

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: December 1, 2009

Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on December 15, 2009, at 9:30 a.m.: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, establishing the Palm Beach County Commission on Ethics; providing for creation and jurisdiction; providing for membership qualifications, terms and vacancy; providing for applicability of the Code of Ethics; providing for organization of the Commission on Ethics; providing for powers and duties; providing for financial support; providing for procedure on complaints filed; providing for public hearing procedures; providing for notification and referral to other authorities; providing for dismissal of complaints; providing for frivolous or groundless complaints; providing for effect on other laws; providing for prospective jurisdiction; providing for personnel proceeding; providing for statute of limitations; providing for advisory opinion; providing for appeals; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the Code of Laws and Ordinances; and providing for an effective date.

**Summary:** In response to the Presentment of the Palm Beach County Grand Jury regarding Investigation of Palm Beach County Governance and Public Corruption Issues, the Board of County Commissioners directed the County Attorney's Office to draft ordinances creating a local Code of Ethics, and establishing an Office of Inspector General and Commission on Ethics. This Ordinance establishes the Palm Beach County Commission on Ethics. Countywide (LB)

**Background and Policy Issues:** The Palm Beach County Commission on Ethics will be empowered to review, interpret, render advisory opinions and enforce the Palm Beach County Code of Ethics, the Lobbyist Registration Ordinance, and the Post-employment Ordinance. The Commission on Ethics will also provide training and outreach programs for county employees and officials, county vendors, and other entities that do business with Palm Beach County. Other local governmental agencies will be able to employ the services of and be subject to the Commission on Ethics by contract. To ensure independence, the Commission on Ethics members will be appointed by one university president and four collegial bodies, not one of which is subject to the jurisdiction of the Commission on Ethics. The board will be composed of a former law enforcement official with experience investigating white collar crime or public corruption, an attorney with experience in ethics regulation, an ethics educator, a certified public accountant, and a former elected official. The Commission on Ethics, along with one representative each from the State Attorney and Public Defender, will select the Inspector General.

**Attachments:**

1. Ordinance

Recommended by: \_\_\_\_\_

County Attorney

Date

11/19/09

Approved by: \_\_\_\_\_

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	180,000	198,500*	198,500*	198,500*	198,500*
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>180,000</b>	<b>198,500*</b>	<b>198,500*</b>	<b>198,500*</b>	<b>198,500*</b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget?            Yes \_\_\_\_\_ No X

Budget Account No.:    Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

Reporting Category \_\_\_\_\_



**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

\*Fiscal impact for 2011-2014 is an estimate, with the actual impact to be determined by the *Commission on Ethics'* budget request.

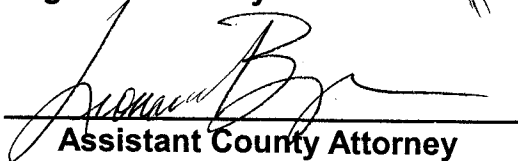
**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 _____ OFMB	11/23/09 SN 11/19/09 PMM 11-19-09	 _____ Contract Development and Control
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

