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November 5, 2026

Mr. Owen Kohler
Clearwater City Attorney
600 Cleveland Street, Suite 600
Clearwater, Florida 33755

Dear Mr. Kohler:

This office received your letter requesting a legal opinion on questions of Florida law.[1] You ask substantially whether Save the Garden's petition seeking reconsideration and repeal of the City of Clearwater's ("the City") Ordinance No. 9907-26 (the "Ordinance") conflicts with section 163.3167(8), Florida Statutes. You also ask whether section 163.3167(8) prohibits application of the City's Charter referendum process to the Save the Garden petition.

In short, my answer to your first question is yes. Section 163.3167(8) forecloses Save the Garden's petition to reconsider and repeal the Ordinance. My answer to your second question is also yes. Section 163.3167(8) prohibits the City from applying its referendum process to Save the Garden's petition.

BACKGROUND[2]

On April 17, 2026, the Church of Scientology Flag Service Organization Incorporated ("CSFSO") submitted an application to vacate the City's right-of-way ("ROW") on a portion of South Garden Avenue abutting CSFSO's property. CSFSO claims ownership of that segment of South Garden Avenue. The City adopted the Ordinance on June 18, 2026, vacating its ROW on that portion of South Garden Avenue, effective immediately.

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[1] *See* Letter from Owen Kohler, City of Clearwater City Att'y, to James Uthmeier, Att'y Gen. of Fla. (Sep. 23, 2025) (on file with the Office of the Attorney General).

[2] For purposes of this opinion, the facts contained in the City Attorney's request are taken as true.

The Ordinance, recorded in the Official Records of Pinellas County, identifies the development project proposed by CSFSO and specifically notes that the public interest was served by "facilitating this Development by vacating this right-of-way." The Ordinance further includes terms relating to CSFSO's completion of certain conditions concerning the construction of the development project.

After adoption of the Ordinance, Save the Garden, a citizens' group, submitted a petition to the City seeking reconsideration and repeal of the Ordinance pursuant to section 6.02 of the City's Charter. Save the Garden also filed suit in federal district court seeking a preliminary injunction against the City related to its enforcement of its petition practices under the City's Charter. The court denied Save the Garden's motion, and the case was voluntarily dismissed.[3]

ANALYSIS

The Community Planning Act established a statutory prohibition against initiatives and referenda concerning development orders and land development regulations.[4] Section 163.3167(8)(a) provides that an "initiative or referendum process in regard to any development order is prohibited." Likewise, section 163.3167(8)(b) prohibits an "initiative or referendum process in regard to a land development regulation."[5] Section 163.3167(8)(c) also provides that such an initiative or referendum process regarding "any local comprehensive plan amendment or map amendment" is prohibited unless expressly authorized by "specific language in a local government charter" that was in effect by June 1, 2011. A mere "general local government charter provision" of initiative and referendum processes is not sufficient.[6] Any initiative or referendum commenced after June 1, 2011, is "*deemed null and void.*"[7]

The term "land development regulation" means "ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or *any other regulations controlling the development of land.*"[8] "Development order" is "any order granting, denying, or granting with conditions an application for a development permit."[9] And a "development permit"

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[3] *Save the Garden et al. v. City of Clearwater*, No. 8:26-cv-1662, 2026 WL 1844151 (M.D. Fla. June 26, 2026).

[4] *See* § 163.3167(8)(a)-(e), Fla. Stat.

[5] This provision was added to section 163.3167 on July 1, 2023.

[6] § 163.3167(8)(c), Fla. Stat.

[7] § 163.3167(8)(e), Fla. Stat. (emphasis added).

[8] § 163.3164(28), Fla. Stat. (emphasis added).

[9] § 163.3164(15), Fla. Stat.

will include "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."[10]

While not defined by statute, courts have interpreted the term "initiative" by its plain and ordinary meaning, which includes an electoral process by which a percentage of voters can propose legislation and compel a vote by the legislature or the full electorate.[11] The same is true for "referendum" which has been defined as the process of referring a legislative act or important public issue to the people for final approval by popular vote.[12]

I.

