

ORDINANCE 2005-39

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, PERTAINING TO CONDEMNATION AND EMINENT DOMAIN; LIMITING THE POWER OF AND SETTING PARAMETERS FOR THE CITY COUNCIL WHEN EXERCISING THE POWERS OF CONDEMNATION AND EMINENT DOMAIN; REQUIRING A SUPER-MAJORITY VOTE WHEN EXERCISING THE POWERS GRANTED TO THE CITY IN SECTIONS 163.375 AND 163.380, FLORIDA STATUTES; PROHIBITING THE ACQUISITION OF PROPERTY BY CONDEMNATION OR EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT PURPOSES; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PALM BAY CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Supreme Court of the United States in the case of *Kelo vs. City of New London*, 545 U.S. ____ (2005), recently determined that a local government can utilize its powers of eminent domain to enhance its tax base, and

WHEREAS, Article 10, Section 6, of the Florida Constitution, provides that no private property shall be taken except for a “public purpose”, and

WHEREAS, the United States Supreme Court in *Kelo vs. City of New London* also ruled that economic development qualifies a “public use” if a legislative body makes such a determination, and

WHEREAS, the United States Supreme Court also declined to “second-guess” a City’s determination of what or what is not a public use or public purpose, and

WHEREAS, the United States Supreme Court emphasized that nothing in its opinion precluded a state from placing further restrictions on its exercise of the taking powers, and

WHEREAS, Chapter 166, and Sections 163.379 and 163.380, Florida Statutes, provides municipalities with certain home-rule powers and the City Council wishes to utilize the powers the Chapter grants it to limit its power of eminent domain, and

WHEREAS, the City Council has determined that the health, safety, and welfare of the citizens of Palm Bay will be best served if restrictions are placed upon it in making

determinations of public use and public purpose in the exercise of its powers of condemnation and eminent domain.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, FLORIDA, as follows:

SECTION 1. In exercising its powers of eminent domain or condemnation, the City Council's determination of public use and/or public purpose shall be strictly limited only to the uses and purposes set out in Sections 166.411 (2), (3), (4), (5), (6), (8), (9), (10), and (11), Florida Statutes.

SECTION 2. In exercising the powers of eminent domain and condemnation authorized in Sections 163.375 and 163.380, Florida Statutes, four (4) affirmative votes of the City Council shall be required to make a determination of public use and/or public purpose.

SECTION 3. The provisions of Section 2 above are further strictly limited by the inability of the City Council to ever impose its powers of condemnation or eminent domain to acquire property for economic development purposes.

SECTION 4. In exercising the powers of eminent domain and condemnation authorized in Sections 163.375 and 163.380, Florida Statutes, three (3) public hearings shall be required to be held on the issue and four (4) affirmative votes of the City Council shall be required at each hearing to exercise the condemnation and eminent domain powers granted to the City Council in said Sections.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 6. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 7. It is the intention of the City Council of the City of Palm Bay that the provisions of this ordinance shall be made a part of the City of Palm Bay Code of Ordinances as Chapter 57, entitled "Eminent Domain", under Title V, Legislative, and the sections may be renumbered to accomplish such intention.


SECTION 8. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2005-18, held on August 4, 2005, and read in title only and duly enacted at Meeting No. 2005-20, held on August 16, 2005.



John Mazziotti, MAYOR

ATTEST



Alice Passmore, CITY CLERK

cc: 08-17-05 All Department Heads
ALP
Libraries (2)

ORDINANCE NO. 2005-40

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, REQUIRING AN AFFIRMATIVE VOTE OF FOUR FIFTHS (4/5ths) OF THE MEMBERS OF THE CITY COUNCIL TO ENACT OR AMEND ANY ORDINANCE THAT PERTAINS TO THE USE, APPLICATION, OR EXERCISE OF THE POWER OF EMINENT DOMAIN BY THE CITY COUNCIL; MAKING FINDINGS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 166.041(6), Florida Statutes, provides, in part, that "a municipality may specify additional requirements for the adoption or enactment of ordinances ... or prescribe procedures in greater detail than contained herein", and

WHEREAS, the City Council has determined that the best interest of the citizens of Palm Bay will be served if it enacts additional restrictions, and

WHEREAS, the City Council has determined that restrictions should be placed upon it when voting on matters that pertain to the exercise of its powers of condemnation and eminent domain.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this ordinance.

SECTION 2. Any ordinance that pertains to the use, application, or exercise of the power of eminent domain by the City shall require the affirmative vote of fourth fifths (4/5ths) of the members of the City Council to adopt or amend such an ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 4. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances within Chapter 57, entitled "Eminent Domain", under Title V, Legislative, and the sections may be renumbered to accomplish such intention.

SECTION 5. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 6. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2005-18, held on August 4, 2005; and read in title only and duly passed and enacted at Meeting No. 2005-20, held on August 16, 2005.

ATTEST:



Alice Passmore, CITY CLERK



John J. Mazziotti, MAYOR



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