1  
2  
3 **ORDINANCE NO. 2009-\_\_\_\_\_**  
4  
5

6 **AN ORDINANCE OF THE BOARD OF COUNTY**  
7 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,**  
8 **ESTABLISHING THE PALM BEACH COUNTY COMMISSION ON**  
9 **ETHICS; PROVIDING FOR CREATION AND JURISDICTION;**  
10 **PROVIDING FOR MEMBERSHIP QUALIFICATIONS, TERMS**  
11 **AND VACANCY; PROVIDING FOR APPLICABILITY OF THE**  
12 **CODE OF ETHICS; PROVIDING FOR ORGANIZATION OF THE**  
13 **COMMISSION ON ETHICS; PROVIDING FOR POWERS AND**  
14 **DUTIES; PROVIDING FOR FINANCIAL SUPPORT; PROVIDING**  
15 **FOR PROCEDURE ON COMPLAINTS FILED; PROVIDING FOR**  
16 **PUBLIC HEARING PROCEDURES; PROVIDING FOR**  
17 **NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES;**  
18 **PROVIDING FOR DISMISSAL OF COMPLAINTS; PROVIDING**  
19 **FOR FRIVOLOUS OR GROUNDLESS COMPLAINTS;**  
20 **PROVIDING FOR EFFECT ON OTHER LAWS; PROVIDING FOR**  
21 **PROSPECTIVE JURISDICTION; PROVIDING FOR PERSONNEL**  
22 **PROCEEDING; PROVIDING FOR STATUTE OF LIMITATIONS;**  
23 **PROVIDING FOR ADVISORY OPINION; PROVIDING FOR**  
24 **APPEALS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT;**  
25 **PROVIDING FOR SEVERABILITY; PROVIDING FOR**  
26 **INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND**  
27 **PROVIDING FOR AN EFFECTIVE DATE.**  
28

29 **WHEREAS,** the Palm Beach County Board of County Commissioners finds that the  
30 integrity of the governmental decision-making process is essential to the continued functioning of an  
31 open government; and

32 **WHEREAS,** in order to ensure the integrity of these processes and restore public confidence  
33 in government, the Board of County Commissioners finds it necessary to create the Palm Beach  
34 County Commission on Ethics; and

35 **WHEREAS,** the purpose of the Palm Beach County Commission on Ethics is to serve as the  
36 guardian of the public trust by, among other things, educating the public, elected and appointed  
37 officials and other public servants as to the required standards of ethical conduct and enforcing those  
38 standards of conduct; and

39 **WHEREAS,** it is not the intent of the Board of County Commissioners that the Palm Beach  
40 County Commission on Ethics serve as a personnel board resolving personnel matters involving  
41 County employees.

42 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
43 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

1     **SECTION 1. CREATION AND JURISDICTION.**

2             The Palm Beach County Commission on Ethics (hereinafter “Commission on Ethics”) is  
3 hereby established. The jurisdiction of the Commission on Ethics shall extend to any person  
4 required to comply with the Palm Beach County Code of Ethics, the Palm Beach County Lobbyist  
5 Registration Ordinance, and the Palm Beach County Post-Employment Ordinance, and may further  
6 extend to persons or entities required to comply with additional Ordinances and Regulations duly  
7 adopted by other county, local, or municipal government and any commission, bureau, district, or  
8 other governmental entity located in Palm Beach County as more fully set forth below.

9     **SECTION 2. MEMBERSHIP, QUALIFICATIONS, TERMS, VACANCIES.**

10            **A. Composition and appointment.** The Commission on Ethics shall be composed of  
11 five (5) members. The members of the Commission on Ethics shall be appointed as follows:

- 12            (1) The President of the Palm Beach County Association of Chiefs of Police shall be  
13 requested to appoint a former law enforcement official with experience in investigating  
14 white collar crime or public corruption.
- 15            (2) The President of the Hispanic Bar Association of Palm Beach County, the President of  
16 the F. Malcolm Cunningham, Sr. Bar Association, and the Chair of the Palm Beach  
17 County Bar Association’s Diversity Task Force shall be requested to appoint an attorney  
18 with experience in ethics regulation of public officials and employees.
- 19            (3) The President of Florida Atlantic University (FAU) shall be requested to appoint a  
20 faculty member who teaches at an institution of higher education with a campus located  
21 in Palm Beach County and who has taught a course in professional legal ethics or has  
22 published or performed services in the field of professional legal ethics.
- 23            (4) The President of the Palm Beach Chapter of the Florida Institute of CPAs shall be  
24 requested to appoint a member who possesses at least five years experience as a  
25 Certified Public Accountant (CPA) with forensic audit experience.
- 26            (5) The Board of Directors of the Palm Beach County League of Cities, Inc. shall be  
27 requested to appoint a person who has served as a former elected official for a  
28 governmental entity in Palm Beach County.

