

City of Coral Gables City Commission Meeting
Agenda Item F-3
May 24, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item F-3 [0:00:00 a.m.]

Discussion item related to section 163.3167 of the Florida Statutes and the City Attorney opinion, referendum on development barred by state law.

Mayor Cason: The Attorney has to catch a plane at 3 o'clock. He's going to do quickly his two items.

City Attorney Leen: They're very quick.

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Agenda Item F-3 – Discussion item related to Section 163.3167 of the Florida Statutes and the City Attorney opinion, referendum on development barred by state law.

Mayor Cason: Which I think we'll be starting with F-3 and then I-2. Is that correct?

City Attorney Leen: Yes. Thank you, Mr. Mayor. I appreciate that. The -- Item F-3, which was sponsored by Commissioner Keon, is a discussion item related to Section 163.3167 of the Florida Statutes and the City Attorney opinion regarding referendums on development being barred by state law. I have a copy here of an opinion I issued last night, this morning. If you could send -- this issue actually came up -- the Mayor asked about this at the last meeting as well. And at the time, I gave an opinion that -- regarding Section 163.3167 of the Florida Statutes. Now, in this meeting, I'm basically formalizing that opinion into a written opinion that has been placed on the web. So, what is the opinion? The question that I was asked was whether it is legal to have a referendum or initiative process that -- where the approval by the voters is a condition of a development. So, in other words, if there's going to be a development that's built in Coral Gables and there's a development order and it's subject to, for example, a quasi-judicial hearing, like so many of them are, and let's say that the Commission approves the development, is it legal to then require that that development be submitted to the voters as part of a referendum, up or down, at a future -- on either a special ballot or at like the November election or something like that. In addition, I was asked -- and part of this involves whether you can make a comprehensive plan text or map amendment contingent on a referendum or initiative vote. I just want to be clear on this, as clear as possible because I do -- I was also informed that there may be -- there's been questions, I guess, in the public about whether requiring a referendum of this nature could be placed on the ballot. I just want to be very clear the Florida Legislature has completely decided this question. There is a statute from 2014 which is as unequivocal as a statute can be. What the statute says is that, first, that Florida law expressly prohibits an initiative or referendum in these circumstances. Section 163.3167(8)(a) says an initiative or referendum process in regard to any development order is prohibited. Period. There's no exception. In addition, the statute says that an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or

referendum process is not sufficient. City of Coral Gables does not have a specific referendum or initiative process related to development or comprehensive plans. It was not in effect as of June 1, 2011. It's not in effect now, so the City cannot adopt such a referendum or initiative process. Finally, there's even a provision in the statute that to the extent it wasn't clear, which it is clear because the statute's as clear as possible, but it emphasizes again that it's the Legislature's intent to prohibit these types of initiatives and referendums, that the prohibitions are remedial in nature, and that any initiative or referendum process commenced after June 1, 2011 -- and that includes in the past since June 1, 2011 and in the future -- are null and void and have no legal force and effect. It's very rare I see a statute that is so clear on an issue. So, I just -- I don't want people to have expectations in the public or this issue to be debated. The statute completely resolves the issue. There cannot be such a referendum or initiative process in Coral Gables. It would be illegal. And if there's any attempt to place that on the ballot, I would have to say my opinion -- because I've been asked what would be my opinion -- would be that it could not be placed on the ballot.

Commissioner Keon: Thank you.

Mayor Cason: Very clear.

City Attorney Leen: And this -- so this will be on my website. And I want to again be clear. This is what the statute says. This is not even really an interpretation; it's what the statute says. It's express.