A threshold question is whether the Ordinance qualifies as a development order or land development regulation, either of which triggers the prohibition on a referendum under section 163.3167(8). The City enacted the Ordinance to directly address CSFSO's proposed development of the tract of land by vacating the ROW on the property.[13] Indeed, the Ordinance explicitly states that facilitating the development of the property by "vacating this right-of-way" serves the public interest.[14] The Ordinance further outlines additional steps that CSFSO must take to vacate the ROW and proceed with the development. For example, the Ordinance requires CSFSO to obtain a certificate of occupancy for the proposed structure of the development.[15] In addition, the Ordinance requires CSFSO to execute any easements needed, relocate utilities, and comply with the City's metered parking requirements.[16] The subject matter and requirements of the Ordinance demonstrate that it was enacted for the "regulation of any aspect of development."[17] The Ordinance, therefore, constitutes a "land development regulation" as that term is defined in section 163.3164(28). As a result, any "initiative or referendum in regard to" the Ordinance is prohibited by section 163.3167(8)(b).[18]

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[10] § 163.3164(16), Fla. Stat.

[11] *XYZ 300, LLC v. City of St. Petersburg*, 429 So. 3d 136, 139-40 (Fla. 2d DCA 2026).

[12] *Id.* at 140-41.

[13] Clearwater, Fla., Code No. 9907-26 (2026).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] § 163.3164(28), Fla. Stat.

[18] Notably, the City already made this legal argument in a federal lawsuit against Save the Garden but now requests the Office of the Attorney General to address the issue. *See* Def., City of Clearwater's Corrected Resp. to Pl.'s Time-Sensitive Mot. for Prelim. Inj. at 20-25, *Save the Garden et al. v. City of Clearwater*, No. 8:26-cv-1662, 2026 WL 1844151 (M.D. Fla. June 26, 2026). When a requestor—here, the City—already knows the answers to questions it poses to this Office, it should think hard whether the request is, in fact, necessary. As a general matter, this Office doesn't

Here, Save the Garden's petition seeks reconsideration and repeal of the Ordinance and, importantly, requires voter approval before the ROW can be vacated. In *Mullen v. Bal Harbour Village*, the Third District Court of Appeal determined that a petition seeking to amend the village charter to require approval from 60% of village electors before commercial properties could increase existing commercial space violated section 163.3167(8)(a).[19] The court explained that the referendum was illegal because the petition subjected individual property rights in a development order to the will of voters.[20] The same analysis applies here.

Save the Garden's petition seeks to require approval of the development of an individual's property rights—CSFSO's in this case—to the will of the voters. Such a petition is an illegal "initiative or referendum" under section 163.3167(8).[21] Save the Garden cannot escape the prohibition on initiatives or referenda on land development regulations under section 163.3167(8) merely because Save the Garden labels its referendum as a petition. Save the Garden's petition is therefore prohibited under section 163.3167(8).[22]

II.

The City's Charter is prohibited under section 163.3167(8) from applying its referendum process to Save the Garden's petition. The facts here are similar to those in *Archstone Palmetto Park, LLC v. Kennedy*. There, the City of Boca Raton allowed qualified voters to petition to require the city council to reconsider an ordinance or resolution and, if the council failed to repeal the measure, could require the measure to be submitted to voters.[23] Here, section 6.02 of the City's Charter provides a nearly identical petition process for reconsideration and repeal.[24] In *Archstone*, the court explained that section 163.3167(8) barred submitting a development order to referendum, emphasizing the Legislature's intent since 2011 to restrict initiatives and referendum

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serve as a third-party validator for legal positions requestors already know to be correct.

[19] 241 So. 3d 949, 956 (Fla. 3d DCA 2018).

[20] *Id.*

[21] *See XYZ 300,* 429 So. 3d at 139-40.

[22] This is also consistent with this office's prior opinion on a city's proposed amendment to its charter. In 2017, this Office issued an opinion stating section 163.3167(8) prohibited a city from amending its charter through an initiative or referendum process that would result in the mandatory denial of certain development orders. Op. Att'y Gen. Fla. 17-03 (2017).

[23] 132 So. 3d 347, 349 (Fla. 4th DCA 2014).

[24] *See* City of Clearwater, Charter, Art. VI, § 6.02 (providing that the voters may "require a reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election").

mechanisms over land development decisions, and that a general charter provision for a referendum is insufficient to preserve the right.[25] The City Charter's referendum process is precisely the structure outlined in *Archstone* that was found to be unlawful under section 163.3167(8). The City is therefore prohibited from applying its referendum process to the petition submitted by Save the Garden.

CONCLUSION

The Legislature prohibits initiatives and referenda regarding development orders and land development regulations. Save the Garden's petition seeking to reconsider and repeal the City's land development regulation, including requiring voter approval on CSFSO's property, is proscribed by 163.3167(8). In addition, the City is prohibited by section 163.3167(8) from proceeding under its Charter's referendum process with Save the Garden's petition.

Sincerely,

Greg Slemp
Deputy Attorney General
Legal Counsel

[25] 132 So. 3d at 353.