



**City Council Minutes
January 10, 2022
Council Chambers
6:30 PM**



I. CALL TO ORDER

Present: 5 - Vice-Mayor Michael Wilde, Councilmember Michael Thomas, Councilmember Vance Guthrie, Councilmember Lindsay Hall Harrison, Mayor John Lowndes

Absent: 0 -

Mayor Lowndes called the meeting to order at 6:33 pm. Also present were City Manager Anselmo, City Clerk Hollingsworth, and City Attorney Shepard.

II. INVOCATION -MS. LEAH MOLYNEUX, CENTRAL FLORIDA FREETHOUGHT COMMUNITY

Ms. Leah Molyneux, Central Florida Freethought Community, provided the Invocation.

III. PLEDGE OF ALLEGIANCE

Mayor Lowndes led the Pledge of Allegiance.

IV. PRESENTATIONS

1. RETIREMENT RESOLUTION - MARTIN WOHLTMANN

Mayor Lowndes presented a framed Retirement Resolution of Appreciation to Battalion Fire Chief Martin Wohltman on behalf of the City Council, the residents and employees of the City expressing deep appreciation and gratitude for his 25 years of devoted public service and contribution to the City of Maitland. Mayor Lowndes expressed best wishes and continued good health and happiness to Martin and his family during the ensuing years.

2. RETIREMENT RESOLUTION - RICHARD CRANDALL

Mayor Lowndes stated that Mr. Crandall was not able to be present at tonight's meeting to receive his retirement resolution and the Mayor expressed best wishes and continued good health and happiness to Richard during the ensuing years.

V. PUBLIC HEARINGS

1. ORDINANCE - PENSION FUND COMPOSITION

The City Clerk read, by title, an ordinance of the City of Maitland, Florida, amending Chapter 2, "Administration," Article IV, "Pensions and Retirement," Division 4, "Police Officers and Firefighters," of the City Code; amending section 2-124, "Pension Trust Fund created, requirements for membership, Operation of fund"; (3) "Board of Trustees, members, terms of

office;" providing for conflicts, severability and an effective date.

The City Manager stated that at the Maitland Police Officers and Firefighters Pension Board ("Board") meeting on September 8, 2021, the Board unanimously approved and directed the plan administrator to forward the attached ordinance and no impact statement to the City Council for their consideration. The ordinance would allow either the Police or Fire Chief to appoint a designee to serve on the Board in their place. The designee must be a present or past member of the plan and can be appointed or reappointed to a four year term and can be removed by the respective Chief. This maintains the general makeup of the Board (three police representatives, three fire representatives, two citizens, and the finance director) but allows the Chiefs the flexibility of appointing someone to serve in their place.

Mayor Lowndes opened the Public Hearing. There being no one who wished to be heard, Mayor Lowndes closed the Public Hearing.

A motion was made to adopt Ordinance #1392 amending Chapter 2, Section 2-124 (3), Administration, Article IV, Pensions and Retirement, Division 4, Police Officers and Firefighters.

RESULT:	Adopt
MOVER:	Councilmember Michael Thomas
SECONDER:	Councilmember Lindsay Hall Harrison
AYES:	Michael Wilde, Michael Thomas, Vance Guthrie, Lindsay Hall Harrison, John Lowndes
NAYS:	None

2. ORDINANCE - WATER, SEWERS AND SEWAGE DISPOSAL

The City Clerk read, by title, an ordinance of the City of Maitland, Florida amending Chapter 20, "Water, Sewers and Sewage Disposal," Article 1, "In General," of the City Code; amending Section 20-2, connection fees; providing for conflicts, severability and an effective date.

The City Manager, stated that in 2018, the City adopted the equivalent residential unit calculations used by Altamonte Springs for sewer capacity. Because sewer capacity (impact) fees in the Altamonte Springs sewage treatment plant service area are a pass-through cost, the City adopted the ERU calculations to ensure there is no discrepancy between what is collected and what is remitted. When the ERU schedule was adopted for sewerage, a portion of the code contained calculations for water connection which is in

conflict with the City's current methodology for water connection fees. The City's water connection fees are collected based upon meter size and not ERU. Staff is recommending that the two sentences referencing ERU's for water connection be deleted from Chapter 20. The City Manager answered questions posed by Council.

Mayor Lowndes opened the Public Hearing. There being no one who wished to be heard, Mayor Lowndes closed the Public Hearing.

A motion was made to adopt ordinance #1393 amending Chapter 20, Water, Sewers and Sewage treatment.

RESULT:	Adopt
MOVER:	Councilmember Michael Thomas
SECONDER:	Councilmember Lindsay Hall Harrison
AYES:	Michael Wilde, Michael Thomas, Vance Guthrie, Lindsay Hall Harrison, John Lowndes
NAYS:	None

VI. OLD BUSINESS

There was no Old Business to report.

VII. CONSENT AGENDA

Mayor Lowndes opened the public period for items 2-3 of the Consent Agenda. There being no one who wished to be heard, Mayor Lowndes closed the public comment period.

