

CAPITAL IMPROVEMENTS ELEMENT (CIE): DISCUSSION OF REQUIREMENTS

I. Statutory Requirements

A. Section 163.3177: The Capital Improvements Element and its relationship to the Comprehensive Plan.

1. Statutes require a Capital Improvements Element (CIE) and that the CIE be coordinated with other comprehensive plan elements. [163.3177], [163.3177(3)a]
2. The CIE outlines the following changes to public facilities:
 - a. Construction of new facilities
 - b. Those actions increasing the capacity of existing facilities in reference to level of service standards.
 - c. Both *a* and *b* (above) must be addressed at least over a 5 year planning time frame.

[163.3177(3)(a)1]

1. Treatment of facilities in the element requires discussion of when the capital facilities will be needed, the cost, likely revenue sources, and location of scheduled capital improvements (within the 5 year period). [163.3177(3)(a)2]
2. The CIE establishes standards to ensure the availability of public facilities as organized by guidelines for level of service (LOS) requirements. [163.3177(3)(a)3]
3. Likewise, all facilities provided should follow standards, outlined in the CIE that will promote their functioning to meet LOS requirements. [163.3177(3)(a)3]
4. The CIE also requires standards to manage public debt. [163.3177(3)(a)4]

B. Definition of the Five (5) year Schedule of Capital Improvements:

1. The CIE must include a Five (5) year Schedule of Capital Improvements
2. The CIE must list all publicly funded capital improvements necessary to maintain LOS. [163.3177(3)(a)5]
3. It must also detail privately funded improvements that contribute to LOS and for which the city has no responsibility but aid LOS. [163.3177(3)(a)5]

- a. Privately provided capital improvements proceed based on enforceable development or interlocal agreements. [163.3177(3)(a)5]
4. The Five (5) year Schedule of Capital Improvements must *be financially feasible*, as defined by Section 163.3164(32) of the Florida State Statues.
- a. Section 163.3164(32) states, “ *...Sufficient revenues are currently available or will be available from committed funding sources for the first three (3) years, or will be available from committed or planned funding sources in years four (4) and five (5) of a capital improvements schedule for the purposes of funding capital improvements.*”
 - i. Committed/Dedicated Funding Sources (Years 1 to 3): Ad valorem taxes, approved bonds, state and federal funds, tax revenue, impact fees, and enforceable developer agreements.
 - ii. Planned Funds (Years 4 and 5): Grants, proposed bonds, other sources of revenue based on contingent sources not already secured.
 - iii. Local governments demonstrate financial feasibility through a balance sheet approach where revenues are shown to meet or exceed expenditures.
 - iv. A balance sheet demonstrating financial feasibility shall be incorporated into CIE text as a stand alone item or merged with the five (5) Capital Improvements Schedule.
 - v. The balance sheet must also be included in the Goals, Objectives and Policies of the CIE.
 - b. The feasibility requirement applies to the entire five (5) year planning period of the CIE.
 - c. A feasibility requirement would also apply to ten (10) to (15) year period of a concurrency management system.
 - d. The local government must demonstrate that LOS is achieved by the end of the planning period, even if in a particular year such improvements are not concurrent.
 - e. If the local government uses planned sources of revenue that require referenda or introduce similar contingencies into funding of a given improvement, then the plan must specify how the improvement would be accomplished in the absence of planned funding. [163.3177(3)(a)5]

II. Procedural Requirements and Changes

A. Executing Changes to the Capital Improvements Element

1. The CIE may be effectively updated per those actions taken over the planning cycle to amend the comprehensive plan—i.e., a future large scale amendment to the comprehensive plan, initiated for other reasons, would also be an opportunity to update the CIE.
2. Specifically, the CIE must be updated on an annual basis as well. [163.3177(3)(b)1]
 - a. The primary purpose of the annual update is to ensure continued financial feasibility as movement through the five (5) year schedule occurs (e.g., one year after adoption—year 4 becomes year 3, year 5 becomes year 4, and year one drops from the schedule with a new year 5 added, and this necessarily implies change especially over the committed and planned funding divide.)
3. How to alter the CIE:
 - a. Minor changes to the CIE may be made on an ongoing basis as information changes. Correcting costs or revenue figures and those changes consistent with the plan may be handled by passage of an ordinance amending the CIE by the local government. Subsequently, the ordinance is transmitted to DCA, and it is not judged to be an amendment to the comprehensive plan.
 - b. The required annual update to the CIE must be handled as a text amendment to the comprehensive plan. Therefore, the annual update proceeds under a large scale amendment to the comprehensive plan.
 - c. Section 163.3177(3)(b)2 allows an expedited review for a single public adoption hearing.
 - d. The annual CIE update may also proceed without use of the statutory exception and follow both an adoption and transmittal hearing.
 - e. The text amendment necessary to achieve annual update of the CIE does not count against the local government's annual limit of comprehensive plan amendments. [163.3187(1)(f)]
4. Once added to the five (5) year schedule, a comprehensive plan amendment is then required to change, alter, defer or delay a given capital improvement. [163.3177(3)(b)1]

