



**Sustainability Advisory Board
April 14, 2021
Council Chambers
6:00 PM**



- I. Call to Order
- II. Pledge of Allegiance
- III. Presentations
 1. Presentation - Chris Castro, Director, Office of Sustainability & Resilience, City of Orlando
- IV. Public Period
- V. Reading or Disposition of Minutes of Previous Meeting
 1. Approve the Sustainability Advisory Board meeting minutes of March 10, 2021
- VI. New Business
 1. Board Constitution and ByLaws
- VII. Old Business
 1. Charter Amendment - Right to Clean Water
- VIII. Any other Business the Board Deems Advisable
- IX. 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
April 14, 2021		Section: Reading or Disposition of Minutes of Previous Meet
Department/Office : Administration	AGENDA REPORT	Item #: 1.
Subject: Approve the Sustainability Advisory Board meeting minutes of March 10, 2021		
Requested Action or Motion: Move to approve the minutes of the 3/10/2021 meeting.		
Summary Explanation & Background: Attached are minutes from 3/10/21 for Board review and approval.		
Fiscal Impact:		
Exhibits: 1. 03102021 Minutes		
Commission/Board: Other		
Contact Person: Kathy Sotero, Deputy City Clerk 407-539-2307		
Reviewed by City Attorney		



**Sustainability Advisory
Board Meeting Minutes
March 10, 2021
Council Chambers
6:00 PM**



I. CALL TO ORDER

Board Chairperson Marc Walch called the meeting to order. In attendance were Board members Simasek, Hazelroth, Christl, and Roberts. Also in attendance were City Manager Anselmo and Assistant City Manager Reggentin.

II. PLEDGE OF ALLEGIANCE

III. PRESENTATIONS

**1. MICHAEL A. SMITH, LC, IESNA, OUTDOOR LIGHTING PROGRAM
MANAGER, DUKE ENERGY**

Michael Smith from Duke Energy gave a presentation about the various types of lighting and their impact, and answered questions from the Board.

IV. PUBLIC PERIOD

Chairperson Walch opened the public period. There were no members of the public wishing to address the Board and the Chair closed the public period.

V. APPROVAL OF MINUTES

1. MINUTES FROM FEBRUARY 10, 2021

A motion by Karen Simasek to approve the minutes was seconded by Lisa Roberts and unanimously approved.

VI. NEW BUSINESS

1. USE OF HERBICIDES ON CITY PROPERTIES

Ryan Sullivan, the City Lakes Coordinator gave a presentation regarding the use of herbicides by the City on both aquatic and invasive plants. The Board discussed the use of herbicides and the need to explore organic or other options where possible. Resident Carter Miller spoke during the public period in opposition to the use of herbicides in Maitland. After discussion, the Board felt this might be a topic for the Lakes Advisory Board to consider, and staff stated they would look into other options (reaching out to other cities who have modified or eliminated the use on city property).

VII. OLD BUSINESS

1. STAFF UPDATE

Staff provided a brief update on the action plan and the LDC. Staff will be presenting the Board's concerns on the sustainability section to the Community Development Department and will present a response at a future meeting. The Board requested that an updated action plan be presented at a future meeting. The Board Chair requested that the Constitution and By-Laws be placed as a topic at the next meeting.

VIII. DISCUSSION**IX. ADJOURNMENT**

John Hazelroth made a motion to adjourn, seconded by Lisa Roberts and unanimously carried at 7:57 pm.

Chairperson, Marc Walch

Date

MEETING DATE		AGENDA
April 14, 2021		Section: New Business
Department/Office : Administration	AGENDA REPORT	Item #: 1.
Subject: Board Constitution and ByLaws		
Requested Action or Motion: Review and discussion of By Laws and Constitution		
Summary Explanation & Background: At the March 10th meeting, the Board Chairperson requested these items be place on the agenda for discussion.		
Fiscal Impact: None.		
Exhibits: 1. Adopted constitution 022021 2. adopted bylaws feb 2021		
Commission/Board: Other		
Contact Person: Sharon Anselmo, City Manager 407-539-6221		
Reviewed by City Attorney N/A		

CONSTITUTION
SUSTAINABILITY ADVISORY BOARD
OF THE CITY OF MAITLAND, FLORIDA

ARTICLE I
ESTABLISHMENT OF THE SUSTAINABILITY ADVISORY BOARD

The Sustainability Advisory Board of the City of Maitland, Florida, is hereby authorized by action of the City Council of Maitland and shall perform all advisory functions appropriate of said Board as designated in the Constitution and By-Laws governing this Board and as authorized by the City Council of Maitland.

