



**Interoffice Memorandum**

February 9, 2023

**TO:** Mayor Jerry L. Demings  
—AND—  
County Commissioners

**FROM:** Lisa Snead  
Assistant County Administrator

A handwritten signature in black ink, appearing to read "Lisa Snead", written over the printed name.

**CONTACT:** 407-836-5610

**SUBJECT:** Discussion Item – February 21, 2023  
Amendments to Chapter 22, Orange County Code (“Human Rights”)

On March 14, 2022, Florida’s Fifth District Court of Appeal filed an opinion holding that the County’s Human Rights Ordinance (“HRO”) conflicts with the Florida Civil Rights Act of 1992 because the HRO allows certain parties aggrieved by discrimination to proceed directly to court without first exhausting administrative remedies. *See O C Food & Beverage, LLC v. Orange Cnty.*, 338 So. 3d 311, 314-15 (Fla. 5th DCA 2022). On August 25, 2022, Commissioner Nicole Wilson, District 1, submitted a memorandum to Mayor Demings and the County Commissioners requesting a work session to discuss amending the HRO to add an administrative precondition to be handled by a Mayoral designee.

At the Board meeting on February 21, 2023, County staff will provide an overview of the HRO and seek Board direction on potential amendments.

**Attachments**

- c: Byron W. Brooks, AICP, County Administrator
- Jeffrey J. Newton, County Attorney
- Carla Bell Johnson, AICP, Deputy County Administrator
- Dylan Schott, Assistant County Attorney



Date: August 25, 2022  
To: Mayor Demings and Board of County Commissioners  
From: Commissioner Nicole Wilson, District 1  
Subject: Amendment to Human Rights Ordinance

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Good afternoon,

In light of recent challenges to the Orange County Human Rights Ordinance, I am writing to request a Work Session to discuss updates to the Orange County Human Rights Ordinance Chapter 22, Orange County Code, amending the current Ordinance to include administrative precondition language. With the exception of 10 counties including our own, every county in Florida includes administrative precondition language to address potential conflict with F.S. 760.01-760.11. Florida jurisdictions have either designated an administrator or Mayoral designate to conduct the review of complaints.

The Orange County Human Rights Ordinance provides protection from discriminatory conduct and is of great importance to vulnerable Orange County residents. We have an opportunity to update the Orange County ordinance now, to prevent potential constitutional challenges and to provide the intended protections.

**Request:** I request a Work Session on September 30th to discuss amending our current Human Rights Ordinance to add an administrative precondition, handled by a Mayoral designee.

Sincerely,  
Commissioner Nicole Wilson

CC: Jeffrey Newton, Byron Brooks

**COMMISSIONER NICOLE WILSON, DISTRICT 1**  
201 South Rosalind Avenue, 5th Floor, Orlando Florida 32801  
Phone: 407-836-7312 Fax: 407-836-5879

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338 So.3d 311

District Court of Appeal of Florida, Fifth District.

O C FOOD & BEVERAGE, LLC d/b/a Rachel's and West Palm Beach Food and Beverage, LLC d/b/a Rachel's Adult Entertainment and Steakhouse, Appellants,

v.

ORANGE COUNTY, Florida, Anita Yanes and Brittney Smith, Appellees.

Case No. 5D21-1061

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Opinion filed March 14, 2022

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Rehearing Denied May 6, 2022

**Synopsis**

**Background:** Bar owner filed action against county, seeking declaration that a provision in county human rights ordinance was preempted by the Florida Civil Rights Act (FCRA). The Circuit Court, 9th Judicial Circuit, Orange County, Jeffrey L. Ashton, J., denied bar owner's motion for declaratory judgment. Bar owner appealed.

The District Court of Appeal, Harris, J., held that county human rights ordinance was preempted by FCRA.

Reversed and remanded.

**Procedural Posture(s):** On Appeal; Motion for Declaratory Judgment.

\*312 Appeal from the Circuit Court for Orange County, Jeffrey L. Ashton, Judge. LT Case No. 2018-CA-03554

**Attorneys and Law Firms**

Steven G. Mason, of Law Office of Steven G. Mason, P.A., Altamonte Springs, for Appellants.

Elaine Marquardt Asad, and Jeffrey J. Newton, of Orange County Attorney's Office, Orlando, for Orange County, Florida.

