

City of Bradenton Beach

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Forfeiture of Office  
Article II, Section 6  
City Charter

**Special Commission Meeting:** 9/17/14 Vice Mayor Clarke, Commissioner Straight and Commissioner Vosburgh called a Special Commission Meeting.

**Agenda Item:** City of Bradenton Beach Municipal Charter, Article II, Section 6, Initiation and Authorization of Forfeiture of Mayoral Office Proceedings

**Notice of Special Commission Meeting:** See, Exhibit A. The Agenda Request was provided to all elected officials on 9/17/14, Notice was posted at City Hall, and provided through email on 9/17/14 to the following:

Mayor Shearon <mayor@cityofbradentonbeach.com>,  
Bonner Joy <news@islander.org>,  
Laurie@islander.org,  
Joe Hendricks <jhendricks504@comcast.net>,  
Amaris Castillo <acastillo@bradenton.com>,  
John Chappie <john.chappie@mymanatee.org>,  
Carol Whitmore <carol.whitmore@mymanatee.org>,  
Commissioner Clarke <ward1@cityofbradentonbeach.com>,  
Commissioner Straight <ward2@cityofbradentonbeach.com>,  
Commissioner Vosburgh <ward4@cityofbradentonbeach.com>,  
Vice Mayor Robertson <ward3@cityofbradentonbeach.com>,  
Alan Garrett <agarrett@cityofbradentonbeach.com>,  
Audra Lanzaro <alanzaro@cityofbradentonbeach.com>,  
Chief Speciale <sspeciale@cityofbradentonbeach.com>,  
Eveann Adams <eadams@cityofbradentonbeach.com>,  
Gail Garneau <ggarneau@cityofbradentonbeach.com>,  
John Cosby <jcosby@cityofbradentonbeach.com>,  
Judy Pruitt <jpruitt@cityofbradentonbeach.com>,  
Sheila Dalton <sdalton@cityofbradentonbeach.com>,  
Steve Gilbert <stevegilbert@cityofbradentonbeach.com>,  
Tom Woodard <twoodard@cityofbradentonbeach.com>,  
Wendy Chabot <wchabot@cityofbradentonbeach.com>,  
Richard Gatehouse <richard.gatehouse.09@gmail.com>

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**Relevant Law:**

CITY CHARTER: Article II, Municipal Organization and Officers, Section 6. Forfeiture of office.

An office is forfeited if an elected official:

- (a) Lacks at any time during the term of office any qualification of office prescribed by this Charter or law,
- (b) Violates any standard of conduct established by law for public officials,
- (c) Is convicted of a felony while in office,
- (d) Fails to attend three (3) consecutive regular meetings of the Commission without a formal excuse by the Commission entered into the minutes,
- (e) Has become physically or mentally incapable of performing the duties of office, or
- (f) Voluntarily changes their permanent residence to an area outside the ward from where the public official was elected.

Notwithstanding any legal proceedings, in all circumstances arising under this provision, the Commission shall be the sole judge of its members as to the applicability of these provisions.

This Charter provision is one of the strongest measures the Commission may take to protect the integrity of the City Commission from elected officials who demonstrate a present unfitness to hold office.

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FLORIDA STATUTE: Chapter 112, Fla. Stat. – Guidance since Charter Provision is provided. *See*, 112.501(8), Fla. Stat.

112.501 Municipal board members; suspension; removal. *See* Exhibit B, a copy of Section 112.501, Fla. Stat.

(1) For the purposes of this section, the term “municipal board member” is defined as any person who is appointed or confirmed by the governing body of a municipality to be a member of a board, commission, authority, or council which is created or authorized by general law, special act, or municipal charter.

(2) By resolution specifying facts sufficient to advise a municipal board member as to the basis for his or her suspension or removal and after reasonable notice to the municipal board member and an opportunity for the member to be heard, a governing body of the municipality may:

(a) Suspend or remove from office any municipal board member for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform his or her official duties.

(b) Suspend from office any municipal board member who is arrested for a felony or for a misdemeanor related to the duties of office or who is indicted or informed against for the commission of any federal felony or misdemeanor or state felony or misdemeanor.

A temporary vacancy in the office created by suspension shall be filled by a temporary appointment to the office for the period of suspension. If no provision is provided by law, the governing body shall make the appointment.

Suspended board members shall not perform any official acts, duties or functions, or receive pay allowance, or be entitled to any emoluments or privileges of the office during suspension. If a suspended board member is

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found not guilty or acquitted of the charge for which expended, the board member shall be reinstated and receive full back pay and benefits for the entire period of suspension. If the term of the office terminated during the suspension period, the board member shall be compensated only for the portion of the suspension period during the term of office, and he or she shall not be reinstated.

**General Timing:**

There is no prescribed timeframe for resolution of the issue set forth in the Charter.

In *In re Inquiry Concerning a Judge re Harvey N. Shenberg*, 632 So.2d 42 Fla. 1992.

The Florida Supreme Court suspended judges without compensation, and then granted judges' motions for rehearing. The Supreme Court held that: four calendar days advance notice of show cause hearing gave judges full and fair opportunity to be heard.

In *In re Inquiry Concerning a Judge (LaMotte)*, 333 So.2d 22 (Fla.1976), the Florida Supreme Court held that twenty-four hours' notice is adequate for a show of cause hearing.

Housing Authority Board Member of the City of Deerfield Beach was given 10 days notice prior to a Section 421.07, Florida Statutes removal hearing.

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**Due Process:**

Of critical importance in a Forfeiture of Office Proceeding is the protection of the challenged official's due process rights. Pursuant to Florida case law, the Florida Supreme Court has articulated the following standard:

Adequate procedural due process requires that Mayor Shearon be:

1. Given notice of proceedings against him;
2. Given an opportunity to be heard, and
3. That the proceedings against Mayor Shearon be essentially fair.

*See, In re Kelly*, 238 So.2d 565, 571 (Fla.1970), *cert. denied*, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971).

**Procedure:**

The City Charter does not provide a detailed forfeiture of office procedure. Robert's Rules of Order provides for a Removal of Office Procedure if no adopted procedure exists. A copy of the relevant portion of Robert's Rules is attached hereto as Exhibit C. Robert's Rules is problematic for a number of reasons including non-public meetings, confidentiality of records that are to be produced as a public record under Chapter 286, Fla. Stat., and removal of Mayor Shearon for deliberations by the City Commission. These procedures are in derogation of the Florida Public Records Act and Florida Sunshine Law. I would strongly advise that the City Commission adopt a modified version of Robert's Rules via a Resolution. A proposed resolution is attached hereto as Exhibit D.

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**Recommended Outline of Procedure.**

1. Initiation of a Forfeiture Proceeding – Requires a majority vote via Motion. Should identify which provisions of Article II, Section 6, of the City Charter are at issue and general summarization of factors supporting alleged violations.
    - i. Chairing of Meeting.
    - ii. Recusal.
    - iii. Suspension. Pursuant to Chapter 112, Fla. Stat., the Commission should also determine if Mayor Shearon should be suspended pending the proceedings.
    - iv. Forfeiture of Office Charge.
      - a. Designate who shall prepares this.
      - b. Identify specific allegations via consensus.
    - v. Timing of Forfeiture Proceeding.
    - vi. Procedures – Exhibit D
    - vii. Role of City Attorney
    - viii. Costs
  2. Notice to Mayor - Forfeiture of Office Charge or Notice of Removal should be prepared and provided to the Mayor. See Exhibit E, Notices for:
    - a. City of Ocala, Forfeiture of Councilman Priester, and
    - b. City of Deerfield Beach, Removal of Housing Authority Board Member.
  3. Evidentiary Investigation -
    - a. OPTION 1: Select a committee to assemble evidence.
    - b. OPTION 2: Designate an attorney to assemble evidence.
  4. Presentation of Evidence - Please note that for due process purposes, the City and the Mayor should be permitted to submit evidence and/or make a presentation of evidence in the Forfeiture Proceeding. Both
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the Commission (including counsel to the Commission) and Mayor Shearon (including counsel to Mayor Shearon) should provide the Clerk with copies of all evidence that will be presented at the Forfeiture Proceeding. NO SURPRISES TO EITHER SIDE.

- a. Where an elected official has personally observed issues concerning the Mayor's fitness to hold office, said elected official may provide testimony or supporting documents to the committee or attorney and/or to the City Commission at the Forfeiture Proceeding. Said submission should be documented in the submission and/or at the Forfeiture Proceeding.
- b. Where an employee wishes to participate in a Forfeiture Proceeding or Evidentiary Investigation, they may be entitled to Whistleblower protections.
- c. Evidentiary Summarization.
  - i. OPTION 1 Prosecutorial-type Role: Require that the committee or attorney referenced in above-paragraph 3 provide a summarization of the evidence with a recommended finding and/or conclusions of law.
  - ii. OPTION 2 Fact-finding Role: Require that the committee or attorney referenced in above-paragraph 3 provide a summarization of the evidence with no recommendation or conclusions of law.

