CITY OF ANNA MARIA

P.O. Box 779, 10005 Gulf Drive, Anna Maria, FL 34216
Phone (941) 708-6130 Fax (941) 708-6134

AGENDA
AMENDED
JULY 13, 2023
IMMEDIATELY FOLLOWING THE BUDGET MEETING
CITY COMMISSION REGULAR MEETING

THIS COMMISSION MEETING IS BEING HELD USING OPTIONAL TELECOMMUNICATIONS MEDIA TECHNOLOGY.

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Pledge of Conduct: **We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.**
CALL TO ORDER
PLEDGE TO THE FLAG
ROLL CALL

REGULAR MEETING

General Public Comment regarding non-agenda items and items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

1. General Public Comment
2. SB250 – Vose
3. Update on Legality of Incentive for Homeowners - Vose
4. Water Taxi Agreement - Vose
5. Centennial Event in September - Mayor
6. Mayor's Comments
7. Commissioners' Comments
8. City Attorney's Comments
9. Staff Comments

10. **CONSENT AGENDA: The following items are considered routine in nature and should be considered in a single motion. Items which warrant individual discussion should be removed from this list prior to the motion to adopt. Such items will be discussed separately.**
    a. Meeting Minute Approval: Regular Meeting: June 22, 2023 and June 22, 2023 Budget Meeting Minutes

Press Comment
Adjournment

(FSS 286.26) IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATE STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK FOR ASSISTANCE AT LEAST THREE BUSINESS DAYS PRIOR TO THE MEETING (941) 708-6130. SHOULD ANY INTERESTED PARTY SEEK TO APPEAL ANY DECISION MADE WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING, THEY WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS BE MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

VOSE LAW FIRM LLP
ATTORNEYS & COUNSELORS AT LAW

M E M O R A N D U M

TO: **Dan Murphy, Mayor, City of Anna Maria**
COPIES: **City Commissioners, Short, Crane, Kingan and Sebring**
FROM: **Gretchen R. H. ("Becky") Vose, Esq., City Attorney**
DATE: **July 7, 2023**
SUBJECT: **SB 250 – Applicability to Anna Maria – Legal Analysis**

On June 28, 2023, Governor Ron DeSantis signed SB 250, "An act relating to natural emergencies," into law. Section 14 of SB 250 provides in its entirety as follows:

> Section 14. (1) A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall shall not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian or Hurricane Nicole; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2024, and any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to September 28, 2022.
>
> "2) Notwithstanding subsection (1), any comprehensive plan amendment, land development regulation amendment, site plan, development permit, or development order approved or adopted by a county or municipality before or after the effective date of this section may be enforced if:
>
> "(a) The associated application is initiated by a private party other than the county or municipality.
>
> "(b) The property that is the subject of the application is owned by the initiating private party.
>
> "(3) This section shall take effect upon becoming a law and expire June 30, 2025."

The question has arisen as to the interpretation of Section 14 of SB 250 as it applies to the City of Anna Maria. The City is within the 100' radius of the landfall of Hurricane Ian but to my knowledge, the City had little damage due to either Hurricane Ian or Nicole. There are many issues that must be reviewed to determine the correct interpretation of Sec. 14 of SB 250. The interpretation in this Memorandum is somewhat speculative at this point since Sec. 14 of SB 250 could be read in different ways with different results. In the future, there will likely be litigation over this law, and if there is, the opinions in this Memorandum may change.

Two possible interpretations of Sec. 14 of SB 250

Interpretation #1. One interpretation of Sec. 14 of SB 250, is that the prohibition as to the adoption of a *moratorium* by a jurisdiction located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall, *only* applies to properties "damaged by Hurricane Ian or Hurricane Nicole"[1]. Whereas, the adoption by a similarly located jurisdiction of "more restrictive or burdensome amendments to its comprehensive plan or land development regulations; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2024" (hereinafter "More Restrictive or Burdensome Provisions") would be prohibited whether or not the property to which it applies was "damaged by Hurricane Ian or Hurricane Nicole." If this interpretation were to be made, the City would be dramatically restricted in its land development related changes going forward until October 1, 2024.