ARTICLE II
PURPOSE: GENERAL FUNCTIONS, POWERS AND DUTIES

SECTION A. Mission Statement

The Sustainability Advisory Board shall serve at the direction of the City Council to review and make recommendations to same regarding City sustainability and resiliency. The City Council may regularly review and provide input and direction to the advisory board to ensure the Council's priorities are being considered.

SECTION B. General Functions, Powers and Duties

Duties may include:

1. Participate in the implementation of a City-wide Sustainability Action Plan.
2. Recommend strategies for increasing energy efficiency, conserving water, reducing waste, protecting sensitive natural areas, reducing GHG emissions, utilizing environmentally responsible practices, products and technologies, potential for new green businesses and jobs.
3. Review and provide input on information for sustainable practices to be distributed to the public and businesses.
4. The City Council the Committee or the City Manager or designee, may place items on the Committee agenda for discussion. Resulting actions and their implementation must be approved by the City Council prior to implementation.
5. The Board shall perform other duties which may be lawfully assigned to it.

ARTICLE III MEMBERSHIP AND OFFICERS

SECTION A. Membership

The Board shall consist of five (5) members to be appointed by and serve at the pleasure of the City Council. Members of the Board shall consist of the following:

1. Five (5) residents of the City, preferably with demonstrated expertise, training, education, interest, or experience in fields related to sustainability and the practical application thereof, such as: physical, biological, or health sciences, engineering, environmental law, environmental education, corporate responsibility, environmental science, energy management, environmental health and safety, sustainability communications, green building, land use planning, water conservation, resiliency planning, or other related fields.
2. Members who are appointed can have no private, personal and financial interests which will or may conflict with the goals and functions of the Committee.
3. Members should not only have an interest in environmental stewardship and the future of the City, but should also be: open to alternate points of view, analytical and balanced thinkers, collaborative problem solvers, excellent communicators and flexible advisors at the direction of the City Council and their assigned City staff.

SECTION B. Terms of Members

Board members shall each serve on the Board for a term of three (3) years. A member may be reappointed by the City Council for one successive term. If a member is appointed to fill a vacancy, pursuant to II.C. below, that appointment shall not be considered a full term unless the appointment period is for two (2) years or greater. Initial appointments shall be staggered to ensure consistency in the make-up of the Board as follows: one member to a one year term; two members to a two year term, and two members to a three year term. The terms of the initial Board members appointed to the one and two year terms will be treated as if the members were appointed to fill a vacancy.

SECTION C. Filling Vacancies

Vacancies shall be filled by appointment of the City Council for the remainder of the unexpired term of office.

SECTION D. Removal from Office

Members of the Board may be removed from office by the affirmative vote of three (3) of the members of the City Council for cause upon written charges and after public hearing, if requested by the member.

If any member is absent from three (3) consecutive regular meetings, or from fifty percent (50%)

of the scheduled meetings in any continuous six-month period and that member has not resigned, that member is assumed to have resigned from the Board. That member shall be notified within thirty days by the City Clerk that the member's office is vacant and City Council shall fill such vacancy. The member shall have the right to reapply.

SECTION E. Officers and Committees

The Board shall annually elect a Chairperson and Vice-Chairperson, and may create and fill other offices and committees as needed.

SECTION F. Executive Secretary and Administrative Assistance

The City Manager shall designate a staff liaison which shall provide clerical and administrative support to the Board as may be reasonably required by the Board for the proper performance of its duties.

SECTION G. Funding and Compensation

Members of the Board shall receive no salaries or fees, but may receive necessary travel, per diem, and other expenses while on official business for the City. The City Council shall make available to the Board such appropriations as it may see fit for expenses necessary in the conduct of Board work through the City Budget allocation process and appropriate City administrative procedures.

SECTION H. Ethics and Statutory Reference.

Members shall be bound by State Statutes regarding Government in the Sunshine and Conflict of Interest.

