

ORDINANCE 2018-05

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA CALLING FOR A REFERENDUM ELECTION TO BE HELD ON NOVEMBER 6, 2018 FOR THE PURPOSE OF PROPOSING TO THE ELECTORATE OF THE CITY OF DAYTONA BEACH SHORES A CONTINGENT REVISION TO THE *CHARTER OF THE CITY OF DAYTONA BEACH SHORES* RELATING TO TERM LIMITS AND AN AMENDMENT TO SECTION 2.01; PROVIDING FOR BALLOT LANGUAGE; PROVIDING FOR THE DUTIES OF THE CITY CLERK; PROVIDING FOR INCLUSION IN THE *CHARTER OF THE CITY OF DAYTONA BEACH SHORES* AND POWERS AND AUTHORITY FOR THE CODE CODIFIER; PROVIDING FOR SEVERABILITY AND PROVIDING FOR EFFECTIVE DATE OF ORDINANCE AND EFFECTIVE DATE OF PROPOSED *CHARTER* AMENDMENT.

WHEREAS, Section 7.01 of the *Charter of the City of Daytona Beach Shores, Florida* provides as follows:

Charter amendment.

This charter may be amended in two (2) ways:

(a) Initiation by ordinance. The council may propose, by ordinance, amendments to any part or all of this charter, except those prohibited by the Constitution and Laws of Florida; and upon passage of the initiating ordinance council shall submit the proposed amendment to a vote of the electors at the next general election held within the city or at a special election called for that purpose. Amendment of boundaries resulting from annexation done in accordance with general law shall be by ordinance and shall not be subject to a vote of the electors except as provided by general law.

(b) Initiation by petition. The electors of the city may propose amendments to this charter by petition signed by at least ten (10) per cent of the registered electors and submitted to a vote of the electorate in a special election to be called within sixty (60) days following the certification of the initiative petition or at any general election scheduled with ninety (90) days.

; and

WHEREAS, Section 2.01 of the *Charter of the City of Daytona Beach Shores, Florida* provides as follows:

Composition.

There shall be a city council consisting of five (5) members, one of whom shall be a mayor-councilmember, all of whom shall be elected at-large for a four-year term. Unless otherwise provided, reference to the office of councilmember in this charter shall also apply to the office of mayor-councilmember. Each councilmember shall be prohibited from serving more than two (2) consecutive four-year terms.

; and

WHEREAS, the City Council of the City of Daytona Beach Shores has concluded that it is in the best interests of the citizens of the City of Daytona Beach Shores for the City Council to propose an amendment to the *Charter of the City of Daytona Beach Shores* at a referendum election in accordance with the provisions of Section 7.01(a) of the *Charter of the City of Daytona Beach Shores* and Section 166.031, *Florida Statutes*,¹ and in the form set forth herein.

¹ The statutory provision provides as follows:

166.031 Charter amendments.—

(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. All such amendments are effective on the date specified therein or as otherwise provided in the charter.

(3) A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2).

(4) There shall be no restrictions by the municipality on any employee's or employee group's political activity, while not working, in any referendum changing employee rights.

(5) A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter and amend provisions or language out of the charter which has been judicially construed, either by judgment or by binding legal precedent from

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: PROPOSED CONTINGENT REVISION OF SECTION 2.01 CITY CHARTER; TERM LIMITS.

Section 2.01 of the *Charter of the City of Daytona Beach Shores, Florida*, is contingently proposed to be amended to read as follows:

Sec. 2.01. – Composition; Term Limits; Mayor and City Council.

There shall be a City Council consisting of five (5) members, one of whom shall be a Mayor, all of whom shall be elected at-large for a four (4)-year term. Unless otherwise provided, reference to the office of Councilmember in this Charter shall also apply to the office of Mayor. ~~Each Councilmember shall be prohibited from serving more than two (2) consecutive four-year terms. No person shall be elected or appointed to office as a City Councilmember for more than two (2) terms. This Section applies to any Councilmember including the Mayor and a person shall not circumvent this rule through election or appointment to a different position. For purposes of this limitation, “term” is defined as service on the City Council for a period longer than one-half of a full term. All terms, including past and present terms, greater than one-half of a full term served by current and former City Council Members shall count for the purposes of applying the term limit. (As set forth in the double underlined text if approved by the electorate).~~

SECTION TWO: BALLOT QUESTION.

The form of the ballot for the *Charter* amendment provided for in Section One of this Ordinance shall be as follows:²

a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.

(6) Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office.

² See, Section 101.161, *Florida Statutes*, relating to referenda and ballots relating thereto. The statutory provision provides as follows:

101.161 Referenda; ballots.—

(1) 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 constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission 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.

