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| MEETING DATE                           |
| April 24, 2017                         |
| Subject: Wetlands Protection Ordinance |



AGENDA REPORT

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| AGENDA    |
| Section:  |
| Item #: 3 |

Department/Office: Public Works

**Requested Action or Motion:** Move to introduce an ordinance on first reading amending Chapter 8 Article IV of the Code of Ordinances of the City of Maitland providing for protection of wetlands; and, set the Public Hearing for May 8, 2017.

**Summary Explanation & Background:**

On December 6, 2016, the City’s Lakes Advisory Board recommended that the City Council adopt a wetlands protection ordinance. Two versions were drafted by the City Attorney’s Office:

Option A - included the protection of wetlands, which are impacted by any proposed development in or near the wetlands.

Option B - included the same protections as Option A and the creation of an Environmental Improvement Trust Fund.

On January 9, 2017, after discussing the two options and receiving information from Drew Smith, City Attorney regarding the advantages and disadvantages of each option; the City Council unanimously selected Option A and directed staff to forward the wetland protection ordinance to the Planning and Zoning Commission for review.

The ordinance intends to provide for protection, maintenance, and utilization of wetlands within the City, while recognizing the rights of individual property owners to use their lands in a reasonable manner as well as the right of all citizens to protection of the purity of the waters of the City and their associated wetland ecosystems.

The ordinance addresses several priorities. First, the ordinance establishes a mechanism to delineate the boundaries of wetlands located on property to be improved and establishes a wetlands protection zone. The ordinance specifies those activities that are prohibited or restricted within a wetland protection zone; describes activities which are exempt from regulation by the ordinance; provides for a City of Maitland Wetland Alteration Permit, with criteria for review; establishes mitigation measures (with criteria), provides for violations, penalties and stop work orders; and sets forth an appeal process to the Development Review Committee (DRC) for appeals of administrative decisions.

On April 6, 2017, the Planning & Zoning Board reviewed the proposed Wetlands Protection Ordinance. After making minor changes, the board recommended the ordinance be forwarded to City Council for approval.

One outstanding issue which requires clarification from the City Council is how existing single family lots are addressed as opposed to new subdivisions and site plans. At the initial hearing, it appeared that City Council was reluctant to impose these requirements on existing single family lots due to the time and expense to meet the requirements. The Lakes Advisory Board concurred with this assessment. As the ordinance is written (Section 8-26(7)), single family homes are included on the list of exemptions provided they do not encroach on the wetland protection zone. If this type of construction impacts the wetland protection zone then all provisions of the ordinance will be enforced. Although this section is entitled Exemptions, the definition of this "exemption" actually enforces the new requirements on existing single-family lots. If it the intent to exempt existing single family lots, the two conditions in Section 8-26(7) should be removed.

It is anticipated that the application fee will be \$100.00 based upon the staff time estimated to review each application.

**Fiscal Impact:**

N/A

|   |                              |
|---|------------------------------|
| Exhibits: WPO.A.PZ.Revised 4-10-2017 (PDF)  | Contact Person: Paul Ritter, |
| Commission/Board: Lakes Advisory Board  | Phone #:                     |
| Reviewed by City Attorney<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A |                              |

**ORDINANCE NO. 2017-XXXX**

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**AN ORDINANCE OF THE CITY OF MAITLAND, AMENDING CHAPTER 8, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF MAITLAND; PROVIDING FOR THE PROTECTION OF WETLANDS; PROVIDING FOR THE DELINEATION OF WETLAND PROTECTION ZONES; REGULATING DEVELOPMENT ACTIVITIES OCCURRING WITHIN WETLAND PROTECTION ZONES; PROVIDING FOR MITIGATION OF ADVERSE IMPACTS TO WETLANDS; PROVIDING FOR ENFORCEMENT AND APPEALS OF ADMINISTRATIVE DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, wetlands are important natural resources that help maintain water quality, prevent hazardous flooding and promote biological and ecological diversity; and

