Charter Review Commission
December 8, 2020
Council Chambers
6:00 PM

I. Call to Order

II. Pledge of Allegiance

III. Approval of Minutes

1. Approval of Charter Review Commission of Minutes of November 16, 2020

IV. Old Business

1. Recap of Outstanding Issues

V. Public Period

VI. Decisions

1. Articles IX - XI

VII. Recommendations

VIII. Staff Presentations or Work Sessions

IX. Discussion

1. Model Ordinance - Right to Clean Water

X. Any Other Business the Board Deems Advisable

XI. Adjournment

More than one member of the City Council may be present and speak at this meeting.

Notice: Any person who desires to appeal any decision made at this meeting or hearing will need a record of the proceedings and, for this purpose, may need to ensure that a verbatim record of the proceedings is made which includes testimony and evidence upon which the appeal is to be based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's office (407-539-6219) 48 hours in advance of the meeting.

MEETING DATE		AGENDA
December 8, 2020		Section: Approval of Minutes
Department/Office : Administration	AGENDA REPORT	Item #: 1.

Subject:
Approval of Charter Review Commission of Minutes of November 16, 2020

Requested Action or Motion:
Move to approve the Chater Review Commission Minutes of November 16, 2020

Summary Explanation & Background:
N/A

Fiscal Impact:
N/A

Exhibits:
1. Charter Review Commission Minutes 11162020

Commission/Board:

Contact Person: Kathy Sotero, Deputy City Clerk 407-539-2307

Reviewed by City Attorney
N/A

Charter Review Commission Minutes
November 16, 2020
Council Chambers
6:00 PM

I. CALL TO ORDER

Chair Randolph called the meeting to order at 6:00 PM. Present were Commission members Lowndes, McIver, and Simasek; City Manager Anselmo, Assistant City Manager Reggentin, City Clerk Waldrop, and interested citizens. Member Grafton was unavoidably absent.

II. PLEDGE OF ALLEGIANCE

Chair Randolph led the Pledge of Allegiance.

III. APPROVAL OF MINUTES

A motion was made by Member Lowndes to approve the minutes as presented from the October 5, 2020 meeting. The motion was seconded by Member Simasek. **Motion passed unanimously.**

1. Approval of Charter Review Commission Minutes of October 5, 2020

Approve the Charter Review Minutes of October 5, 2020.

IV. OLD BUSINESS

1. Recap of Outstanding Issues

The City Manager provided a Recap of Outstanding Issues from the October 5, 2020 meeting.

V. PUBLIC PERIOD

Chair Randolph opened the Public Period. Mr. Marc Walch, 430 N. Lake Sybelia Drive, supports including the Sustainability Committee in the Charter. There being no one else who wished to be heard, Chair Randolph closed the Public Period.

VI. DECISIONS

1. Articles IV-VIII

The City Manager presented a PowerPoint Presentation (attached hereto and made part of) reviewing Articles IV through VIII of the Maitland Charter. She will also update the tracking chart with outstanding issues from this meeting.

VII. RECOMMENDATIONS

There were no Recommendations.

VIII. STAFF PRESENTATION OR WORK SESSIONS

There were no Staff Presentations or Work Sessions.

IX. DISCUSSION

Member Simasek discussed including sustainability objectives in the Charter.

X. ANY OTHER BUSINESS THE BOARD DEEMS ADVISABLE

There was no other Business the Commission Deems Advisable.

XI. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 7:50 PM.

_____
Chairperson

_____
Print Name

Attest:

_____

_____
Print Name

MEETING DATE		AGENDA
December 8, 2020		Section: Old Business
Department/Office : Administration	AGENDA REPORT	Item #: 1.

Subject:
Recap of Outstanding Issues

Requested Action or Motion:
N/A

Summary Explanation & Background:
Attached is the current listing of items and the status of the Commission's review.

Fiscal Impact:
None.

Exhibits:
1. Charter Review Tracking 2020

Commission/Board:

Contact Person: Kathy Sotero, Deputy City Clerk 407-539-2307

Reviewed by City Attorney
Attachment has updated responses from City Attorney.

