ORDINANCE NO. 2011-___

AN ORDINANCE PERTAINING TO THE CHARTER FOR ORANGE COUNTY FLORIDA; AMENDING SECTION 704 OF THE ORANGE COUNTY CHARTER TO PROVIDE THAT COUNTY ORDINANCES SHALL BE EFFECTIVE WITHIN MUNICIPALITIES AND PREVAIL OVER MUNICIPAL ORDINANCES WHEN THE COUNTY SETS STRICTER MINIMUM STANDARDS FOR PROHIBITING OR REGULATING SIMULATED GAMBLING OR GAMBLING; PROVIDING FOR A REFERENDUM ON THE CHARTER AMENDMENT; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; AND PROVIDING EFFECTIVE DATES.

BE IT ORDAINED by the Board of County Commissioners of Orange County:

Section 1. Amendment to Section 704 of Orange County Charter. Section 704 of the Orange County Charter is amended to read as follows, with added wording being shown by the underlines and deleted wording being shown by the strike-throughs:

Sec. 704. Conflict of county ordinances with municipal ordinances; preemption.

A. Except as provided in this section, no county ordinance shall be effective within a municipality if the municipality maintains an ordinance covering the same subject matter, activity or conduct as the county ordinance.

B. County ordinances shall be effective within municipalities and shall prevail over municipal ordinances when:

1. The county sets minimum standards for (a) regulating adult entertainment, and (b) protecting the environment by prohibiting or regulating air or water pollution, and (c) prohibiting or regulating simulated gambling or gambling, but only to the extent that such minimum standards are stricter than the applicable municipal standards.

2. The county ordinances provide that the county's and any municipality's rezonings or comprehensive-plan
amendments (or both) that increase residential density are effective only upon approval by the governing boards of all significantly affected local governments when:

(a) The attendance zone for any public school to be affected by the increase in residential density lies only partly inside a municipality; and

(b) The school district cannot certify to the governing boards of all significantly affected local governments that the school, the attendance zone for which straddles a municipal boundary, can accommodate the additional students that will result from the increase in residential density.

The ordinance shall provide that the above-described rezonings and comprehensive-plan amendments take effect only upon approval of each significantly affected local government, whether the county or any municipality therein. The ordinance may include exceptions for de minimis impacts to the affected school(s) and such terms, requirements, limitations, exceptions, and other provisions that may be necessary or useful to protect property rights, comply with applicable law, and carry out the intent and purposes of this subsection.

Should a court of competent jurisdiction hold, after all appeals, that the ordinance does not afford the municipalities the same opportunity as the county to approve or deny the aforementioned comprehensive-plan amendments and rezonings when they are significantly affected local governments, the ordinance shall terminate and be of no further force and effect. This paragraph 2 shall be offered to the electors for re-approval at referendum at the General Election in 2012. If not re-approved by the electors, this paragraph 2 and the corresponding reference in subsection C shall stand repealed as of January 1, 2013.

C. The intent of this section is that no person within a municipality shall be governed simultaneously by two sets of ordinances covering the same subject matter, activity or conduct, except in matters of minimum adult-entertainment standards, or pollution regulatory standards, or simulated gambling or gambling prohibitions or standards, or rezoning or comprehensive-plan amendments that affect public schools with attendance zones that straddle any municipal boundary. In absence of an ordinance within a municipality on a subject, the county ordinance on that subject shall govern.

Section 2. Referendum. The Orange County Supervisor of Elections is authorized and directed to place on the ballot for the election to be held on November 6, 2012, the following
COUNTY CHARTER AMENDMENT
REGARDING EFFECT WITHIN
MUNICIPALITIES OF COUNTY
ORDINANCES CONCERNING SIMULATED
GAMBLING OR GAMBLING

Shall the Orange County Charter be amended to provide that Orange County ordinances shall be effective within municipalities and prevail over municipal ordinances when Orange County sets stricter minimum standards for prohibiting or regulating simulated gambling or gambling?

Yes  _____

No  _____

Section 3. Codification. Section 1 shall be codified in the Orange County Code, but only if approved at a referendum as provided by Section 2. No other section shall be codified, but shall remain in full force and effect nonetheless.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. Effective dates. Section 1 of this ordinance shall take effect only if the ballot question is approved by vote of a majority of the qualified electors of Orange County, Florida, voting on the question. Sections 2, 3, 4, and 5 of this ordinance shall become effective as provided by general law.
ADOPTED THIS ___ DAY OF ________________, 2011.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: ____________________________
Teresa Jacobs, County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: ____________________________
Deputy Clerk