

**ORDINANCE NO. 16 - 20**

**AN ORDINANCE OF THE COUNTY OF PINELLAS UPDATING THE LEVEL OF SERVICE CONDITIONS FOR PUBLIC SERVICES AND FACILITIES AND REPEALING TRANSPORTATION CONCURRENCY FROM CHAPTER 134 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE, CONCURRENCY SYSTEM; REVISING SECTIONS 134-221, 134-223, 134-225 AND 134-226 TO REMOVE LANGUAGE PERTAINING TO TRANSPORTATION CONCURRENCY; REPEALING SECTION 134-222 AND SECTIONS 134-227 THROUGH 134-231 TO REMOVE LANGUAGE PERTAINING TO TRANSPORTATION CONCURRENCY AND MANAGEMENT PLANS; RENUMBERING SECTIONS 134-224, 134-233 AND 134-261; REVISING SECTION 134-232 TO REMOVE TRAFFIC CIRCULATION AND MASS TRANSIT AS PERTAINING TO LEVEL OF SERVICE STANDARDS; REVISING SECTION 134-234 TO REMOVE LANGUAGE PERTAINING TO TRANSPORTATION CONCURRENCY IN REFERENCE TO THE BOARD OF ADJUSTMENT VARIANCE AND APPEALS REVIEW GUIDELINES; REVISING SECTION 134-256 TO REMOVE LANGUAGE PERTAINING TO TRANSPORTATION CONCURRENCY IN THE ANNUAL CONCURRENCY TEST STATEMENT; UPDATING SECTIONS 134-258 THROUGH 134-261 TO REFLECT CURRENT YEAR LEVEL OF SERVICE CONDITIONS FOR PUBLIC SERVICES AND FACILITIES AND TO REPEAL CONCURRENCY TEST STATEMENT LANGUAGE PERTAINING TO TRANSPORTATION, ROADWAY AND MASS TRANSIT LEVEL OF SERVICE; AND PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THIS ORDINANCE AT THE PUBLIC HEARING AND/OR WITH OTHER RESPONSIBLE PARTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the Pinellas County Board of County Commissioners has established that land development shall bear a proportionate cost of the provision of new or expanded capital facilities required by such development; and

WHEREAS, Pinellas County adopted a Concurrency Management System for Pinellas County through its adoption of Ordinance #89-69, as amended; and

WHEREAS, the provisions of Ordinance #89-69, as amended, were intended to ensure that the adopted level of service standards for roadways, potable water, waste water, solid waste, stormwater, recreation, and mass transit be maintained prior to the issuance of a development order and/or development permit; and

WHEREAS, in 2011, the Legislature amended the concurrency requirements to no longer require a level of service standard for roads, mass transit or recreation facilities; and

WHEREAS, the Community Planning Act removed State requirements for local government implementation of transportation concurrency management systems; and

WHEREAS, Pinellas County is implementing the Mobility Management System to manage transportation related impacts resulting from development activity; and

WHEREAS, in the absence of State imposed transportation concurrency management requirements, the Pinellas County Metropolitan Planning Organization authorized a multi-jurisdictional task force to develop a countywide approach to manage the transportation impacts of development projects through local site plan review processes; and

WHEREAS, Pinellas County believes that maintaining the level of service standards for sanitary sewer, solid waste, drainage, potable water, and recreation is appropriate at this time; and

WHEREAS, the Pinellas County Mobility Plan was approved by the Pinellas County Metropolitan Planning Organization on September 11, 2013; and

WHEREAS, Chapter 134 of the Pinellas County Land Development Code requires a Concurrency Test Statement to be adopted on an annual basis by the Board of County Commissioners as a status report on public facilities and services; and

WHEREAS, Pinellas County, through action on this Ordinance, adopts the annual Concurrency Test Statement for Pinellas County for 2015.

NOW, THEREFORE, BE IT ORDAINED, ON THIS 29<sup>TH</sup> DAY OF MARCH, 2016, BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA THAT:

**SECTION 1. SECTION 134-221 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS AMENDED TO READ AS FOLLOWS:**

Sec. 134-221. Definitions.

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

*Acceptance of or accepted application for development* means that an application for development contains sufficient information, pursuant to existing regulations, to allow continuing review under this division or other regulatory ordinances.

*Application for development* means any documentation which contains a specific plan for development, including the densities and intensities of development, where applicable, that is presented by any person for the purpose of obtaining a development order or development permit.

*Approved final site plan* means any site development plan, as defined in Subsection 134-86(a)(2), and as it may be further defined in other county regulations, that has been accepted, reviewed, and approved by the county.

*Backlogged roadways* means roads not designated as constrained that are operating at peak hour level of service E or F and/or a volume-to-capacity of 0.9 or higher and scheduled or planned for construction after the first three years of either the Florida Department of Transportation (FDOT) adopted work program or the six-year schedule of improvements within the county capital improvements element.

