

MEETING DATE
May 8, 2017
Subject: Ordinance - Wetlands Protection



AGENDA REPORT

AGENDA
Section:
Item #: 1

Department/Office: Public Works

Requested Action or Motion: Move to adopt an ordinance on second reading amending Chapter 8 Article IV of the Code of Ordinances of the City of Maitland providing for protection of wetlands.

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.

On April 24, 2017, City Council introduced the Ordinance on first reading and set public hearing for

May 8, 2017. A resolution establishing the application fee at \$100 is on tonight's consent agenda for adoption.	
Fiscal Impact: N/A	
Exhibits: WPO Revised 042417 (PDF)	Contact Person: Paul Ritter, Stormwater & Lakes Management
Commission/Board: Lakes Advisory Board	Phone #: 407-539-6203
Reviewed by City Attorney <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	

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 or
100 wetland alteration permit;

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

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

111 **Sec. 8-26. Exemptions.**

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

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

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

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

121 (4) Overhead utility crossings;

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

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

131 (7) Construction or alteration of a single-family dwelling;

132 (8) All City building or maintenance projects.

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 part, portion or
136 entirety of any wetland protection zone as defined herein without obtaining a Wetland Alteration
137 Permit from the City.

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

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

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

144 (2) Signature of agent or owner;

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

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

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

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

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

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

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

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

162 (iii) Functions performed by the wetlands located within the
 163 wetland protection zone, such as providing cover, substrate, and refuge;
 164 breeding, nesting, denning, and nursery areas for existing and migratory
 165 species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

248 (c) Review of the wetland alteration permit shall follow the procedures set forth in this
 249 chapter. If a condition of approval is the requirement for corrective action, then the corrective

250 actions shall occur within 20 days of the issued Wetland Alteration Permit. If the corrective actions
 251 have not occurred within the specified time allowed, then the violation shall be submitted to the
 252 City's Code Enforcement Department for further action.

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

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

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

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

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

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