Interpretation #2. A second and different interpretation of Sec. 14 of SB 250, is that a prohibition of a moratorium *and* any More Restrictive or Burdensome Provisions only applies to properties that were "damaged by Hurricane Ian or Hurricane Nicole." This would leave allow the City to continue to regulate land development issues except that if such regulation was more restrictive or burdensome, it would not apply to any property damaged by Hurricane Ian or Hurricane Nicole.

I. Legal argument in favor of Interpretation #1

The first sentence of Section 14 of SB 250 can easily be grammatically parsed in a manner indicating that the phrase "of any property damaged by Hurricane Ian or Hurricane Nicole" *only* modifies the immediately preceding phrase "propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property." Thereafter, the More Restrictive or Burdensome Provisions are separated by semicolons, indicating that the "doctrine of last antecedent" may apply. The "doctrine of last antecedent" indicates that relative and qualifying words, phrases and clauses (in this instance the phrase "of any property damaged by Hurricane Ian or Hurricane Nicole") are to be applied to the words or phrase immediately preceding, (in this instance "propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property"), and are not to be construed as extending to, or including, others phrases more remote.

In *Kasischke v. State*, 991 So.2d 803, 811-812 (Fla. 2008), the Florida Supreme Court held:

> "Where legislative intent is unclear from the plain language of the statute, we look to canons of statutory construction. Joshua v. City of Gainesville, 768 So.2d 432, 435 (Fla.2000) ('[I]f the language of the statute is unclear, then rules

[1] The word "damaged" is not defined in SB 250. Some possible interpretations of the word could be based upon the FEMA 50% rule, or whether an insurance claim was filed, or on some other basis. In any event, the interpretation of that word would need to be applied on a case by case basis. .

> of statutory construction control.'). One such canon is the doctrine of the last antecedent, under which 'relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote.' City of St. Petersburg v. Nasworthy, 751 So.2d 772, 774 (Fla. 1st DCA 2000). The last antecedent is 'the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.' 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 47.33 (7th ed.2007).
>
> "Commentators have questioned the doctrine's utility. See Terri LeClercq, Doctrine of the Last Antecedent: The Mystifying Morass of Ambiguous Modifiers, 2 J. Legal Writing Inst. 81, 89 (1996) ('[R]ather than becoming 'one more aid' in interpretation as Sutherland hoped, the Doctrine of Last Antecedent has, in its hundred-plus year history, created as much confusion and disagreement as the ambiguous modifiers its drafter set out to clarify.'). The very formulation of the doctrine recognizes its application only where 'no contrary intention appears.' Singer & Singer, supra, § 47:33 ('Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent.'). As Statutes and Statutory Construction explains, '[t]he rule is another aid to discovery of intent or meaning and is not inflexible and uniformly binding. Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent.' Id.; see also Barnhart v. Thomas, 540 U.S. 20, 26, 124 S.Ct. 376, 157 L.Ed.2d 333 (2003) ('While [the doctrine of last antecedent] is not an absolute and can assuredly be overcome by other indicia of meaning, we have said that construing a statute in accord with the rule is 'quite sensible as a matter of grammar.' ' (quoting Nobelman v. Am. Savings Bank, 508 U.S. 324, 330, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993))); Porto Rico Ry., Light & Power Co. v. Mor, 253 U.S. 345, 348, 40 S.Ct. 516, 64 L.Ed. 944 (1920) ('When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.').

Therefore, if Sec. 14 of SB 250 is parsed grammatically using the statutory construction doctrine of last antecedent, it appears that the phrase "of any property damaged by Hurricane Ian or Hurricane Nicole" *only* modifies the immediately preceding phrase "propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property," and there is no need for any restriction as to property damage by either of the two hurricanes to make any More Restrictive or Burdensome Provisions adopted during the applicable timeframe null and void. However, as held in the *Kasischke* case, this rule of construction is not uniformly followed.