*Certificate of concurrency* means that document issued by the county administrator, or his designee, that is a prerequisite for the issuance of any development order or development permit, except that certificates of concurrency for re-zonings shall only be issued such that further development in the rezoned parcel is conditioned upon the availability of sufficient capacity of those public facilities and services required for any project which may be subsequently proposed for that rezoned parcel, or any portion thereof. At a minimum, the certificate of concurrency shall provide information on the following:

- (1) Type of proposal;
- (2) Effective date of the concurrency test statement utilized in the comparison;
- (3) Date of issuance of the certificate of concurrency; and
- (4) Status of each public facility and service after comparison with the current concurrency test statement.

*Concurrency* means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

*Concurrency management monitoring system* means the data collection, processing and analysis performed by the county to determine levels of service for public facilities and services. Data maintained by the concurrency management monitoring system shall be the most current information available to the county.

*Concurrency management system* means the procedure and process that the county utilizes to ensure that development orders and permits issued by the county shall not result in an unacceptable degradation of the adopted level of service adopted in the county comprehensive plan.

*Concurrency test statement* means a public facility and service status report, approved and adopted by ordinance, which, at a minimum, establishes for each public facility and service the following:

- (1) The existing and committed development in each service area;
- (2) The existing levels of service for each public facility and service;
- (3) Updates of items (1)—(2), above, based upon the most recently adopted ten-year schedule of capital improvements from the capital improvements element; and
- (4) The methods used in determining the nature of projected development impacts on public facilities and services.

*Currently available revenue sources* means an existing source and amount of revenue available to the county.

*Deficient facility* means a road operating at peak hour level of service E or F and/or a volume-to-capacity (v/c) ratio of 0.9 or higher with no mitigating improvements scheduled within three years.

*Development* has the definition provided in F.S. § 380.04.

*Development order* means any order granting, denying, or granting with conditions, an application for development.

*Development permit* means any approved final site plan, building permit, zoning clearance, rezoning, special exception, variance, conditional use, or any other official action of the county having the effect of permitting the development of land.

*Final local development order* means, for the purposes of this division, that last approval necessary to carry out the development requested, provided that the proposed project has been precisely defined. The last approval for a given type of development activity shall be as provided in article III of this chapter. Terms used in that definition shall be as further defined in this Code.

*Level of service (LOS)* means a measure of performance and/or of demand versus available capacity of public services and facilities. *Public facilities and services* means those necessary public facilities and services covered by a comprehensive plan element for which level of service standards have been adopted by the county. The necessary public facilities and services are: sanitary sewer, solid waste, drainage, potable water, recreation, and mass transit.

**SECTION 2. SECTION 134-222 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS HEREBY DELETED.**

**SECTION 3. SECTION 134-223 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AND AMENDED AS FOLLOWS:**

Sec. 134-222. Purpose and intent.

- (a) It is the purpose of this division to establish a concurrency management system to ensure that facilities and services needed to support development are available concurrent with the impacts of such development. Prior to the issuance of a development order and/or development permit, this concurrency management system shall ensure that the adopted level of service standards required for, potable water, wastewater, solid waste, stormwater, recreation, and mass transit shall be maintained.
- (b) The concurrency management system is intended to serve the long-term interests of the citizens of the county by implementing a managed growth perspective that preserves the capacity of important infrastructure facilities and services.

**SECTION 4. SECTION 134-224 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AS FOLLOWS:**

Sec. 134-223. Areas embraced.

The provisions of this division shall apply to any property within the unincorporated areas of the county. The provisions of this division shall also apply to incorporated areas of the county that are provided service by a county facility or service evaluated in this division and may apply to incorporated areas provided service by a state facility or service evaluated in this division.

**SECTION 5. SECTION 134-225 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AND AMENDED AS FOLLOWS:**

Sec. 134-224. - Concurrency management system; procedure.

- (a) Application for development. The concurrency management system is accessed by the property owner, or his/her representative, when an application for development containing the required documentation for the given development order or permit is submitted to the county. A county representative shall then ascertain the completeness of the documentation, in a timely manner, to ensure that the required information is sufficient to accept the application for development for review.
- (b) Review of application for development.
  - (1) When the application for a development order or permit has been accepted, it shall be processed and reviewed in accordance with adopted procedures. These procedures shall include a review of the application for development for the public facilities and services identified in this division, as they may apply.
  - (2) If the application for development is not reviewable as submitted, then the application for development shall be returned to the property owner or representative clearly stating what the deficiencies are and why the application for development cannot be further reviewed.
- (c) Concurrency test statement applied.
  - (1) After an application for development is accepted and passes review, it will be compared to the most recently adopted concurrency test statement. The county shall compare the application for development to the public facilities and services on the current concurrency test statement, as they may apply to the location described on the application for development.
  - (2) If the application for development being proposed is found to be exempt from the formal concurrency review, a certificate of concurrency, or its functional equivalent, is not required.
  - (3) If the application for development is found by the latest concurrency test statement to fall within an area with a deficient level of service for a facility or service, then a certificate of concurrency or its functional equivalent shall state that development shall either not be authorized or be authorized with conditions to be identified in the concurrency test statement.
  - (4) A certificate of concurrency or its functional equivalent shall be issued within 14 days of receipt of an acceptable application for development. This period of time may be waived by the county administrator, with additional time granted, based upon the circumstances of the situation.
- (d) Certificate of concurrency determination—Continued validity.
  - (1) The certificate of concurrency or its functional equivalent shall indicate the date of issuance and will be valid for purposes of the issuance of development orders or permits for 12 months from the date of issuance.
  - (2) Any development order or permit that is issued within the effective period of a validly issued certificate of concurrency or its functional equivalent shall be vested, for the purposes of concurrence, until the expiration of that development order or development permit, provided that development commences within the validity period of the development order or permit and continues in good faith, except that for purposes of a development order or development permit that authorizes construction, the validity period shall be limited to six months from the date of approval of the development order or development permit. Under no circumstances shall the validity period for a development order or permit or application for development under an existing certificate of concurrency or its functional equivalent be extended by action on a subsequent development order or permit for the same project or proposal, except when review of the subsequent development order or permit or application for