5. Quasi-Judicial Hearing on the Charges/Notice

- a. OPTION 1: Proceeding resembles a trial.
    - i. Open public hearing.
    - ii. Procedure set out by the Chair to the Mayor and members of the public.
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- iii. Anyone offering testimony would be sworn in by the City Clerk.
- iv. Reading of Forfeiture of Office Charge or Notice of Removal by the City Clerk.
- v. Opening statements given by the Attorney for the City and Mayor Shearon.
- vi. Take public comment.

NOTE: The Mayor and/or the City Commission, should be allowed to present oral and documentary evidence, submit memorandums of fact and law in support of their positions, present evidence, examine and cross-examine witnesses, including the Mayor.

- vii. Presentation of evidence by the Attorney for the City. (written or verbal)
  - viii. Presentation of evidence by Mayor Shearon. (written or verbal)
  - ix. Closing Statements and recommendation by the Attorney for the City and Mayor Shearon.
  - x. Discussion by City Commission.
  - xi. Vote on Forfeiture Charge.
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b. OPTION 2: Proceeding resembles quasi-judicial proceeding, i.e. site plan hearing. The Commission would either request a recommendation for removal or non-removal from the committee/attorney with their evidentiary presentation (Prosecutorial-type Role) or the Commission would use the committee/attorney for a limited purpose of collecting and synthesizing evidence (Fact-finding Role).

- i. Open public hearing.
- ii. Procedure set out by the Chair.
- iii. Anyone offering testimony would be sworn in by the City Clerk.
- iv. Reading of Forfeiture of Office Charge or Notice of Removal by the City Clerk.
- v. Opening statement - Mayor Shearon.
- vi. Take public comment.

NOTE: The Mayor and/or the City Commission, should be allowed to present oral and documentary evidence, submit memorandums of fact and law in support of their positions, present evidence, examine and cross-examine witnesses, including the Mayor.

- vii. Presentation of evidence by the Committee/Attorney for the City. (written or verbal)
  - viii. Presentation of evidence by Mayor Shearon. (written or verbal)
  - ix. Closing by Mayor Shearon.
  - x. Discussion by City Commission.
  - xi. Vote on Forfeiture Charge.
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6. If positive finding for Forfeiture, then a Statement of the Grounds For Removal should be prepared – This should be relatively specific.

- a. OPTION 1: The Committee or Attorney should submit with its Evidentiary Summarization, a Proposed Statement of the Grounds For Removal. The City Commission deliberates and, either adopts the Proposed Statement of the Grounds For Removal by resolution, or adopts a resolution, which should contain a Statement of the Grounds For Removal.

The Commission should make specific findings of fact during the Forfeiture Proceeding that are adopted by Consensus and are likewise incorporated into the Resolution as findings of fact serving as the basis for the Forfeiture.

- b. OPTION 2: The City Commission receives and reviews the Evidentiary Summarization and then adopts by resolution a Statement of the Grounds For Removal. The Commission should make specific findings of fact during the Forfeiture Proceeding that are adopted by Consensus and are likewise incorporated into the resolution as findings of fact serving as the basis for the Forfeiture.

**Law:** The Florida Supreme Court held in *Richard v. Tomlinson*, 49 So.2d 798 (Fla.1951) that the following Statement of the Grounds For Removal in a recall petition was legally insufficient:

The official had ‘indulged in activities that are inimical to the best interests of the citizens of Miami Beach.’

Specifically, the Court held,

‘We think such a statement falls woefully short of meeting the requirement of the statute. When the legislature was at pains to specify

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as a basis for a recall that a sworn statement should be given containing a ground for removal, we apprehend that a real foundation for such a harsh test was meant, and we think too it was intended that the misdeed charged to the councilman should have some relationship to his performance of the duties of his office. The ground for the action was contemplated to be something stronger than a belief or an idea; and the one set out in the affidavit before us amounts to no more than one of these. The paper in no way apprised the petitioner of the charge he would be expected to meet were the recall election held, nor would any elector participating in such an election know what issue was intended to be drawn. 'If the affiants knew of any facts justifying the election, they kept them to themselves, and for aught the reader would know, the signing of the affidavit might have been dictated by whim or caprice. The instrument constitutes nothing more than the statement of a conclusion or opinion without any tangible basis in fact. No one scanning it could tell what was in the affiants' minds or, for that matter, whether they were of one mind or each had a different reason for setting the recall machinery in motion.'

Likewise in *Gilbert v. Morrow*, 277 So.2d 812, 814 Fla. 1st DCA, 1973, the First District Court of Appeals held that the following Statement of Grounds For Removal was also legally insufficient:

The official "failed to obey or comply with the charter and the laws of Florida," falls woefully short of meeting the requirements of law.

The court held that said ground does not sufficiently set forth a violation of some duty to the electorate which could be sufficiently identified for the electorate to determine the truth or falsity of the charge; nor does the ground apprise the appellants of the charges they would be expected to meet were the recall election held. It constitutes nothing more than a statement of conclusion or opinion.

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## **MISCELLANEOUS ISSUES:**

### **1. Role of City Attorney**

- a. Case law and Florida Ethics Opinions provide that it would be a denial of due process to the Mayor if the City Attorney acts in a dual role of advisor to the Commission and as the prosecutor in the proceeding.

Attorney General: 072-64-March 8, 1972, provides a good analysis of this issue. It is provided herein as Exhibit F.

Noteworthy Excerpts:

A lawyer may act as legal advisor to both the Zoning Commission and the Board of Zoning Appeals, provided that, at the higher level of authority, he never steps outside the role of advisor to become an advocate for the result reached at the lower level.

In a vacuum and idealistically, the board could be properly and impartially advised by its own attorney while he is actively involved as prosecuting attorney as to motions, presentation of evidence, objections, recommended final rulings and the type of penalty imposed without prejudice to the defendant or without denying him fundamental fairness. However, more often than not, when a hearing has become heated due to the adversary nature of the particular proceeding, the natural tendency of the prosecuting attorney is to advise his board in a manner most advantageous to what he anticipates is its particular desire within the law and morality of the issues presented.

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The Commission needs to make a decision on the manner in which the hearing will be conducted and what role, if any, that the City Attorney or any other attorney will assume in the proceedings.

- i. If the Commission desires to proceed with a Prosecutorial-Type Role Forfeiture Proceeding, it should utilize two attorneys:
  - a. one attorney to make motions, a presentation of evidence, raise objections, and to recommend final rulings with the type of penalty imposed, and
  - b. one attorney to advise the City Commission.
- ii. If the Commission desires to use one attorney, the role of the attorney will need to be very limited so as to ensure that Mayor Shearon is provided due process. Under the single attorney approach, the attorney would gather all the facts and evidence related to the cause for the Forfeiture Proceeding and then hand over the information to the City Commission (and Mayor Shearon). The attorney should not render any conclusions of law-only advise the Commission generally on the manner in which the meeting is being conducted, i.e. proper notice, assistance with its procedures/Robert's Rules of Order, reducing the Commission's findings to writing, which should include Resolutions and the Statement of the Grounds For Removal. In no way should the attorney go beyond the bounds of acting as a legal advisor. Stated another way, the attorney should be focused on protecting the integrity/legality of the process and should not advise the Commission as to whether the evidence supports a finding of forfeiture. The Commission is charged under the City Charter to be the sole judge of the applicability of Article II, Section 6.

2. Costs

The City will incur substantial legal costs, advertising costs (recommend advertising once in a paper of local circulation), court reporter fees, staff time, and potential litigation costs if the matter is taken on appeal.

3. Representation for Mayor Shearon

Mayor Shearon is entitled to retain counsel at his cost. Pursuant to AGO 89-69, he may be entitled to reimbursement by the municipality for reasonable attorney fees if successful in challenging the Forfeiture Proceeding.

4. Chairing of Forfeiture Proceeding

City Charter, Article II, Section 5: Section 5. Vacancies.

A vacancy in the Commission, including the Mayor, occurs when a Commissioner leaves office before expiration of the term of office. *If by forfeiture, such forfeiture must be declared by a majority of the remaining Commissioners.*

The above-Charter provision clearly provides that the elected official subject to forfeiture does not have a vote on the matter.

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Florida League of Cities

According to the Florida League of Cities Pamphlet on Ethics in 2008, an official is not allowed to participate in proceedings that would affect him or her personally and he/she should recuse themselves from the proceedings:

“An appointed municipal officer shall not “participate” in any matter which would affect the officer’s special private gain or loss, the special

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gain or loss of any principal, parent organization or subsidiary by whom the officer is retained, or the special gain or loss of a relative or business associate, without first disclosing the nature of the interest in the matter. "Participate" means "any attempt to influence the decision by oral or written communication whether made by the officer or at his or her discretion." The disclosure should be made in a written memorandum prior to the meeting at which the matter is discussed, in which case the memorandum shall be read publicly at the meeting prior to the consideration of this matter. If this is not done, the disclosure is to be made orally at the meeting, with a written memorandum to be filed within 15 days."

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#### Robert's Rules of Order

According to Robert's Rules of Order, no member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization. For example, if a motion proposes that the organization enter into a contract with a commercial firm of which a member of the organization is an officer and from which contract he would derive personal pecuniary profit, the member should abstain from voting on the motion. (Robert's Rules, 11th ed., p. 407.)