II. Legal argument in favor of Interpretation #2

The Florida Supreme Court in *Florida Dept. of Env. Prot., v. Contractpoint Florida Parks, LLC,*[2] 986 So.2d 1260, 1265-1266 (Fla. 2008), described the process of statutory interpretation while considering the interpretation of Florida Statutes, Section 11.066(3) (2005) which provided:

> "(3) *Neither the state nor any of its agencies shall pay or be required to pay monetary damages under the judgment of any court except pursuant to an appropriation made by law.* To enforce a judgment for monetary damages against the state or a state agency, the sole remedy of the judgment creditor, if there has not otherwise been an appropriation made by law to pay the judgment, is to petition the Legislature in accordance with its rules to seek an appropriation to pay the judgment. [Emphasis in original.]

The Florida Supreme Court proceeded by opining:

> "In *Florida State Racing Commission v. McLaughlin*, 102 So.2d 574, 575–76 (Fla.1958), this Court stated:
>
> > "[I]f a *part* of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the *same statute* or others in pari materia, the Court will examine the entire act and those in *pari materia* in order to ascertain the overall legislative intent.[3] [Emphasis in original.]
>
> "These principles apply to this statute. While subsection (3), standing alone, appears to be an absolute bar to the State's payment of all judgments, subsections (3) and (4) must be read with reference to subsection (2), which states:

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[2] Please excuse the extensive quotations from the Florida Supreme Court *Contractpoint* case, but the case is so similar to the issues addressed in this Memorandum that the quotations assist in the analysis set forth herein.

[3] In the instant analysis and as set forth in section I above, the portion of a sentence in Sec. 14 of SB 250 referencing the More Restrictive or More Burdensome Provisions may, due to the use of semi-colons and failure to specifically reference damages due to hurricanes in that part of the sentence, seem to provide that the restrictions apply irrespective of any hurricane damage to the applicable properties. However, when read in the context of: i) the overall SB 250, "[a]n act relating to natural emergencies;" ii) the full Sec. 14 of SB 250, (which is actually just one run-on sentence except for the retroactive provision), and iii) the last portion of the run-on sentence which lumps moratoriums and More Restrictive or More Burdensome Provisions together as being "null and void," it can be difficult to believe that the intent of the statute was to insert a dramatically restrictive (and retroactive) limitation on home rule powers of some local governments, when the restrictions have no relationship whatsoever to natural emergencies or hurricanes.

> The state and each state agency, *when exercising its inherent police power to protect the public health, safety, or welfare,* is presumed to be acting to prevent a public harm. A person may rebut this presumption in a suit *seeking monetary damages* from the state or a state agency only by clear and convincing evidence to the contrary.
> § 11.066(2), Fla. Stat. (2005) (emphases supplied).

"This express reference to suits 'seeking monetary damages' made in the context of the State's exercise of its 'police power to protect the public health, safety, or welfare' precedes the references in subsection (3) to 'monetary damages under the judgment of any court' and 'a judgment for monetary damages.' The reference to police power also precedes the remaining subsections that discuss execution on State property and application of mandamus to enforce such judgments. Subsection (2) clearly focuses the thrust of the statute on judgments arising from claims based on the exercise of the State's police power and says nothing about claims arising from breach of contract. The references in subsection (3) to 'monetary damages' echo the provisions of subsection (2) and accordingly relate to monetary damages contained in judgments arising from the exercise of the State's police powers. Therefore, the statute does not express a clear intent to bar payment of valid breach of contract judgments, but rather expresses an intent to limit payment of judgments arising out of the exercise of the State's police powers.[4]

"Moreover, '[t]o discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and *history of its enactment, and the state of law already in existence on the statute.*' *Bautista v. State,* 863 So.2d 1180, 1185 (Fla.2003) (emphasis supplied) (quoting *State v. Anderson,* 764 So.2d 848, 849 (Fla. 3d DCA 2000)). When considered as a whole, with the express indication of the "evil to be corrected" in subsection (2), in the context of the broad statutory scheme conferring contracting authority upon its agencies, and in light of the legislative history of the enactment, the Legislature's apparent intent in section 11.066 is to preclude payment of judgments for monetary damages arising out of the State's exercise of its police powers unless an appropriation exists. [Emphasis in original.][5]

"The legislative history of section 11.066 confirms that the provision addresses the

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[4] Considering the clear focus of SB 250 on storm related issues, as well as the repeated references to Hurricanes Ian and Nicole in the actual sentence in which the restrictions as to More Restrictive or More Burdensome Provisions are provided, again, it is difficult to interpret Sec. 14 of SB 250 as applying to anything other than storm damaged properties.