ARTICLE IV PROCEDURES, MEETING AND QUORUM

SECTION A. Adoption of Rules

The Board may adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this Constitution.

SECTION B. Meetings

The Board shall meet as required, on a day to be established by the Board, and may hold such additional regular meetings as may be designated by the Board. In addition, the Board may hold such special meetings as may be called by the chairperson or by the request of three (3) members. Each member of the Board shall be entitled to at least two (2) days' written notice, of any special meeting of the Board. All meetings shall be open to the public.

SECTION C. Minutes and Records

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question. If a member is absent or fails to vote, the minutes shall reflect this fact. The Board shall also reflect in its minutes all official actions, which minutes shall be a public record and be filed in the office of the City Clerk.

SECTION D. Quorum and Votes

The Board shall consider a quorum present when a simple majority of the total membership of the Board is in attendance. If any matter coming before the Board shall inure the special private gain of a member of the Board (as defined in Chapter 112.3143, Florida Statutes), said member shall declare his conflict of interest with the pending request. After a conflict of interest has been declared, the declarant shall file a Memorandum of Voting Conflict form within fifteen (15) days with the City Clerk disclosing the nature of the interest in conflict. Said form will be attached to and made part of the Board minutes. If no conflict of interest as defined above has been declared, then the member is required to vote on each issue before the Board.

SECTION E. Recommendations to City Council

The Chairperson shall take special care to convey in writing any formal recommendation of the Committee to City Council.

ARTICLE V APPEALS

SECTION A. Appeals

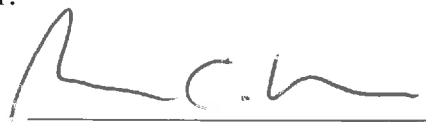
Any person or persons, or any board, taxpayer, department, or bureau of the City jointly or severally aggrieved by any decision of the Board may petition the City Council for review of the decision. The petition must be filed with the City Clerk within thirty (30) days of the determination of the Board.

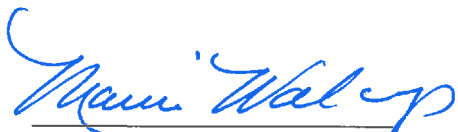
ARTICLE VI TERMINATION

SECTION A. Formal Termination

The City Council may, by majority vote, cause the Board to cease operations at any time as it may deem appropriate.

Approved by Maitland City Council on February 22, 2021.

By: 
Vice Mayor Michael C. Wilde

Attest: 
Maria Waldrop, City Clerk

**BY-LAWS FOR THE
SUSTAINABILITY ADVISORY BOARD
OF THE CITY OF MAITLAND, FLORIDA**

SECTION A. Officers.

The officers of the Sustainability Advisory Board shall consist of a Chairperson and Vice Chairperson elected by the Board. All officers shall be eligible for re-election for a period not to exceed two consecutive years.

SECTION B. The Presiding Officer.

The Chairperson shall be the presiding officer (hereinafter: the "Presiding Officer") at meetings of the Board and shall perform all duties as described by proper parliamentary procedure.

The Presiding Officer's general duties are to:

1. Open and call the meeting to order;
2. Announce the business to be conducted;
3. Recognize members entitled to the floor or to recognize individuals seeking to address the Board;
4. State and put to a vote all questions which are regularly moved or necessarily arise in the course of proceedings;
5. Announce the result of the vote;
6. Move proceedings forward as much as shall be reasonable and appropriate by seeking to avoid redundant or repetitive presentations or remarks by individuals addressing the Board;
7. Require order and sincerity in meetings;
8. Inform the group present as to a point of order or a practice pertinent to pending business;
9. Authenticate, by signature when necessary, all actions, orders, and proceedings of the Board; and
10. Establish time limits for presentations at the meetings, as deemed appropriate by the Presiding Officer.

The Presiding Officer shall conduct business only for the benefit of the Board and shall reflect no personal prejudice in any matter.

SECTION C. Vice Chairperson.

The Vice Chairperson shall assist the Presiding Officer in any way possible subject to the Presiding Officer's request. Upon the absence of the Presiding Officer, the Vice Chairperson shall automatically act as the Presiding Officer of the Board.

