

Municipal Charter Amendment

Number: AGO 2017-03

Date: April 05, 2017

Subject:
Municipal Charter Amendment

April 4, 2017

Mr. Lonnie N. Groot
Attorney for the City of Daytona Beach Shores
1001 Heathrow Park Lane, Suite 4001
Lake Mary, Florida 32746

RE: MUNICIPALITIES – CHARTER AMENDMENT – REFERENDUM REGARDING DEVELOPMENT ORDERS AND COMPREHENSIVE PLAN AMENDMENTS – whether s. 163.3167, Fla. Stat., allows a municipality to amend its city charter through an initiative or referendum process to include language resulting in mandatory denial of certain development orders and requiring an initiative or referendum to implement local comprehensive plan amendments.

Dear Mr. Groot:

On behalf of the City Council, you have asked the following question:

May the city charter be amended by referendum to include language “which results in the mandatory denial of certain development orders” and which requires that “local comprehensive plan amendment[s]” be implemented only pursuant to “a vote arising from the initiative or referendum process”?[1]

In sum:

The city charter may not, consistent with section 163.3167, Florida Statutes, be amended through an initiative or referendum process to include language “which results in the mandatory denial of certain development orders” and which requires that “local comprehensive plan amendment[s]” be implemented only pursuant to “a vote arising from the initiative or referendum process.”

Florida’s Growth Policy Act, Chapter 163, Florida Statutes, provides a direct answer to your question. As amended in 2014, section 163.3167(8), Florida Statutes—which governs local government initiative or referendum processes in regard to any development order—currently provides that “[a]n initiative or referendum process in regard to any development order is prohibited.” The Legislature expressly indicated its intent that this prohibition be “remedial in nature[,]” providing:

“(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any

development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (b). Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.”[2]

In interpreting an earlier version of section 163.3167, Florida Statutes (which, at the time, prohibited an initiative or referendum process “in regard to any development order or in regard to any local comprehensive plan amendment or map amendment *that affects five or fewer parcels of land*”), the Second District Court of Appeal considered the validity of proposed city charter amendments which would require elector approval for any comprehensive plan or plan amendment affecting more than five parcels of land. *Citizens For Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1147–48 (Fla. 2d DCA 2006). The appellate court held that the proposed amendments were “inferentially permitted” by section 163.3167:

“Clearly, the Legislature has proscribed use of the initiative and referendum process in matters affecting five or fewer parcels of land. And just as clearly, the Legislature inferentially permitted use of the initiative and referendum process in development orders or comprehensive plans or amendments affecting six or more parcels.”

Id. at 1149–50.[3]

While the court’s reasoning in *Citizens For Responsible Growth* may have suggested that proposed ordinances or charter amendments might be authorized to the extent they complement, rather than conflict with, the Growth Policy Act’s statutory framework, the basis for any such leeway has since been removed. By subsequent amendment to section 163.3167, Florida Statutes, the condition that the prohibited initiative or referendum process must involve local comprehensive plan amendments or map amendments “affecting five or fewer parcels of land” was eliminated.

Under the present version of the law, “except as specifically and narrowly allowed by paragraph (b),” the initiative and referendum process is prohibited in regard to any development order, local comprehensive plan amendment, or map amendment. Because your query concerns a prospective charter amendment, the exception provided by subsection (b) for processes “expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011[,]” would not apply.[4]

As applied to your question, you indicate that it has been proposed that the city charter be amended through an initiative or referendum process to include language “which results in the mandatory denial of certain development orders” and which requires that “local comprehensive plan amendment[s]” may be implemented only pursuant to “a vote arising from the initiative or referendum process.” Were the proposed amendment to have the outcomes you describe, this would result in violations of the clear statutory proscriptions against implementation of the initiative or referendum process in regard to any development order or local comprehensive plan amendment.

Based on the foregoing, I am of the opinion that the city charter may not, consistent with section 163.3167, Florida Statutes, be amended through an initiative or referendum process to include language “which results in the mandatory denial of certain development orders” and which requires that “local comprehensive plan amendment[s]” be implemented only pursuant to “a vote arising from the initiative or referendum process.”

Sincerely,

Pam Bondi
Attorney General

PB/ttlm

[1] Based on the quoted language (taken directly from your letter), it is presumed that the proposed charter amendment, if adopted, would have the legal effect you have asserted. This office otherwise would not interpret the effect of any proposed charter amendment language. See Frequently Asked Questions About Attorney General Opinions (available at <http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad>) (last visited March 6, 2017).

[2] § 163.3167(8)(c), Fla. Stat. (2016).

[3] In later addressing a different question under the same provision, the Fourth District Court of Appeals determined that the statutory prohibition precluded a referendum to challenge a city ordinance which amended the City’s comprehensive plan and provided for rezoning of a 4.02-acre parcel of land. *City of Lake Worth v. Save Our Neighborhood, Inc.*, 995 So. 2d 1002, 1003–04 (Fla. 4th DCA 2008). In so doing, the appellate court rejected the challengers’ argument that “affected” parcels comprised not only the parcel specifically described in the amendment, but “may also include other affected parcels” which were not directly subject to the amendment. *Id.* at 1003.

[4] § 163.3167(8)(b), Fla. Stat., specifies that “[a] general local government charter provision for an initiative or referendum process is not sufficient.”