



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: February 25, 2009

SUBJECT: **Referral to the Land Use and Development Committee – Recusals and absences for Land Use Board members**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE TO HARMONIZE THE PERMITTED NUMBER OF ABSENCES AND RECUSALS FOR LAND USE BOARD MEMBERS, BY AMENDING CHAPTER 118, ADMINISTRATIVE AND REVIEW PROCEDURES, ARTICLE II, BOARDS, DIVISION 2, PLANNING BOARD, SECTION 118-52, MEETINGS AND PROCEDURES; DIVISION 3, DESIGN REVIEW BOARD, SECTION 118-74, REMOVAL; DIVISION 4, HISTORIC PRESERVATION BOARD, SECTION 118-105, REMOVAL; DIVISION 5, BOARD OF ADJUSTMENT, SECTION 118-133, REMOVAL, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

### ADMINISTRATION RECOMMENDATION

Refer to the Land Use and Development Committee.

### BACKGROUND

At the October 28, 2008 meeting, the Planning Board requested that staff look into the issue of the number of recusals that would constitute an automatic removal of a board member; and also review how an absence from a meeting is defined. At the December 16, 2008 meeting, the Board discussed the ordinance and continued it to the January 2009 meeting asking that staff research the City Code to better harmonize the requirements of the four land use boards. At the January 27, 2009 meeting, the Planning Board recommended approval of the ordinance.

### ANALYSIS

These land use boards are tasked with the regulation of land development in very specific realms; however there are commonalities in their duties to review the applications submitted to them. As shown in the chart below, the number of recusals within a period of a calendar year varies from four for the Planning Board and the Board of Adjustment, to five for the Historic Preservation Board, to seven for the Design Review Board. The proposed ordinance would harmonize the number of recusals for all four boards to seven in a calendar year.

Agenda Item C4C

Date 2-25-09

**Development Boards – Comparison**

<b>Board</b>	<b>Appointment</b>	<b>Removal</b>
Planning Board	Seven, appointed with the concurrence of at least four votes of the city commission.	Missing 33 percent of the regularly scheduled meetings per calendar, or <b>abstains on four</b> different applications within a period of one year.
Design Review	Same as above	Missing 33% of the regularly scheduled meetings per calendar year or <b>abstains on seven different applications</b> within a calendar year.
Historic Preservation	Same as above	Missing 33 percent of the regularly scheduled meetings per calendar year or <b>abstains five times</b> within one year.
Board of Adjustment	Seven members appointed by a <b>five-sevenths</b> vote of the city commission.	Missing 33 percent of the regularly scheduled meetings per calendar year or <b>abstains on four different</b> applications within one year

The proposed amending ordinance also addresses the definition of what constitutes an absence. Currently an absence is defined as missing more than 30 percent of the scheduled matters on that meeting's agenda, with the exception of the Historic Preservation Board which does not have such definition.

For example, a meeting that has 10 items scheduled on its agenda and lasts 5 hours, but a member leaves at hour four, and during those four hours only 6 items have been reviewed, that person has missed 40% of the scheduled items, and therefore, by the current definition, that person is absent. In this regard, the proposed ordinance would consider a dual criterion for this definition - if the member misses 30 percent of the scheduled matters, but has been present at the meeting for 70% of the duration of time, it would not count as an absence. In fairness to members of all the land use boards, some items take extremely long time for discussion and final action, and although this does not happen regularly, prior commitments or emergencies do happen; if a member has been present at a meeting 70% of the duration, that member should get credit for his/her attendance. In trying to clarify the definition of an absence, guidance was taken from Section 2-22 of the City Code, which lists general requirements for Agencies, Boards and Committees, and one of those is "Attendance shall be recorded when an individual arrives within 30 minutes of the scheduled meeting time and remains for at least 70 percent of the meeting."

\* \* \*

Following the Planning Board's direction at the December 16, 2008 meeting, a research of the City Code showed where the different discrepancies and language originated. The following is a synopsis of the findings:

**Conflicts of interest**

The Planning Board, Historic Preservation Board and the Board of Adjustment use similar language to that contained in Section 2-22 (16) of the City Code. The Design Review Board (DRB) section contains different language and in this regard, staff is including an amendment to the language so that it the same as the other land use boards.

### Removal of board members

*Ordinance No. 94-2923* included the removal of a Design Review Board member in the event that the member is absent from 3 regular meetings, or is absent from 3 workshop meetings or recused from voting due to a conflict of interest on 7 different applications in a calendar year. The ordinance also defined an absence as missing 30% of the scheduled matters on the agenda, and that if removal for these reasons, a member could not be reappointed for at least one year.

The amendments above were requested by the Planning Board at that time in order to encourage improved attendance and ensure that the process was not bogged down due to excessive conflicts of interest.

*Ordinance No. 95-3025* provided for removal of a Board of Adjustment member in the event that the member is absent from 3 regular meetings, or is absent from 3 workshop meetings or recused from voting due to a conflict of interest on 4 different applications in a calendar year. The ordinance also defined an absence as missing 30% of the scheduled matters on the agenda, and that if removal for these reasons, a member could not be reappointed for at least one year.

The amendments above were requested by the Planning Board at that time in order to encourage improved attendance and ensure that the process was not bogged down due to excessive conflicts of interest and to make the removal of members more consistent.

A separate ordinance – *Ordinance No. 95-3026* – created the same regulation for the Planning Board.

*Ordinance No. 99-3168* provided for automatic removal of an agency, board or committee member failing to attend 33% of the regularly scheduled meetings per calendar year in Section 2-22(9) of the City Code.

*Ordinance No. 99-3225* codified in the Land Development Regulations of the City Code, the automatic removal of a land use board member using the same formula that was included in Section 2-22 of the City Code.

### Number of recusals (abstentions)

Section 2-22, "General requirements," subsection (16) partially states: "The issue of conflict of interest/abstention impairs an individual's ability to be an effective member of an agency, board or committee." Based on this statement in the City Code and past legislation, it has been envisioned that attendance and ensuring that the process is not bogged down due to excessive conflicts of interest is of utmost importance to the City Commission.

### CONCLUSION

The Administration recommends that the City Commission refer the proposed ordinance to the Land Use and Development Committee.

**THIS PAGE INTENTIONALLY LEFT BLANK**