development is based upon a more recently adopted or amended concurrency test statement, or subsection (d)(3), below, applies.

- (3) For those certificates of concurrency or its functional equivalent issued for a development agreement entered into by the county, pursuant to the provisions of F.S. §§ 163.3220—163.3243, as amended, the duration of such certificate of concurrency, as issued, shall be for the time period stated within the development agreement.
- (e) Same—Development order or development permit compliance. All development orders and development permits issued and approved after the effective date of this division shall be based upon and in compliance with, the certificate of concurrency or its functional equivalent issued for that development proposal. A development order or development permit shall be in compliance with its underlying certificate of concurrency or its functional equivalent if the impacts associated with that development order or development permit are equal to or less than the allocations made in association with the underlying certificate of concurrency or its functional equivalent.
- (f) Site plan requirements.  
Submittal of a new site plan. Consistent with the county's comprehensive zoning ordinance, and as accepted by the county administrator or his designee, modifications may be made to an already submitted site plan. This will constitute a revision to the existing certificate of concurrency documentation, and the county's records will reflect such revision. A revision will not result in any extension to the validity time frames associated with the certificate of concurrency or its functional equivalent issued for the initial site plan, and will not justify the issuance of a new certificate or functional equivalent. Modifications in demand on facilities will be reflected in the tracking mechanism. If the county administrator or his designee determines that such modifications constitute substantial deviation, as defined in the comprehensive zoning ordinance, from the original project proposal, submittal of a new site plan will be required. In such instances, the certificate of concurrency or its functional equivalent issued for the original site plan submittal will no longer be valid, and the site plan will be subject to a concurrency review against the most current adopted concurrency test statement and all provisions within.

**SECTION 6. SECTION 134-226 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AND AMENDED AS FOLLOWS:**

Sec. 134-225. Concurrency test statement and monitoring system.

- (a) On an annual basis, the planning department shall develop and recommend a concurrency test statement, or any proposed amendments to the existing statement, to the county administrator. The county administrator shall convey such proposed statement or amendment, along with the local planning agency recommendations, to the board of county commissioners for final adoption.
- (b) The planning department, in coordination with the department of building and development review services, shall establish and maintain a concurrency management monitoring system for the purposes of monitoring the status of public facilities and services and establishing concurrency test statements.
- (c) The remaining capacity reported for each public facility and service on the annual concurrency test statement should be determined by calculating the existing demand as well as the committed impacts, including those associated with multi-year, phased development proposals or projects (including developments of regional impact, development agreements, etc.). These calculations are based upon data accumulated in the concurrency monitoring system, data supplied by individual county departments, as well as a reasonable projection for the progress of each proposal or project, population growth projections, or such other considerations as good planning practices would deem appropriate.
- (d) A concurrency test statement shall be issued every year. Nothing in this division precludes the issuance and effectiveness of amendments to the current concurrency test statement if updating or correction is deemed necessary by the board of county commissioners for, including, but not limited to, the following circumstances: Errors in preparation and adoption are noted; the impact of issued development orders or permits, as monitored by the planning department, indicate an unacceptable degradation to the adopted

level of service; or where changes in the status of capital improvement projects, of the state or any local government, change the underlying assumptions of the current concurrency test statement.

(e) Under no circumstances will an amended concurrency test statement divest those rights acquired, pursuant to subsection 134-225(d), under the concurrency test statement as it existed prior to amendment, except where a divestiture of such rights is clearly established by the board of county commissioners to be essential to the health, safety or welfare of the general public.

(f) A concurrency test statement shall include, at a minimum, the following:

(1) For potable water, wastewater, solid waste, and stormwater, that the following are minimum standards that, when met, will satisfy the concurrency requirement:

- a. The necessary facilities and services are in place at the time a development order or permit is issued;
- b. A development order or permit is issued subject to the condition that, at the time of issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place of and available to serve the new development;
- c. At the time the development order, or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of subsections (f)(1)a, and b of this section. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. §§ 163.3220 et seq., or an agreement or development order issued pursuant to F.S. ch. 380.