Recusal normally occurs when a director has a conflict of interest or prejudice concerning a particular matter. A conflict of interest is any situation in which financial or other personal considerations may unduly influence the director's judgment. This includes matters such as a disciplinary action against the director.

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# City of BRADENTON BEACH

State of Florida

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107 Gulf Drive North – Bradenton Beach, Florida 34217 – Phone (941) 778-1005 / FAX: 778-7585

## **AGENDA SPECIAL CITY COMMISSION MEETING MONDAY, SEPTEMBER 22, 2014 – 11:00 AM KATIE PIEROLA COMMISSION CHAMBERS**

**Pledge of Public Conduct:** We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

**CALL TO ORDER  
PLEDGE TO THE FLAG  
ROLL CALL**

### **ORDER OF BUSINESS:**

- 1. City of Bradenton Beach Municipal Charter, Article II, Section 6, Initiation and Authorization of Forfeiture of Mayoral Office Proceedings.**
- 2. Adjournment -**

*PURSUANT TO FLORIDA STATE STATUTE 286.0105 IF AN INDIVIDUAL DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION OR CITY BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING, A RECORD OF THE PROCEEDINGS WILL BE REQUIRED AND THE INDIVIDUAL WILL NEED TO ENSURE THAT A VERBATIM TRANSCRIPT OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.*



*PURSUANT TO FLORIDA STATE STATUTE 286.26 IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATE STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK FOR ASSISTANCE AT LEAST THREE BUSINESS DAYS PRIOR TO THE MEETING (941)778-1005 OR TDD 778-5994.*

# City of BRADENTON BEACH

State of Florida

107 Gulf Drive North – Bradenton Beach, Florida 34217 – Phone (941) 778-1005 / FAX: 778-7585

## **AGENDA REQUEST FORM Special Commission Meeting**

**Date request submitted: September 17, 2014**

**For meeting date: September 22, 2014 at 11:00 a.m.**

**Agenda Verbiage: City of Bradenton Beach Municipal Charter, Article II, Section 6, Initiation and Authorization of Forfeiture of Mayoral Office Proceedings**

**Does your request require action (a motion) by Commission? Yes**

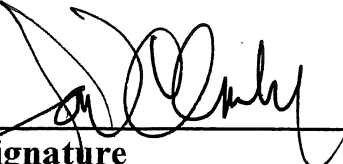
**If “No”, then your request should be a presentation or discussion.**

**If “Yes”, please describe exactly how you want the motion to read.**

**Motion to initiate a Forfeiture of Office Proceeding of Mayor William Shearon pursuant to the City of Bradenton Beach Municipal Charter, Article II, Section 6 and any other relevant State law, and issuance of a formal directive to the City Attorney to commence the forfeiture proceeding and prosecute the Commission’s claim to the fullest extent allowed by law, which shall include representing the City, producing any and all evidence referenced in the 9/16/14 City Commission Workshop, and communicating with the elected officials or staff.**

**Backup included: Charter Provision, City Workshop Recorded Meeting and Clerk File, and Written Request for Special Commission Meeting.**

**Note: Backup is required for all agenda requests. If appropriate backup is not included, the issue may be pulled from the agenda.**

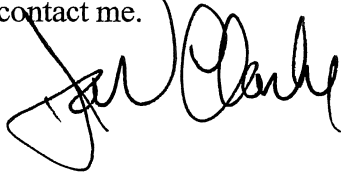
  
\_\_\_\_\_  
**Signature**

Ms. Sanclemente,

I am hereby requesting a Special Commission Meeting pursuant to Article II, Section 4, which provides that "any Commissioner may ask for a special Commission meeting which will be held upon approval of two additional Commissioners." I am also requesting the presence of Attorney Perry at this meeting, and have conveyed my request for this meeting to her on 9/16/14 at approximately 2:11 p.m.

I would like to schedule the meeting for Monday morning, September 22, 2014. I have commitments through 11:00 a.m., and would be available from 11:00 a.m. forward.

The backup is appended to this request. I have also used the format of prior City notices and am including this for posting of the meeting. I presume, as the Clerk pro tem that you will be handling this aspect of the request. If you need anything further, please contact me.

A handwritten signature in black ink, appearing to read "San", is written over the text "contact me.".

## **ARTICLE II. MUNICIPAL ORGANIZATION AND OFFICERS**

### **Section 6. Forfeiture of office.**

An office is forfeited if an elected official:

- (a) Lacks at any time during the term of office any qualification of office prescribed by this Charter or law,
- (b) Violates any standard of conduct established by law for public officials,
- (c) Is convicted of a felony while in office,
- (d) Fails to attend three (3) consecutive regular meetings of the Commission without a formal excuse by the Commission entered into the minutes,
- (e) Has become physically or mentally incapable of performing the duties of office, or
- (f) Voluntarily changes their permanent residence to an area outside the ward from where the public official was elected.

Notwithstanding any legal proceedings, in all circumstances arising under this provision, the Commission shall be the sole judge of its members as to the applicability of these provisions.

(Ord. No. 05-389, 9-15-2005, Ref. 11-8-2005; Ord. No. 10-418, 8-19-2010, Ref. 11-2-2010)

Exhibit A

OPENING STATEMENT 9/16/14

Our Pledge of Public Comment provides that we will avoid personal attacks.

While the Mayor may perceive much of this meeting as being a personal attack, as a fellow elected official, I was sworn to uphold the policies and laws of this City and I have the responsibility to protect our assets, which includes our projects, finances and employees.

Since coming into office, the Mayor has used the metaphor of being the captain of a ship. He has stated that this Commission sets the course and that the Mayor, working with our staff, will lead this ship on a true course. Mayor has asked repeatedly for Commission's flexibility, resources and trust.

In just over 300 days, our City, or to use the Mayor's metaphor, the "Ship", has been repeatedly taken off course and has been directed into the eye of many storms. At this point, we are taking on water, the ship is barely seaworthy, and what is left of our crew...well they are exhausted and battered.

Let me be more specific. At the outset of this Mayor's term, this Commission supported and authorized his many requests.

Example # 1:

The Mayor asked to scrap the City's computers and buy new ones. As the situation was presented to the Commission, this was a critical and time-sensitive matter that had been overlooked for far too long. We obliged and gave full rein to you and your staff to purchase all the computers and hardware needed to "keep the City running" within generous budget limits since these expenses were unbudgeted for fy 2014.

What we got for that faith and trust, was an unusable waste of a software package in the unauthorized Microsoft 365 program, which as an aside, by most accounts has been a colossal technological problem for the Manatee County Schools.

Despite being told months ago that we purchased everything we needed, the facts indicate otherwise. There have been multiple add-on purchases outside of Commission approval and beyond the fiscal limit set by this Commission. As recently as this month, I signed a check for another module to our computer system and, so far as I know, there are still non-operational components, one of which will cost several thousands of dollars to get up and running. In a nutshell, the entire technological package was not thought out, was poorly planned, and disastrously executed by unqualified personnel. By sheer good fortune, elements of the City Treasurer's Department provide the only bright spot in this mess.

Also functioning well is our city e-mail system which was established apart from the City IT package by a separate vendor. All but one or two users have found this email system effective as designed and implemented. This part of the plan was held up because the Mayor had previous personal issues with the vendor, and that is a fact.

Overall the whole IT scheme was an unplanned mish-mash of terrible hardware and software selections, lack of follow through, little to no supervision, and cost-overruns galore.

Daily this City is wrought with claims of computer issues, many of which are raised by the Mayor. What has our faith and trust in the Mayor gotten us? As the administrative head of this City, who asked for this very expensive unbudgeted purchase, I expected much greater supervision by you and a successful outcome. As far as I can see, the City's technology functioned better before we purchased the \$50,000+ upgrade.

Example #2: The Mayor again asked Commission to trust his lead in identifying qualified candidates for the Offices of the City Clerk and City Treasurer. Once again we gave you unlimited discretion and gave your recommendations the benefit of the doubt. The outcome for the Clerk proved unsuccessful. The entire Administrative Department, where you have been heavily involved, has undergone one setback after another. I've lost track of the number of times we have reassigned a clerk pro tempore. For a staff of 2, the Clerk's Office has lost 4 individuals (Karen Cervetto, Karen Perry, Jamie Anderson and Tammy Johnson), a greater than 200 % attrition rate!

Before I digress any further, let me just make it clear that I did give you trust and discretion. I supported your requests and believed that you had the ability to supervise the day-to-day functions of the City. This trust has eroded over the past 300 days as I have seen nothing but failures, disrespect, outbursts, and problems.

The Mayor claims that this Commission has tied his hands. I submit Mr. Mayor, it is you who has tied the hands of this City with more lawsuits, public records requests, hostile work environment claims, and all-around poor morale. If Commission, as policymakers of this City, wanted to tie your hands, we could revoke the discretionary funds given to the office of the Mayor and adopt stricter policies interpreting administrative authority. Instead, this Commission has tried to work with the Mayor and set out a framework that would move this City forward toward success in achieving its stated objectives.. Put another way, this Commission has set a course and entrusted the Mayor with all the tools and finances needed to get us there. With almost every tool wasted and our finances squandered we are now far "off course".

