Referenda -- Municipalities -- Redevelopment Districts

Number: INFORMAL

Date: August 22, 2012

Ms. Maura J. Kiefer
Attorney for the City of Treasure Island
The Alexander Building
535 Central Avenue
St. Petersburg, Florida 33701-3703

Dear Ms. Kiefer:

On behalf of the City of Treasure Island, you have asked whether the city is allowed to place a referendum question before the electorate which seeks an increase in density and height for a future downtown redevelopment district, where the ordinance which would create said district is conceptual only and would not be passed by the city commission in time for the submission of the referendum question.

As reflected by your question and the facts in your letter, it would appear that the city wishes to hold a referendum which, upon approval, would increase height and density restrictions in designated areas of a planned downtown redevelopment district which has not been approved and which would necessitate passage of the referendum in order to be implemented.

You state that the charter for the City of Treasure Island (city) requires referendum approval for increases to the height and density restrictions for land development.[1] There appears to be uncertainty, however, as to whether the electorate would be adequately informed of the effect of the referendum, in light of the speculative nature of the redevelopment district. Amending the city charter to allow increased height and density within the redevelopment district is critical to the viability of the redevelopment district plans.

Initially, I must note that this office has no authority to pass judgment upon the validity of a proposed local initiative.[2] In an effort to be of assistance, however, the following informal comments are offered.

Section 101.161(1), Florida Statutes, provides:

"Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no,' and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the . . . proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the

ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution."

Simply put, the ballot must give the voter fair notice of the decision he or she must make.[3] It is well settled that section 101.161, Florida Statutes, requires a public measure to be in clear and unambiguous language and that the ballot title and summary explain the chief purpose of the measure. Applying the standard set forth in court decisions addressing the validity of initiative petitions to amend the Florida Constitution, the Supreme Court of Florida has stated that the language on the ballot must advise the voter of the substance of the amendment, but need not explain every detail or ramification of the proposed amendment; rather it must be determined whether the voter will be misled by the language on the ballot.[4]

In one instance, a court determined that a ballot title and summary of a proposed amendment to a county home rule charter regarding the provision of fire and rescue services falsely promised the creation of a uniform countywide fire and rescue service when such service already existed and failed to inform voters that the amendment would reduce rather than expand rights of county's citizens by curtailing municipal powers.[5] In another case, the court found that a proposed amendment to a county charter reducing the salaries of county commissioners was not misleading, despite the contention that the ballot language did not inform the voters that the commissioners' salaries would be reduced by a lesser amount even if the proposal failed.[6] The court found that the ballot language in "simply presenting the absolute amount proposed as the commissioners' salary" was unambiguous and clearly stated the amendment's chief purpose.[7]

Thus, a ballot title and summary must advise the electorate of the true meaning and ramifications of an amendment so that the voter will not be misled as to its purpose and may cast an informed ballot.

You have provided a copy of proposed Ordinance 12-07 which sets forth five questions that would appear on the referendum ballot, each apparently relating to density or height increases within specified areas of the redevelopment district. I would note that while section 3 of proposed Ordinance 12-07 reflects that passage of all the questions is a threshold requirement for the passage of the ordinance, nothing in the ballot title and summary of each question advises the voter that all of the questions must receive an affirmative vote before the land development regulations will be amended.

While this office has recognized that two or more propositions may be placed on a referendum ballot, each must be complete within itself and stated separately and distinctly in such form that a voter has the opportunity to vote either for or against each separate proposal.[8] It is questionable that an individual who favors an increase in height restrictions in one area would necessarily favor them in another, yet a voter aware of the need for approval of all height and density amendments before each may become effective would not be able to independently vote on each referendum question.

I trust that these informal comments will be of assistance in your resolving the issues you have

raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Sec. 68-126. - Changes requiring approval by electors.

"Any changes in the land development regulations of the city that would allow an increase in the number of units per acre (density) or an increase in allowable height of buildings must be approved by a majority of the qualified electors of the city." City of Treasure Island Code of Ordinances (Referendum of 11-5-02, § 1).

[2] *Compare* Art. IV, s. 10, Fla. Const., and s. 16.061, Fla. Stat., directing the Attorney General to request the opinion of the justices of the Supreme Court as to the validity of an initiative petition to amend the state constitution.

[3] *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

[4] *Roberts v. Doyle*, 43 So. 3d 654, 658-659 (Fla. 2010).

[5] *Miami-Dade County v. Village of Pinecrest*, 994 So. 2d 456 (Fla. 3d DCA 2008), *rev. denied*, 5 So. 3d 669 (Fla. 2009)

[6] *Citizens for Term Limits & Accountability, Inc. v. Lyons*, 995 So. 2d 1051 (Fla. 1st DCA 2008), *rev. denied*, 5 So. 3d 668 (Fla. 2009).

[7] *Id.* at 1058, citing *Gross v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

[8] *See* Op. Att'y Gen. Fla. 98-03 (1998).