Matthew W. Dietz, of Disability Independence Group, Inc., Miami, for Appellees, Anita Yanes and Brittney Smith.

Rafael Paz, Acting City Attorney, Robert F. Rosenwald, Jr., Deputy City Attorney, and Feroat I. Andasheva, Assistant City Attorney I, Miami Beach, Amicus Curiae for Alachua County, Broward County, Monroe County, Palm Beach County, Pinellas County, City of Atlantic Beach, City of Delray Beach, City of Dunedin, City of Ft. Lauderdale, City of Gainesville, City of Mascotte, City of Miami Beach, City of North Port, City of Orlando, City of Sarasota, City of Tampa, City of Wilton Manors, North Bay Village, and Village of Wellington, in support of Appellee.

Travis R. Hollifield, of Hollifield Legal Centre, Winter Park, and Richard E. Johnson, of Law Office of Richard E. Johnson, Tallahassee, Amicus Curiae for National Employment Lawyers Association, Florida Chapter, in support of Appellees.

Diana L. Martin, of Cohen, Milstein, Sellers & Toll, PLLC, Palm Beach Gardens, Lindsay Nako, Impact Fund, Berkeley, CA, Amicus Curiae for Equality Florida Institute, Impact Fund, National Center for Lesbian Rights, ADL, ACLU of Florida, Freedom for All Americans, Lambda Legal Defense and Education Fund, Inc., League of Women Voters of Florida, Legal Aid At Work, and Zebra Coalition, in support of Appellees.

## Opinion

HARRIS, J.

**\*313** Appellants, OC Food & Beverage, LLC, d/b/a Rachel's and West Palm Beach Food and Beverage, LLC., d/b/a Rachel's Adult Entertainment and Steakhouse (collectively, "Rachel's"), appeal the trial court's final judgment denying its motion to declare Chapter 22 of the Orange County Code facially unconstitutional. Rachel's argues that Chapter 22, known as Orange County's Human Rights Ordinance (HRO), conflicts with and is preempted by chapter 760, Florida Statutes, known as the Florida Civil Rights Act (FCRA). On the narrow issue of whether the HRO conflicts with the FCRA because it eliminates the statutory conditions precedent to filing suit, we agree with Rachel's and reverse on this limited basis. In doing so, we do not reach Rachel's preemption argument.

The underlying suit involved a sex discrimination claim against Rachel's for prohibiting Anita Yanes and Brittany Smith, plaintiffs below, from entering its establishment on the basis that they were not accompanied by a male companion. Yanes and Smith filed suit against Rachel's alleging a violation of section 22-42 of the Orange County Code, which provides:

(a) It is a violation of this article for a person who owns or operates a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another individual the full and equal enjoyment of the facilities and services of any place or public accommodation on the basis of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation.

(b) It is a violation of this article for a person who owns or operates a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any individual or that any such individual is unwelcome, objectionable or unacceptable because of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation.

Orange Cnty., Fla., Code of Ordinances ch. 22, § 4 (2018). The plaintiffs filed their suit pursuant to section 22-4 of the HRO, which details the procedures and remedies for filing a private cause of action for discrimination claims:

(a) An aggrieved individual may, under this chapter, commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided, however, that such civil action must be filed no later than one (1) year after the discriminatory practice is alleged to have been committed.

(b) If, in a civil action commenced under this chapter, the court finds that a discriminatory **\*314** practice has been committed or is about to be committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary or permanent injunction or other equitable relief, a temporary restraining order, an award of actual damages, including back pay, punitive damages, an award of reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate.

Orange Cnty., Fla., Code of Ordinances ch. 22, § 4(a), (b) (2018). Because section 22-4 specifies that a complainant may file suit directly in court without first pursuing administrative remedies, Yanes and Smith did so.

By contrast, the FCRA requires satisfaction of conditions precedent before filing a civil action for sex discrimination in places of public accommodation. See §§ 760.08, 760.11, Fla. Stat. (2018). Specifically, a complainant must file a complaint with the Florida Commission on Human Relations (the “Commission”), the Equal Employment Opportunity Commission, or any unit of government of the state which is a fair-employment-practice agency, within one year of the alleged discriminatory practice. § 760.11(1), Fla. Stat. (2018). Within 180 days of the filing of the complaint, the Commission must determine whether there is reasonable cause to believe that a discriminatory practice has occurred. § 760.11(3), Fla. Stat. (2018). Only once the Commission determines that there is reasonable cause—or if it fails to determine whether there is reasonable cause within 180 days after the filing of the complaint—may the complainant then file a civil action in court. § 760.11(4)(a), (7), (8), Fla. Stat. (2018).