SECTION D. Staff Liaison

The City Manager shall designate a staff liaison to generally assist the Board and be responsible for carrying out the following duties:

1. Keep records and minutes of meetings and hearings of the Board and transmit draft copies of all minutes to City Council within fifteen (15) days of such meeting;
2. Keep a record of the members and call this roll when required;
3. Notify officers and committees of their appointment and furnish committees with all papers necessary;
4. Record the number of votes for and against each question put to vote;
5. Indicate any absences or disqualifications from voting when a question is put to vote;
6. Arrange proper and legal notice of hearings;
7. Attend to correspondence of the Board and such other duties as are normally carried out by a secretary or as authorized by the Presiding Officer of the Board, as may be reasonably required by the Board for the proper performance of its duties.

ARTICLE II NOMINATION AND ELECTION OF OFFICERS

SECTION A. Nominations.

Nominations of officers shall be made from among the members at the annual organization meeting, which shall be held on the first regularly scheduled meeting in each calendar year.

SECTION B. Elections.

Election of officers shall take place immediately following nominations. Voting shall take place by roll call. A candidate receiving the majority of votes of the membership at a meeting where there is a properly constituted quorum shall be declared elected and shall serve for a term of one (1) year or until a successor shall take office. All officers elected at the annual meeting shall assume office at the close of that meeting. Officers are eligible for re-election for a period not to exceed two consecutive years.

SECTION C. Vacancies.

Upon a vacancy in the post of the Presiding Officer, the Vice Chairperson shall automatically succeed to the office of Presiding Officer for the remaining time period in the term of that office. Vacancies in unexpired terms of office other than the Presiding Officer shall be filled immediately by the regular election procedures set forth in this Article. Upon filling a vacancy, the individual so selected shall serve the remaining time period in the unexpired term in which the vacancy was filled.

ARTICLE III COMMITTEES

The Chairperson shall be empowered to appoint such special committees as deemed necessary at any time or, on the majority vote of the members at any meeting, and shall appoint committees as they direct.

ARTICLE IV AMENDMENT

By-Laws amendments may be proposed by the Board to City Council at any meeting by a two-thirds vote, a quorum being present. Any amendments to the By-Laws shall be effective only with City Council approval.

ARTICLE V MEETINGS

SECTION A. Time of Meetings.

Unless the Presiding Officer shall otherwise set the time, date, or location of a meeting, the regular meetings of the Board shall be held in the Maitland City Council Chambers or other appropriate public meeting place consistent with Florida Statutes. Unless the Board at a duly called meeting has directed otherwise for any given meeting, the staff liason, after consultation with the Presiding Officer, shall set the agenda for all meetings. All meetings shall be open to the public.

SECTION B. Quorum.

The Board shall consider a quorum present when a simple majority of the total membership of the Board is in attendance.

SECTION C. Special Meetings.

Special meetings may be called by the Presiding Officer with forty-eight (48) hours written notice (i.e., notice posted at City Hall), provided a quorum can be assembled.

SECTION D. Transcription of Meetings.

All meetings of the Board shall be public and shall be recorded.

ARTICLE VI PROCEDURE

SECTION A. Meeting Format and Order of Business.

- I. Call to Order/Roll Call
- II. Pledge of Allegiance
- III. Reading or Disposition of Minutes of Previous Meeting
- IV. Public Period
- V. Old Business
- VI. New Business
- VII. Any Other Business the Board Deems Advisable*
- VIII. Adjournment

* "Any other Business the Board Deems Advisable" shall be time period open to

discussion and announcements by members of the Board

SECTION B. Rules of Procedure.

Unless otherwise set forth in these By-Laws, general parliamentary procedure as determined by the Presiding Officer shall guide all Board meetings. Questions or statements made by members of the Board, by the general public or staff shall be directed to the Presiding Officer. The failure to follow the procedures set forth in these By-Laws shall not be a basis upon which any person or legal entity may seek an invalidation of any action taken by the Board.

ARTICLE VII VOTING

Each regular Board member, including the Chairperson, shall have an equal vote in all matters.

ARTICLE VIII TRANSACTION OF BUSINESS

SECTION A. Transcripts.

All minutes and records of proceedings, including findings and determinations, shall be filed with the official records of the City of Maitland. A transcript of the proceedings of the Board's regular meetings may be requested by any member of the Board or the general public, but any expenses incurred in the preparation of the transcript shall be the responsibility and obligation of the requesting party, if a member of the general public.

