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**INTER-OFFICE CORRESPONDENCE  
MEMORANDUM NO. 2018-134**

**TO:** Mayor Frank C. Ortis  
Members of the City Commission

**CC:** Charles F. Dodge, City Manager  
Aner Gonzalez, Assistant City Manager  
Mike Stamm, Director of Planning and Economic Development

**FROM** Samuel S. Goren, City Attorney *SSG*  
Jacob G. Horowitz, Assistant City Attorney *JGH*

**DATE:** August 28, 2018

**RE:** City of Pembroke Pines ("City") / Chamber of Commerce Matters

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The City Attorney's Office has prepared this memorandum as a follow-up to the discussion that occurred at the regular City Commission meeting on August 22, 2018 related to the Miramar-Pembroke Pines Regional Chamber of Commerce, Inc. (the "Chamber"). The intent of this memorandum is to provide some additional clarification as to the City's relationship with the Chamber and the Chamber's corporate status, as well as the Chamber's legal ability to engage in political activity.

Our review of the Chamber's corporate status is limited to the information that is publicly available. More specifically, we have predicated this analysis on the assumption that the information provided to the City Commission at the August 22, 2018 Commission meeting by the Chamber's Chair, Henry Rose, is factually accurate. We have also examined other operative information that is available in the public domain.

Additionally, the City Attorney's Office is not directly familiar with the general operations or activities engaged in by the Chamber or any other related corporate entity. This memorandum is not intended to provide legal advice to the Chamber, and we would defer to the Chamber's legal counsel regarding the applicability of the Internal Revenue Code ("IRC") to the Chamber or Chamber's status as a tax exempt entity.

Not for profit corporations, in general, are governed by Chapter 617, F.S. In addition, the IRC has established a number of tax exempt designations which apply to certain entities, depending on the types of activities engaged in by the entities. Failure of an entity to comply with the conditions and requirements of their designation may result in an investigation by the

Internal Revenue Service and a potential loss of a tax exemption, as legally appropriate.

## I. PARTNERSHIP AGREEMENT

On or about December 6, 2016, the City and the Chamber entered into a one-year Partnership Agreement (the “Partnership Agreement”) whereby the City agreed, among other things, to become a trustee member of the Chamber at a cost of \$8,000.00. On March 8, 2018 (*nunc pro tunc* December 1, 2017), the City and the Chamber entered into an amendment to the Partnership Agreement, whereby the parties agreed to extend their relationship for one (1) additional year under the same terms and conditions. The current Partnership Agreement, as amended, expires on November 30, 2018.<sup>1</sup>

The item on the August 22, 2018 Commission agenda was the renewal of the Partnership Agreement for another additional one (1) year term, commencing on December 1, 2018 and expiring on November 30, 2019.

## II. CHAMBER OF COMMERCE – CORPORATE STATUS

It is our understanding that the following three (3) separate legal entities generally operate under the auspices of the Chamber:

- i) 501(c)(3) – Chamber of Commerce Scholarship Fund
- ii) 501(c)(4) – South Florida Business Partnership Legislative Action Committee, Inc. (the “Action Committee”)
- iii) 501(c)(6) – Miramar-Pembroke Pines Regional Chamber of Commerce, Inc.

The City Commission discussion which occurred on August 22, 2018 focused on the 501(c)(4) and the 501(c)(6), and this analysis is limited to these two corporate entities. This memorandum does not address the Chamber’s scholarship fund.

### A. 501(c)(4)

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<sup>1</sup> The 2016 Partnership Agreement was a restatement of the longstanding relationship between the City and the Chamber, which previously included the City’s financial support, as well as the Chamber leasing space from the City in the old city hall building, among other things.

The Articles of Incorporation for the Action Committee were filed with the Secretary of State on or about January 16, 2018. In accordance with Article III thereof, the expressed purpose of the corporation is as follows:

...To transact any and all lawful business allowable under the Florida Not for Profit Act, and to further the common good and general welfare of the Miramar and Pembroke Pines surrounding community, within the meaning of 501(c)(4).

Article V further identifies the Chamber as the registered agent of the Action Committee.

Our research has also indicated that the Action Committee does business as “The Miramar Pembroke Pines Regional Chamber of Commerce Political Action Committee” and that, under that d/b/a, the Action Committee has endorsed candidates in local elections, including City elections. It is unclear how the IRS would consider the Action Commission doing business as some minor variation of the Chamber’s legal name; however, the Chamber may legally engage in some political activity, as detailed below.

In accordance with the IRC, a 501(c)(4) designation generally applies to social welfare organizations that must not be organized for profit and must be operated exclusively to promote social welfare. Seeking legislation germane to the organization’s programs (i.e. lobbying) is considered a permissible means of satisfying the social welfare requirement. Further, social welfare organizations may engage in certain other political activities so long as that is not its primary activity.

Note, however, Section 1.501(C)(4)-1(a)(2)(ii) of the IRC expressly states, in part, as follows:

The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.

As previously noted, this memorandum is limited to the ability to engage in political activity. The City Attorney’s Office is not familiar with the general mission, operations or other activities engaged in by this entity.

B. 501(c)(6)

It is our understanding that the Chamber is organized and designated as a 501(c)(6) not for profit entity. The Chamber's Amended and Restated Articles of Incorporation were filed with the Secretary of State on or about February 13, 2003. Article III(2)(B) of the Articles expressly state, as follows:

This Corporation [the Chamber], a non-profit corporation, in its activities, shall be non-partisan and non-sectarian, and shall neither take part nor lend its influence to the election or appointment of any candidate for national, state, county or city office.

A 501(c)(6) designation generally applies to business leagues such as chambers of commerce, as well as a number of other entities expressly enumerated in the IRC. A "business league" is defined as "an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit."

An organization that otherwise qualifies for a 501(c)(6) exemption will not be disqualified merely because it engages in some political activity; however, if it does so, it may be required to provide its members with notice of the dues used for such activity and/or be subject to certain taxation on the amount of the expenditures.

For reference, when the City makes its trustee payment to the Chamber pursuant to the Partnership Agreement, the 501(c)(6) entity is the intended destination of such funds.

### III. CONCLUSION

Exhibit "A" to the Partnership Agreement, as amended, details the City's investment in the Chamber, including the \$8,000.00 platinum trustee membership, along with the return on investment provided by the Chamber. The Partnership Agreement does not expressly address political activities. The articles of incorporation of both the Chamber and the Action Committee, as referenced, speak for themselves.

Based on the foregoing, the City may consider the following options, among others, regarding the deferred item to renew the City's Partnership Agreement with the Chamber:

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- 1) Renew the Partnership Agreement under the same terms and conditions;
- 2) Renew the Partnership Agreement on the condition that the Chamber refrain from political activity at the national, state, county or city level, consistent with the Articles (including through the Action Committee); or
- 3) Choose not to renew its Partnership Agreement with the Chamber.

Note that if any member of the Commission or member of the public believes that the Chamber, or any one of its entities, has violated IRC rules associated with its particular exemption, the Internal Revenue Service has resources to review tax exempt designations.

Please contact our office if there is any additional information that we can provide.