CHARTER REVIEW TRACKING 2020

Item	Issue	Resolution	Comment
Sec 1.02 Construction	CRC would like to explore the potential that we could globally make the charter gender neutral with one question rather than having to address it in each section.	Ballot language being drafted for consideration by CRC.	Per the City Attorney, this can be handled in one question and he is drafting the language for the ballot. 11/24/2020
Sec 1.03 Intergovernmental Relations	Staff would like to clarify with Cliff if civil divisions (unable to find definition) is equivalent to county/city.	Still under consideration.	Per the City Attorney : The "civil division" provision most likely doesn't meaningfully limit the City, but the definition is vague and creates some ambiguity. The best reading is that it means "subdivision," but there is no clear answer. As such, it may be beneficial to change the clarify that it applies to all sorts of governmental subdivisions. 11/24/2020
Article II – City Council	There has been a request to change Council to Commission.	Resolved.	CRC felt Council could continue to use "Council" vs. "Commissioner" and use "Council person" or "Council member" instead of "man" or "woman."
Sec. 2.01. - Composition, eligibility, election and terms. (b)	Residency requirement is 6 months.	Resolved.	CRC felt 6 month is still appropriate.
Sec. 2.01. - Composition, eligibility, election and terms. (a)	Districts vs. at large.	Still under consideration.	CRC may want to consider making a comment that although not recommended at this time, the City may want to look into districts as the City continues to grow.
Sec. 2.01. - Composition, eligibility, election and terms.(c)	Consecutive terms	Still under consideration.	City Attorney advice required. Appears to read that two consecutive terms are either mayor or council or any combination thereof. Interpretation at 2.01f seems to conflict.
Sec. 2.01. - Composition, eligibility, election and terms.(c)	Length of terms – 4 years vs. 3 years.	Still under consideration.	CRC may want to consider longer terms.
Sec. 2.01 – Composition, eligibility, election and terms. (c)	Term limits	Still under consideration.	CRC may want to consider removing term limits.
Sec. 2.01 – Composition, eligibility, election and terms. (c)	Mayor ineligible at next election if termed out.	Still under consideration.	This results in the Mayor being singled out to sit out an additional cycle, not just the next Mayoral cycle. CRC not sure what the intent was or if it's needed. It is in the interpretation that this is how 2.01© is to be interpreted.
Sec. 2.02 – Compensation	Should the specific amounts be updated to today's dollars.	Still under consideration.	CRC may want to consider updating dollar values.
Sec. 2.05 – Appointments and removal. (b)	Concern about the language that prohibits dictating the appointment or removal of administrative staff limiting the Council members' right to express their opinion.	Still under consideration.	City Attorney advice required.
2.03 – Mayor.	Language is unclear regarding vacancies.	City Attorney is drafting ballot language for CRC consideration.	States first that the vice mayor shall become Mayor for the remainder of the unexpired term and finishes that if the Mayor's seat is vacated a new Mayor shall be elected at the next election. Ord. 1232 clearly had to intent to have the seat come up at the next election, but the ordinance did not clear up the conflicting language.

			City Attorney believes this is a conflict, is drafting language for CRC consideration.
2.06 – Filling of vacancies (c)	Requires a special election to be held with 90 to 120 days after vacancy.	Still under consideration.	City Clerk to check with Supervisor of Elections (once we are past this election cycle) to see if that is reasonable. Certainly impossible if we are mid cycle in an election and certainly in a presidential election cycle he would not be able to do it. Does it make sense to change to next regularly scheduled election?
2.07 – Judge of qualifications	Requires publication in the newspaper.	Still under consideration.	City Attorney Advice Required. Newspaper ad is not the best method of notifying residents – perhaps post on the City website or other methods would suffice? Since the recall procedure is outlined in F.S. this would only apply if a Council/Mayor moved out of the City or other circumstances that disqualify him/her from serving.
4.04 – Powers and Duties of the City Manager	Model city charter has additional duties relating to strategic goals and performance measures.	Still under consideration.	CRC may want to make suggestions related to adding these items to JD or other documentation to broaden the duties.
5.02 – Human Resource Rules	HR would like to remove this from the charter, however it failed in 2012.	Still under consideration	CRC suggested changing ordinance to resolution.
5.06 – Term Limits		Still under consideration	To be considered with term limits of Mayor/Council.
Sec. 8.03. - Elections. (c)	Run off elections	Still under consideration	Consider whether it is necessary to have a runoff or allow a plurality to determine winner.
Sec. 8.04. - Qualifications of candidate; form of oath.	Qualifying Period during PPP	Still under consideration	Language may be changed to allow council to set QP by ordinance? 100.3605 FS does this override Charter?
Sec. 8.04. - Qualifications of candidate; form of oath.	Oath notary language	Still under consideration	Does this need to be updated?
Sec. 8.09. - Qualifications of electors; prescribing method and manner of elections.	FS reference	Still under consideration	Obsolete statutes are referenced.
Rights of Nature / Right to Clean Water	State preemption.	Still under consideration.	The State has preempted giving rights to non-corporations or individuals that will invalidate the Orange County Charter Question. Is there language that may accomplish the same outcome without crossing the preemption language? Commission member Simasek has a model ordinance for the CRC agenda in December.