The point of this workshop request is to really examine your authority, the City's policies, and, if need be, hold you accountable.

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## POINT-BY-POINT

At this time I would like to go through my outline, which was included with the back-up, paragraph by paragraph. These are my understandings/interpretations of the Policy adopted on March 20, 2014. I'd like to use this workshop to be sure we are on the same page with authority, discretion and accountability. If you disagree with on my interpretation, have suggestions, concerns or issues, lets discuss it.

1. City Commission sets and establishes the City Policies. Mayor ensures the policies are distributed and explained to personnel. Mayor may recommend to the Commission policies to be adopted.
  - a. How do we want to move forward with future policies via the Commission initiating them with our staff and City Attorney?

## PROBLEM

Clear line (policy) for initiating agenda requests and a sensible meeting schedule that is adhered to. This is addressed further in item 5

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2 Mayor recommends any necessary reorganization of staff to the Commission. The City Commission authorizes all reorganization.

a. Want to be clear that any reorganization, including current staff changing positions, would need to be authorized by the Commission and could not be unilaterally changed by the Mayor.

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3 Mayor is to provide a monthly report to the City Commission on the finances and administrative activities of the City.

- b. Where are these reports?
- c. What will be in the reports?
- d. Expenses we incur that are part of discretionary funds should be included, i.e. the recent computer module.

## PROBLEM:

3 Mayor's monthly report – I particularly want an accounting of use of these discretionary funds – in detail. Discretionary does not mean unaccountable! Further: I would like to see Commission frame a resolution for a

vote at a future meeting requiring all vendors to specifically itemize work performed. Two areas of particular concern are legal and IT.

This step is essential with all the lawyers that we have now. Commission has no idea what funds are expended or for what purpose. We have lost control. It should be relatively simple to state the issue addressed and the time involved and who initiated the contact with the Attorney. Attorney's administrative time is not billable, so why not?

As far as IT is concerned, unauthorized funds continue to be expended, apparently as "discretionary" but there's not a person here who can tell what we've spent or what we've got for the money we've spent in the last 6 months on Computer systems and related items..

As an aside, if the Mayor had provided these reports in a consistent manner, we might not be tied in knots on the stormwater funds issue.

3 d In theory, I have no objection to a reasonable level of discretionary spending. The problem is that I do not know when, who, or what individuals are making discretionary purchases or for how much. Much of this again comes from the Administration Dept where the Mayor has utilized his hands-on supervision and management style least effectively. Some issues here are overtime payments, unscheduled pay raises and bonuses, extra hires, overruns on small projects, and additional professional fees without detailed invoicing

>>>>>>>>>>

4 Mayor nominates and recommends all appointments and all dismissals/terminations with cause of:

- e. Department Heads
- f. Charter Officials
- g. Building Official
- h. Independent Contractors
- i. Board Members/Boards/Committees/Panels

#### PROBLEM:

It's clear that the Mayor nominates the above-individuals and this Commission accepts or rejects the recommendations. Likewise, the Mayor may not terminate or suspend our staff for more than 3 days without Commission approval.

The issue here is the hiring process. This is problematical because Commissioners are not privy to background materials relating to these individuals and essentially rubber stamp the candidate put forth by the Mayor. I don't believe anyone on the dais had any information on Ms Dalton or Ms Anderson prior to their hire – indeed, in our spirit of cooperation and trust in the Mayor we allowed

3

the whole process to be farmed out. This is not a new situation nor one unique to this administration, but it must be addressed particularly in light of the rapid turnover in top level positions over the past year. Commissioners and involved senior staff need more information on Mayor's prospective hires.

>>>>>>>>

5 Mayor oversees day-to-day functions of City. Must disclose any and all discussions Mayor has with staff on quasi-judicial matters as an ex parte communication.

#### PROBLEM:

There is a breakdown in the manner in which the Mayor uses his power with staff. We have lost 4 people as noted previously within the past 9 months. One of these employees had over 10 years experience in administration with the city. She provided much needed institutional memory and was in a position to establish continuity within the Administration Section since the Mayor and half the Commission were newly elected.

Commission developed and passed a resolution determining that the three office personnel would re-qualify for the two new positions available after the hiring of a permanent City Clerk, but the mayor unilaterally addressed that by causing to be terminated one of the three, and thereby rendering the time effort and dollars devoted to that part of the restructuring as useless and unproductive.

Further, we currently have three employees from Public Works making hostile work environment claims. Mayor's management approach also comes through to outside vendors, contractors, City Commissioners, and extends to our County relationships as well.

Apparently staff cannot make any agenda requests (see item 1) or communicate with this Commission until and unless it is first raised with Mayor and blessed by him. I am strongly opposed to having the Mayor filter and manipulate the staff's interaction with us. In addition, just this week, on September 14, the Mayor issued a memo requiring Commissioners to notify him of any and all requests and correspondence to any department head.

It's one thing to have a hands-on management style, but this is a heavy-handed form of dictatorship in dealing with our vendors, contractors and employees, as well as the letter and the spirit of the City Charter as it pertains to Commissioners

We need to adopt some policy measures that will protect our staff and provide a positive work environment. For a man who is constantly asking for trust and for this Commission to not tie his hands Mayor exhibits complete lack of trust in our staff and elected officials, places gag orders on them, and through capricious edicts hinders their effectiveness and totally eliminates any form of initiative or enthusiasm for their jobs. Everyone's punching the clock waiting for the next pronouncement from city hall!

Countless meetings! Rescheduling is the norm rather than the exception. The number of meetings and length of time for each has increased exponentially under this administration. The meetings are unproductive and we are meeting-ed to death. With the Mayor as Chair, We have to have a workshop to have a workshop, then a meeting to decide on a meeting. We lose track of the issues and progress is non-existent. The situation would be funny if not such a tragic waste of time, resources, and yes – money. Nothing gets accomplished in this environment. There is no respect for our time, City staff time, or the extra costs all these meetings are creating.

>>>>>>>>>>

- 6 Mayor is to provide Commission and Clerk with monthly reports prepared by each department identifying pending projects and workloads with timelines.
- j. Where are these reports?
  - k. How are they generated? I thought there was a form attached to the Resolution. Can we just use this form? I don't want them to be summarized by the Clerk as was attempted a few months ago. This seems to be too laborious, especially with the limited resources we seem to be facing.
  - l. Can we add a section for the Administrative Office to identify how much time they are devoting to Public Records Requests, Email/Computer issues, and to Providing Mayoral assistance?

PROBLEM:

Commissioners are totally unaware of where most departments are unless individual commissioners interact with Department Heads on an informal basis. The Monthly Department Head meetings don't get it done. Every one is so eager to get out of there that very little meaningful dialogue takes place.

This policy must be adhered to. If there is a better way to get this info to Commissioners, then it's up to the mayor to establish these lines of communication.

>>>>>>>>>>

- 7 Mayor may develop and organize public improvement projects and programs.
- m. When will we be apprised of any of these projects?

PROBLEM:

This Mayor has stated that he would uphold the decisions and policies of prior Commissions, even if he didn't agree with them.

While initially opposed to the installation of an out of town corporate entity's cell tower to be placed on display in the gateway to our City, the Mayor has supported the prior favorable vote of the City Commission and took active part in the ground breaking ceremony, complete with gold shovel. By all accounts, you have embraced the cell tower project.

However, in the case of a responsible local Corporate Citizen ( ELRA) with a long history of giving back to our community, the Mayor will not honor a development agreement which was ratified by the same Commission that okayed the Cell Tower project. It is abundantly clear that you have a personal vendetta against ELRA and its principal, Ed Chiles. Though you removed your name from the lawsuit you initiated on this issue, your business partner and a primary member of your household, TJet Martin, remains one of two named plaintiffs in this case. You have made no effort to reach resolution in this matter, yet city funds continue to be expended as this drags on.

Further, when presented with a greater City-wide issue that is related to this project, the Mayor is obstinate in exploring a City-wide fix because it can provide a favorable outcome for both the City and the ELRA folks. It is shameful to me that we cannot solve a City-wide problem, simultaneously terminate two of our costly lawsuits (in one of which we are forced to defend the Mayor for actions alleged to be in violation of his authority), and honor our agreement in a public-private partnership for the benefit of our City property. Additional benefit to the city frequently overlooked is a measure of "hardening" against storms which will be provided when the project is complete. I can't imagine many more people would want to help fund municipal projects after this.

Anyone who is objective and unbiased can see the tremendous benefits associated with the comprehensive city-wide fix. Rather, the Mayor prefers a piecemealed approach that will place a great burden on our staff, countless P&Z and City Commission hearings, and unnecessary costs for many of our City neighbors. This approach is obviously designed by the Mayor to fail.

Ultimately, we have the tools to end these costly lawsuits and fulfill the City's obligations under the Developer agreement.

Apart from the above, we have contractual and and state permit problems caused by the mayor's inaction. Not to be ignored is the very real possibility we may be shut out of future SWFWMD projects

By his actions, or lack thereof, the Mayor has single-handedly placed this city in more legal jeopardy, more financial jeopardy, and greater risk in dealing with other entities including Manatee County that flatly won't deal with local officials that don't follow through and keep their word.

