

City of Coral Gables City Commission Meeting
Agenda Item E-3
December 16, 2008
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael "Ralph" Cabrera, Jr.

Commissioner Wayne "Chip" Withers

City Staff

Interim City Manager, Maria Alberro Jimenez

City Attorney, Elizabeth Hernandez

City Clerk, Walter J. Foeman

City Clerk Staff, Billy Urquia

Public Speaker(s)

Vincent Damian, President of Political Action Committee (PAC)

Charles Girtman, Coral Gables Resident

E-3 [Start: 10:55:33]

An Ordinance of the City Commission of Coral Gables, Florida, calling for the holding of a Special Municipal Referendum Election of Coral Gables, Florida, on April 14, 2009, in accordance with Section 6.03 of the Code of Miami-Dade County, for the submission to the qualified electors of said City, not less than sixty (60) nor more than one hundred twenty (120) days after the draft is submitted, an Ordinance in connection with the proposed amendment to the Charter of the City of Coral Gables, wherein the voters of the City of Coral Gables shall be called upon to vote on the following question, to be known as Charter Amendment Ballot Question No. ___: Shall the Charter of the City of Coral Gables be amended to provide for two (2) term limits for a total of eight (8) years for the Mayor, and Ballot Question No. ___: Shall the Charter of the City of Coral Gables be amended to provide for three (3) term limits for a total of twelve (12) years for City Commissioners, and providing for an effective date of April 20, 2009, with terms of office beginning prior to the effective date of the amendment not to be counted, including but not limited to amending certain sections, stating the form of the question to be voted upon; providing the form of the ballot for said election; designating and appointing the City Clerk as the official representative of the City Commission with respect to the use of the voter registration books and records; further directing the City Clerk to cause a certified copy of the herein Ordinance to be delivered to the Supervisor of Elections of Miami-Dade County, Florida, not less than sixty (60) days prior to the date of such Special Municipal Referendum

Election; further directing the City Clerk of the City of Coral Gables to publish notice of such election pursuant to Section 100.342, Florida Statutes (2008), which notice shall include the full text of the proposed amendment to the Charter of the City of Coral Gables, Florida, providing at least thirty (30) days' notice of the election of referendum in a newspaper of general circulation in the City of Coral Gables, at least two times, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held; providing for the severability of the provisions of this Ordinance; repealing all Ordinances or parts of Ordinances in conflict herewith; providing an effective date for this Ordinance.

Mayor Slesnick: Madam City Attorney.

City Attorney Hernandez: Yes, Mr. Mayor Commissioners; this comes back to you at the direction of the City Commission to place on the ballot the question of term limits for the citizens to vote on. Last week when I forwarded to you the proposed final draft, I raised the issue that if you have an affirmative vote on the Mayor's term, going to a two-year term, if both that ballot question and this ballot question were to pass, there would be certain inconsistencies based on the language that we drafted, which was based on your prior direction. You will note that in the ordinance we indicate that the question would be to provide for two term limits for a total of eight years for the Mayor. So what we need to do if we are going to move forward on the first question, which was reverting the Mayor's term to a two-year Mayor's term, then we need to remove the section two term limits and just merely rely on eight years for the Mayor, and the same thing removing three-term limits and just rely on the verbiage twelve years for City Commissioners. In addition to that, Mr. Vincent Damian proposed some modifications that he felt were appropriate; I have reviewed the minutes; I have reviewed the direction of the City Commission; I forwarded to you his concerns together with the drafts; and I received no other correspondence for any other individual regarding the proposed language, so I just need direction from this Commission, and Mr. Damian, I believe is here also; he is here to address his concerns as well.

Commissioner Withers: How are prior years of service counted?

City Attorney Hernandez: The Commission indicated that they did not wish for prior years to be counted, that it would be a fresh slate and directed us to follow the direction of how the State Legislature amended the vote, and created term limits, and that's exactly the direction that we followed.

Vice Mayor Kerdyk: The way that the State did it, is that what you are saying?

City Attorney Hernandez: Yes, there is no...prior terms...any terms presently continuing would not be affected; there would be a blank slate for everybody.

Mayor Slesnick: Questions or comments before we go to the public speakers? Mr. Vincent Damian, 1115 North Greenway Drive.

Mr. Damian: Members of the Commission, Mayor...

Commissioner Cabrera: Mr. Damian you need to put the mike closer to you.

