

RESOLUTION 2019-03

of the
Town Council
for the

Town of Windermere, Florida

regarding

Voting Requirements under Section 12.04 of the Town Charter for Rezoning

Whereas, Section 12.04 of the Charter of the Town of Windermere provides: “Any rezoning of land for any use other than single-family residential must be approved by an affirmative vote of seventy percent (70%) of the members of the Town Council.”

Whereas, an application has been filed to rezone certain parcels of property from residential to commercial and the Town Council will be reviewing and taking action on a rezoning ordinance.

Whereas, a member of the Town Council has a voting conflict and legally must abstain from voting and a question has been raised regarding how to interpret the affirmative vote requirement of 70% of the “members of the Town Council” in the Town’s Charter.

Whereas, Section 112.3143 of the Florida Statutes was amended in 1984 to provide in part that “No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained. . . .”

Whereas, in Florida Attorney General Opinion 85-40, May 22, 1985, the Attorney General opined on the new statutory voting abstention requirement and stated: “The abstention requirement of the amended statute causes a legal infirmity as to the public officer’s authority on the matter in question and therefore has the effect, in my opinion, of eliminating that individual from being considered as part of the quorum for purposes of that matter.”

Whereas, when applying the analysis in AGO 85-40 to Section 12.04 of the Charter, the affirmative vote of 70% of the members of the Town Council applies to only the Council Members that are entitled to vote, for instance, if one Council Member has a voting conflict and cannot legally vote, an affirmative vote of 3 Council Members is necessary to approve a rezoning of land for any use other than single-family residential.

Now Therefore, Be It Resolved by the Town Council of the Town of Windermere, Florida:

Unless and until judicially determined otherwise, the Town Council hereby adopts the opinion set forth in AGO 85-40 and declares that the voting abstention requirements of section 112.3143 of the Florida Statutes causes the “members” of the Town Council to be composed of only those members of the Town Council entitled to vote. This resolution applies to the voting requirements in Section 12.04 of the Town’s Charter as well as to votes taken from time-to-time

by the Town Council to enact an ordinance or adopt a resolution for which a Council Member may have a voting conflict and legally must abstain from voting.

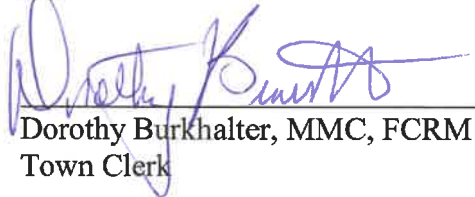
Resolved this 13th day of August, 2019

TOWN OF WINDERMERE, FLORIDA

By: Town Council

By: 
Jim O'Brien, Mayor

Attest:


Dorothy Burkhalter, MMC, FCRM
Town Clerk