LTA?

- 2 City Commission may communicate with department heads, supervisory staff and Charter officials for informational purposes, and specifically on the:

a 2<sup>nd</sup> and 4<sup>th</sup> weeks of each month, the Commissioners are to audit and discuss general business matters with staff in a non-supervisory fashion.

a.i. Who is doing this?

CLOSING STATEMENT:

Sept 16, 2014

To All:

Let me make it clear that I get no joy engaging in these accountability sessions that usually lead to embarrassing outbursts from the Mayor. Some have been so severe that it has been asked if the Mayor has quit his term of office. I would rather work together on projects that move the City forward as opposed to focusing on the Mayor's pet peeves, personal vendettas, and power plays that place the City in total gridlock.

Mr Mayor

From everything that I have observed, you subvert, ignore or intimidate in order to prevent a policy or project from being implemented.

You commonly confuse, misunderstand and misinterpret policy, whether intentionally or unintentionally.

You have created a work environment that is unproductive and by many media accounts and public comment is hostile. Any project supervised by you is wrought with failures, delays and cost overruns and on most occasions you appear to forget the details and do not understand what is happening.

This City is facing lawsuits initiated by you from you...and even defending them for you. You have been a magnet for outside litigation based on your performance in office as well as outside of your official duties as Mayor. Retaliatory public records requests from your surrogates have paralyzed city hall and the expense continues to mount.

Because of your ineptitude or intentional hindrance and interference. the city faces a major financial liability with our stormwater project that also jeopardizes our long standing relationship with SWFWMD.

Mr. Mayor, you stated at the close of public meeting wherein you had one of your loud outbursts that you have never quit anything in your life. Is it not true that you quit the P&Z? From this dais you stated that you were frustrated because the then-seated City Commission ignored your decisions with the P&Z. Perhaps the Commission knew then what we know now...you cannot be trusted and are a liability to this City. The common denominator with every problem we face is you.

Your activities with this City should be formally addressed by this Commission at a special meeting to be called as soon as possible and attended by the City Attorney.

I move to schedule that meeting for Friday September 19, 2014 at a time to be determined.

Exhibit D

I MADE A DECISION WHEN DECIDING TO RUN ANOTHER  
TERM AS COMMISSIONER IN BRADENTON BEACH THAT  
I WOULD TAKE THE HIGH ROAD AND NOT BE DISRESPECTFUL  
TO MY OPPONENT.

IN THAT LIGHT, I FEEL MORALLY OBLIGATED TO COMMUNICATE  
TO THE CITIZENS AND TAXPAYERS HOW BAD THE CITY IS BEING  
RUN UNDER THE CURRENT MAYOR. WITHOUT ELABORATING  
FURTHER, I WOULD LIKE EACH AND EVERYONE OF YOU TO  
KNOW....THE CITY IS IN A MESS...AND NEEDS TO BE FIXED.

*Jan Vardburg*  
9/16/14

## EXHIBIT B

### **Florida Statute, 112.501** Municipal board members; suspension; removal.—

(1) For the purposes of this section, the term “municipal board member” is defined as any person who is appointed or confirmed by the governing body of a municipality to be a member of a board, commission, authority, or council which is created or authorized by general law, special act, or municipal charter.

(2) By resolution specifying facts sufficient to advise a municipal board member as to the basis for his or her suspension or removal and after reasonable notice to the municipal board member and an opportunity for the member to be heard, a governing body of the municipality may:

(a) Suspend or remove from office any municipal board member for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform his or her official duties.

(b) Suspend from office any municipal board member who is arrested for a felony or for a misdemeanor related to the duties of office or who is indicted or informed against for the commission of any federal felony or misdemeanor or state felony or misdemeanor.

(3) In addition to the authority granted under subsection (2), the governing body of a municipality may remove from office any municipal board member who is convicted of a federal felony or misdemeanor or state felony or misdemeanor. For the purposes of this subsection, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.

(4) A suspended municipal board member may, at any time before his or her removal, be reinstated by the governing body of the municipality in its discretion.

(5) The suspension of a municipal board member by the governing body of a municipality creates a temporary vacancy in such office during the suspension. Any temporary vacancy in office created by the suspension of a municipal board member under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension, not to extend beyond the term of the suspended municipal board member. Such temporary appointment shall be made in the same manner and by the same authority as provided by law for the filling of a permanent vacancy in such office. If no provision for filling a permanent vacancy in such office is provided by law, special act, or municipal charter, the temporary appointment shall be made by the governing body of the municipality.

(6) No municipal board member who has been suspended from office under this section may perform any official act, duty, or function during his or her suspension; receive any pay or allowance during his or her suspension; or be entitled to any of the emoluments or privileges of his or her office during suspension.

(7) If the municipal board member is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest, indictment, or information by

reason of which he or she was suspended under the provisions of this section, the governing body of the municipality shall forthwith revoke the suspension and restore such municipal board member to office; and the member shall be entitled to and be paid full back pay and other emoluments or allowances to which he or she would have been entitled for the full period of time of the suspension. If, during the suspension, the term of office of the municipal board member expires and a successor is either appointed or confirmed, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal board member was suspended under the provisions of this section, and he or she shall not be reinstated.

(8) This section applies in the absence of a charter provision.

History.—s. 1, ch. 84-245; s. 718, ch. 95-147.

## **EXHIBIT C**

### **ROBERT'S RULES: REMOVAL FROM OFFICE**

#### **THE INVESTIGATING COMMITTEE**

If there is no provision in the bylaws from removing an officer by rescinding the election or by another method, then the membership has to do this by a trial. Robert's Rules has very specific procedures for a trial whether it is for an officer or for punishing a member who has committed wrong.

Robert's says that any society has the right to enforce its standards for membership and the right to investigate the character of its members to enforce its standards. Let's say an organization has high moral standards for membership which includes such things as no drinking of alcoholic beverages, no using profane language, no smoking of tobacco, and no licentious activities.

Someone has heard that a person who really looked like the president was seen with a woman who was not his wife at a tavern, drinking ale, swearing at the bartender and other customers, and smoking Cuban Cigars.

At the next meeting, a member instead of getting up and accusing the president of wrong doing, (if he has not gone to the president to see if this is true) should make a motion to form an investigating committee to investigate rumors affecting the character of the president. In the motion he should include the names of the committee members. (These people should be selected because they have integrity and good judgment). The motion should also include that the committee report resolutions covering its recommendations if the rumors prove to be true.

This should be done when non members are not present. If any non-members are present, the member should move to go into executive session to propose this motion.

To protect the innocent the motion should avoid details as much as possible. If a member would get up and make a motion that actually preferred charges, unsupported by an investigating committee's recommendation, another member should move to postpone the motion indefinitely. Stating that if it is adopted he will make a motion to form an investigating committee.

Since all this has to do with the president, he should step down from the chair and let the vice president preside during this discussion.

When the investigating committee meets it has no power to require either the accused or other members to appear before it. It should definitely meet with the accused and hear his side of the story. All business conducted in the committee is confidential and should be discussed with no one outside of the committee.

After the committee investigates, it should do one of two things.

1. If it finds that there is no substance to the charge, (in this case it turns out to be someone who looked the like the president) then the committee should present a resolution exonerating the president.
2. However, if it finds substance to the charges, then the committee should report its findings in writing. Every committee member who agrees with the report must sign

it. The report should "outline the course of its investigation and prefer charges" (p. 648 RONR). The resolution proposed by the committee should state the charges and then who should act as managers for the society. They should also include the date and time of the trial. Robert's says a thirty day notice is reasonable time for the accused to present his defense.

The resolution should include in it the charge and specifications of what the accused is alleged to have done. In the example given, the charge would be that he acted in a manner that was unworthy of a member. The specifications would be that he was at the X tavern, drinking, smoking, using profane language and with a woman that was not his wife.

Here's an example of a resolution that the investigating committee might propose:

Resolved, that when this meeting adjourns, it adjourn to meet at 7 pm, Saturday, March 6, 1999.

Resolved, that the president be, and hereby is, cited to appear at the adjourned meeting for trial, to show cause why he should not be remove from office of this Society on the following charge and specification.

Charge. Conduct unworthy conduct for the president of this Society.

Specification 1. That on the evening of January 2nd, 1999 the president was seen at Tavern X with a woman not his wife, drinking alcoholic beverages, and smoking a Cuban Cigar.

Specification 2. On this same evening he was using profane language at the bartender and customers, baiting them into a fight.

Resolved, that Mr. Justice and Mrs. Honorable act as managers for the trial.

This is a main motion. The date and time of the meeting and kind of meeting is amendable. The motion is debatable and other subsidiary motions can be proposed concerning this resolution. It takes a majority to adopt.

If a regular meeting comes before the adjourned meeting then the resolution should state that it be a "special meeting". If the assembly is large, or the trial is going to be long and troublesome or scandalous, then the resolution should recommend that a committee hear the trial and report its findings to the assembly.

In the trial the president must be found guilty of a charge before the penalty is imposed.

