code of Ordinances.**

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238 It is the intention of the City Council and it is hereby ordained that the  
239 amendments to the City of Marco Island Code of Ordinances made by this Ordinance  
240 shall become part of the City of Marco Island Code of Ordinances, that the sections of  
241 this Ordinance may be renumbered and relettered as necessary, and that the word  
242 “Ordinance” may be changed to “Section, “Article” or other appropriate word.

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**SECTION 4. Conflicts.**

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247 All ordinances or parts of ordinances and all resolutions or parts of  
248 resolutions in conflict with the provisions of this Ordinance are hereby repealed.

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**SECTION 5. Severability.**

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253 If any section, clause, sentence or phrase of this Ordinance is for any  
254 reason held invalid or unconstitutional by a court of competent jurisdiction, the holding  
255 shall not affect the validity of the remaining portions of this Ordinance.

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**SECTION 6. Effective Date.**

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260 This Ordinance shall be effective immediately upon adoption by the City  
261 Council on second reading.

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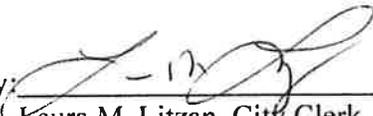
264 **ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO**  
265 **ISLAND** this 7<sup>th</sup> day of June 2010.

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268 Attest:

**CITY OF MARCO ISLAND FLORIDA**

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271 By:   
272 Laura M. Litzan, City Clerk

273 By:   
Frank R. Recker, Chairman

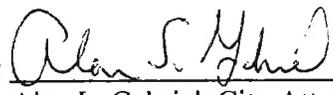
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(SEAL)

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278 Reviewed for legal sufficiency:

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281 By:   
282 Alan L. Gabriel, City Attorney

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