MEETING DATE		AGENDA
December 8, 2020		Section: Decisions
Department/Office : Administration	AGENDA REPORT	Item #: 1.

Subject:
Articles IX - XI

Requested Action or Motion:
Review Articles IX through XI

Summary Explanation & Background:
Attached are Articles IX through XI for review.

Fiscal Impact:
none

Exhibits:
1. charter review ix - xi

Commission/Board:

Contact Person: Kathy Sotero, Deputy City Clerk 407-539-2307

Reviewed by City Attorney
n/a

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.01. - General authority.

(a) *Initiative.* The qualified voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election; provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(b) *Referendum.* The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

Comment: Consistent with MCC (p.43) except Maitland does not include recall procedures (those are covered under Article VIII).

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.02. - Commencement of proceedings; petitioners' committee; affidavit.

Any five qualified voters may commence initiative or referendum proceedings by filing with the city clerk an affidavit stating they will constitute the petitioner's committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

Comment: Consistent with MCC (p.43-44) except Maitland does not include recall procedures (those are covered under Article VIII and F.S.).

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.03. - Petitions.

(a) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the city equal in number to at least fifteen per cent (15%) of the total number of qualified voters registered to vote at the last regular city election.

(b) *Form and content.* All papers of a petition shall be uniform in size and style and shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Each signature page of the petition shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

Comment: MCC recommends 5 to 10% of voters (p44). Under form and content the item in red was added in 2012.

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.03. - Petitions.

(c) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) *Time for filing referendum petitions.* Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered.

Comment: Consistent with MCC (p44).

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.04. - Procedure after filing.

Certificate of clerk; amendment. Within 20 days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate.

Comment: Consistent with MCC (p44).

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.04. - Procedure after filing.

Such supplementary petition shall comply with the requirements of subsections (b) and (c) of section 9.03, and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and petitioners' committee does not elect to amend or request council review under subsection (b) of this section within the time required, the clerk shall promptly present his certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

Comment: Consistent with MCC allows except 20 days for sufficiency review (business or calendar?)

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.04. - Procedure after filing.

(b) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.

Comment: Consistent with MCC

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.04. - Procedure after filing.

(c) *Court review; new petition.* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Comment: Consistent with MCC

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.05. - Referendum petitions; suspension of effect of ordinance.

When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

(1) There is a final determination of insufficiency of the petition, or

(2) The petitioners' committee withdraws the petition, or

(3) The council repeals the ordinance, or

(4) Thirty days have elapsed after a vote of the city on the ordinance.

Comment: Consistent with MCC

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.06. - Action on petitions.

(a) *Action by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.

Comment: Consistent with MCC

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.06. - Action on petitions.

(b) *Submission to voters.* The vote of the city on a proposed or referred ordinance shall be held not less than thirty days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

Comment: Consistent with MCC

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.06. - Action on petitions.

(c) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Comment: Consistent with MCC, except it states 2/3 of the members must sign.

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.07. - Results of election.

(a) *Initiative.* If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Comment: Consistent with MCC.

ARTICLE IX – INITIATIVES AND REFERENDUM

Sec. 9.07. - Results of election.

(b) *Referendum.* If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

Comment: Consistent with MCC.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.01. - Personal financial interest.

Any city officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of any land, material, supplies or services to the city or to a contractor supplying the city shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a city officer or employee in the making of such sale or in the making or performance of such contract. Any city officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the city, shall render the contract or sale voidable by the city manager or the city council.