**WHEREAS**, unfettered development on or near wetlands can adversely impact the natural and built environments; and

**WHEREAS**, the Lakes Advisory Board of the City of Maitland studied and discussed the potential loss of wetlands within the City associated with development activities; and

**WHEREAS**, the City Council of the City of Maitland determines that protection of wetlands is necessary and critical to the health, safety and welfare of the citizens of Maitland; and

**WHEREAS**, the City Council of the City of Maitland determines that development on or adjacent to wetlands requires specific design and permitting to be reviewed by staff to ensure minimal environmental impacts; and

**WHEREAS**, The Planning and Zoning Commission sitting as the Local Planning Agency and City Council of the City of Maitland determine that wetland protection is consistent with the City’s Comprehensive Plan’s goals, objectives and policies; and

**WHEREAS**, The City Council of the City of Maitland, has the authority to regulate development within wetlands pursuant to Chapter 163, Part II, *Florida Statutes*.

Attachment: WPO-A.P.Z.Revised 4-10-2017 (1281 : Wetlands Protection Ordinance)

29           **NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY**  
30 **OF MAITLAND, FLORIDA, AS FOLLOWS:**

31           **SECTION 1. Recitals Adopted.** The foregoing “WHEREAS” clauses are hereby ratified  
32 and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon  
33 adoption hereof.

34           **SECTION 2.** Chapter 8, Article IV of the City of Maitland Code of Ordinances, is  
35 hereby amended to include Sections 8-23 - 32 as follows:

36 **Sec. 8-23. Title and Purpose.**

37           (a) This ordinance shall be known as the “Wetlands Protection Ordinance of the City  
38 of Maitland, Florida.”

39           (b) In accordance with the City of Maitland’s 2030 Comprehensive Development Plan  
40 Conservation Element, the city hereby adopts wetlands impact regulations to protect, preserve and  
41 enhance the natural functions of wetlands within the city and prevent or mitigate activities which  
42 degrade or destroy the function of wetlands.

43           (c) It is the purpose and intent of this regulation to provide for the protection,  
44 maintenance, and utilization of wetlands within the city, recognizing the rights of individual  
45 property owners to use their lands in a reasonable manner as well as the right of all citizens to  
46 protection and purity of the waters of the city and their associated wetland ecosystems.

47           (d) It is the policy of the city to minimize the disturbance of wetlands in the city and to  
48 encourage their use only for the purposes which are compatible with their natural functions and  
49 environmental benefits.

50           (e) Wetlands serve important functions in the hydrologic cycle and ecological system  
51 including but not limited to:

52 (1) Wetlands provide temporary storage of surface waters during times of  
53 flood, thereby regulating flood elevations and the timing, velocity and rate of flood  
54 discharges;

55 (2) Wetlands protect water bodies by providing settling of suspended  
56 sediments, assimilation of nutrients, and uptake of other natural and manmade pollutants.  
57 Wetland vegetation filters sediment, organic matter, and chemicals. Microorganisms utilize  
58 dissolved nutrients and break down organic matter;

59 (3) Wetlands provide essential breeding and predator escape habitats for many  
60 forms of mammals, birds, reptiles, amphibians, fishes, and invertebrates;

61 (4) Wetlands provide essential habitat for many rare, endangered, and  
62 threatened species.

63 (f) It is further the purpose and intent of these regulations to ensure that there is no  
64 unavoidable net loss of wetlands function and acreage within the city.

65 **Sec. 8-24. Wetland identification.**

66 (a) Wetland boundaries shall be delineated in the field according to the state unified  
67 wetland delineation methodology. This delineation determines the final jurisdictional location and  
68 extent of wetlands and shall occur prior to any alteration on a site on which wetlands may be  
69 located. Prior to any developmental actions that are likely to impact the wetland protection zone,  
70 the applicant shall have the wetland line delineated by a certified wetland professional and submit  
71 a wetland management plan prepared by the same wetland professional. The wetland management  
72 plan shall be submitted to and reviewed by the City.

73 (b) All lands within wetland boundaries delineated as provided herein and within  
 74 twenty-five (25) feet landward of such wetland boundaries shall be considered to be within a  
 75 wetland protection zone.