The managers are to be members of the society. Their task is to present evidence against the accused, but they are not to act as prosecutors, but rather to strive that the trial will get at the truth and the outcome will be just.

#### NOTIFICATION OF THE ACCUSED

If the assembly adopts the resolution, then the secretary should immediately send a letter to the accused notifying of the charges. This should include an exact copy of the resolution as adopted by the society. The letter includes the date, time, and place of the trial, and directing him to appear. The secretary should send him the letter by registered, return receipt requested. See ROBERT'S RULES OF ORDER NEWLY REVISED 1990 ed. page 651 for example of letters to be sent.

## THE TRIAL

The trial is a formal hearing which can be done before the entire membership or a committee selected by the membership for this purpose. This is an opportunity for the entire membership to hear the findings and for the accused to defend himself. The accused is allowed to be represented by counsel (but not necessarily an attorney) who is a member of the organization. For the accused to have an attorney who is not a member of the society, the society must vote to allow this. The society is represented by managers who are also members of the organization which present evidence against the accused. Any nonmembers who consent to appear as witness can only be in the room when testifying.

If the accused does not attend the meeting, the members can proceed with the trial as long as the accused has been notified by registered letter.

## ORDER OF THE TRIAL

The presiding officer calls the meeting to order. He should then state that the proceedings are held in executive session which means everything is now confidential and can not be discussed with anyone outside the meeting. Any member who breaks this rule is subject to penalty.

The presiding officer asks the secretary to read from the minutes the resolutions adopted relating to the trial. The chair then asks the secretary if the accused was furnished with a copy of the charges. The chair announces the names of the managers and asks the accused if he has counsel.

The chair then asks the secretary to read the charges.

After the charges are read, the chair then asks the accused how he pleads. If he answers guilty, there is no need to proceed with the trial. The members can proceed with discussion and vote on penalties. If he pleads not guilty, then the members proceed with the trial in the following order:

1. Opening statements: by the managers first, then the accused.
2. Managers call witnesses for the society.
3. Accused calls witnesses
4. Rebuttal of witnesses; first by managers; then the accused
5. Closing arguments. First by managers; then by the accused.

After closing arguments, the members of the assembly have the right to ask questions of witnesses. All questions and remarks should be made to and through the presiding officer. However, when given permission they may ask questions of the witnesses without going through the chair.

6. After closing arguments the accused leaves the room. All witnesses and defense counsel, if members, remain for discussion and the vote.

7. The chair presents each charge and specification for a vote before the members. Each charge and specification is open for discussion. The specifications and charges can be amended to conform with the evidence presented. Each charge and specification is voted on individually, but several votes can be delayed and voted on in a single ballot. These are adopted by a majority vote.

If the accused is found guilty of several of the specifications but not the charge, then a lesser charge should be proposed and voted on.

If the accused is found guilty, then the managers should make a motion proposing the penalty. This motion is amendable and debatable. It is adopted by a majority vote.

If the penalty is removal from membership, it takes a two thirds vote.

After all is decided, the accused is brought in and the presiding officer tells the accused the results of the vote and what penalties are incurred if any.

This is a very serious step in any organization. A trial can leave a great distaste in the membership and some could even leave the organization if they feel in anyway that what has been done is unfair or unjust. Members should carefully weigh the evidence and be morally convinced that great harm has been done to the organization before finding another member guilty.

Finally, always try to work this out in other ways before having a trial.

**EXHIBIT D**

**RESOLUTION NO. \_\_\_\_\_**

**CITY OF BRADENTON BEACH, FLORIDA**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, IMPLEMENTING PROCEDURES FOR FORFEITURE OF OFFICE BROUGHT PURSUANT TO ARTICLE II, SECTION 6 OF THE CITY OF BRADENTON BEACH MUNICIPAL CHARTER, ACKNOWLEDGING PROVISIONS FOR FILLING VACANCIES IN THE OFFICE OF MAYOR, ACKNOWLEDGING PROVISIONS FOR FILLING VACANCIES OF THE OFFICE OF COMMISSIONER FOUND IN ARTICLE II, SECTIONS 6 THROUGH 7 OF THE CITY'S CHARTER OCCURRING AFTER THE CLOSE OF QUALIFYING AS PROVIDED BY SECTION 166.031(6), FLORIDA STATUTES (2014); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.**

**THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, DOES HEREBY RESOLVE AS FOLLOWS:**

**WHEREAS**, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate, and proprietary powers to enable municipalities to conduct municipal government; and

**WHEREAS**, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

**WHEREAS**, pursuant to Article II, Municipal Organization and Officers, of the City Charter, the City of Bradenton Beach shall have a City Commission consisting of five (5) officers elected at large, for two (2) year terms. The elected officers shall be a Mayor, residing in the City and one (1) Commissioner representing and residing in each ward established by ordinance, (hereinafter, collectively referred to as the "Commission" or "Elected Officials"). The Commission shall elect from one of its number a Vice Mayor to serve in the absence of the Mayor; and

**WHEREAS**, pursuant to Article II, Municipal Organization and Officers, of the City Charter, the City of Bradenton Beach has enumerated the duties and the powers of the Mayor and City Commission; and

**WHEREAS**, the Elected Officials, in order to establish a more effective and efficient governmental body desire to identify the means and methods the elected officials will conduct a Forfeiture of Office Proceeding as authorized for use by the City Commission in Article II, Section 6 of the City Charter; and

**WHEREAS**, the City of Bradenton Beach acknowledges that a vacancy in office occurring before the expiration of the term of office could be caused by death, withdrawal, forfeiture of office, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office requires a filling of vacancy; and

**WHEREAS**, the City of Bradenton Beach, pursuant to Section 166.031(6), Florida Statutes is required to have procedures for filling a vacancy in office occurring before the expiration of the term of office; and

**WHEREAS**, pursuant to Article II, Section 7, the City of Bradenton Beach has already established procedures by Ordinance 05-389 for filling vacancies of any member of the Commission; and

**WHEREAS**, the City of Bradenton Beach City Commission is adopting this Resolution to implement the City's Charter provisions providing procedures for removal from office by forfeiture and creating a method by which the Commission will process, hear, determine and dispose of a Forfeiture of Office Proceeding over a commissioner, the mayor, the vice mayor, and an elected or appointed official.

**WHEREAS**, the adoption of this Resolution is for a proper municipal purpose.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:**

Section 1. Findings of Fact. The above WHEREAS clauses are adopted herein as findings of fact.

Section 2. Procedure. The following procedure is hereby adopted in order to process, hear, determine and dispose of a Forfeiture of Office Proceeding pursuant to Chapter 2, Article II, Administration of the Code, which shall be read in its entirety as follows:

Sec. 2-33. Procedures for hearing a Petition of Forfeiture. When a petition for forfeiture of office of a member of the City Commission or an elected or appointed City Official is presented to the Commission, the Commission shall adhere to the following:

- 1) The City Commission shall convene a Special Commission Meeting, which shall be coordinated through the Office of the City Clerk, to initiate Forfeiture of Office Proceeding and to determine if the official subject to the forfeiture should be suspended. All members of the Commission shall be provided with a copy of the agenda for the meeting, which shall serve as notice.

- 2) The City Commission shall designate an individual to prepare a Forfeiture of Office Charge outlining the grounds for the charge, informing the member charged that he/she has a right to a public hearing, outlining the provisions for notice of such hearing, and providing notification that an appeal may be taken of the Commission's decision. The Official who is the subject of such charge shall be notified by the City Clerk by certified mail of the Forfeiture of Office Proceeding date and provided a copy of the Forfeiture of Office Charge concurrent to such notification.
- 3) Section 6 of Article II, City Charter states the Commission shall be the sole judge of its members as to the applicability of charges relating to forfeiture of office.
- 4) An Official who is subject to forfeiture of his/her office, shall recuse themselves from the Forfeiture Proceedings and shall not vote on any such matters. The Official in question shall be entitled to a public hearing upon request regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the Vat least one week in advance of the hearing.
- 5) The City shall conduct a quasi-judicial public hearing including presentation of evidence and sworn testimony. The chairperson of the hearing shall maintain decorum and rule on matters of law, procedure and/or evidence during the hearing. A record shall be made of all proceedings.
- 6) Any final determination by the Commission that an Official shall forfeit his/her office shall be made by a majority of the remaining members of the City Commission via resolution including a Statement of the Grounds For Removal. All votes and other acts of the Official who is the subject of such proceedings prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.
- 7) The Commission shall commence with filling the vacant seat or position in accordance with Section 7, Article II, of the City Charter.
- 8) Any decision of the Commission with respect to any such forfeiture proceeding is appealable to the circuit court.

Section 3. Severability. In the event any section, paragraph, sub-paragrpah, sentence or work of this Ordinance shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Ordinances. Any resolutions in conflict herewith, to the extent of conflict, are hereby repealed.

Section 5. Codification. This resolution shall be incorporated in and shall be included in the City of Bradenton Beach Resolutions.

Section 6. Effective Date.  
upon adoption.