[5] There is no question but that the legislative purpose as repeatedly set forth in the legislative history of SB 250 is to remedy and address current and future storm and natural disaster issues. There are no indications that the purpose includes addressing past or future local government legislative actions unrelated to storm or disaster issues or that effect properties that have not been damaged by storms.

State's exercise of its police powers. Chapter 91–109, section 40, Laws of Florida, was enacted in 1991 by the passage of House Bill 2313. The House of Representatives Committee on Appropriations Bill Analysis and Economic Impact Statement for HB 2313 (May 13, 1991) states that section 40 of the bill: "Provides that in suits seeking monetary damages against the state or its agencies, a court may not require the payment of monetary damages unless an appropriation has been made by law. Provides for a standard of clear and convincing evidence for a person to rebut the presumption that state agency, exercising its inherent police power, is acting to prevent public harm." It can be seen that the elements of the law given prominence in the staff analysis were suits for monetary damages stated in conjunction with the State's exercise of its police power. Other legislative materials relating to the original enactment of section 11.066 also suggest that one impetus for the statute was the many attempts to recover judgments for claims arising out of the State's exercise of its police powers during the Citrus Canker Eradication Program in the mid–1980s.

"Subsequently, the Senate Staff Analysis and Economic Impact Statement for CS/SB 822 (Apr. 5, 2001), discussing the proposed amendment of section 11.066, explains generally that the statute "relates to suits seeking monetary damages against the state or state agencies."[6] This staff analysis goes on to again explain: "When the state or a state agency is exercising its inherent police power to protect the public health, safety, or welfare, it is presumed to be acting to prevent a public harm." Immediately following this statement, the staff analysis states that "[t]he section permits payment of monetary damages under a court judgment by the state or its agencies only pursuant to an appropriation."

"Nothing in either of the staff analyses or legislative history indicates in any way that the statute bars payment of breach of contract judgments entered upon legislatively authorized contracts. Instead, these legislative staff analyses, as do the other sections of the statute, focus on the police power aspect of monetary damage suits as the subject of the legislation."[6]

"Moreover, '[t]o discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and *history of its enactment, and the state of law already in existence on the statute.*' *Bautista v. State*, 863 So.2d 1180, 1185

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[6] There will be no attempt in this Memorandum to go through the complete legislative history of SB 250; but rest assured, there is nothing in the legislative history that I could find after extensive research that would in any way indicate that it was the intention of the legislature in SB 250 to address an issue unrelated to natural disasters or storms by imposing home rule legislative restrictions on local governments as to properties *not* damaged by storms. It must be noted that a multitude of jurisdictions in Florida are within 100 miles of landfall of either Hurricane Ian or Nicole but suffered zero storm effects or damage. It would seem that the legislative intent of Section 14 of SB 250 would not be to dramatically limit the home rule powers of local governments as to properties totally unrelated to storm issues.

> (Fla.2003) (emphasis supplied) (quoting *State v. Anderson*, 764 So.2d 848, 849 (Fla. 3d DCA 2000)). When considered as a whole, with the express indication of the "evil to be corrected" in subsection (2), in the context of the broad statutory scheme conferring contracting authority upon its agencies, and in light of the legislative history of the enactment, the Legislature's apparent intent in section 11.066 is to preclude payment of judgments for monetary damages arising out of the State's exercise of its police powers unless an appropriation exists. [Emphasis in original.][7]
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> * * *
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> "Nothing in either of the staff analyses or legislative history indicates in any way that the statute bars payment of breach of contract judgments entered upon legislatively authorized contracts. Instead, these legislative staff analyses, as do the other sections of the statute, focus on the police power aspect of monetary damage suits as the subject of the legislation.