76 (c) All applications for development within a wetland protection zone shall identify the  
 77 following items on the submitted site plan.

78 (1) The location of all wetlands located on the property to be developed and all  
 79 wetlands located within 300 feet of the property to be developed;

80 (2) The delineated wetland line as set forth in subsection (a) above;

81 (3) The wetland protection zone as set forth in subsection (b) above;

82 (4) The 100-year floodplain line (where applicable);

83 (5) The normal high water line (NHWL) as identified by the City (where  
 84 applicable);

85 (6) Pre-development hydrological connections between adjacent ditches,  
 86 culverts, drainage easements or swales onsite and offsite;

87 (7) The location of any protected species adjacent to or on site on or adjacent  
 88 to the site.

89 **Sec. 8-25. Restrictions on development.**

90 The following performance standards shall be required for all development within wetland  
 91 protection zones:

92 (1) Any alteration of a wetland protection zone shall be mitigated as provided  
 93 herein;

94           (2)     The wetland protection zones shall be protected from sedimentation during  
95           development activities through the use of appropriate sediment and erosion control  
96           measures;

97           (3)     There shall be no temporary filling of the wetland protection zones;

98           (4)     Clearing or removal of native vegetation shall not occur within any wetland  
99           protection zone except in compliance with an approved wetland management plan;

100          (5)     Any structure permitted within a wetland protection zone shall be designed  
101          to accommodate surface water flows and shall not impede, interrupt or impound surface  
102          water flows;

103          (6)     Dredge and fill activities shall be prohibited within wetland protection  
104          zones except where the applicant has demonstrated that such activity will not negatively  
105          impact water quality, natural functions, or endangered species habitat. Receipt of a permit  
106          from the U.S. Army Corps of Engineers and/or the Florida Department of Environmental  
107          Protection and/or the St. Johns River Water Management District authorizing all proposed  
108          dredge and fill activities shall constitute demonstration of compliance with this standard.

109   **Sec. 8-26.     Exemptions.**

110           The following activities are exempt from the required wetland management plan and  
111           wetland alteration permit required herein:

112           (1)     Non-mechanical removal of non-native or invasive wetland or buffer  
113           vegetation, provided the vegetation is removed from the wetland and disposed of on a  
114           suitable upland site outside of a wetland protection zone;

115           (2)     Maintenance of existing structures that does not result in additional damage  
116           to the wetland protection zone;

117 (3) Clearing of walking trails that do not require fill and that do not exceed four  
118 feet in width;

119 (4) Overhead utility crossings;

120 (5) Maintenance and incidental dredge and fill activities in ditches, retention  
121 and detention areas, public roads and other rights-of-way, and other related drainage  
122 systems;

123 (6) Development where a federal, state, regional, or local agency completed  
124 dredge and fill or wetland application was tendered to said government on or before the  
125 adoption of this ordinance or where said agencies have previously determined that no  
126 permit was required for a proposed development within one year prior to the adoption of  
127 this ordinance. If a person is aggrieved by the decision of the city on this issue, said person  
128 may appeal directly to the City Council;

129 (7) Construction or alteration of a single-family dwelling i) provided that the  
130 dwelling is not located within a wetland protection zone; and ~~which-ii~~the dwelling does  
131 not alter by removing, filling, draining, dredging, clearing or destroying any wetland  
132 protection zone.

133 **Sec. 8-27. City wetlands permit requirements.**

134 (a) Except as otherwise provided herein, it is hereby unlawful for any person to engage  
135 in any activity which will remove, fill, drain, dredge, clear, destroy, or alter any wetland protection  
136 zone as defined herein without obtaining a Wetland Alteration Permit from the City.

137 (b) An application for a Wetland Alteration Permit and a non-refundable processing  
138 fee, as set by resolution of the City Council, shall be filed with the City's Lakes Management  
139 Department.