Comment: MCC language is for cities that aren't covered by State laws. State law is pretty clear and applies to officers and employees of the city and includes a code of ethics.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.02. - Prohibitions.

(a) *Activities prohibited.*

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, sex, political or religious opinions or affiliations.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the human resources provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

Comment: MCC language includes gender, sexual orientation, and disability, country of origin.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.02. - Prohibitions.

(a) *Activities prohibited.*

(3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

(4) No person shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatever from any person holding any compensated appointive city position.

Comment: MCC language in 4 limits to "to be used in conjuction with any city election from any city officer or city employee."

ARTICLE X – GENERAL PROVISIONS

Sec. 10.02. - Prohibitions.

(a) *Activities prohibited.*

(5) No person who holds any compensated appointive city position shall make, solicit or receive any contribution to the campaign funds of any political party or any candidate for public office or take any part in the management, affairs or political campaign of any political party, but he may exercise his rights as a citizen to express his opinions and to cast his vote.

Comment: MCC language again refers just to City elections. As written this would imply I couldn't give campaign donations to a candidate for president, senator or a non-city ballot initiative. FS

ARTICLE X – GENERAL PROVISIONS

Sec. 10.02. - Prohibitions.

(b) *Penalties.* Any person who by himself or with others willfully violates any of the provisions of paragraphs [(a)](1) through (4) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred ($500.00) dollars or by imprisonment for not more than sixty days or both. Any person who by himself or with others willfully violates any of the provisions of paragraph (5) shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not more than five hundred ($500.00) dollars. Any person convicted under this section shall be ineligible for a period of five years thereafter to hold any city office or position and, if an officer or employee of the city, shall immediately forfeit his office or position.

Comment: MCC language is similar except that it allows the Council to establish the penalties by ordinance.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.03. - Charter amendment.

(a) *Proposal of amendment.* Amendments to this charter may be framed and proposed:

(1) In the manner provided by law, or

(2) By ordinance of the council containing the full text of the proposed amendment and effective upon adoption, or

(3) By the voters of the city, or

(4) By report of a charter commission created by ordinance.

Comment: MCC language is consistent.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.03. - Charter amendment.

Proposal of an amendment by the voters of the city shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article IX for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by qualified voters of the city equal in number to at least ten (10) per cent of the total number of qualified electors registered to vote at the last regular city election. The petitioners' committee may withdraw the petition at any time before the fifteenth (15th) day immediately preceding the day scheduled for the city vote on the amendment.

Comment: MCC language is consistent.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.03. - Charter amendment.

(b) *Election.* Upon delivery to the city election authorities of the report of a charter commission or delivery by the city clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to subsection (a), the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least 30 days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be within the discretion of the council.

Comment: MCC language is consistent.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.03. - Charter amendment.

(c) *Adoption of amendment.* If a majority of the qualified voters of the city voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.

Comment: MCC language is consistent.

ARTICLE X – GENERAL PROVISIONS

Sec. 10.04. - Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

Comment: MCC language is consistent.

ARTICLE XI – TRANSITIONAL PROVISIONS

Sec. 11.01. - State and municipal laws.

In general. All city ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and laws of the state of Florida permit, all laws relating to or affecting this city or its agencies, officers or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.

Comment: This only applies in transition from an old to new form of government.

MEETING DATE		AGENDA
December 8, 2020		Section: Discussion
Department/Office : Administration	AGENDA REPORT	Item #: 1.

Subject:
Model Ordinance - Right to Clean Water

Requested Action or Motion:
Review of Model Ordinance

Summary Explanation & Background:
Attached is a model ordinance provided by member Simasek for the Commission to consider.

Fiscal Impact:
None.

Exhibits:
1. RTCW - Model Ordinance (002)

Commission/Board:

Contact Person: Maria Waldrop, City Clerk 407-539-6219

Reviewed by City Attorney
A copy was provided to the City Attorney, no response as of agenda distribution.

ORDINANCE 2020-___

SEMINOLE COUNTY RIGHT TO CLEAN WATER ORDINANCE

AN ORDINANCE OF THE COUNTY OF SEMINOLE, FLORIDA, RECOGNIZING A RIGHT TO CLEAN WATER AND HEALTHY WEKIVA AND ECONLOCKHATCHEE RIVERS; PROHIBITING ACTIVITIES WHICH INTERFERE WITH THOSE RIGHTS; AND PROVIDING FOR AN EFFECTIVE DATE.