Florida Constitution's "single subject" rule for legislation

Article III, "Legislature," Section 6. "Laws" of the Florida Constitution provides:

> "Laws.—Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: 'Be It Enacted by the Legislature of the State of Florida:'."

The full title to SB 250 is quite long describing an extremely large conglomeration of natural disaster/storm related provisions, and it provides relating to the subject discussion:

> "An act relating to natural emergencies
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> …
>
> "prohibiting counties and municipalities located within a certain area from adopting or amending certain moratoriums, amendments, or procedures for a specified period; declaring that such moratoriums, amendments, or procedures are null and void; providing for retroactive application; providing that certain comprehensive plan amendments, land development regulations, site plans, and development permits or orders may be enforced; providing for expiration…."

[7] The Florida Supreme Court in the *Contractpoint* case proceeds to discuss in detail the legislative history of F.S. 11.066. Similar to the *Contractpoint* case, it is clear from reviewing the legislative history of SB 250, that any intent to slip in a restriction on home rule powers of certain local governments unrelated to storm issues is certainly not reflected in any official documents related to SB 250.

The lengthy title of SB 250 does nothing to differentiate the treatment of local government moratoriums, amendments or procedures, and actually lumps them in together. There is no indication in the title that there is any intent to regulate anything that is not storm or disaster related. In fact, if it were the intent to regulate disaster/storm related issues (which is over 99% of SB 250) and at the same time regulate past and future legislation of certain specified local governments unrelated to disaster/storm related issues, that portion of the legislation on an unrelated subject would actually be void due to the constitutional "one subject" rule. Any argument that Interpretation #1 should be followed as to Section 14 of SB 250 would have to be accompanied by an explanation as to how the provision is disaster/storm related, rather than an unrelated illegal provision.

The Florida Supreme Court in *Franklin v. State,* 887 So.2d 1063. 1074-1078 (Fla. 2004) decided a case based upon an analysis of the Florida Constitution's "single subject" requirement for state legislation. The court held:

> "For purposes of single subject analysis, every law published in the Laws of Florida has both a short title, i.e. 'An act relating to ...,'[8] and a full title, which begins with the chapter law number and ends with 'providing an effective date,' and encompasses the short title. Cf. State v. Kaufman, 430 So.2d 904, 907 (Fla.1983). '[F]ormerly the title of an act was not considered a part of it and, anciently, acts had no title prefixed at all but ... titles [have] come to possess very great importance by reason of' the single subject clause contained in the constitution. Canova, 94 So.2d at 183–84.16 **Consistent with our earliest jurisprudence and the actual wording of our constitution, we reiterate that a court generally need look no further than the title of the act in question when defining the single subject."** [Emphasis supplied.]
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> * * *
>
> "We resolve the uncertainty as to the source of the single subject by relying on the precise language of the constitution itself, which mandates that the single subject be 'briefly expressed in the title.' Although the full title may be as lengthy as the Legislature chooses, the actual expression of the single subject within the full title must be briefly stated. Therefore, we adopt that portion of Judge Cope's dissent in Franklin in which he concluded that **the single subject of an act is derived from the short title, i.e., the language immediately following the customary phrase 'an act relating to' and preceding the indexing of the act's provisions. In so doing, we specifically note that although many acts may contain a citation name by which either the entire act or portions of it may be identified, the citation name is not synonymous with the single subject.** [Emphasis supplied.]
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> * * *

[8] The "short title" of SB 250 is '[a]n act relating to natural emergencies.'"

