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NO. LTC # 333-2008 CITY CLERK'S OFFICE LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: December 24, 2008

SUBJECT: **City Commission Board and Appointment Process.**

In preparation for the Special Commission Meeting called for January 14, 2009, the City Clerk's office will be providing a listing of all Boards and Committees which require City Commission Appointments.

In addition, a copy of a portion of the After-action for the January 23, 2008 Special Commission Meeting is attached which, at the Commission Retreat held on January 11 and 12, the City Commission, requested nomination be send to the City Clerk who would compile and send the list to the Commission via email.

If this will be helpful to the City Commission, the City Clerk's office will again provide this service.

As always, feel free to contact me with any questions.

JMG/RP/lb

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Folio Version 261**

**January 23, 2008 Special Commission Meeting / R9 - New Business and
Commission Requests**

R9 - New Business and Commission Requests

R9A Board And Committee Appointments.
(City Clerk's Office)

ACTION:

At the City Commission Retreat held on January 11 and 12, 2008, the City Clerk asked the Commission if there was anything that could be done to make the City Commission board and committee appointment process easier. The Commission indicated that if nominations were sent to the City Clerk, the Clerk would compile a list and send the list to the Commission via email. Ten (10) nomination emails were sent. A copy of the final list of nominees is filed in the Commission Folder.

Discussion held before appointment process began.

Vice-Mayor Libbin requested a legal opinion from the City Attorney regarding lobbying prohibitions when accepting Board/Committee appointments.

Jose Smith, City Attorney, explained that each individual has different facts and each case needs to be looked at individually, the general provisions are listed in Section 2-459 of the City Code. He explained this Section of the City Code and gave several examples.

Jean Olin, Deputy City Attorney, further explained the lobbying definitions and prohibitions applicable to the Section of the Code and explained the rationale for the ordinance.

Discussion continued.

Commissioner Tobin requested language from Ms. Olin specific to the lobbying prohibition definitions that impact board/committee members and/or their representatives in certain instances. **Legal Department to handle.**

Commissioner Gross stated that his desire is to replace the entire Planning Board because he felt the Planning Board did not follow the Commission's instruction specifically regarding the Miami Heart issue. He added that he was given a legal opinion that the City Commission can only remove board members by passing a Resolution and allowing the board members an opportunity to explain their position.

Prepared by the City Clerk's Office
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Jean Olin, Deputy City Attorney, explained that there is a State Statute on point regarding removal of board members for cause and the grounds for removal for cause are, and this applies to the Planning Board,: 1) malfeasance, 2) misfeasance, 3) neglect of duty, 4) habitual drunkenness, and 5) commission of a felony. The requirements are that the governing body must pass a resolution specifying the facts for removal, the resolution needs to be transmitted to the board member, and the board member(s) must be given a reasonable opportunity, at a public hearing, to present their case.

Commissioner Gross stated that his preference would be to appoint a new Planning Board, if only to send a message to the residents that the Commission heard the message which was sent via the election and to other board members, that the Commission expects the boards to follow the instructions of the Commission. He added that at the Commission Retreat it was discussed that perhaps the Commission needs to make a formal statement of what the Commission expects of the board. He suggested referring this issue to the Neighborhoods/Community Affairs Committee to work out a set of guidelines.

Jorge Gonzalez, City Manager, stated that boards/committees appointed by the City Commission as a body, could give some philosophical or general guiding principles of the priorities of the Commission to the board/committee. This should be worked through a committee.

Discussion continued.

Commissioner Wolfson asked the Legal Department if the resolution passed by the City Commission with the referral to the Planning Board regarding the Hospital District can be interpreted as a lawful request and the Planning Board failed to follow the request.

Jean Olin, Deputy City Attorney, answered "yes", it can, and explained why a board/committee must vote on an item. She also explained that it appears that misfeasance or neglect to perform their duty could be grounds for removal.

Discussion continued.

Jorge Gonzalez, City Manager, suggested that with regards to Commissioner Gross' referral, there is currently a referral to the Land Use and Development Committee, Commissioner Wolfson's referral, and this discussion could be added to that discussion. This was approved by acclamation. **Jorge Gomez to handle.**