

ORDINANCE NO. 2011-05

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA RELATING TO REZONING APPROVAL; AMENDING SECTION 6.06, TOWN CHARTER; MAKING FINDINGS; PROVIDING FOR A REFERENDUM ELECTION AND BALLOT LANGUAGE; AMENDING THE TOWN CHARTER BY MAKING THE TOWN CHARTER CONSISTENT WITH FLORIDA LAW; PROVIDING THAT REZONING REFERENDUM PROVIDED FOR BY THE TOWN CHARTER SHALL ONLY BE REQUIRED IF THE TOWN COMMISSION CERTIFIED THAT THE REFERENDUM IS NOT PROHIBITED BY FLORIDA LAW; PROVIDING FOR COORDINATION WITH THE SUPERVISOR OF ELECTIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2005, the Town electorate approved Section 6.06, as an amendment to the Town Charter requiring that any rezoning changing the zoning classification from one district to another before becoming effective must first be approved by the Town electorate;

WHEREAS, in 2011, the Florida Legislature adopted HB-7207, a 349-page bill that substantially amended Florida's growth management law;

WHEREAS, HB-7207 was signed into law by the Governor and is known as Chapter 2011-139, Laws of Florida;

WHEREAS, Chapter 2011-139, Laws of Florida, amends Section 163.3167(8), Florida Statutes, to provide as follows:

(8) An initiative or referendum process in regard to *any development order* or in regard to any local comprehensive plan amendment or map amendment is prohibited.

(emphasis supplied);

WHEREAS, pursuant to Section 163.3164(15), Florida Statutes (2011), a "development order" is "any order granting, denying, or  
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grating with conditions an application for a *development permit*" (emphasis supplied);

WHEREAS, pursuant to Section 163.3164(16), Florida Statutes (2011), a "development permit" is "any building permit, zoning permit, subdivision approval, *rezoning*, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land" (emphasis supplied);

WHEREAS, Section 6.06, Melbourne Beach Town Charter, is contrary to Chapter 2011-139, Laws of Florida, and Section 163.3167(8), Florida Statutes (2011);

WHEREAS, the Town Commission recognizes that the law of the State of Florida is that the Town Charter is inferior to state law and can not be contrary to Florida law. City of Miami Beach v. Rocio Corp., 404 So.2d 1066 (Fla. 3d DCA), *rev. denied*, 408 So.2d 1092 (Fla. 1981);

WHEREAS, as stated by the Florida Supreme Court, pursuant to the concept of municipal home rule as embodied in Section 166.021, Florida Statutes, a municipality may exercise any governmental, corporate, or proprietary power for a municipal purpose, except when expressly prohibited by law. See City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); *accord* Board of Trustees of City of Dunedin Municipal Firefighters Retirement System v. Dulje, 453 So.2d 177 (Fla. 2d DCA 1984);

WHEREAS, the Charter requirement that a rezoning proposal changing the zoning classification from one district to another

before becoming effective must first be approved by the Town electorate is contrary to Section 163.3167(8), Florida Statutes;

WHEREAS, the Town Commission finds that Section 6.06, Melbourne Beach Town Charter must be amended in some manner to make it consistent with Florida law;

WHEREAS, the Town Commission proposes that the provision shall be remain in the Charter because it expresses the will of the Town electorate, but to be consistent with Florida law, Section 6.06 shall only be effective if from time to time, the Town Commission certified that the rezoning referendum requirement is not prohibited by Florida law;

WHEREAS, the Town's Planning and Zoning Board, sitting as the Town's Local Planning Agency, has reviewed this Ordinance and found it to be consistent with the Town's Comprehensive Plan;

WHEREAS, the Town's Planning and Zoning Board, sitting as the Town's Local Planning Agency, has determined that Comprehensive Plan does not require a referendum prior to a rezoning becoming effective;

WHEREAS, the Town Commission has determined that adoption of this Ordinance will promote the public interest, safety, economic order, and welfare of the community; and

WHEREAS, pursuant to its home rule power in Article VIII, Section 2, Florida Constitution of 1968; Chapter 166, Florida Statutes; Section 166.021, Florida Statutes, and the Town's Charter, the Town Commission hereby adopts this Ordinance.

BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

SECTION 1. Referendum Election. A referendum election is hereby called and scheduled to be held concurrent with the general Town election on the 8th day of November, 2011, to determine whether the amendment to the Charter of the Town of Melbourne Beach, Florida, appearing in Section 2. hereof shall be approved by a majority of the votes cast in such election in which the qualified electors residing in the Town shall participate. Such referendum election shall be held and conducted in the manner prescribed by law for all elections. The places for voting in such referendum election shall be such locations as shall be otherwise established for the general election to elect the Mayor on November 8, 2011. All duly qualified electors of the Town of Melbourne Beach shall be entitled to participate in said election.

SECTION 2. Amendment to Charter. In interpreting the amendment in this Section, language that is underlined is an addition to the existing text of the Town Charter. Language that is ~~stricken through~~ is a deletion from the existing text of the Town Charter. It is proposed that Section 6.06 of the Town Charter of the Town Melbourne Beach, Florida, shall be amended to read as follows:

**Sec. 6.06. Rezoning approval.**

No rezoning of one single parcel of property or group of parcels of properties shall be effective that changes the zoning district classification from one zoning district to another zoning district until the rezoning proposal shall be approved by a majority of the

Town electorate voting in a general or special election. The foregoing requirement to submit a rezoning proposal to the Town electorate shall only be effective if the Town Commission first certifies that submitting the rezoning proposal to the Town electorate is not prohibited by Florida law. Prior to any proposal being placed on the ballot, to the extent required by law the Town government shall make a determination whether the proposed rezoning is consistent with the Town's comprehensive plan. This provision shall apply regardless of whether the rezoning proposal is initiated by a property owner, member of the general public, the Town, or other person, natural, corporate, or otherwise.

SECTION 3. Ballot Question. Concurrent with the Town General Election scheduled for November 8, 2011, the following question shall be placed on the ballot following the placement on the ballot of candidates for the office of Mayor, if any. The issue shall be worded substantially as follows:

**No. 1**

**MELBOURNE BEACH TOWN CHARTER AMENDMENT**

**SECTION 6.06, TOWN CHARTER**

The Town Charter requires that no rezoning of land shall be effective unless the rezoning is approved by Town voters. Earlier this year, the Legislature passed a state law that prohibits the Town from having a referendum on any rezoning. This Charter amendment makes the Charter consistent with state law by providing that a referendum

may only be required if the Town Commission certifies that holding a referendum is not prohibited by with state law.

YES (for approval) \_\_\_\_\_

NO (for rejection) \_\_\_\_\_

SECTION 4. Coordination with Supervisor of Elections. The Town Clerk is hereby authorized and directed to coordinate with the Supervisor of Elections of Brevard County to include the above-described question on the ballot concurrent with the general election to be held on November 8, 2011.

SECTION 5. Severability Clause. In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 6. Effective Date.

(a) Section 2. of this Ordinance shall become effective only if a majority of the registered electors of the Town of Melbourne Beach, Florida, casting votes at the municipal election on November 8, 2011 on Town Charter Question No. 1 approve the amendment set forth in Section 2. of this Ordinance. If the amendment is approved by the registered electors, the Charter amendment embodied herein shall be immediately effective and shall be incorporated into the Melb.Bch/Charter Amendment Rezoning.Ord

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Town Charter. The Town Clerk is directed upon adoption to promptly file the Charter with said amendment incorporated therein with the State of Florida, Secretary of State, as required by Section 166.031, Florida Statutes.

(b) Sections 1., 3., 4., 5., and 6. of this Ordinance shall become effective only if at 1 PM on August 23, 2011, the last day of qualifying in 2011 for the Office of Mayor in the Town of Melbourne Beach, there is a contested race for Mayor with at least two candidates running for the office.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 20th day of July, 2011, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Florida, on final reading on the 17th day of August 2011.

TOWN OF MELBOURNE BEACH, FLORIDA

By: \_\_\_\_\_  
Jean Marshall,  
Mayor

ATTEST: \_\_\_\_\_  
Rhonda Danielle,  
Town Clerk