5. All local governments must alter their Capital Improvements Elements to reflect the new requirements no later than December 1, 2008. The annual update will continue as a requirement thereafter.
 - a. Failure to amend the comprehensive plan by said date carries three main implications:
 - i. Local governments failing to diligently revise their capital improvements elements by December 1, 2008 may be sanctioned by the Administration Commission. [163.3177(3)(b)(2)c]
 - ii. After December 1, 2008, local governments with a CIE found not in compliance may be prevented from amending its future land use map for reasons other than emergency or new growth management requirements. [163.3177(3)(b)1]
 - iii. To resolve questions regarding CIE, a local government might voluntarily request a DCA ORC Review during the comprehensive plan amendment process or seek a courtesy review from DCA. This will identify any problems within the CIE. In effect, this course of action preempts the document, preempting any designation of not in compliance.

III. Coordination Requirements

A. Water Management District Coordination

1. The CIE schedule must incorporate water supply projects 18 months after the Water Management District updates the Regional Water Supply Plan. [163.3177(6)c]

B. Transportation Coordination

1. The CIE must reflect proportionate fair-share projects for transportation. A developer may satisfy proportionate fair share requirements by paying proportionate fair-share mitigation to transportation facilities or facility segments identified in the CIE. [163.3180(16)(b)1]
2. The CIE schedule must also reflect the Metropolitan Planning Organization's (MPO)'s Transportation Improvement Program (TIP) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. [163.3180(3)(a)6]
3. If a state funded roadway improvement is necessary to accomplish level of service, then the appropriate FDOT plan funding said improvement should be adopted in the CIE by reference.
4. *De Minimis* Records Reporting

- a. *De minimus* Impact: “an impact not affecting more than 1% of the volume at the adopted level of service of the affected transportation facility as determined by the local government.”
 - b. Local governments determine when they will allow above stated exceptions.
 - c. Main task is to devise system for de minimus reporting and incorporate it into annual CIE update. (See attached De minimus reporting sheet.)
4. Local government should review FDOT five (5) year District Work Plan, but only need adopt into CIE if relying on specific projects to ensure concurrency.

C. School Project Coordination

1. As of 12/8/08, the CIE will be required to reflect coordination with schools:
 - a. The CIE should include school projects consistent with the school district’s work plan.
 - b. A public schools LOS standard will be established.
 - c. They must also identify fair share revenue or donated projects for schools.

[163.3180(13)(d)1]

IV. Local Capital Improvements Planning

A. Changes to CIE imply coordination between annual budgeting, Capital Improvements Program/Plan, and annual CIE update.

1. Ideally, CIE should inform annual budgeting and any ongoing capital improvements program.
2. Coordination between CIE, budget and CIP is area where local governments have prerogative to develop systems, methods, and approaches that work in local context.
3. Likely, to some degree, all three processes will need to be handled in conjunction with one another in the future.
4. (See Annual Schedule insert and accompanying materials.)

B. Finding Efficiencies in the Annual CIE Update Process

1. (See joint five (5) year schedule of improvements and financial feasibility table.)

2. Existing documents serve as excellent information sources to fulfill data and analysis requirements related to CIE
 - a. Capital Improvements Program
 - b. Budget Summary Sheets
 - c. Annual Budget
3. (See Budget Summary Sheet and discussion in reference to 9J-5 requirements)

C. Benefits of Capital Improvements Planning

1. Organization for systematic review and evaluation of all facility and public service provision options.
2. Allows platform for open, public discussion of capital expenditures relating to public facilities and services
3. Properly executed CIE, CIP and budgeting coordination encourage fiscally responsible growth.
4. Capital Improvements Planning can serve valid economic development purpose and businesses have expectations related to public services defined.

V. Information Sources

- A. Senate Bill 360 (2005)
- B. The Administrative Code
 1. Rule Chapter 9J-5
 - a. 9J-5.005 *General Requirements*
 - b. 9J-5.016 *Capital Improvements Element*
- C. House Bill 7203 (2007)
- D. Future: DCA “best practices manual” for Capital Improvements should provide step by step guidance.