> "Ordinarily, determining the single subject of an act by reference to the short title will be a straightforward process. The more difficult analysis is whether the various provisions are 'properly connected' to the single subject. We now turn to the analysis to be used when evaluating the 'properly connected' question."
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> * * *
>
> "A review of our jurisprudence reveals that we have defined a 'proper' connection in various ways. We have described a proper connection as one that is 'natural or logical.' See, e.g., Florida Dep't of Highway Safety & Motor Vehicles v. Critchfield, 842 So.2d 782, 785 (Fla.2003) ('[M]atters included in the act [must] have a natural or logical connection.'); Grant v. State, 770 So.2d 655, 657 (Fla.2000) ('Pursuant to [the single subject] requirement, there must be a logical or natural connection between the various portions of a legislative enactment.'). We have stated that whether a connection is proper will depend on 'common sense.' Smith v. Dep't of Ins., 507 So.2d 1080, 1087 (Fla.1987). We have also stated that if the provision is 'necessary' to the subject, 'fairly and naturally germane' to the subject, or promotes the purposes of the legislation as set forth in the subject, the provision may be regarded as properly connected. As we explained in surveying the law to date as of 1957, if a matter is germane to or reasonably connected with the expressed title of the act, it may be incorporated within the act without being in violation of [the single subject provision] of our constitution. Provisions which are necessary incidents to, or tend to make effective or promote the object and purpose of the legislation included in the subject expressed in the title of the act may be regarded as matters properly connected with the subject thereof.... In determining if matters are properly connected with the subject, the test is whether such provisions are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject. Canova, 94 So.2d at 184 (citations omitted)."

Courts interpret a statute in a manner to result in a constitutional outcome when possible.

Florida law is clear that when one interpretation of a law would result in a law being found unconstitutional, and another interpretation of the law would result in a law being found constitutional, a court will interpret the law in a way that results in the law being found to be constitutional. As held by the Florida Supreme Court in *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC,* 155 S0.3d 1137 (Fla. 2015),

> "[t]he Court is obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever reasonably possible. See, e.g., Scott, 107 So.3d at 384; State v. Adkins, 96 So.3d 412, 416–17 (Fla.2012); Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc., 978 So.2d 134, 139 (Fla.2008); Bush v. Holmes, 919 So.2d 392, 405 (Fla.2006); Fla. Dep't of Revenue v. Howard, 916 So.2d 640, 642 (Fla.2005). **'[E]ven where the statute is reasonably susceptible of two interpretations, one of which would render it invalid and the other valid, we must adopt the constitutional construction**.' State v. Lick, 390 So.2d 52, 53 (Fla.1980); see also Dep't of Ins. v. Se. Volusia Hosp. Dist., 438 So.2d 815, 820 (Fla.1983); Miami Dolphins, Ltd. v. Metro. Dade Cnty., 394 So.2d 981, 988 (Fla.1981) ('**Given that an interpretation upholding the constitutionality of the act is**

> **available to this Court, it must adopt that construction**.'); Corn v. State, 332 So.2d 4, 8 (Fla.1976) (**holding that the Court has a duty 'to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity**'); Overstreet v. Blum, 227 So.2d 197, 199 (Fla.1969) (citing *1147 Redwing Carriers, Inc. v. Mason, 177 So.2d 465, 467 (Fla.1965)). **Thus, where terms in a statute are ambiguous and the statute 'may reasonably be construed in more than one manner, this Court is obligated to adopt the construction that comports with the dictates of the Constitution**.' Vildibill v. Johnson, 492 So.2d 1047, 1050 (Fla.1986). **In that circumstance, we will adopt the construction that will effect a constitutional outcome so long as it is a fair construction of the statute consistent with legislative intent**. See State v. Globe Commc'ns Corp., 648 So.2d 110, 113 (Fla.1994)."

Because of the Florida Constitution's single subject rule, and the rule of construction that requires a construction of a statute to be constitutional, it would appear that a construction of Section 14 of SB 250 would necessitate that the More Restrictive or Burdensome Provisions be applied only to properties with storm related damages, rather than to properties (or for that matter jurisdictions) which were unaffected by Hurricanes Ian or Nicole.

III. Conclusion

Based on the above analysis, it appears clear that there are cogent legal arguments as to both the legal interpretations of Sec. 14 of SB 250. The first of the legal interpretations results in the City being dramatically restricted in its applicable ordinance passing ability for a period of well over a year even though the area in which the City is located was only marginally affected by Hurricanes Ian and Nicole. The second of the legal interpretations results in allowing the adoption of such ordinances, but restricting the application of any applicable ordinance passed so that it will only apply to properties that were not damaged by either Hurricane Ian or Hurricane Nicole.