This Resolution shall become effective immediately

**PASSED AND DULY ADOPTED** with a quorum present and voting this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF BRADENTON BEACH, FLORIDA, BY AND THROUGH THE CITY COMMISSION OF  
THE CITY OF BRADENTON BEACH

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk, Gia Lancaster



City of  
**DEERFIELD  
BEACH**

April 16, 2012

Caryl Berner  
3130 Cambridge F  
Deerfield Beach, FL 33442

Via U.S. Mail and Email

Re: Removal from Deerfield Beach Housing Authority

Dear Ms. Berner;

This is to inform you that I am initiating proceedings under Section 421.07, Florida Statutes, for your removal from the Deerfield Beach Housing Authority. The grounds (charges) are inefficiency and misconduct in office, to wit:

1. Behavior which disrupts Housing Authority Board meetings and injecting irrelevant matters into meetings, which has created disunity and therefore inefficiency at Board meetings.
2. Interference with the operation of the professional staff at the Housing Authority which constitutes misconduct and causes inefficiency.
3. Failing to follow Board procedures and fostering disharmony with the City of Deerfield Beach.

As you know, three of your fellow Board members have requested that you be removed for the reasons stated above. Any one of these reasons would be sufficient to support removal. I have considered this matter very carefully and feel that I must act. I will therefore be asking the City Commission for a vote in support of your removal from the Housing Authority on May 1, 2012, at 7:00 p.m. at the City Commission chambers at 150 N.E. 2<sup>nd</sup>, Deerfield Beach, Florida. Pursuant to F.S. 421.07, Florida Statutes, a hearing will be held at the time and you shall be given an opportunity to be heard in person or by counsel.

Mayor  
Peggy Noland

Vice Mayor  
Martin Popelsky

Commissioners  
Bill Ganz  
Joseph P. Miller  
Ben Preston

City Manager  
Burgess Hanson

Sincerely,

Peggy Noland  
Mayor  
City of Deerfield Beach

cc: Burgess Hanson, City Manager  
City Commission  
City Clerk  
City Attorney  
Commissioners of the Deerfield Beach Housing Authority

InternetCoast

Deerfield Beach  
**2001**  
All America City Finalist

Deerfield Beach  
**2003**  
All America City Finalist

Deerfield Beach  
**2004**  
All America City Finalist



### Forfeiture of Office Charge

Pursuant to Section 2-74 of the Code of Ordinances, Councilman John Priester is hereby charged with conduct constituting grounds for forfeiture of his office. The grounds for forfeiture are as follows:

1. In preparation for the creation of the redistricting maps based on the recent census, city staff located the current and prospective councilman by address on the now existing districting map.

2. That mapping process identified Councilman John Priester's current residence address of 923 N. E. 2nd Street to be within the current district four.

3. Councilman John Priester qualified, ran for office and was elected as the district three Councilman with 923 N. E. 2nd Street as his residence address.

3. Section 2-74(a)(1) states that a councilmember shall forfeit his office if he "lacks at any time during his term of office any qualification for the office prescribed by the Charter or by law".

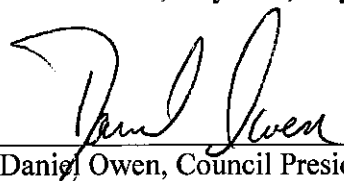
4. Charter Section 2.01(b) states the qualifications to hold office as:

(b) Eligibility. Only the qualified voters of the city shall be qualified to hold the office of councilmember. Each candidate for city council shall be a resident qualified voter within the district from which the candidate seeks to be elected, and shall have been a resident of the City of Ocala for not less than one (1) year prior to his election to office.

5. Charter Section 2.06 states that the council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths, and require the production of evidence. Decisions made by the council under this section shall be subject to review by the courts.

6. Section 2-74(b) states that "a member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the courts".

7. You are hereby notified that said forfeiture hearing shall be held on DEC. 6, 2011 at 4:30, p.m. at Council Chambers, City Hall, City of Ocala, Florida.

  
Daniel Owen, Council President

while it attempts to negotiate the terms, price and details of the sale with the property owner?

**SUMMARY:**

Appraisal reports made for a public body in connection with public land acquisition are public records within the purview of the Public Records Law, §119.011, F. S.

Your question is answered by what was said in AGO 071-394, with reference to confidential applications for the position of district school superintendent. In distinguishing former opinions of this office holding that the "work product" of a public official made for his own convenience is not a public record, it was said:

In the instant case, on the other hand, the documents in question are not simply for the personal convenience of the school board and are not the preliminary rough notes of the board. They are formal documents prepared by persons other than the school [board] members and their receipt is a link in the chain of events leading to the transaction of an important specific official act . . . . Both documents play a key role in the selection process. I am therefore of the opinion that both the applications and the reports are "public records" within the meaning of [the Public Records Law].

This language is equally applicable to the appraisal reports in question.

This conclusion is in accord with the decision of the Florida Supreme Court in *Shell v. State Road Department*, Fla. 1962, 135 So.2d 857, ruling that the State Road Department can be required to produce for inspection its appraisals and appraisers' work sheets prepared in connection with a condemnation proceeding, and in which the court noted, in a footnote, that "the files of a governmental authority should be and probably are subject to inspection by the public generally at all reasonable hours." The ruling in the *Shell* case was reaffirmed by the court in *Pinellas County v. Carlson*, Fla. 1971, 242 So.2d 714.

072-64—March 8, 1972

**STATE REGULATORY BOARD****MUST UTILIZE ONE ATTORNEY TO ADVISE BOARD AND ONE  
ATTORNEY TO PROSECUTE ON BEHALF OF BOARD IN  
DISCIPLINARY PROCEEDINGS**

To: L. K. Ireland, Jr., Secretary, Department of Administration, Tallahassee

Prepared by: Joseph C. Mellichamp III and Bjarne B. Andersen, Jr., Assistant Attorneys General

**QUESTION:**

Must a state regulatory board employ or utilize two attorneys to handle disciplinary proceedings—one to advise the board and one to prosecute on behalf of the board?

**SUMMARY:**

To insure that the rights of due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution and Section 9 of the Declaration of Rights of the Florida Constitution, are not denied to any of the citizens of this state, a state regulatory board must employ or utilize two attorneys to handle disciplinary

proceedings—one to advise the board and one to prosecute on behalf of the board.

Before I can properly deal with your question, it must first be determined whether there is a legal requirement that a state regulatory board must employ or utilize legal counsel in its proceedings.

It is my opinion that there is such a requirement. In order to insure that the constitutional guaranty of due process of law is afforded in administrative proceedings, a person competent by reason of training or experience in legal affairs should be present at all such proceedings. Chapter 120, part II, F. S.; §§403.231, 476.18(2), 484.08, 489.10 and 493.231, F. S.

Therefore, a state regulatory board should employ or utilize an attorney to advise said board in its proceedings, for legal and practical reasons. *Metropolitan Dade County v. Florida Processing Company*, Fla. 3 D.C.A. 1969, 218 So.2d 495; reversed on other grounds Fla. 1969, 229 So.2d 254. *Mack v. Florida State Board of Dentistry*, 296 F.Supp. 1259 (S.D. Fla. 1969), affirmed in part and in part vacated and remanded 430 F.2d 862 (5th Cir. 1970), *cert. den.* 401 U.S. 960 (1971).

Thus, as to your question of whether there is a legal requirement that a state regulatory board must utilize or employ two attorneys to handle disciplinary or enforcement proceedings—one to advise the board and one to prosecute on behalf of the board—it is my opinion that such is a legal requirement.

The constitutional guaranty of due process of law applies in administrative proceedings. When the rights of life, liberty or property are materially affected by the exercise of official administrative or ministerial discretion and judgment, due process of law must be afforded. 1 Fla. Jur. *Administrative Law* §109; *Williams v. Kelly*, Fla. 1938, 182 So. 881; *State v. Gates*, Fla. 1961, 134 So.2d 497; *Larson v. Florida Real Estate Commission*, Fla. 4 D.C.A. 1969, 227 So.2d 886; *Moore v. Florida Real Estate Commission*, Fla. 3 D.C.A. 1960, 121 So.2d 197.

The essential elements of due process of law are notice, an opportunity to be heard, and an opportunity to defend in an orderly proceeding before a tribunal having jurisdiction of the case. *State ex rel. Munch v. Davis*, Fla. 1940, 196 So. 491; Ch. 120, part II, F. S.

All the formalities of judicial proceedings are not necessary to constitute due process of law in administrative proceedings. In such proceedings it is sufficient if the accused is informed with reasonable certainty of the nature and cause of the accusation against him, has a reasonable opportunity to defend against attempted proof of such charges, and the proceedings are conducted in a fair and impartial manner free from any just suspicion of prejudice, unfairness, fraud or oppression. *State ex rel. Williams v. Whitman*, Fla. 1934, 150 So. 136; *Board of Public Instruction v. State ex rel. Allen*, Fla. 1969, 219 So.2d 430; *Florida Board of Massage v. Thrall*, Fla. 3 D.C.A. 1964, 164 So.2d 20.