***Whereas*, almost half of Florida's waterways have been declared to be "impaired," and the State of Florida has now issued over 23,000 permits for the emission of pollution into Florida's air, water, and soil; and**

***Whereas*, Florida's environmental regulatory system has shown itself to be highly subject to corporate influence and changing political winds, meaning that ensuring clean water through the protection of springs, bays and waterways cannot be guaranteed by the state's regulatory system; and**

***Whereas*, the health and vitality of the people of Seminole County are dependent on the ecosystems which provide clean water, and the health and vitality of the Wekiva and Econlockhatchee Rivers is a barometer of the cleanliness of that water; and**

***Whereas*, the ancient existence of the Wekiva and Econlockhatchee Rivers accords the bay a special status, with the accompanying responsibility on the government of Seminole County to protect it; and**

***Whereas*, other Citizens within the State of Florida have placed into law - by overwhelming popular vote - the acknowledgement that their Waters, like the Wekiva and Econlockhatchee Rivers, possess pre-existing rights to naturally exist, to Flow, to be protected against Pollution and to maintain healthy ecosystems, among others;**

***Therefore*, the Board of County Commissioners of Seminole County adopts this Ordinance to protect the Citizens of Seminole, the Wekiva and Econlockhatchee Rivers and all waters within the jurisdiction of Seminole County.**

A. Rights of the Citizens of Seminole County

The Citizens of Seminole County possess the right to clean water, which shall include the right to the Wekiva and Econlockhatchee Rivers and all other waters within the jurisdiction of Seminole County that naturally exist, flow, are free of pollution, and maintain healthy ecosystems.

B. Standing, Private Right of Action.

Seminole County, municipalities within Seminole County, any other public agency within Seminole County, and all Citizens of Seminole County shall have standing to bring an action in their own name, in the name of the Wekiva and Econlockhatchee Rivers, or in the name of other waters within the jurisdiction of Seminole County, to enforce the provisions of this Ordinance. Such actions shall be filed in the Eleventh Judicial Circuit Court in and for Seminole County, Florida, or, where jurisdiction exists, in the United States District Court, Southern District of Florida.

C. Violations.

It shall be unlawful and a violation of this Ordinance for any governmental agency, non-natural person or corporate entity to violate the right to clean water established by this Ordinance, or to intentionally or negligently pollute the Wekiva and Econlockhatchee Rivers or any other Waters within the boundaries of Seminole County. Violations shall include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Seminole County or unreasonably interferes with or is injurious to the health and welfare of others. This Ordinance applies only to violations that occur after the effective date of the amendment as provided in Section (H).

D. Remedies.

(1) Remedies for violations of this Ordinance shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Wekiva and Econlockhatchee Rivers or the Waters at issue to the condition as they existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

(2) Attorneys' fees are not compensable unless the court determines that the action brought under this Ordinance is frivolous, vexatious, or is brought solely for the purpose of harassing the defendant. If such a finding is made, the Court may also award reasonable attorneys' fees to the defendant as a sanction.

E. Exception.

The provisions of the Section shall not apply to Constructed Wetlands.

F. Definitions.

(1) "*Citizen*" or "*Citizen of Seminole County*" means an adult resident of Seminole County with legal residence in the United States who has resided within the County for at least one (1) year prior to filing an action under this Section.

(2) "*Constructed Wetland*" means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.

(3) "*Flow*" shall have the same meanings as in FLA. STAT. § 373.042.

(4) "*Pollutant*" means any substance or contaminant, whether manmade or natural, that is the source or cause of Pollution.

(5) "*Pollution*" shall have the same meanings as in FLA. STAT. § 376.031(17) and Rule 62-520.200(15), Florida Administrative Code, and means the non-natural presence in the Waters of Seminole County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(6) "*Waters*" shall have the same meaning as in Rule 62-520.200(25), Florida Administrative Code, and includes, but is not limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Seminole County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other Waters, property or persons within Seminole County.

G. Severability and Conflicts.

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Ordinance impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

H. Effective Date.

This amendment shall become effective upon passage and shall not require further enabling legislation by the Seminole Board of County Commissioners.