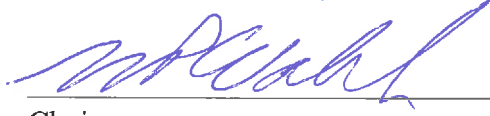
SECTION B. Record Voting.

The manner in which each member has voted (e.g. - "aye" or "nay") on all issues put to a vote, excluding procedural motions, shall be recorded in the minutes of the Board. A member may supplement the minutes with a statement explaining the reason for voting in a certain manner. The statement may not exceed one hundred (100) words and must be filed with the staff liason within five (5) business days (holidays excluded) after the meeting at which the member's vote was cast.

SECTION C. Contents of Minutes.

The staff liason shall keep minutes on presentations before the Board. The record shall include the name, address, and who the speaker represented, if anyone, and a very brief synopsis of the speaker's statement to the Board. The official copy of the minutes on file at City Hall shall also include all written statements, exhibits, letters, and other exhibits submitted at hearings and made a part of the record. The minutes shall include the name of the Board member making all motions, the name of the Board member seconding all motions, a roll call vote for all non-procedural motions, and at least a final vote tally for all procedural motions.

I HEREBY CERTIFY that these By-Laws were duly recommended as the By-Laws of the City of Maitland Sustainability Advisory Board, and that these By-Laws were properly adopted at a meeting of the Maitland City Council held on the 22ND day of February, 2021.



Chairperson



~~A. Dale McDonald, Mayor~~
Michael Wilde, Vice MAYOR

MEETING DATE		AGENDA
April 14, 2021		Section: Old Business
Department/Office : Administration	AGENDA REPORT	Item #: 1.
Subject: Charter Amendment - Right to Clean Water		
Requested Action or Motion: Discussion only.		
Summary Explanation & Background: Member Simasek, also a member of the Charter Review Commission, has requested the Board consider drafting and forwarding an ordinance to City Council to add the right to clean water (lakes, etc.) to the City's Charter. Staff will provide an update at the meeting.		
Fiscal Impact: TBD		
Exhibits: 1. Memo Clean Water Rights		
Commission/Board: Other		
Contact Person: Sharon Anselmo, City Manager 407-539-6221		
Reviewed by City Attorney See City Attorney memorandum attached.		



Memo

To: Maitland Charter Review Commission and Sustainability Committee

From: Cliff Shepard

Date: January 18, 2021

Re: City Proposal to Grant Clean Water Rights

We were asked to prepare this memorandum to address a proposal currently before Maitland's Charter Review Commission and Sustainability Committee to recognize certain environmental rights for the citizens of the City. The proposal is based on a model ordinance from Seminole County, which grants clean water rights to citizens and allows citizens to sue violators in the name of waters within the County.

While recent changes in Florida law restrict local governments' abilities to enact protections for the natural environment, the City has options to restrict pollution of natural water bodies and enable its citizens to bring actions to protect the waters of the City. We would recommend against adopting the Seminole County proposal, as the Clean Waterways Act likely preempts the model ordinance. If the City does choose to enact some form of water rights or environmental protection, Florida law will almost certainly limit the City's protections on a case-by-case basis.

Proposed Action

Maitland is currently considering granting its residents the right to clean water and to provide mechanisms for residents to enforce those rights. Specifically, the City is considering adopting a measure similar to a 2020 Seminole County ordinance (the "Model Ordinance," which is provided in full as Attachment A). The Model Ordinance provides residents with the right to clean water and provides a right to sue alleged violators of that right.

The pertinent language within the Model Ordinance reads as follows:

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.¹

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).

¹ This paragraph has somewhat awkward wording, as it appears to only protect waters that are “free of pollution.” We interpret the right as intending to grant citizens the right to clean waters such that they are free of pollution and maintain healthy ecosystems.

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.

Summary of Operation of Proposal

The Model Ordinance begins by declaring that Citizens of Seminole County possess the right to clean water, including the waters of the Wekiva and Econlockhatchee Rivers and all other natural waters within the jurisdiction. The Ordinance explains what constitutes a violation, as well as how citizens and government agencies can enforce the Ordinance.

