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EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: Ron Ramsingh, Chief Assistant City Attorney

Date: August 31, 2016

RE: An add-on ordinance revision to clarify the City's Attorney's role in code compliance cases.

Action statement:

This proposed ordinance revision seeks to further clarify the role of the Office of the City Attorney in presenting cases to the Code Compliance Magistrate.

Background:

FL Statute 162.05(5) mandates that: "The local governing body attorney shall either be counsel to an enforcement board **or** shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities." Additionally, Sec. 2-639 of the Code of Ordinances says: "Each case before the special magistrate may, at the option of the administrative staff, be presented by either the office of the city attorney or by a member of the city administrative staff. The attorney representing the city shall not serve both as legal advisor to the special magistrate and as presenter of cases before the special magistrate." Historically, the city in the past had used a code compliance board to resolve code issues. Approximately 20 years ago, the city changed to a single special magistrate system to decide code cases, which FL statutes permits. When this change occurred, it does not appear that all of the ordinances were changed to reflect the new procedure. Specifically, in one section of the code, it had

indicated that the city attorney shall advise the special magistrate. Then in another section it had said that the city attorney shall advise code compliance staff. Nevertheless, the undersigned has *never* provided, nor can he recall a situation where legal advice was *ever* afforded to the special magistrate.

In June 2016, Judge Koenig issued a ruling in an appeal of a code case that found fault with this discrepancy in our ordinances and remanded the case back to the lower court (code compliance) in order to correct the issue. Later that same month, an ordinance revision was passed by the City Commission that not only made numerous changes in updating terminology of the code compliance section of your code, but it also proposed to allow for the actual city attorney to provide counsel to the special magistrate, while the assistant city attorney would continue to provide counsel to code staff with precautionary measures in place that have been long recognized in the legal community to avoid any conflict of interest. On August 31, 2016, the same code case was back before the special magistrate for a re-trial. Counsel for the Respondents renewed his objection based on a conflict of interest that he believed still existed with the new ordinance. While the special magistrate wanted the parties to brief the issue, the magistrate also indicated that he was inclined to believe that a conflict exists with the new revision. Even if the city was to prevail at the special magistrate level on this conflict issue, an appeal to Judge Koenig would again likely prove futile given his June 2016 ruling. The effect of such a ruling could render code compliance without the assistance of the city attorney's office at a time when Respondents are increasingly being represented by counsel of their own. Therefore, it is the belief of the undersigned that an ordinance revision to simply state that the city attorney's office shall provide legal counsel to code compliance staff will be a far more expeditious and judicious way to address the issue and therefore render the motion to dismiss moot. Frankly, given the fact the no one currently in the city attorney's office has ever provided legal counsel to the special magistrate, and the old language appears to have been an oversight from many years ago under different counsel, the change would not negatively affect the administration of these cases in any way.

Options:

1. To approve the proposed ordinance which will adequately reflect the fact that the city attorney's office does not provide legal advice to the special magistrate. Further, it would remove any appearance of conflict, however remote and moot a current motion to dismiss that if granted,

would immediately render the code compliance department without legal assistance from the city attorney's office.

2. To defeat the proposed ordinance. The current motion to dismiss in a pending code case will likely be granted due to a perceived conflict of interest.

Recommendation: To approve the proposed ordinance revision.