140 (c) An application for a Wetlands Alteration Permit shall be submitted with the  
141 following information:

142 (1) Name, address, and phone number for the property owner and/or agent;

143 (2) Signature of agent or owner;

144 (3) A copy of all other federal, state, and regional permits and/or applications  
145 and conditions issued for the proposed project;

146 (4) If not included in the permits and/or applications above, the following items  
147 must be provided:

148 (a) Legal description of property, including the property appraiser's  
149 parcel number;

150 (b) A scale drawing of the property identifying existing structures,  
151 adjacent streets, and water bodies;

152 (c) A scaled drawing and description of the proposed activity and  
153 location and a description of procedures to be utilized during the activity;

154 (d) A wetland management plan that states the following:

155 (i) A plan for the control of erosion, sedimentation and turbidity  
156 during and after construction which describes in detail the type and location  
157 of control measures, and provisions of maintenance;

158 (ii) Geographic relationship and hydrologic connection between  
159 the assessment area and any contiguous wetland or other surface waters, or  
160 uplands, as applicable;

161 (iii) Functions performed by the wetlands located within the  
162 wetland protection zone, such as providing cover, substrate, and refuge;

163 breeding, nesting, denning, and nursery areas for existing and migratory  
 164 species;

165 (iv) Applicable listing classifications (threatened, endangered, or  
 166 species of special concern as defined by applicable state laws and  
 167 regulations) of the species currently present and those migratory species that  
 168 utilize the site.

169 **Sec. 8-28. Standards for review.**

170 (a) Review criteria. In determining whether proposed development is permissible, the  
 171 City shall consider the following criteria:

172 (1) The ability of the wetland to receive, store and discharge surface water  
 173 runoff so as to contribute to hydrological stability and control of flooding and erosion;

174 (2) The ability of the wetland to recharge the groundwater as demonstrated by  
 175 reliable available information;

176 (3) The ability of the wetland to provide filtration and nutrient assimilation  
 177 from surface water runoff;

178 (4) The ability of the wetland to provide habitat and significant ecological  
 179 function in the life cycle for fish, wildlife, or other forms of animal or plant life;

180 (5) The ability of the wetland to function as an integral part of any waters, water  
 181 body, or watercourse;

182 (6) The cumulative impacts of the proposed development on the wetland  
 183 system in combination with other developments which have been permitted or constructed  
 184 in the same drainage basin;

185 (7) The technical feasibility of any proposed wetland mitigation plan and the  
186 likelihood of their success in restoring or replacing the environmental benefit altered by  
187 the development;

188 (8) The capacity of the existing wetland to provide environmental benefits  
189 because of such factors as maturity, size, degree of prior alteration, physical relationship  
190 to other water systems, and adjacent land uses;

191 (9) The degree or magnitude of the impact of the proposed alteration on the  
192 wetland and how such impact shall be minimized through mitigation measures, and  
193 recommendations concerning the appropriate location of said mitigation;

194 (10) Whether and the extent to which a proposed project must be located within  
195 a wetland or water body in order to perform the project's basic functions;

196 (11) Whether the wetlands impacted by the proposed activity are protected or  
197 used in a manner which does not adversely impact their beneficial functions as provided in  
198 this section 8-28;

199 (12) The ability of the wetland to continue to function after development is  
200 completed;

201 (13) Whether the proposed project and the wetland impacts are consistent with  
202 the policies in the comprehensive plan.

203 (b) If the application meets the requirements provided herein the City shall issue the  
204 permit and may attach such appropriate conditions to said permit in order to ensure the  
205 development complies with the requirements of this ordinance. The City may deny the permit if it  
206 does not meet such standards and shall state in writing the reasons therefore.

207 (c) Review process. All of the following actions shall be considered in the following  
208 order when a wetland protection zone will be impacted during proposed development:

209 (1) Avoiding the impact altogether by not taking a certain action or parts of an  
210 action;

211 (2) Minimizing impacts by limiting the degree or magnitude of the action or its  
212 implementation;

213 (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected  
214 environment;

215 (4) Reducing or eliminating the impact over time by preservation and  
216 maintenance operations during the life of the action;

217 (5) On-site mitigation of the impact by replacing or providing substitute  
218 resources or environments through creation of new wetlands, enhancement of existing  
219 wetlands, or reestablishment of wetlands which are no longer functioning due to significant  
220 alteration in the past.