(2) For recreation, the county shall satisfy the concurrency requirement by complying with the following standards:

- a. At the time the development order or permit is issued, the necessary facilities and services in place or under actual construction; or
- b. A development order or permit is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the local government, or funds in the amount of the developer's fair-share are committed; and
- c. A development order or permit is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted ten-year schedule of capital improvements in the Pinellas County Capital Improvements Element; or
- d. At the time the development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent; or
- e. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to F.S. § 163.3220, or an agreement or development order issued pursuant to F.S. ch. 380, to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent.

**SECTION 7. SECTIONS 134-227 THROUGH 231 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE ARE HEREBY DELETED.**

**SECTION 8. SECTION 134-232 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AND AMENDED AS FOLLOWS:**

Sec. 134-226. Recognition of the establishment of levels of service in the county comprehensive plan.

The county shall recognize those adopted levels of service, as defined in the comprehensive plan, as stated in the following subsections:

- (1) Stormwater. The following level-of-service standards are adopted for major drainage projects to support stormwater management goals:
  - a. All applicable federal, state, and local regulations (as indicated in the regulatory framework section of the surface water management element) relating to flood control, stormwater treatment and wetland protection, shall continue to be met in public and private project design.
  - b. The 25-year storm design standard shall confine the runoff from a 25-year, 24-hour rainfall event within drainage channel banks, or within designated 25-year floodplains, in order to protect human life and minimize property damage.
  - c. The 100-year storm design standard shall protect homes and commercial buildings against flooding by a 100-year, 24-hour rainfall event.
  - d. Preference shall be given to stormwater management options which restore floodplains and remove obstructions from floodways.
- (2) Recreation and open space. The county's adopted level of service standard is 14.0 acres of parks and environmental lands, in combination, available for every 1,000 residents (permanent and seasonal).
- (3) Solid waste and resource recovery. Disposal of 1.3 tons of solid waste per person per year.
- (4) Potable Water supply. Except as otherwise provided in the master water supply contract and in the associated interlocal agreement, all potable water required by Pinellas County Utilities to serve its customers shall be supplied by Tampa Bay Water.

In the event that Tampa Bay Water determines that the regional system has experienced a "shortfall" or "production failure" as defined in the interlocal agreement, Pinellas County shall respond with one or more of the following actions and alternatives:

- a. Institute additional water conservation measures;
- b. Halt or otherwise restrict the issuance of development orders and permits;
- c. Develop new sources of potable water within the parameters of the interlocal agreement;
- d. Purchase potable water from suppliers other than Tampa Bay Water;
- e. Cooperate with Tampa Bay Water, the Southwest Florida Water Management District, and the affected local governments to develop a regional response to the situation; and
- f. Use actions and alternatives not identified in this policy.

Pinellas County shall use the following level of service when preparing its annual five-year and 20-year potable water demand projections for the Pinellas County Water Demand Planning Area, which are required by the master water supply contract to enable Tampa Bay Water to formulate its capital improvement program:

Pinellas County Water Demand Planning Area:

Year	1990	1994	1995	1997	2000	2005	2010	2015	2020	2025
gpcd	150	145	135	125	125	120	120	120	115	115

gpcpd - gallons per capita per day

- (5) Wastewater. The concurrency management program adopted by the Pinellas County Board of County Commissioners shall recognize that wastewater treatment plants must be in compliance with the operational permit requirements of the state department of environmental protection regarding the availability of capacity. Additionally, wastewater flows associated with existing and permitted development cannot exceed the wastewater treatment plant's permitted design capacity.
  - a. Wastewater flows associated with existing and permitted development cannot exceed the wastewater treatment plant's permitted design capacity.
  - b. Treated effluent and biosolids shall meet all pertinent federal, state and local standards and regulations for treatment, reuse and disposal.

- c. Pinellas County will, for concurrency management purposes, annually compare wastewater flows to permitted treatment capacity to determine the percentage of available capacity and assess whether permitted treatment capacity exceeds the needs of existing and committed development. If available treatment capacity meets this standard, development can be permitted.
- d. Unpredictable situations where permitted capacity is temporarily exceeded due to unanticipated situations such as limited/extreme weather conditions shall not impact the determination of level of service conditions.
- e. If an annual assessment evidences that a capacity deficit could occur within ten years, Pinellas County Utilities will prepare a more detailed capacity analysis as directed by 62-600.405, F.A.C, and determine whether facility expansion is required or if the service area is built out.
- f. Peak design flow capacity shall be between 1.5 and 2.5 times the average daily flow for each sanitary sewer system, based on the individual characteristics of the system.

**SECTION 9. SECTION 134-233 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AS FOLLOWS:**

Sec. 134-227. Intergovernmental coordination.

