

RESOLUTION NO. 2023-26

A RESOLUTION OF THE VILLAGE OF ESTERO, FLORIDA, OPPOSING AMENDING THE COUNTY CHARTER IN ANY MANNER WHICH WOULD IMPEDE THE FREE RIGHT OF A PROPERTY OWNER TO VOLUNTARILY ANNEX INTO A MUNICIPALITY AND OPPOSING ANY CHARTER LANGUAGE WHICH WOULD ALLOW COUNTY COMMISSIONERS TO ARBITRARILY DECIDE IF A VOLUNTARY ANNEXATION MAY OCCUR; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes § 177.044(1) provides that the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality; and

WHEREAS, the statute then goes on to allow the municipality, after it provides certain newspaper and county notices, to adopt an ordinance incorporating the property into the municipality's boundaries; and

WHEREAS, a member of the County Commission has asked the County's Charter Review Commission to approve a proposed amendment to the County Charter which would allow the County Commission to unilaterally and arbitrarily prohibit any voluntary annexation into a municipality within the County; and

WHEREAS, the proposed Charter amendment provides that if a property:

1. is located in a Lee County Utilities Future Water Service Area, or
2. is located in a Lee County Utilities Future Sewer Service Area, or
3. abuts, has direct access to, or its primary access to the public street network is or will be a County Maintained Roadway, then

then the County Commission must approve of the voluntary annexation of that property; and

WHEREAS, the proposed Charter language provides further that if a property seeking to voluntarily annex is within a fire control district, the municipality must first enter into an interlocal agreement with the district to provide fire protection services; and

WHEREAS, the proponent of the Charter language has indicated that the intent of the proposal is for the County and its municipalities to work together in the planning of infrastructure; and

WHEREAS, it is unclear how the voluntary annexation of a home or a business or vacant land could possibly have substantial Countywide infrastructure impacts; and

WHEREAS, it is also unclear how the adoption of a rule which provides that on a case-by-case basis a property owner and municipality would go through the entire voluntary annexation process, and then require the owner to petition the County Commission to agree, would create the

type of systematic cooperative planning process regarding future infrastructure needs which the proponent indicates is the aim of the proposal; and

WHEREAS, in 2006, the Florida Legislature adopted Part II of Florida Statutes Chapter 171, providing for Interlocal Service Boundary Agreements; and

WHEREAS, specifically, Florida Statutes § 171.203 authorizes the County Commission to initiate a collaborative process with some or all of its municipalities to develop agreements regarding, among other things, the identity of governmental units which will be responsible for providing public safety, fire, water, wastewater, road construction and maintenance, and stormwater management in areas which may be annexed; and

WHEREAS, this process would appear to afford the County with a greater opportunity to engage with its municipalities if there are concerns over such matters than individually halting voluntary annexations, large or small, regardless of existing or future use; and

WHEREAS, in regards to any concern that voluntary annexation would impose a negative impact on the County's fire districts, ; and

WHEREAS, Florida Statutes § 171.203(8) already provides that in order to ensure that the health and welfare of the residents affected by annexation will be protected, all fire and emergency medical services shall be provided by the existing provider of fire and emergency medical services to the annexed area and remain part of the existing municipal service taxing unit or special district unless the county and annexing municipality reach an agreement regarding who shall provide such services; and

WHEREAS, setting aside that there are already adequate statutory mechanisms to allow counties and municipalities to systemically coordinate on issue of public safety, fire, water, and other infrastructure matters, the proposed Charter language is inconsistent with a property owner's right to voluntarily choose to become part of a municipality for whatever personal, business, financial or other reasons the owner may have; and

WHEREAS, the proposed Charter language would cause the owner of property who wanted to become part of one of the County's municipalities to first undertake the time and expense of working with the municipality to join, only to then petition the County Commission to agree, in a process which would not be applying any objective, quantifiable, measurable standards and would instead permit unfettered and subjective discretion on the part of the Commission; and

WHEREAS, such a process may be found by a reviewing court to be a taking of an owner's property rights, and may also be found by a reviewing court to be a deprivation of the owner's due process and equal protection rights; and

WHEREAS, with regard to the fire district provision, the owner would not even be able to petition the County Commission to approve the voluntary annexation unless the fire district approved an agreement with the relevant municipality (a process the owner cannot impact), even though the fire district would then also be able to effectively preclude the voluntary annexation by simply refusing to enter the required agreement; and

WHEREAS, while the City Council of the Village of Estero has been and will remain fully willing to engage with County leaders to discuss the planning of future infrastructure needs as the County continues to grow and as voluntary annexations may occur, it respectfully believes the proposed Charter language will not result in any systemic infrastructure solutions, is incompatible with freedom of choice of property owners, and may expose the County to needless litigation.

WHEREAS, the City Council desires to have its position known to the members of the County's Charter Review Commission as that body furthers its work for all of the citizens of the County, both those within municipalities and those in unincorporated portions of the County.

NOW, THEREFORE BE IT RESOLVED by the City Council of the Village of Estero, Florida, that:

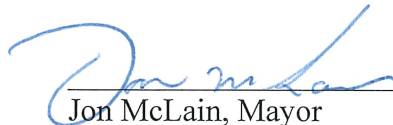
Section 1. The Village Council of the Village of Estero opposes any amendment to the County's Charter which would deprive the owner of any residential or non-residential property to freely choose to become part of one of the County's municipalities as long as any statutory requirements regarding voluntary annexation are satisfied.

Section 2. The Village Mayor and Manager are authorized to convey the Village's position on this matter, and to engage in such other communication efforts as those officials deem appropriate to advocate for the continuation of the right of any County property owner to freely chose to join, or not join, a municipality.

BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, provision or word of this Resolution is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision, as the Village Council would have adopted the Resolution even absent the invalid part.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon adoption.

DULY ADOPTED with a quorum present and voting this 4th day of October, 2023.



Jon McLain, Mayor

Attest:



Carol Sacco, Village Clerk