Mr. Damian: I'm pleased to be here to discuss this issue with you. I was not here for the April meeting, the 28th, the end of April when it was adopted. I did read the minutes of that meeting, and I'd like to say I noted with interest the comment of the dichotomy between what I want for the Commission and how the PAC has been run; and that Vince Damian has been President of the PAC for eight years; and I would like to comment and say, I resign every year as President of the PAC, and I look forward to somebody please, please, please step up. So, I think I'm going to propose term limits for the PAC when we have our annual meeting. I'm very much in favor of it. The arguments as to why I was in favor of term limits; we all have been through that over and over again. I believe that its good to have turnover; I thought eight years was good to get the experience and to provide your insight and to be able to get your programs going; the compromise was, and I think the compromise was based upon the fact that some of you, Mr. Cabrera and Ms. Anderson, will have already served eight years, and this will be like a slap in the face really, and that was not intended; and so even though I was not here, I spoke to people whose representatives were here; we got together and we all agreed, that's a very fair compromise and it accomplishes the idea of turnover, not having somebody serving for forty years, that twelve years is certainly quite acceptable. I think we don't need to go through all those issues again as to why we need the turnover, and Don we have your comments, Mr. Mayor I should say, your comments on having to run every two years are very well taken. I think all of us can understand that, and the hardship of having to run. One of the things about the term limits is, it forces you at some point in time to stop having to have be a family man, be a businessman, be a politician and be a candidate, and it is a terrible thing. So, I don't think of that as having the term limits is going to be a hardship to anybody, probably going to be a welcome thing, with that and then come back again. My issue with the City Attorney is, I think there was a mistake made. I think it was very, very clear what we were talking about this, with Commissioner Cabrera, Commissioner Anderson, that we were not trying to throw you out of office by the back door, that was not it; and so we all understood that the twelve years wouldn't affect your term, that was taken care of, but the way the ordinance is written now, she said everybody starts from scratch; so if you've already served eight years, you'll get twelve more, that puts you in for twenty. I don't think that was the intent of this Commission in April, I think the idea was to have term limits, people who have served the eight years are getting another four; the people who have served a lot more than that are going to run for re-election. I'm not sure of what happened at the State; I didn't see that. I requested it of Ms. Hernandez, a draft of what she would propose to the Commission in May; I asked for it again in June; I asked for it again in July, and was not able to get it. I saw it for the first time last week and made my comments, that there needs to be changes. I know what the changes are, obviously they can change between now the first reading and the second reading; its taking out the effective date, the amendment to be counted, and take out the not, so prior terms will be counted and we can clear that up between the first reading and the second reading. So my comments only are is that it was very, very clear to me what we were seeking, it was very, very clear to me in reading the minutes what the Commission intended, and I think that something happened between then and there, its called a Scriveners error, and we just have not had enough time to get the thing corrected; I think, had I seen it earlier and was able to work with the City Attorney, we could have sent it, a very specific description to the

Commission so that they could have made the choice. I remember very clearly from what I read, and I think the Commission does as well. I'm in favor of this, I think the language about prior years, not counted, should be stricken, and it should be effective April of 2009, but the years that you did serve prior will count towards the twelve years, and obviously the Mayor's office will have to be counted in terms of years because we don't know what the term will be. Thank you. If you have any questions as to our position or my position, I'd be please to answer them.

Mayor Slesnick: Mr. Namon.

Mr. Namon: [Inaudible – off mike]

Mayor Slesnick: OK, sorry. Alright. Any further comments or questions?

Commissioner Withers: I think Charlie wanted to say something.

City Attorney Hernandez: I think Mr. Girtman also...

Mayor Slesnick: I'm sorry, you did tell me to change your E-2 to E-3, so I gave it back. Mr. Charles Girtman.

Mr. Girtman: I have some...Charles Girtman, 744 Tibidabo. I have some of the same concerns with the language that Mr. Damian did; I'm not certain what is the right way to do it, I trust you all to be reasonable and look at it, and you kind of know what the ideas are, so do it the right way. I'd like to bring two quick things up here; one, absentee ballots – I think as a matter of fact, absentee ballots until Mr. Foeman became the City Clerk, has not been counted. I think...I see you smiling, am I right?

Commissioner Cabrera: I had my opinion about that, but I...

Mr. Girtman: They were not counted, the reason being that the City Clerk said, there are not enough absentee ballots to make a difference, so I'm not going to count them. Is that right or wrong?

Commissioner Cabrera: Well, I just know one instance when there was an election and some absentee ballots were not counted, that's why I smiled.

Mr. Girtman: I'll go with that statement.

Commissioner Withers: Wait, wait, wait, absentee ballots are counted every election.

Mr. Girtman: I'll go with Commissioner Cabrera's statement.