- (a) Provision of public facilities or services to other governmental entities. The county shall provide service to other local governmental entities within the county in accordance with the policies included in the comprehensive plan. The county shall administer this division such that development in those areas shall be consistent with the comprehensive plan and implementing ordinances, and actions of the county.
- (b) Receipt of public facilities or services from other governmental entities. Concerning those services that are provided by other governmental entities, the county shall recognize the level of service provided by such entities in accordance with the policies of the comprehensive plan. The county shall ensure that all development within its area shall be in accordance with such policies as identified in the comprehensive plan.

**SECTION 10. SECTION 134-234 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS RENUMBERED AND AMENDED AS FOLLOWS:**

Sec. 134-228. Appeals, reviews, and variances.

- (a) Definitions. As used in this section:

Applicant means any person making an official request to the county for a development permit, as that term is defined in this division.

*Concurrency review* and *variance hearing administrator* means the county administrator.

*Concurrency review* and *variance hearing board* means representatives of the county administrator's office, the county attorney's office, the department of development review services and the planning, public works, and environmental management departments, and where necessary or appropriate, representatives from other departments affected in the application.

- (b) Eligibility for concurrency variance. Any applicant who applies for a hearing under subsection (d) of this section and demonstrates by competent, substantial evidence that the strict interpretation or enforcement of the provisions of this division would cause an exceptional and unique hardship, peculiar to the applicant's parcel and not shared by other property owners in the area, may be granted a variance to the provisions of this division. Variances may only be granted to the extent necessary to relieve the hardship. Upon granting concurrency variances, additional safeguards and conditions may be required to ensure proper compliance with the general spirit, purpose and intent of this division and of the comprehensive plan.
- (c) Eligibility for review of an administrative decision. Any applicant who has been aggrieved by an administrative decision in the application or interpretation of the provisions of this division to his particular application for development may apply for a review of that decision to the concurrency review and variance hearing board.
- (d) Review hearing procedure.
  - (1) Any applicant who requests a concurrency review and variance hearing shall do so in writing to the planning department of development review services. Requests need not be in any particular form but must clearly indicate when the original application was made, what the variance or review concerns,

what property or project the application involved, and be accompanied by a payment determined to be sufficient to cover the cost of providing the hearing procedure. Notice shall be that same notice provided for a board of adjustment case.

- (2) The concurrency review and variance hearing board shall conduct a public hearing on all requests.
  - (3) An applicant's failure to appear or be represented at a scheduled review hearing shall be sufficient cause to deny the application on the strength of lack of evidence.
  - (4) Within 21 days after the applicant's review hearing, the concurrency review and variance hearing administrator shall have considered the findings of the concurrency review and variance hearing board and have made available to the public, in writing, his decision of denial or approval, with or without conditions. Such report shall be released through the planning department. If agreed to by all parties, this requirement may be waived.
- (e) Appeals procedure.
- (1) Any applicant who wishes to contest the validity of a concurrency determination by the concurrency review and variance hearing administrator after a review hearing may file for an appeal before the board of adjustment. Appeal filings shall not be required to be in any particular form, but shall be filed with the planning department within ten days after the denial, with a copy sent to the clerk of the board of county commissioners. Each appeal filing must clearly indicate when the original application was heard by the concurrency review and variance hearing board, what property or project the application involved, and be accompanied by a payment in sufficient amount to cover the cost of processing the appeal, providing the public hearing, and publishing notice which shall be the same as required for other hearings before the board of adjustment.
  - (2) The board of adjustment shall conduct the public hearing on all appeals as soon as practicable.
  - (3) An applicant's failure to appear or be represented at a scheduled appeal hearing shall be sufficient cause to deny the application on the strength of lack of evidence.
  - (4) The applicant is required to present substantial competent evidence, on the record, that establishes the applicant's right to a more favorable decision.
  - (5) In passing upon applications, the board of adjustment or the review and variance hearing administrator shall consider all technical evaluations, all relevant factors, standards specified in other sections of this division or in the comprehensive plan, and shall utilize the following generalized guidelines and criteria:
    - a. That the variance, review, or decision on appeal will not confer on the applicant any special privilege that is otherwise denied by this division to other similarly situated lands;
    - b. That any variance, review, or decision on appeal is the minimum increase in intensity or density that will make possible the reasonable use of the land, building, or structure, consistent with the need to protect public facilities or services;
    - c. That the variance, review, or decision on appeal is not inconsistent with the general intent, purpose, and spirit of this division, or with the county comprehensive plan;
    - d. That the variance, review, or decision on appeal will not be injurious to the area involved or otherwise detrimental to the public welfare;
    - e. That the variance, review, or decision on appeal shall not authorize a development in conflict with any other county ordinance or the county comprehensive plan; and
    - f. That the variance, review, or decision on appeal is based upon evidence submitted by the applicant that factually supports the variance, review, or decision on appeal.
  - (6) Appeals of the decisions of the board of adjustment made pursuant to this division shall be by petition for writ of certiorari to the circuit court.
  - (7) The department of planning shall maintain a summary record of all appeals that have been acted on by the board of adjustment with a report then submitted on a quarterly basis to the county administrator to file with the board of county commissioners.
- (f) Applicability of appeals procedures.
- (1) This section shall not be interpreted to limit or enhance the applicability of F.S. § 163.3215.
  - (2) As provided for in section 134-85, in order to prevent the taking of property, any party challenging a decision, determination or result made under this division as a temporary or permanent taking of private property must exhaust the provisions of this section and any other subsequently enacted

administrative procedures, including special master procedures under F.S. ch. 70.001, before any action on a request for development is deemed final by any competent court or quasi-judicial proceeding having jurisdiction.