29 All members of the Commission on Ethics shall be appointed within forty five (45) days of the  
30 effective date of this Ordinance. Each appointing entity shall promptly provide notice of each  
31 appointment to the County Administrator.

1           **B. Additional qualifications.** Each member of the Commission on Ethics shall be of  
2 outstanding reputation for integrity, responsibility and commitment to serving the community. The  
3 members of the Commission on Ethics should be representative of the community-at-large and  
4 should reflect the racial, gender and ethnic make-up of the community. Before entering upon the  
5 duties of office, each appointee on the Commission on Ethics shall take the prescribed oath of office  
6 pursuant to section 876.05, Florida Statutes. Members of the Commission on Ethics shall serve  
7 without compensation.

8           **C. Term.** The members of the Commission on Ethics shall serve staggered terms of four (4)  
9 years each, provided that of the original members, two (2) members described in subsection 2.A.(1)  
10 and 2.A.(2) shall be appointed for an initial term of two (2) years. The remaining three (3) members  
11 shall be appointed for an initial term of four (4) years. Thereafter, all members of the Commission  
12 on Ethics shall serve terms of four (4) years.

13           **D. Vacancies.** A vacancy occurring during or at the expiration of a member's term on the  
14 Commission on Ethics shall be filled as provided in subsections A. and B., no later than sixty (60)  
15 days after the vacancy occurs.

16           **E. Additional requirements.** No individual, while a member of the Commission on Ethics,  
17 shall:

- 18           (1) Hold or campaign for any elective political office;
- 19           (2) Hold office in any political party or political committee;
- 20           (3) Actively participate in or contribute to any political action committee, or to any  
21           campaign for state or local office or for any U.S. Congressional or Senate office serving  
22           the State of Florida;
- 23           (4) Be employed by Palm Beach County, any municipality within Palm Beach County, or  
24           any other governmental entity subject to the authority of the Commission on Ethics or  
25           the Inspector General; or
- 26           (5) Allow his or her name to be used by a campaign in support of or against any candidate  
27           for political office or any referendum or other ballot question. Nothing herein shall  
28           preclude a member of the Commission on Ethics from signing a petition in support of or  
29           against any referendum or other ballot question.

1     **SECTION 3. APPLICABILITY OF CODE OF ETHICS ORDINANCE.**

2             The Palm Beach County Code of Ethics Ordinance shall be applicable to the members and  
3 staff of the Commission on Ethics.

4     **SECTION 4. ORGANIZATION OF THE COMMISSION ON ETHICS.**

5             A. The Commission on Ethics shall elect one (1) of its voting members as chairperson who  
6 shall serve a term of two (2) years. No chairperson shall be permitted to serve two (2) consecutive  
7 terms.

8             B. The Commission on Ethics shall adopt bylaws and rules of procedure which are  
9 consistent with the provisions of this ordinance and rules and regulations for the Commission on  
10 Ethics' governance. The Commission on Ethics shall hold regular meetings in accordance with the  
11 bylaws of the Commission and may hold such other meetings as it deems necessary.

12            C. All meetings of the Commission on Ethics shall be public, and written minutes of the  
13 proceedings thereof shall be maintained by the Commission on Ethics. All actions taken at the  
14 meetings of the Commission on Ethics shall be promptly and properly recorded. Copies of all  
15 minutes, resolutions, decisions or advisory opinions of the Commission on Ethics shall be forwarded  
16 to the Clerk to the Board of County Commissioners no later than thirty (30) days subsequent to any  
17 meeting of the Commission on Ethics.