Commissioner Cabrera: There was one election years and years ago when Pat Keon was running for City Commissioner, and a number of absentee ballots were not...

Commissioner Withers: The time I've sat on the Canvassing Board for the absentee ballots, we go through and say, signatures doesn't match, there is no signature on the envelope and on the ballot, but never, since I've been on this Commission have we not counted absentee ballots.

Mr. Girtman: Well I hope that's the case, but I remember reading about it in the papers.

Commissioner Cabrera: There was a complaint filed back in, whenever....

Mr. Girtman: Prior to his term.

Commissioner Withers: Well I know in the off years when I wasn't running, I was on the Canvassing Board, and we counted every single ballot; we probably through out 10 or 15 or 20 on a normal session. Now, when you guys canvassed when we ran together, but were you ever on the Canvassing Board?

Commissioner Cabrera: Yes when we were both together we through out about 10 or 12.

Commissioner Anderson:...we went through ballots as well; the question was the signature issues...

Commissioner Cabrera: But Mr. Girtman might be referring to back in '95/'94, Ms. Keon ran against former Mayor Thomson when she was a Commissioner, and there was a complaint filed afterwards because of some absentee ballots had not been counted, but that was not a Canvassing Board issue, it was a City Clerk issue.

Commissioner Withers: In fact these are the absentee ballots that are first posted.

Mr. Girtman: I'll go with what Commissioner Cabrera said...

Commissioner Cabrera: I just remember because I was past Campaign Manager, that's why I remember.

Commissioner Anderson: Well they count now, that's the main thing, how about that.

Mr. Girtman: I just wanted to bring that up. The second point I wanted to bring up on term limits and on changing three of you. When one, two, three of you ran the first time, had there not been the requirement for a Mayor to run, we would be walking out the back door into a giant monstrosity annex; true?

Mayor Slesnick: Hard to say.

Mr. Girtman: Thank you all very much.

Ms. Bolton: What was the Mayor's answer, I couldn't hear it.

Mayor Slesnick: It was hard to say.

Mr. Damian: I had one other comment. Your vote for this ordinance with three terms and a twelve year limit, is not a vote in favor of the ordinance...[inaudible – off mike]...it's a vote for the voters, let them decide whether or not they want it, and if any Commissioner votes for it, they can go out campaign against it with all the vigor that they have.

Mayor Slesnick: That closes the public hearing. Anymore discussion or comments from the Commission? If not, Mr. Clerk.

City Attorney Hernandez: Wait, I need direction from the City Commission with regard to the issue of term...leaving in the words term of two terms and three terms.

Mayor Slesnick: I thought you said that you had changed that to years.

Commissioner Cabrera: To years.

City Attorney Hernandez: OK – years. Alright. Thank you.

Mr. Clerk: Mr. Mayor, I need a mover and a seconder.

Vice Mayor Kerdyk: I'll make a motion.

Mayor Slesnick: It's been moved by Mr. Kerdyk.

Commissioner Cabrera: Second.

Mayor Slesnick: Seconded by Mr. Cabrera.

Mr. Clerk

Vice Mayor Kerdyk: Yes

Mayor Slesnick: Well wait, wait; it does raise an issue though of, if in fact, well forget it. Go ahead.

Mr. Damian:...[Inaudible – off mike]...you still have to determine whether or not you want the prior years counted or not counted.

Mayor Slesnick: Well that will be determined by this vote, and then as you said there can be further discussion between now and the second reading.

Mr. Damian:...[Inaudible – off mike].

Mayor Slesnick: Well the vote is on the ordinance as printed, which includes the effective date.

City Attorney Hernandez: I introduced the item and I gave the Commission my summary, which was my understanding that they did not want prior terms to count. You indicated that you wanted prior terms to count; there has been no further discussion on it. As it stands right now as you and I discussed, prior terms will not count as it's written, and if they adopt it on first reading that's how it will move forward.

Mr. Damian: [Inaudible – off mike]...amended to the proposed ordinance.

City Attorney Hernandez: Right, absolutely.

Mr. Damian: [Inaudible – off mike]...that will lead to minor wording change...

City Attorney Hernandez: Correct.

Mr. Damian:...[Inaudible – off mike]...so right now you are faced with, is the off prior years that count or not and we vote for this ordinance as presented, prior years will not count, so everybody is stuck again, unless its amended so that the prior years will count.

Mayor Slesnick: Any misunderstanding to that?

Commissioner Anderson: I don't have any problem with that.

Commissioner Cabrera: Neither do I.

Mayor Slesnick: Anybody that wishes to amend?