**SECTION 11. SECTION 134-256 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS AMENDED AS FOLLOWS:**

Sec. 134-256. Purpose and intent.

- (a) The concurrency test statement is a status report on the ability of public services and facilities to meet the demands of existing and committed development and provide an acceptable level of service. In section 134-259 of this division, which contains detailed information on county services and facilities, it was determined that all public services and facilities evaluated in this division are currently providing an acceptable level of service based on the level of service standards contained in the concurrency management system for the county and the county comprehensive plan. For the purpose of determining the ability of a municipal service or facility to provide an acceptable level of service for unincorporated areas within a municipal service area, the county will rely upon information from the applicable jurisdiction indicating capacity availability.
- (b) Section 134-258 provides a summary of the level of service conditions for utilities, recreation/open space, drainage, and mass transit. If the existing level of service as shown in the table in section 134-258 equals or exceeds the adopted level of service standard, and all other level of service conditions are met, then that facility or service is considered to be providing an acceptable level of service. In section 134-259, the calculated existing levels of service for county services and facilities are compared to level of service standards contained in the adopted concurrency management system ordinance and the adopted county comprehensive plan. The source of the population figures used in section 134-259 is explained in section 134-260. The population figures used to evaluate public facilities/services in section 134-259 are the sum of the estimated existing population and the population associated with committed residential dwelling units.
- (c) Section 134-260 describes the methodology used to determine the level of service conditions.

**SECTION 12. SECTION 134-258 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS AMENDED AS FOLLOWS:**

Sec. 134-258. Level of service conditions—For utilities, recreation/open space, and stormwater.

The following table sets out a summary of level of service (LOS) conditions for utilities, recreation and open space, and stormwater:

Public Facility/Service	Existing LOS	Adopted LOS Standard	Status of Public Facility/Service of this Code
Pinellas County Water Demand Planning Area (PCWDPA)	Tampa Bay Water is able to meet annual demand	Refer to section 134-259(1)(b) of the Pinellas County Code	Acceptable
Pinellas County Wastewater System			
1) William E. Dunn	1) 6.56 mgd based on a capacity of 9.00 mgd	Refer to section 134-259(2) of the Pinellas County Code	1) Acceptable
2) So. Cross Bayou	2) 25.27 mgd based on a capacity of 33.00 mgd		2) Acceptable
Recreation and Open Space (Countywide)	15.85 acres/1,000 residents	14.0 acres/1,000 residents	Acceptable
Solid Waste and	County is able to dispose of the solid	1.30 tons/person/year	Acceptable

Resource Recovery (Countywide)	waste for which it is responsible (current generation rate is 0.90 tons/person/year)		
Stormwater		Refer to section 134-259(5) of the Pinellas County Code	Acceptability determined at time of site plan review

**SECTION 13. SECTION 134-259 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS AMENDED AS FOLLOWS:**

Sec. 134-259. Same—For public services and facilities.

The level of service conditions for public services and facilities are as follows:

- (1) Pinellas County Water Demand Planning Area (PCWDPA).
  - a. Existing level of service. Tampa Bay Water is able to supply all potable water required by Pinellas County Utilities to service its customers.
  - b. Adopted level of service standard.
    1. Except as otherwise provided in the master water supply contract and in the associated interlocal agreement, all potable water required by Pinellas County Utilities to serve its customers shall be supplied by Tampa Bay Water.
    2. In the event that Tampa Bay Water determines that the regional system has experienced a shortfall or a production failure as defined in the Interlocal Agreement, Pinellas County shall respond with one or more of the following actions and alternatives:
      - i. Institute additional water conservation measures;
      - ii. Halt or otherwise restrict the issuance of development orders and permits;
      - iii. Develop new sources of potable water within the parameters of the interlocal agreement;
      - iv. Purchase potable water from suppliers other than Tampa Bay Water;
      - v. Cooperate with Tampa Bay Water, the Southwest Florida Water Management District, and the affected local governments to develop a regional response to the situation; and
      - vi. Use actions and alternatives not identified in this policy.
    3. Pinellas County shall use the following level of service when preparing its annual five-year and 20-year potable water demand projections for the Pinellas County Water Demand Planning Area, which are required by the master water supply contract to enable Tampa Bay Water to formulate its capital improvement program:

Pinellas County Water Demand Planning Area  
gallons per capita per day (gpcd)

Year	1990	1994	1995	1997	2000	2005	2010	2015	2020	2025
gpcpd	150	145	135	125	125	120	120	120	115	115

- c. Potable water use for Pinellas County Water Demand Planning Area (PCWDPA).