Therefore, absent contrary direction by a court, the City Commission of the City of Anna Maria can make its own decision about the adoption of any More Restrictive or Burdensome Provisions. If adopted though, such More Restrictive or Burdensome Provisions would not apply to properties that were damaged by either Hurricane Ian or Hurricane Nicole.[9] If considering a More Restrictive or Burdensome Provision, the City Commission should definitely consider the likelihood of a court challenge to the provision based on SB 250 and weigh the need for the More Restrictive or Burdensome Provision against the possible cost of litigation regarding same, and whether a delay until October 1, 2024 would be prudent.

If you have any questions about this opinion, please let me know.

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[9] Again, SB 250 does not define the term "damaged" so that the city would need to make a determination on a case by case basis as to whether a particular property was "damaged" by either Hurricane Ian or Hurricane Nicole to determine the applicability thereto of Section 14 of SB 250.

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CITY OF ANNA MARIA

P.O. Box 779, 10005 Gulf Drive, Anna Maria, FL 34216
Phone (941) 708-6130 Fax (941) 708-6134

MINUTES
JUNE 22, 2023
IMMEDIATELY FOLLOWING THE BUDGET MEETING
CITY COMMISSION REGULAR MEETING

THIS COMMISSION MEETING IS BEING HELD USING OPTIONAL TELECOMMUNICATIONS MEDIA TECHNOLOGY.

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Pledge of Conduct: **We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.**
CALL TO ORDER

Chair Short called the meeting to order at

PLEDGE TO THE FLAG
ROLL CALL

The City Clerk/Treasurer LeAnne Addy called the roll.

Present: Chair Mark Short, Commissioner Jonathan Crane, Commissioner Robert Kingan, Commissioner Deanie Sebring, and Commissioner Charles Salem.

Absent: Mayor Dan Murphy

Others Present: City Clerk/Treasurer LeAnne Addy, Deputy City Clerk Fransheska Berrios, AMI Sun, and Islander newspaper.

REGULAR MEETING

General Public Comment regarding non-agenda items and items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

1. General Public Comment

None.

2. Update on SB 250 – Vose

City Attorney Becky Vose stated that there is not much to update as it has not gone to the Governor as of yet, but it should go into effect July 1, 2023. Increases of building inspection fees are not allowed to happen based on FEMA declaration of emergency until 2024. Business impact statement for regulatory ordinance that we do will go into effect in October 2023.

Chair Short asked about the increase in vacation rental fees.

City Attorney Becky Vose stated that it is strictly for Building Fees.

No public comment.

3. Centennial Event in September – Mayor

Deputy City Clerk Fransheska Berrios stated that they would like to hold the event September 9 or 10, 2023. The time would be 2:00 p.m. to 6:30 p.m. She mentioned that the focus for the locals that live here.

Commissioner Salem asked if that would interfere with any religious events.

There is a consensus from the Commission to continue to move forward.

4. Mayor's Comments

None.

5. Commissioners' Comments

Commissioner Kingan stated that on June 29, 2023, there is an event at the Island Players and a reception beforehand and a screening beforehand of the history of the Island Players and the screening is at 7:00 p.m.

Commissioner Crane stated that he was saddened by the passing of Mrs. Copeland and let's keep Doug in our hearts. He also mentioned the great article written by Joe in the AMI Sun.

6. City Attorney's Comments

None.

7. Staff Comments

None.

8. **CONSENT AGENDA: The following items are considered routine in nature and should be considered in a single motion. Items which warrant individual discussion should be removed from this list prior to the motion to adopt. Such items will be discussed separately.**
   - **a.** Meeting Minute Approval: Regular Meeting: June 8, 2023
   - **b.** Special Event: Haney/Hensley Wedding on the Beach – July 12, 2023, from 7:00 p.m. to 7:30 p.m.

Motion: To approve consent agenda
Action: Motion by Commissioner Kingan, seconded by Commissioner Sebring.
On roll call vote, the motion passed unanimously.

Press Comment
Adjournment

Chair Short adjourned the meeting at 6:14 p.m.