Commissioner Anderson: I don't have any problem with that to have total number of years; I don't like term limits, but if we are going to do this, I think its fair in the spirit of the law; the intent was to go that way.

City Attorney Hernandez: Which way?

Commissioner Anderson: For my purposes is to count the total number of years; like if I served eight (8), I could only serve twelve (12).

Commissioner Cabrera: And then count the eight (8) that Ms. Anderson served.

City Attorney Hernandez: Count it already so you would only be able to serve four more years, is that what you are...

Commissioner Cabrera: Right.

City Attorney Hernandez: Well, then someone needs to direct me to amend the ordinance.

Commissioner Anderson: If that's at the will of the majority, that's just one person.

Commissioner Cabrera: Well, I share the same position. I think it would only be fair.

Mayor Slesnick: Are you moving to amend....

City Attorney Hernandez: That's for procedural purposes...

Mayor Slesnick: Wait, come on we've already; are you moving to amend it?

Commissioner Anderson: Go ahead.

Commissioner Cabrera: I'll move to amend it, that they count...

Mayor Slesnick: It's been moved by Mr. Cabrera seconded by Ms. Anderson to amend the ordinance, the amendment would be to strike the effective date and we'll leave it to the City Attorney to craft the right language to count prior years of service before this amendment passes.

City Attorney Hernandez: We'll remove the language which states, "providing for an effective date of April 20, 2009, with terms of office beginning prior to the effective date of the amendment not to be counted", that would all be removed and therefore prior terms would be counted.

Mayor Slesnick: OK, that's the amendment. We are going to vote on the amendment. Mr. Clerk on the amendment.

Mr. Clerk

Vice Mayor Kerdyk: No

Commissioner Withers: No

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Mayor Slesnick: No

(Vote: 2 - 3)

Mayor Slesnick: Now, since it has been brought up, and as everyone knows I'm opposed to this entire term limit thing anyways, and I am going to vote yes to put it on the ballot as I did before; it seems to me that there is a compromise here of some kind if we can do it; I don't know that anybody on this Commission should be asked to vote for a term limit ballot which takes away their immediate right to run the next term. So by not going for a full count, in other words, by forgetting everybody's past service maybe one extreme, but I would think that everyone on this Commission deserves at least one other shot to run one more time, which then clears the way for them not to take a position on term limits because of their own interests, it really kind of clarifies for them what their future is as far as, and then they can take an honest assessment of what term limits are, and none of their positioning in the campaign will be based on whether they can run again or not. So would there be a way Madam City Attorney, that anyone on the Commission has at least one last shot of running for one more term?

City Attorney Hernandez: We can add language that says, with each Commissioner presently serving to be allowed to run for and serve one additional full term. That's how we would just draft it.

Mr. Damian: [Inaudible – off mike]...

City Attorney Hernandez: I already said we would have to remove that.

Mayor Slesnick: No, my suggestion was to not give, in other words there was a criticism that under the current language, a person could now run starting from scratch, so if they've been on the Commission for sixteen (16) years or twelve (12) years, they could have another twelve (12) years, that seemed to be the thrust of the criticism. That failed, by the way, to get rid of that. So my compromise was, in order to allow this to go on the ballot, but to have everyone take an honest position about what their positions about term limits are, without hanging in the balance their ability to seek one more term, to allow everyone to seek at least one more term.

Commissioner Anderson: The whole group?

Mayor Slesnick: Yeah, the whole group.

City Attorney Hernandez: That's what I'm saying; we'll just write that...

Mayor Slesnick: That way when they take a position its an honest position; do they believe in term limits or not; not do I get to run one more time or not. So everyone can express themselves honestly without knowing that they can never run again; I mean, I think that's...that's my attempt to be a compromiser. I am opposed to term limits anyway, but that's my attempt to compromise; is anybody interested in that?

Commissioner Withers: Well, I plan on voting against term limits anyway, so it makes no difference to me.

Commissioner Anderson: And the reason I...I'm just putting it on the ballot; I don't approve of term limits, but if people want to vote on it, and the majority wants it, then let's go with it. I'll definitely be campaigning against it, but you can all put it on the ballot, that's fine.

Mayor Slesnick: We have had one amendment that failed, is there any interest in putting another amendment on?

Vice Mayor Kerdyk: Can we do something between first and second reading to bring it back at second reading?

City Attorney Hernandez: Well you have to direct our office as to what you want the ballot language to be, and so if all you are asking for is one more term for each Commissioner...

Mayor Slesnick: Wait, we are not asking for one more term, the voters will decide that.

City Attorney Hernandez: I understand that, but you want the language...