(2) The ballot summary and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification and in accordance with rules adopted by the Department of State. The Department of State shall furnish the designating number, the ballot title, and, unless otherwise specified in a joint resolution, the ballot summary of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

(3)(a) Each joint resolution that proposes a constitutional amendment or revision shall include one or more ballot statements set forth in order of priority. Each ballot statement shall consist of a ballot title, by which the measure is commonly referred to or spoken of, not exceeding 15 words in length, and a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language. If a joint resolution that proposes a constitutional amendment or revision contains only one ballot statement, the ballot summary may not exceed 75 words in length. If a joint resolution that proposes a constitutional amendment or revision contains more than one ballot statement, the first ballot summary, in order of priority, may not exceed 75 words in length.

(b) The Department of State shall furnish a designating number pursuant to subsection (2) and the appropriate ballot statement to the supervisor of elections of each county. The ballot statement shall be printed 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 amendment or revision and a “no” vote will indicate rejection.

(c)1. Any action for a judicial determination that one or more ballot statements embodied in a joint resolution are defective must be commenced by filing a complaint or petition with the appropriate court within 30 days after the joint resolution is filed with the Secretary of State. The complaint or petition shall assert all grounds for challenge to each ballot statement. Any ground not asserted within 30 days after the joint resolution is filed with the Secretary of State is waived.

2. The court, including any appellate court, shall accord an action described in subparagraph 1. priority over other pending cases and render a decision as expeditiously as possible. If the court finds that all ballot statements embodied in a joint resolution are defective and further appeals are declined, abandoned, or exhausted, unless otherwise provided in the joint resolution, the Attorney General shall, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court, and the Department of State shall furnish a designating number and the revised ballot title or ballot summary to the supervisor of elections of each county for placement on the ballot. The revised ballot summary may exceed 75 words in length. The court shall retain jurisdiction over challenges to a revised ballot title or ballot summary prepared by the Attorney General, and any challenge to a revised

Charter amendment limiting persons to two terms as Councilmember applies to current and former Councilmembers.

An amendment to amend the City Charter to apply the amendment limiting persons to serve only two terms (if it is adopted) to current and former Councilmembers and would include prior and current terms served in applying the limitation.

Yes []

No []

SECTION THREE: REFERENDUM ELECTION.

A referendum election is hereby called to be held on November 6, 2018, to present to the electors of the City of Daytona Beach Shores the ballot question provided for in this Ordinance. The

ballot title or ballot summary must be filed within 10 days after a revised ballot title or ballot summary is submitted to the Department of State.

(4)(a) For any general election in which the Secretary of State, for any circuit, or the supervisor of elections, for any county, has certified the ballot position for an initiative to change the method of selection of judges, the ballot for any circuit must contain the statement in paragraph (b) or paragraph (c) and the ballot for any county must contain the statement in paragraph (d) or paragraph (e).

(b) In any circuit where the initiative is to change the selection of circuit court judges to selection by merit selection and retention, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(c) In any circuit where the initiative is to change the selection of circuit court judges to election by the voters, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(d) In any county where the initiative is to change the selection of county court judges to merit selection and retention, the ballot shall state: "Shall the method of selecting county court judges in (name of county) be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(e) In any county where the initiative is to change the selection of county court judges to election by the voters, the ballot shall state: "Shall the method of selecting county court judges in (name of the county) be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

Supervisor of Elections of Volusia County is hereby requested to coordinate all matters relating to the said referendum election with the City Clerk, the Division of Elections of the Florida Department of State, and the City Manager, City Clerk and City Attorney.

SECTION FOUR: DUTIES OF CITY CLERK.

The City Clerk is hereby directed to ensure that the advertising and notice requirements of Section 100.342, *Florida Statutes*, are complied with and to coordinate all activities necessary to conduct the referendum election called in this Ordinance with the Supervisor of Elections for Volusia County.

SECTION FIVE: REVISED *CHARTER OF THE CITY OF DAYTONA BEACH SHORES*.

If the proposed amendment to the *Charter of the City of Daytona Beach Shores* is approved by the electorate in the referendum election called for in this Ordinance, as well as the double underlined text herein, it is the intention of the City Council, and it is hereby ordained, that the approved provisions of this Ordinance shall become and be made a part of the *Charter of the City of Daytona Beach Shores*. The City's Code codifier is granted broad and liberal power and authority to codify the *Charter of the City of Daytona Beach Shores* in terms of making appropriate harmonizing, technical or editorial changes and notes that do not affect the substantive provisions thereof.

SECTION SIX: SEVERABILITY.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

SECTION SEVEN EFFECTIVE DATE.

The provisions of this Ordinance shall take effect immediately upon enactment. The amendment to the Charter of the City of Daytona Beach Shores proposed for approval in this Ordinance shall become effective only upon approval at a referendum election of the electors of the City of Daytona Beach Shores in accordance with the provisions of Section 166.031, *Florida Statutes.*, relative to the proposal herein and the proposal set forth in the double underlined text herein.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2018.

Adopted on second reading this __ day of _____, 2018.