

Municipalities, repeal of voter initiative ordinance

Number: INFORMAL

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Mr. Robert E. McGill, III
Attorney for the City of Destin
743 Highway 98 East, Suite 5
Destin, Florida 32541

Dear Mr. McGill:

You ask substantially whether the City Council for the City of Destin may repeal or amend an ordinance that was passed by voter initiative. This question has arisen in light of a city ordinance that was approved by voter initiative prohibiting the abandonment or vacation of County Road 2378, known as Old Highway 98, without prior approval by voter referendum. The council has voted to repeal the ordinance and has scheduled public hearings to consider whether to abandon the subject road. A question has also arisen regarding the city council's authority to enter into a settlement agreement whereby the city agrees to hold public hearings regarding the abandonment of the road.

In sum, absent a charter provision to the contrary, the city council may repeal or amend an ordinance that was passed by voter initiative without a referendum to approve such action. The ultimate question of whether to vacate or abandon the subject road is a legislative determination based upon appropriate findings of fact to be made by the governing body of the city and cannot be delegated to this office. As to whether the city may enter into a settlement agreement whereby the city agrees to hold public hearings on the matter, I have found no statutory prohibition that would preclude such action by the city.

The Municipal Home Rule Powers Act^[1] (act) secures to municipalities the broad home rule powers granted by section 2(b), Article VII, of the Florida Constitution. Section 166.021, Florida Statutes, provides that municipalities "may exercise any power for municipal purposes, except when expressly prohibited by law." Inherent in the city's home rule powers and its capacity to sue and be sued is the city's ability to compromise or settle litigation to which it is a party.^[2] Further, I am not aware of any statute that would prohibit the city council from agreeing to hold public hearing on an issue before it.

In Attorney General Opinion 90-2, this office addressed the effect of the act upon a city charter provision relating to initiative petitions and referenda for the adoption of ordinances. In that opinion the charter provided that the electorate could petition the governing body of the city to adopt an ordinance by referendum vote. The charter also contained a provision that an ordinance adopted by referendum vote could only be amended or repealed by referendum vote. These provisions, however, were part of the city's charter adopted prior to passage of the Municipal Home Rule Powers Act, such that the act specifically nullified and repealed, or converted them into ordinances, subject to amendment or repeal like other ordinances.^[3] It was concluded, therefore, that absent a charter provision requiring referendum approval, the

governing body of the municipality could enact an ordinance amending or repealing the charter provision without a referendum by the electorate.

Similarly, in *Holzendorf v. Bell*,^[4] the court acknowledged that the ability of a governing body of a municipality to amend or repeal ordinances initiated by the electorate is governed by the city's charter and general or special acts of the Legislature.^[5] In that case, the city's charter did not confer the right to repeal ordinances by referendum. The court concluded that absent a provision in the city charter allowing direct citizen control over ordinances, the electorate has no authority to impose a referendum requirement on the city council's authority to do any act within its powers.

Based upon information to this office, the charter of the City of Destin does not appear to contain a provision requiring referendum approval for the repeal of ordinances. Accordingly, the city council may repeal or amend an ordinance that was passed by voter initiative without a referendum to approve such action. As noted above, however, the decision to abandon or vacate the subject road is a determination based upon factual findings that must be made by the city council and not by this office.

I trust these informal comments will be of assistance in the resolution of this matter.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tgk

[1] Part I, Ch. 166, Fla. Stat. (1995).

[2] See *Williams v. Public Utility Protection League of Florida*, 178 So. 286 (Fla. 1938) (power of city to compromise and settle litigation is incident to its power to sue and be sued).

[3] See Fla. Att'y Gen. Ops. 73-478 (1973) and 75-223 (1975).

[4] 606 So. 2d 645 (Fla. 1st DCA 1992).

[5] *Id.* at 648.