A motion was made to approve the Consent Agenda as presented.

RESULT:	Approve
MOVER:	Councilmember Michael Thomas
SECONDER:	Councilmember Vance Guthrie
AYES:	Michael Wilde, Michael Thomas, Vance Guthrie, Lindsay Hall Harrison, John Lowndes
NAYS:	None

1. APPROVE THE CITY COUNCIL MEETING MINUTES OF DECEMBER 13, 2021

Approve the City Council meeting minutes of December 13, 2021.

2. APPROVE ADDITIONAL CEI SERVICES TO CPH FOR 17-92 WATERMAIN PROJECT

Authorize the City Manager to execute an amendment to the contract with CPH Engineering for CEI Services for the 17-92 Watermain Project.

3. RESOLUTION - ELECTION MARCH 8, 2022

Move for passage of Resolution # 1-2022 designating places of polling, opening and closing times of polls and form of ballot; for the general municipal election to be held on Tuesday, March 8, 2022.

VIII. PUBLIC PERIOD

Mayor Lowndes opened the Public Period.

Ms. Danielle Thomas, Executive Director of the Maitland Art & History Museum, provided an update on the exhibits that are currently scheduled and invited all to attend.

Mr. Dale McDonald, 108 Tangelo Court, stated that the Planning & Zoning Commission meeting was well attended regarding the Comprehensive Development Plan (CDP) Amendment on Maitland Concourse North (MCN) Lot 1.

There being no one else who wished to be heard, Mayor Lowndes closed the public comment period.

IX. DECISION

1. APPOINTMENTS - LAKES ADVISORY BOARD (2)

The City Clerk stated that the terms of Juliet Demaree and Lee Hale on the Lakes Advisory Board expired on January 4, 2022. Both Mrs. Demaree and Mr. Hale are eligible and wish to be considered for reappointment. Council is requested to make two appointments.

Mayor Lowndes requested nominations. Councilmember Guthrie nominated Lee Hale. The nomination received a second from Councilmember Wilde and a third from Councilmember Thomas. Councilmember Hall Harrison nominated Juliet Demaree. The nomination received a second from Councilmember Wilde and a third from Councilmember Thomas. There being no further nominations, Mayor Lowndes declared Lee Hale and Juliet Demaree appointed effective January 4, 2022, each for a three year term.

X. DISCUSSION

1. RECOMMENDATION FROM SUSTAINABILITY ADVISORY BOARD - RIGHT TO CLEAN WATER CHARTER AMENDMENT

The City Manager stated that on December 8, 2021, the Sustainability Advisory Board (the "Board") voted unanimously to forward the Charter

Amendment ordinance to the City Council for consideration. Initially, the Board wanted to consider an amendment similar to the Orange County amendment that passed with 89% voting yes in November 2020. When Governor Ron DeSantis signed the Clean Waterways Act, SB 712, in June of 2020, the law preempted what the voters ultimately approved in the November election. Currently, there is litigation challenging the law. A memorandum from the City Attorney, which was drafted for the Charter Review Committee, is provided (attached hereto and made part hereof) for additional information regarding the preemption. The amendment, if approved, would add a right to clean water to the City's charter as outlined below. A discussion ensued. The City Attorney and City Manager answered questions posed by Council.

7.07 - Right to clean water.

(a) The citizens of the city have a right to clean water, which shall include the right to prevent pollution that affects the enjoyment of private or public property; (b) The city and citizens of Maitland shall have standing to bring an action in their own name to enforce provisions of this section as outlined 7.07(c); (c) It shall be unlawful and a violation for any governmental agency, non-natural person or corporate entity to violate the citizen's right to clean water or intentionally or negligently pollute any body of water within the boundaries of the city; and, (d) The City Council shall establish, by ordinance, the definitions, rights, remedies and other components necessary to ensure the citizens' rights to clean water.

Mayor Lowndes called Mr. Marc Walch, Chair of Sustainability Advisory Board, to the podium.

Chair Walch provided a recap as to how the proposed Charter Amendment evolved.

After further discussion, moving forward the City will continue to monitor pending litigation and await clarity in regard to the legal suit process within the proposed amendment.

XI. CITY MANAGER'S REPORT/CITY ATTORNEY/COUNCIL REPORTS

The City Manager stated that Councilmember Guthrie requested to have Council consider moving or canceling the February 14, 2022, scheduled meeting. As that day is observed as St. Valentine's Day.

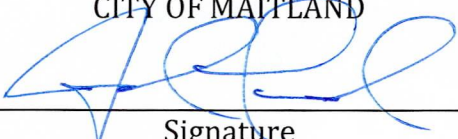
The City Manager will place this request on the next agenda for consideration and decision.

The City Attorney provided an update on the Peacock Ford lawsuit.

XII. ADJOURNMENT

There being no further business to come before Council the meeting adjourned at 7:43 pm.

CITY OF MAITLAND

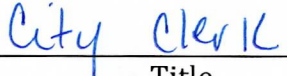


Signature

Title

ATTEST:



Signature

Title



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.

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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.