Average daily flow (August 2014 through August 2015) for the PCWDPA = \*55.38 million gallons per day (mgd)

55.38 mgd based on: 49.72 mgd from Pinellas County Utilities + 5.09 mgd from the City of Clearwater Utilities + 0.57 mgd from the City of Tarpon Springs Utilities

Calculation: Pinellas County 49.72 + Clearwater 5.09 + Tarpon Springs 0.57 = 55.38

PCWDPA population as of August 2015 = 703,055

Existing level of service = 55.38 mgd ÷ 703,055 = 87 gpcd

Calculation:  $(55.38 \div 703,055) \times 1,000,000 = 78.7 = 79$

Maximum daily flow (Pinellas County Utilities only) = 55.62 mgd

Projected population increase in the PCWDPA (based on the difference between the August 2016 projected population and the August 2015 population) = 7,272

Calculation:  $710,327 - 703,055 = 7,272$

Projected 2016 water demand = 55.38 mgd +  $[7,272 \times 79 = 0.57 \text{ mgd}] = 55.38 \text{ mgd} + 0.57 \text{ mgd} = 55.95 \text{ mgd}$

Calculation:  $55.38 + 7,272 \times 82 \div 1,000,000 = 0.57$   
 $55.38 + 0.57 = 55.95$

Status of potable water level of service conditions: acceptable; no existing or projected capacity deficits.

(2) Sanitary sewer system/wastewater treatment. Adopted level of service standards for wastewater treatment: William E. Dunn Wastewater Treatment Plant and South Cross Bayou Wastewater Treatment Plant.

- a. Wastewater flows associated with existing and permitted development cannot exceed the wastewater treatment plant's permitted design capacity.
- b. Pinellas County will, for concurrency management purposes, annually compare wastewater flows to permitted treatment capacity to determine the percentage of available capacity and assess whether permitted treatment capacity exceeds the needs of existing and permitted development.
- c. If an annual assessment evidences that a capacity deficit could occur within ten years, Pinellas County Utilities will prepare a more detailed capacity analysis as directed by 62-600.405, F.A.C., and determine whether facility expansion is required or if the service area is built out.
- d. System-wide considerations. Treated effluent and sludge shall meet all pertinent federal, state and local standards and regulations for treatment, reuse and disposal.

Peak design flow capacity shall be between 1.5 and 2.5 times the average daily flow for each wastewater system, based on the individual characteristics of the system.

Pinellas County Utilities Wastewater System Capacity Analysis:  
 Summary of Level of Service Conditions

	Year	Estimated or Projected Service Area Population	Facility Design Capacity (MGD)	Estimated or Projected Average Daily Flow (MGD)*	Estimated or Projected Average Daily Flow Per Person (GPCPD)*	Capacity Surplus (or Deficit) (MGD)	Percent of Plant Capacity
William E. Dunn							

actual data	2009	109,772	9.00	6.38	60	2.62	71%
actual data	2010	103,006	9.00	6.40	62	2.60	72%
actual data	2011	103,155	9.00	6.19	62	2.45	72%
actual data	2012	103,304	9.00	6.72	65	2.28	75%
actual data	2013	102,577	9.00	6.56	64	2.44	73%
actual data	2014	103,091	9.00	6.60	64	2.40	73%
actual data	2015	103,200	9.00	6.60	64	2.40	73%
	2020	103,757	9.00	6.64	64	2.36	74%
	2025	104,207	9.00	6.67	64	2.33	74%
South Cross							
actual data	2009	255,158	33.00	21.02	84	11.98	64%
actual data	2010	256,446	33.00	21.00	82	12.00	63%
actual data	2011	256,730	33.00	23.17	90	9.83	70%
actual data	2012	257,014	33.00	23.21	90	9.79	70%
actual data	2013	258,199	33.00	21.42	83	11.58	65%
actual data	2014	260,767	33.00	21.64	83	11.36	66%
actual data	2015	261,214	33.00	21.68	83	11.32	66%
	2020	263,311	33.00	21.85	83	11.15	66%
	2025	265,035	33.00	22.00	83	11.00	67%

Source: Pinellas County Comprehensive Plan—Potable Water Supply, Wastewater and Reuse Element) and Pinellas County Department of Environment & Infrastructure. 2014-2015.

Flow data and per capita data for 2015 based on actual figures (Pinellas County Utilities Department 2014-2015); population estimates and projections prepared by Pinellas County Planning Department, 2015.

(3) Solid waste/resource recovery.

- a. Population as of August 2015 = \*1,106,305\*

Projected August 2016 population = 1,119,139

Difference between August 2015 population and August 2016 population is 12,834

Calculation:  $(1,119,139 - 1,106,305 = 12,834)$

\* Total population (permanent, seasonal and tourist) was used in establishing the solid waste/resource recovery level of service standard.

- b. Operating capacity of solid waste disposal system:

Resource recovery plant: 985,500 tons/year =  $(3,000 \text{ tons per day} \times 365 \text{ days per year} \times 0.90^{**})$

Bridgeway Acres Landfill: Expected to last at least 30 years, based on current design and disposal rate.