Minutes Approved: _____

_____
LeAnne Addy, CMC
City Clerk/Treasurer

10b

CITY OF ANNA MARIA

P.O. Box 779, 10005 Gulf Drive, Anna Maria, FL 34216
Phone (941) 708-6130 Fax (941) 708-6134

MINTUES
BUDGET MEETING
JUNE 22, 2023, AT 5:30 P.M.
CITY COMMISSION MEETING

THIS COMMISSION MEETING IS BEING HELD USING OPTIONAL TELECOMMUNICATIONS MEDIA TECHNOLOGY.

Dial in using your phone.
United States: +1 (929) 205-6099
Meeting ID: 853-9200-0280
***OUT OF COURTESY TO OTHERS, PLEASE MUTE YOUR PHONE WHEN NOT SPEAKING. ***
IF YOU WISH TO MAKE A PUBLIC COMMENT, PRESS *9 ON YOUR PHONE

Pledge of Conduct: **We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.**

CALL TO ORDER
Meeting called to order by Vice Chair Short at 5:30 p.m.

PLEDGE TO THE FLAG

ROLL CALL
Present: Chair Mark Short, Commissioner Robert Kingan, Commissioner Jonathan Crane, Commissioner Deanie Sebring, and Commissioner Charles Salem

Absent: Mayor Dan Murphy

Others Present: City Clerk/Treasurer LeAnne Addy, Deputy City Clerk Fransheska Berrios, City Attorney Becky Vose via Zoom, and AMI Sun.

BUDGET MEETING

General Public Comment regarding non-agenda items and items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

1. General Public Comment

None.

2. FY 2023-2024 Budget Review and Discussion
    - Capital Outlay and Miscellaneous

Chair Short went through the budget items with the City Commissioners.

1. The Proposed Public works costs of $3,674,634.46 which is the $325,000 for Road Paving and the remaining Pine Avenue, Magnolia and Spring Corridor.
2. The proposed Stormwater cost for 2024 is $1,816,533.50 which includes Maintenance of $525,235, Stormwater Capital Project of $1,216,298.50, and the Pumping Station Design near Archer of $75,000.

3. Capital Outlay Miscellaneous projects and they are not set in stone so he read through the projects.
    a. Sail Shade – Playground
    b. Sail Shade – City Pier
    c. Sail Shade – Expansion
    d. City Hall Consolidation & Improvements
    e. Lake LaVista Engineering & Permits
    f. Public Bathroom
    g. Redesign Island Players Parking Lot
    h. Extension of Multi-Use Path – Consideration when discussing the Pine Avenue Corridor Plans
    i.

Commissioner Crane asked if Brian Seymour would be paying for any part of the City Pier Sail Shade or consider adding a few hundred dollars a month to his rent.

Commissioner Kingan stated that the extension of the Multi-Use Path is so expensive as there is a pipe underneath there and that is probably why it is so expensive and has not been done yet.

Commissioner Crane remembers that there were many residents on Magnolia and Spring didn't want the path to go down their area.

Commissioner Salem brought up addressing our permanent resident population decline and presented a document that he discussed with the Commissioners. He went through the Incentives and Actions that he came up with in a meeting with the City Planner and the Mayor. He is requesting a feasibility study in this year's budget using the above parameters in the amount of $100,000.

Commissioner Kingan feels that this is an excellent idea and St. Pete as has an accessory building that are used in this matter. He thinks we should investigate how they are doing it. He mentioned that tax benefit that we give them if they change it there would be a penalty to get the money back that was given to the property.

Commissioner Crane asked what type of professional that we would use on this feasibility study.

Commissioner Salem stated that the Mayor knows of a firm that does this as well as the City Planner knew of someone in Colorado that did that as well. He is not looking to make this program mandatory.

Chair Short stated that it is interesting and warrants more investigation. He mentioned that we would need legal to do a pre-investigation.

City Attorney Vose stated that she will do a pre-investigation on this matter.

There was a consensus on the Capital Outlay including Commissioner Salem's proposal.

3. Date and Time of next budget meeting (TBD)

The next meeting will be on Revenues.

Press Comment

None.

Adjournment

Meeting adjourned by Chair Short at 6:03 p.m.

Minutes Approved: _____

_____

LeAnne Addy, CMC
City Clerk/Treasurer