- Scope of Clean Water Right

The Ordinance gives *all* citizens the right to clean waters in the *entire* system of naturally flowing waters within the County, regardless of whether the citizen lives near the water or is any way specifically reliant upon or affected by the water. The Ordinance then provides that it is a violation to (1) injure that right to clean water **or** (2) intentionally or negligently pollute the natural waters within the County. This prohibition on intentional and negligent pollution applies to waters within a single group of commonly-owned properties if the pollution unreasonably interferes with or is injurious to the health and welfare of others.

- Private Right of Action

The Ordinance provides that all public agencies and citizens within the County have standing to bring an action to enforce violations of the Ordinance. This action may be brought in the suing party's name or in the name of the polluted waters. The Ordinance provides that as a remedy for a violation, the Court may order the violator to restore the waters at issue to their previous state "to the greatest extent reasonably possible."

Legal Background

Local Government Powers

Under Florida law, cities have broad “home rule” powers to pass regulations as necessary to protect and advance the health, safety, and welfare of its citizens when not inconsistent with general law. *See* FLA. CONST. Art. VIII; FLA. STAT. § 166.021(1). As part of this home rule authority, local governments may create new rights for its citizens, including the right to sue to enforce those private rights. *See Laborers’ Int’l Union, Local 478 v. Burroughs*, 541 So. 2d 1160 (Fla. 1989) (upholding local ordinance providing new private right to sue for discrimination but disallowing certain damages unless awarded by a court).

There are two reasons a local regulation may be struck down as inconsistent with state law: (1) the local regulation conflicts with a specific state statute, or (2) the legislature has preempted that particular subject area. *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). The Florida legislature can preempt all local laws in a subject area either by express language or by implication. *See Browning*, 28 So. 3d at 886. Preemption is implied when the state legislative scheme is pervasive, and the local regulation would present a danger of conflict with that pervasive regulatory scheme. *Id.* In determining whether implied preemption applies, a court must look to the entire law, its objectives, and its policy. *Id.* When evaluating the validity of a charter amendment, courts will presume the amendment to be valid and construe it in harmony with Florida laws if reasonable to do so. *See Charlotte Cnty. Bd. of Cnty. Comm’rs v. Taylor*, 650 So. 2d 146, 148-49 (Fla. 2d DCA 1995).

Clean Waterways Act Preemption

Florida’s Environmental Protection Act of 1971, located at F.S. § 403.412, provides Florida governments and citizens with the right to bring actions and intervene in permit decisions to ensure that the relevant authorities properly enforce state environmental regulations. *See Morgan v. Dep’t of Env’tl. Prot.* 98 So. 3d 651 (Fla. 3d DCA 2012).

In 2020, Florida enacted the Clean Waterways Act, which added Subsection (9) to the Environmental Protection Act to severely limit local governments’ ability to enact new environmental protection laws. That subsection reads as follows:

(9)(a) A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law **may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural environment** that is not a person or political subdivision as defined in s. 1.01(8) **or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in general law or specifically granted in the State Constitution.**

(b) This subsection does not limit the power of an adversely affected party to challenge the consistency of a development order with a comprehensive plan as provided in s. 163.3215 or to file an action for injunctive relief to enforce the terms of a development agreement or challenge compliance of the agreement as provided in s. 163.3243.

(c) This subsection does not limit the standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as provided in this section.

The statute does not define what constitutes the “natural environment” or how to determine whether a right “relates to” the natural environment. However, the legislative analyses indicate that it was specifically geared to counter the “Rights of Nature” movement and ordinances which grant standing to all individuals regardless of any individual rights affected. *See Fla. Sen. Bill Analysis and Fiscal Impact Statement, CS/CS/SB 712 (Feb. 24, 2020).*

Analysis

The Clean Waterways Act likely preempts the Model Ordinance as written. However, the City can make small changes to the proposal to make a clean water rights ordinance more likely to withstand scrutiny.

Scope of Preemption

While the Clean Waterways Act clearly preempts ordinances which provide rights for natural waters, the Act provides little indication of what other environmental rights might be preempted. Based on subsection (9)(b) and the traditional practices of land use and home rule powers, local governments have strong legal grounds to recognize a right to clean water when tailored to individual property interests and to waters passing through public land. Local governments may also regulate pollution when consistent with Florida law and not based on the granting of rights.