Rachel's moved to dismiss the complaint, arguing that the Orange County HRO is preempted by or otherwise conflicts with the FCRA. Rachel's also filed a third-party complaint against Orange County seeking a declaratory judgment that sections 22-4 and 22-42 of the Orange County HRO are unconstitutional. The trial court concluded that the HRO was neither preempted by nor in conflict with the FCRA and, therefore, declined to find that the HRO was unconstitutional. We disagree and find that conflict exists between the HRO and the FCRA.

Charter counties such as Orange County have broad powers of local self-government “not inconsistent with general law.” Art. VIII, § 1(g), Fla. Const.; Phantom of Brevard, Inc. v. Brevard Cnty., 3 So. 3d 309, 314 (Fla. 2008). “[I]n a field where both the State and local government can legislate concurrently, a county cannot enact an ordinance that directly conflicts with a state statute.” Orange Cnty. v. Singh, 268 So. 3d 668, 673 (Fla. 2019). There is conflict between a local ordinance and a state statute where the ordinance “stands as an obstacle to the execution of the full purposes of the statute.” Masone v. City of Aventura, 147 So. 3d 492, 495 (Fla. 2014) (internal quotations omitted). “A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.” Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972). If a county has enacted an inconsistent ordinance, that ordinance must be declared null and void. Singh, 268 So. 3d at 674.

We find that section 22-4 of the HRO conflicts with the FCRA because it allows a party aggrieved by sex discrimination in public accommodations to proceed directly to court without first exhausting administrative remedies, while section 760.11 requires the exhaustion of administrative remedies before filing an \*315 action in court. In construing the FCRA, the Florida Supreme Court has concluded that “the Legislature wanted persons who believe they have been the object of discrimination to go through the administrative process prior to bringing a circuit court civil action.” Joshua v. City of Gainesville, 768 So. 2d 432, 436 (Fla. 2000).<sup>1</sup> The purpose of the administrative process is “to provide the [Commission] with the first opportunity to investigate the alleged discriminatory practices to permit it to perform its role in obtaining voluntary compliance and promoting conciliation efforts.” Sunbeam Television Corp. v. Mitzel, 83 So. 3d 865, 874 (Fla. 3d DCA 2012) (quoting Gregory v. Ga. Dep't of Hum. Res., 355 F.3d 1277, 1279 (11th Cir. 2004)) (internal quotations omitted).

By eliminating the FCRA's conditions precedent to filing suit, and by eliminating the role of the Commission, section 22-4 stands as an obstacle to the execution of the full purposes of the statute. See Masone, 147 So. 3d at 495. We therefore find that section 22-4 of the HRO, which allows an individual to commence a civil action without first following the administrative requirements outlined in the FCRA, conflicts with state law and is therefore unconstitutional. We reverse the trial court's final judgment solely on this basis.

REVERSED and REMANDED.

NARDELLA and WOZNIAK, JJ., concur.

ON MOTION FOR REHEARING, REHEARING EN BANC AND FOR CERTIFICATION

HARRIS, J.

We deny Appellee's motion for rehearing and motion for rehearing en banc, but grant the motion for certification.

We certify the following question as one of great public importance:

ARE THE ADMINISTRATIVE PRECONDITIONS TO FILING A LAWSUIT SET FORTH IN SECTION 760.11, FLORIDA STATUTES, APPLICABLE TO ALL DISCRIMINATION CASES FILED IN THE COURTS OF THE STATE OF FLORIDA OR ARE LOCAL GOVERNMENTS PERMITTED TO ENACT ORDINANCES ON THE SAME SUBJECT MATTER THAT CONFLICT WITH THE STATUTORY PRECONDITIONS?

NARDELLA and WOZNIAK, JJ., concur.

**All Citations**

338 So.3d 311, 47 Fla. L. Weekly D636

**Footnotes**

- 1 In Joshua, the Supreme Court specifically rejected the same argument raised by Yanes and Smith below and adopted by the trial court, e.g., that the term "may" in section 760.11(8) gives complainants the option to file under the FCRA but does not require one to do so.