



To: Commissioners

From: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Initiative and Referendum Process Relating to Development Orders and the Comprehensive Plan

Date: May 24, 2016

My office has been asked to provide an opinion as to whether it would be unlawful to condition approval of a development order (or a comprehensive plan text or map amendment) on approval by a citizen initiative or referendum. Pursuant to sections 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code, my opinion is that such a citizen initiative or referendum requirement would be expressly prohibited by statute. My analysis is as follows:

1. Florida law expressly prohibits an initiative or referendum in these circumstances. Indeed, section 163.3167(8)(a) of the Florida Statutes, which was recently adopted in 2014, states that “[a]n initiative or referendum process in regard to any development order is prohibited.” This prohibition is unequivocal and clearly indicates that such an initiative or referendum process is prohibited.

2. The statute applies a similar restriction in relation to a comprehensive plan text or map change, stating in section 163.3167(8)(b) of the Florida Statutes that “[a]n 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.” The City of Coral Gables does not have a specific Charter provision that authorizes an initiative or referendum process in relation to a comprehensive plan text or map amendment. Instead, the City has a Charter provision that generally provides for an initiative and referendum process, which has been declared “not sufficient” in section 163.3167(8)(b). “general local government charter provision for an initiative [and] referendum process,” which is found in section 10 of the Coral Gables Charter. Accordingly, an initiative or referendum process cannot be required for a comprehensive plan text or map amendment.

3. The statute also indicates that it is 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 is "null and void and of no legal force and effect." Fla. Stat. § 163.3167(8)(c). Accordingly, it is my opinion that these prohibitions would be construed broadly to accomplish the Legislature's intent.

Ultimately, based on the clear statutory text, it is my opinion that it would be unlawful to condition a development order or comprehensive plan text or map amendment on approval by a citizen initiative or referendum. In addition, any attempt by initiative to require an initiative/referendum in the circumstances described would be legally insufficient in light of the statute, and could not proceed as a matter of law.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: City Attorney Opinion - Initiative and Referendum Process relating to Development Orders and the Comprehensive Plan
Date: Tuesday, May 24, 2016 1:08:56 AM
Attachments: [image002.png](#)
[image001.png](#)

Please publish.

Craig E. Leen, City Attorney

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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Tuesday, May 24, 2016 1:08 AM
To: Commissioners
Cc: Swanson-Rivenbark, Cathy; Fernandez, Frank; Iglesias, Peter; Ramos, Miriam; Wu, Charles; Trias, Ramon; Chen, Brigitte
Subject: City Attorney Opinion - Initiative and Referendum Process relating to Development Orders and the Comprehensive Plan

City Attorney Opinion

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Please do not reply to all, and please call with any questions.

Craig E. Leen, City Attorney

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