221 **Sec. 8-29. Mitigation ratios.**

222 In determining the replacement acreage ratios for restored or created wetlands and their  
223 associated buffer zones, the City shall consider, but not be limited to the following criteria:

224 (1) The length of time that can be expected to lapse before the functions of the  
225 impacted wetlands functions have been restored or offset;

226 (2) Any special designation or classification of the water body, including  
227 Outstanding Florida Waters, aquatic preserves, or class II;

228 (3) The type of wetland to be created and the likelihood of successfully creating  
229 that type of wetland;

230 (4) Whether or not the affected wetland is functioning as natural, healthy  
 231 wetland of that type;

232 (5) Whether the wetland is unique for that watershed;

233 (6) The presence or absence of exotic or nuisance plants within the wetland and  
 234 adverse effects those plants have on the wetland's beneficial functions;

235 (7) Whether the proposed project eliminates or changes the wetland from one  
 236 type to another;

237 (8) The amount and quality of upland habitat preserved as conservation areas  
 238 or buffer.

239 **Sec. 8-31. Violations, penalties, and stop work orders.**

240 (a) Whenever evidence has been obtained or received establishing that a violation of  
 241 this chapter, or any rules or regulations adopted pursuant to this chapter has occurred, the City  
 242 shall have the power and authority to issue a stop work order requiring the violator to cease the  
 243 activity or suspend operation of the facility causing the violation until the violation has been  
 244 investigated by the appropriate agencies.

245 (b) The City may require that the owner/developer submit a wetland alteration permit,  
 246 which shall include a wetland mitigation plan in accordance with this chapter.

247 (c) Review of the wetland alteration permit shall follow the procedures set forth in this  
 248 chapter. If a condition of approval is the requirement for corrective action, then the corrective  
 249 actions shall occur within 20 days of the issued Wetland Alteration Permit. If the corrective actions  
 250 have not occurred within the specified time allowed, then the violation shall be submitted to the  
 251 City's Code Enforcement Department for further action.

252 **Sec. 8-32. Appeals to Development Review Committee.**

253 Any administrative decisions made pursuant to this ordinance may be appealed by an  
254 adversely affected party in writing within 30 days of the rendering of said decision to the  
255 Development Review Committee in accordance with Chapter 4.7, Article IV of the Code of  
256 Ordinances.

257 **SECTION 3. CODIFICATION.** It is the intent of the City Council of the City of  
258 Maitland that the provisions of this Ordinance shall be codified. The codifier is granted broad and  
259 liberal authority in codifying the provisions of this Ordinance.

260 **SECTION 4. SEVERABILITY.** If any section, sentence, phrase, word or portion of  
261 this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall  
262 not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase,  
263 word or portion of this Ordinance not otherwise determined to be invalid, unlawful or  
264 unconstitutional.

265 **SECTION 5. CONFLICTS.** In any case where a provision of this Ordinance is found  
266 to be in conflict with a provision of any other ordinance of this City, the provision which  
267 establishes the higher standards for the promotion and protection of the health and safety of the  
268 people shall prevail.

269 **SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective upon  
270 adoption.

271 **ADOPTED** by the City Council of the City of Maitland, Florida, this \_\_\_\_ day of  
272 \_\_\_\_\_, 2016.

273 **CITY OF MAITLAND, FLORIDA**

274 **By:** \_\_\_\_\_  
275 **A. DALE MCDONALD, MAYOR**  
276

Attachment: WPO-A.P.Z.Revised 4-10-2017 (1281 : Wetlands Protection Ordinance)

277

278 **Attest:** \_\_\_\_\_  
279 **MARIA WALDROP, CITY CLERK**

Attachment: WPO-A.PZ.Revised 4-10-2017 (1281 : Wetlands Protection Ordinance)