The Act prohibits ordinances which grant persons specific rights “related to the natural environment not otherwise authorized in general law.” Theoretically, this could affect all land-related regulations and services traditionally handled by local governments. Parks, stormwater, zoning, tree preservation, traffic, and more are all “related to” the natural environment in some way. Many local government practices in these fields stem from general home rule powers without any explicit authorization by statute. The idea that the legislature intended to dramatically undermine local government powers to create parks, grant environment-related private property rights, and other traditional local powers through a single subsection in an omnibus environmental regulation bill is unlikely.

Instead, the City should consider the Act to prohibit any ordinance which would grant any individual or the public substantive rights to the water bodies **as a whole**, without regard to any specific impact on the

individual granted the rights. For example, the Act would preempt granting an individual a right to a clean portion of the river spanning among private properties the individual does not own and has no access to when the pollution does not affect the individual in a specific way.

This should leave local governments with the following powers related to regulation of the natural environment:

1. Zoning and land use regulation, including environmental preservation ordinances which do not purport to grant substantive rights to members of the public who do not suffer special injury.
2. Creation of public parks and otherwise defining the public's relationship with public land.
3. Regulating pollution in a manner that does not grant environmental rights or conflict with Florida pollution regulations; and
4. Procedural rights to contest government actions and permissions which might harm the environment.

Proposal Preempted

The Clean Waterways Act likely preempts both mechanisms within the Model Ordinance due to the scope of the right granted to the public. Because the Ordinance provides all citizens rights to the entire natural water system within the County without regard to any specific impact on the individual citizen, this would likely be considered as granting a right to "the natural environment" in violation of the Act.

Additionally, the Act likely preempts the mechanism allowing citizens to bring suit in the name of natural bodies. The Act explicitly prohibits granting rights to bodies of water. While there is an argument to be made that bringing a suit in a river's name does not actually provide any "rights," the effect is practically the same: when a river is polluted, any local citizen may bring an action in the river's name, regardless of the citizen's connection to the river. As such, a court would likely consider this provision prohibited.

Note that any ordinance or charter provision that grants a right to clean water will be preempted on a case-by-case basis. Many of the practices which might pollute local waters, such as utility discharges, fertilizer and underground fuel tanks have specific statutory schemes governing what is and is not permissible. Any local-level general right to clean water will be preempted when a statute or valid Florida rule expressly allows the alleged violation. Additionally, any regulation that grants a general "right to clean water" may be subject to attack for being overly vague.

However, local governments can accomplish similar objectives to the Ordinance by tailoring clean water rights to individual interests, as discussed below.

Potential Alternatives

Local governments should be able to protect the waters within their jurisdiction and grant additional substantive rights to clean water for the public but would need to tailor those rights to individual injuries. Some potential mechanisms are suggested below:

1. Recognize Clean Water Rights based on Impact to Private Properties.

Similar to code enforcement and land use powers, the City could recognize a right to prevent pollution which affects the enjoyment of a private property. For enforcement, the City could create a private right of action for property owners and tenants against polluters that violate that right. The City could also attempt to enforce the restrictions through code enforcement.

2. Authorize Citizens to Bring an Action in the Name of the Government.

As part of the right discussed in item #1 above, the City could also authorize citizens to bring actions in the name of the City when someone pollutes waters affecting City-owned properties. A lawsuit brought by a citizen in the name of a government is called a *qui tam* action, and it avoids the Clean Waterways Act issue granting lawsuit rights to natural water bodies.

3. Recognize Rights to Clean Water within Public Parks.

The City could state that its residents have a substantive right to clean waters within public parks. For enforcement, the City could create a private right of action for City residents against parties who pollute waters running through public parks. The City should be specific that it still has discretion to open and close public parks.

Legislative Note

In adopting any clean water proposal, the City may want to consider that the legislature is more likely to intervene with additional legislation if local governments pass ordinances beyond what would be viewed as a use of traditional powers. The Clean Waterways Act was an omnibus bill with many provisions, but the provision restricting natural rights did not seem to face meaningful opposition in either the house or the senate. As such, the City may want to frame any proposed regulation in a way that avoids a comparison to granting rights to the water bodies themselves.