\*\* Normal operating efficiency is 100 percent -90 percent of the time.

- c. Existing level of service: The county is able to dispose of the solid waste for which it is responsible.

Projected demand on solid waste disposal system is based on:

Current demand (August 2014 through August 2015) = 1,000,247 tons/year (805,225 tons per year, resource recovery plant + 195,022 tons, landfill)

Current generation rate = 0.90 tons/person/year

Calculation:  $(1,000,247 \text{ tons} \div 1,106,305 \text{ people} = 0.90)$

Projected demand = 1,000,247 tons/year current demand (August 2014 through August 2015) + 11,551 tons (associated with service area population increase from August 2015 through August 2016) = 1,011,798 tons/year

Calculation:  $0.90 \text{ tons/person} \times 12,834 \text{ people} = 11,551 \text{ tons.}$

- d. Adopted level of service standard = disposal of 1.30 tons/person/year (resource recovery plant and landfill).

Status of solid waste disposal level of service conditions: acceptable; no existing or projected capacity deficits.

- (4) Recreation/open space.

- a. Population as of August 2015 = 1,014,675\*

Projected August 2016 population = 1,026,958

Difference between August 2016 population and August 2015 population = 12,283

- b. Capacity of the county park/preserve system: 16,279 acres total (accessible to the public).

- c. Existing level of service =  $(16,279 \text{ acres}/1,014,675) \times 1,000 = 16.04 \text{ acres per } 1,000 \text{ county residents}$ .

Projected level of service as of August 2016 =  $(16,279 \text{ acres}/1,026,958) \times 1,000 = 15.85 \text{ acres}/1,000 \text{ residents}$ .

- d. Adopted level of service standard = 14.0 acres/1,000 county residents.
- e. Status of level of service conditions: acceptable; capacity exceeds demand.

\* Permanent and seasonal population rather than total population (permanent, seasonal and tourist) were used in establishing the recreation/open space level of service standard.

Status of recreation level of service conditions: acceptable; no existing or projected capacity deficits.

- (5) Stormwater. On-site and major stormwater facilities will be required to meet the level of service standards adopted within the Pinellas County Comprehensive Plan and division 2 of this article. Therefore, applications for development will not be approved unless they conform to the adopted level of service standards. In addition, the Capital Improvements Element of the County Comprehensive Plan and the Pinellas County Capital Improvement Program have scheduled stormwater improvements needed to eliminate existing stormwater deficiencies. The necessary funds are available for those projects identified in the six-year schedule of improvements.

**SECTION 14. SECTION 134-260 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS AMENDED AS FOLLOWS:**

Sec. 134-260. Methodology used to determine the level of service conditions.

- (a) Since the level of service standards for recreation/open space, wastewater, potable water and solid waste/resource recovery facilities and services are partially based on per capita standards, information on the existing and projected populations for the service areas are used to evaluate existing and future impacts on services and facilities. For the purposes of this division, the source used in developing the population estimates, for permanent, seasonal, and tourist (depicted as a permanent population equivalent impact upon public services), were derived from the Pinellas County Population Projections 2010-2035 at the Traffic Analysis Zone (TAZ) level. The projections were at five-year intervals. Population estimates for the interim years were calculated by interpolation. However, short-term permanent population estimates have been updated based on results of the 2010 decennial census and subsequent annual estimates from the University of Florida.
- (b) An additional consideration in determining the existing level of service for recreation/open space, wastewater, and solid waste/resource recovery facilities and services is the impact of anticipated near term population growth. The impact of projected population growth over the next year (obtained by multiplying the projected increase in population for each service area by the existing level of service) is added to the actual demand (e.g., annual average flow) for the facilities. In this way, the additional demands associated with this anticipated population growth are factored into the assessment of existing level of service conditions. Flow data is obtained from Pinellas County Department of Environment and Infrastructure. Park and open space acreages are obtained from the parks and conservation resources.
- (c) For potable water supply, the existing levels of service and level of service standard is based upon Tampa Bay Water being able to meet the needs of the Pinellas County Water Demand Planning Area. For informational purposes, however, estimates of the Pinellas County Water Demand Planning Area population are applied to average daily flow figures to arrive at an estimate of existing per capita use.

**SECTION 15. SECTION 134-261 OF THE PINELLAS COUNTY LAND DEVELOPMENT CODE IS HEREBY DELETED.**

**SECTION 16. Severability**

If any section, paragraph, subdivision, clause, sentence, or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of the Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

**SECTION 17. Inclusion in the Code**

The provision of this Ordinance shall be included and incorporated in the Pinellas County Land Development Code, as an amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Land Development Code.

**SECTION 18. Filing of Ordinances; Effective Date**

Pursuant to Section 125.66, F.S., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon notice of filing of the Ordinance with the Department of State or May 1<sup>st</sup>, 2016, whichever is later.

APPROVED AS TO FORM

By:



Office of the County Attorney