Natural justice requires not only that the accused be heard, but that he be given a fair hearing by an impartial tribunal. The right to such a fair hearing is an inexorable safeguard and one of the rudiments of fair play assured to every litigant by the Fourteenth Amendment to the United States Constitution and Section 9 of the Declaration of Rights of the Florida Constitution. As a minimal requirement such proceedings must be free from any just suspicion of prejudice, unfairness, fraud or oppression. Due process of law is not satisfied by a hearing which is only colorable or illusory. What is required is a reasonable opportunity to be heard which affords a party a fair and full opportunity to protect his constitutional rights.

The general practice in Florida has been to fully inform a person of the nature and cause of the accusation and to give such a person a reasonable opportunity to defend against such charges. This fulfills the first two requirements laid down

in State *ex rel. Williams v. Whitman, supra*; but this still leaves the third requirement that the proceedings be conducted in a fair and impartial manner free from any just suspicion of prejudice, unfairness, fraud or oppression.

In 1961 the legislature enacted Ch. 120, part II, F. S., commonly referred to as the Administrative Procedure Act. It was the intent of the legislature to establish minimum requirements for the adjudication of any party's legal rights, duties, privileges or immunities by state agencies. Section 120.20, F. S. It would appear, therefore, in view of the expressed intent of the legislature in enacting Ch. 120, part II, F. S., that the provisions thereof should be construed *in pari materia* with all other statutory provisions relating to the same subject matter embraced within Ch. 120, part II, F. S. See AGO 062-47.

Section 120.28, F. S., and, indeed, all of part II, is an indication of the legislative intent to provide for objectivity and neutrality on the part of the board and its agents, employees and examiners.

However, it is the practice in administrative disciplinary hearings that the attorney for the board acts to collect *all* evidence favorable and unfavorable to both the board and the cited person. He further advises the board and prosecutes on behalf of the board in such hearings. The mixing of certain functions of the board's single attorney in such a proceeding may violate the guaranty of due process that must be afforded the person while fully protecting the state's interest.

This practice by various boards to mix certain functions of their single attorneys raises serious doubts as to whether the basic requirements of due process are being met unless two attorneys are furnished—one to advise the board and the other to prosecute the case. The practice of mixing certain functions in this type of hearing has been questioned and recognized as a denial of due process of law by both federal and state courts.

In *Mack v. Florida State Board of Dentistry, supra*, the court held that the mixing of functions by the state board, as evidenced by the fact that the adjudicator of fact was kept apprised of the facts of investigation prior to the hearing; the adjudicator of the facts had the authority to authorize the filing of the accusation; the legal advisor to the adjudicator of facts made decisions for the board and also acted as prosecuting attorney; the advisor to the board remained present during deliberative sessions where the defense counsel was not accorded the same right; and the executive secretary who had charge of the investigation was present during the deliberative sessions of the adjudicator of fact, deprived the defendant, whose license was revoked, of procedural due process.

What the court questioned most was the constitutional propriety of the mixing of functions of the attorney of the board. The attorney for the board, in the disciplinary proceeding, wore two hats: that of legal advisor to the board, as well as that of advocate for the prosecution. Such a mixing of functions produces the anomalous situation of the attorney for the board (as prosecutor) asking a question, defendant's counsel objecting, whereupon the board turns to its legal advisor (the prosecutor) for advice as to whether his question was objectionable. The court characterized this process as foreign to our notions of fairness and justice and somewhat reminiscent of the Star Chamber proceedings which had hopefully been relegated to history and as such deprived the defendant of the fundamental fairness required by the Constitution.

The court ordered a new hearing in accordance with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. The *Mack* decision was appealed to the United States Court of Appeals for the Fifth Circuit which affirmed in part and in part vacated and remanded. The Court of Appeals did not impose upon the board the exact rules by which the hearing was to be conducted, but instead directed the U. S. District Court and the board to conduct a hearing "within the requirements of the Constitu-

tion." Without saying so explicitly, the Court of Appeals declined to legislate what procedures should be used in an administrative hearing as had the U. S. District Court. The court merely examined what actually took place before the board, said board being uneducated in the law and subject to the advice of its own counsel who was also the prosecutor, and found in this specific case that the defendant was denied the administrative hearing to which he was entitled.

Florida courts have also recognized that such mixing of functions—one attorney in a dual role—is a denial of due process of law as required by the Fourteenth Amendment to the United States Constitution and Section 9, Declaration of Rights of the Florida Constitution, in the cases of *Metropolitan Dade County v. Florida Processing Company*, *supra*; *Ford v. Bay County School Board*, Fla. 1 D.C.A. 1970, 246 So.2d 119; *Corbett v. Churchwell*, Fla. 1968, 215 So.2d 302.

In the *Florida Processing* case the court was faced with three questions:

Whether the fact that two of the members of the board who voted to sustain the cease and desist order were not present at one of the hearings at which evidence was taken denied the appellee due process of law; whether the fact that the assistant county attorney acted both as legal advisor to the board and as the officer conducting the prosecution deprived the appellee of a fair hearing of its cause; and whether the appellee waived its right to raise the foregoing issues on appeal by failing to raise them at the hearing before the board.

The First District Court of Appeal affirmed the lower court's decision on the first ground and stated that the second or third grounds need not be decided. However, the court said concerning the question of whether the mixing of functions of the attorney was a denial of due process of law, that it would be in closer accord with traditional notions of justice and fair play for a quasi-judicial administrative board to designate one person to act as its legal advisor and a different person to act as its prosecutor.

The Florida Supreme Court heard the case on a certification that the case was of great public interest and said that where such serious rights are involved, the mixing of functions of the legal advisor to the board and the prosecutor could be subject to abuse, but that in this case the review of the transcripts failed to suggest any impropriety. *Metropolitan Dade County v. Florida Processing Company*, *supra*.

A majority of disciplinary proceedings presently being held in this state in administrative cases have the same defects as the hearing held in the *Mack* case—that of the mixing of functions of the board's attorney.

In a vacuum and idealistically, the board could be properly and impartially advised by its own attorney while he is actively involved as prosecuting attorney as to motions, presentation of evidence, objections, recommended final rulings and the type of penalty imposed without prejudice to the defendant or without denying him fundamental fairness. However, more often than not, when a hearing has become heated due to the adversary nature of the particular proceeding, the natural tendency of the prosecuting attorney is to advise his board in a manner most advantageous to what he anticipates is its particular desire within the law and morality of the issues presented.

Thus, it readily appears that the objectivity required by a board sitting as the finder of fact is not practically attained in reference to affording the respondent in such proceeding the full benefits of due process and a fair and impartial hearing. The courts have recognized the inequities in the present proceedings, but, without preempting the responsibilities of various agencies, have stated in the *Mack* and *Florida Processing* cases that there is an irregularity in the system of procedures and the procedures should be changed.

The judiciary has left the manner of change open to the legislative and

executive branches of government, thus avoiding the assumption of administrative responsibilities residing within the agencies themselves which have the basic authority to employ the necessary personnel to avoid and eliminate the existing inequities of their administrative proceedings.

As the foregoing cases indicate, the courts have recommended the appointment of an independent hearing officer or examiner to take testimony, make appropriate findings of law and fact, and render such other procedural orders as may be necessary to assure fundamental fairness in administrative proceedings or hearings.

Therefore, to insure that the rights of due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution and Section 9 of the Declaration of Rights of the Florida Constitution, are not denied to any of the citizens of this state, I am of the opinion that the responsibilities and duties to be exercised in administrative adversary hearings require that there should be (in addition to the prosecuting attorney acting in behalf of the agency) an additional attorney to serve as an independent legal advisor responsible to insure the proper conduct of such proceedings.

072-65—March 8, 1972

#### CEMETERY CORPORATION

#### REFINANCING EXISTING MORTGAGE NOT DISPOSAL OF PROPERTY SO AS TO REQUIRE APPROVAL OF DEPARTMENT OF BANKING AND FINANCE

*To: George Firestone, Representative, 92nd District, Tallahassee*

*Prepared by: S. Strom Maxwell, Assistant Attorney General and James M. Wallace, Law Intern*

#### QUESTION:

May a cemetery corporation, organized and licensed before July 1, 1965, which holds a total of less than thirty acres in dedication refinance a preexisting mortgage without the prior written approval of the Department of Banking and Finance provided for in §559.481(4), F. S.?

#### SUMMARY:

A cemetery corporation holding less than thirty acres in dedication, licensed before July 1, 1965, may refinance a preexisting mortgage without the prior written approval of the Department of Banking and Finance.

All private cemetery corporations in the state are subject to regulation under Ch. 559, part IV, F. S. The Cemetery Act was passed in 1959 empowering the state comptroller to license such businesses and generally to regulate the essential aspects of private cemetery corporations. The act provides that such corporations must dedicate a minimum of thirty acres for cemetery purposes, but that preexisting corporations "shall continue in full force and effect but shall hereafter be operated in accordance with the provisions of Part IV of this chapter." See §559.35, F. S.

Section 559.481, F. S., specifically deals with the sale or other disposition of dedicated lands. Subsection (1) sets out minimum acreage, stating that each licensee "shall not sell, mortgage, lease or encumber the same without prior approval" of the Department of Banking and Finance. See §20.12(2), F. S. Section 559.481(2) provides further the duties of such a licensee in conveying