Mayor Slesnick: And you've already got one person who said he is not seeking another term; so I'm just saying...

City Attorney Hernandez: So there is no motion pending...

Mayor Slesnick: It's a matter of just seeking...Liz...

City Attorney Hernandez: Yes sir.

Mayor Slesnick: I think we've had it.

City Attorney Hernandez: OK.

Commissioner Anderson: It's the ability for Bill to run if he wants, he's already served more than twelve years, one more time...or Chip or whatever. I'll make that motion.

Vice Mayor Kerdyk: I don't care.

Mayor Slesnick: Do we have a second.

Vice Mayor Kerdyk: I'll second it.

Mayor Slesnick: OK. We have a motion for a proposed amendment to this that would take away...the purpose of this is, and we'll allow the City Attorney to bring back the exact words, but the purpose would be to amend it as it currently stands, which discounts all past service, and grants the right of each sitting Commissioner to run for one more time, and then the terms would be exhausted if they have exceeded the amount of time on the term limits.

Mr. Damian: To make that clear, that would be one more time on the day of April 20th...

Mayor Slesnick: Yes.

Mr. Damian: 2009.

City Attorney Hernandez: No, no, no, that's not what I understood.

Mayor Slesnick: What do you mean?

City Attorney Hernandez: If there is a presently serving Commissioner who has already served twelve years, if...

Mayor Slesnick: They could run one more time.

City Attorney Hernandez: But not...and that would be in 2011, so.

Mayor Slesnick: That's right.

City Attorney Hernandez: You see, he disagrees. So I...

Mr. Damian:...[Inaudible – off mike]...what you want to do is make the Commissioners who are not running in 2009 have a vote, so they are not influenced one way or the other, about term limits because they can run again.

Mayor Slesnick: That's right.

Mr. Damian: These two Commissioners who are running in 2009 are also exempt from the eight years that they previously served, they are running one time, that's it; they will then have twelve, they've been term limited, and the other two Commissioners would be term limited only after they run the last time.

Mayor Slesnick: Yes...that's right.

City Attorney Hernandez: Again...correct.

Mr. Damian: That I think is what....[Inaudible – off mike]...that's the spirit of it.

Mayor Slesnick: That was the spirit of it, yes.

Commissioner Anderson: The spirit of it, right.

Commissioner Cabrera: So in essence we would get 2009 to 2013.

Mr. Damian: Well you will get four years; you go from two thousand...if you were to be re-elected, you and Commissioner Anderson, would be re-elected, you would serve from 2009 to 2013...

Commissioner Anderson: Right.

Commissioner Cabrera: Right, right.

Mr. Damian: Commissioners Kerdyk and Withers would get to run one more time.

Commissioner Cabrera: So they would at 2011 get to run until 2015?

City Attorney Hernandez: Correct.

Mayor Slesnick: If they so desired.

Mr. Damian: [Inaudible – off mike].

City Attorney Hernandez: Correct.

Commissioner Cabrera: That's what I thought.

Mr. Damian: Not what I wanted, but I think the Mayor stated that it makes everybody vote without their self interest in mind, and I think that's....and again, Commissioner Withers, I understand you are going to be very, very vocal in your opposition to it, and that's good.

Commissioner Withers: No, I'm not going to be vocal.

Mr. Damian: When I say vocal, I mean you are going to vote...

Commissioner Withers: But I have no intention at all of running again, so it's not for me wanting to...I'm just saying, I just genuinely gone back and forth on this and I just...

Mayor Slesnick: OK. Mr. Clerk.

Mr. Girtman: One question, Mr. Mayor.

Mayor Slesnick: Sure Mr. Girtman.

Mr. Girtman: This is directed at Commissioner Withers because I just heard you say that you plan to vote against it, is that correct?

Commissioner Withers: That's correct.

Mr. Girtman: I would like to give you your statement of April 28th

Commissioner Withers: You already did, Charlie.

Mr. Girtman: And you are just going to go against that?

Commissioner Withers: Yeah.

Mr. Girtman: Thank you.

Mayor Slesnick: Mr. Clerk.

Mr. Clerk

Commissioner Withers: No

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Mayor Slesnick: Yes

(Vote 4-1)

Mayor Slesnick: That was on the amendment. Now on the ordinance as amended.

Mr. Clerk

Commissioner Anderson...

Mayor Slesnick: Wait a minute, do we have a motion?

Mr. Clerk: Yes, we previously had a motion.

Mayor Slesnick: OK thank you. Sorry, go ahead.

Mr. Clerk

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Mayor Slesnick: Yes

(Vote: 5-0)

[End: 11:22:30 a.m.]