18            D. The Commission on Ethics shall be empowered to appoint an Executive Director and to  
19 remove such appointee at will. The Commission on Ethics shall utilize a competitive selection  
20 process when selecting an Executive Director. The Commission on Ethics shall fix the Executive  
21 Director's salary, subject to ultimate budget approval by the Board of County Commissioners. The  
22 Executive Director shall be empowered to appoint, remove, and suspend employees or agents of the  
23 Commission on Ethics, subject to ultimate budget approval by the Board of County Commissioners.  
24 The Executive Director shall be further empowered to adopt personnel and management policies  
25 consistent with like policies in place for County personnel.

26     **SECTION 5. POWERS AND DUTIES OF THE COMMISSION ON ETHICS.**

27            A. The Commission on Ethics shall be authorized to exercise such powers and shall be  
28 required to perform such duties as are hereinafter provided. The Commission on Ethics shall be  
29 empowered to review, interpret, render advisory opinions and enforce the:

- 30            (1) Palm Beach County Code of Ethics;  
31            (2) Palm Beach County Post-Employment Ordinance; and

1 (3) Palm Beach County Lobbyist Registration Ordinance.

2 **B.** It is anticipated that municipalities, taxing districts, and other public officials and entities  
3 will recognize and desire to benefit from the services of the Commission on Ethics. The  
4 Commission on Ethics may be empowered to review, interpret, render advisory opinions, and  
5 enforce the County's Code of Ethics or similar ordinances, rules or regulations duly adopted by Palm  
6 Beach County or other local or municipal government, or any commission, bureau, district, or other  
7 governmental entity located in Palm Beach County, pursuant to agreements or memoranda of  
8 understanding between the Commission on Ethics and said governmental agency. The memorandum  
9 of understanding or agreement shall include a provision for fees to be paid to the Commission on  
10 Ethics from the public entity in exchange for such benefits at a rate established by the Commission  
11 on Ethics. All fees paid under any such agreement shall be used solely to fund the operations of the  
12 Commission on Ethics and its staff. Any such agreement or memorandum of understanding is  
13 subject to final approval of the Board, but such approval shall not be unreasonably withheld.

14 **C.** As set forth in the Palm Beach County Office of Inspector General Ordinance (Palm  
15 Beach County Ordinance 2009-XXX), the Commission on Ethics shall serve with one delegate each  
16 from the State Attorney's Office and Public Defender's Office for the Fifteenth Judicial Circuit to  
17 serve as a selection committee to select the Inspector General. Upon initiation of procedures for the  
18 removal of the Inspector General by the Board of County Commissioners or any other Funding  
19 Entity as described in the Palm Beach County Office of Inspector General Ordinance (Palm Beach  
20 County Ordinance No. 2009-\_\_\_\_), the Commission on Ethics shall further be authorized to  
21 independently investigate and report the results of such investigation to Board of County  
22 Commissioners and any other Funding Entity.

23 **D.** The Commission on Ethics shall from time to time review ordinances and state and  
24 federal laws relating to ethics in government and shall report and make recommendations to the  
25 Board of County Commissioners as it deems appropriate.

26 **E.** The Commission on Ethics shall develop and deliver ethics training and outreach  
27 programs for the benefit of county employees and officials, county vendors, non-profit corporations,  
28 and other entities that do business with or are regulated by the County. The Commission on Ethics  
29 may recommend that the Board enter into agreements with other entities to provide such training and  
30 outreach programs to be administered by the Commission on Ethics.

1     **SECTION 6. FINANCIAL SUPPORT FOR THE COMMISSION ON ETHICS.**

2             A. The Commission on Ethics shall establish a fiscal year which coincides with that of Palm  
3 Beach County. Pursuant to its annual budget process, the County shall provide sufficient financial  
4 support for the Commission on Ethics to fulfill its duties as set forth in this Ordinance. The  
5 Commission on Ethics shall timely submit to the Board of County Commissioners a budget request  
6 including a reasonable estimate of operating and capital expenditures, which request shall not be  
7 implemented until approved by the Board of County Commissioners. In order to ensure adequate  
8 funding for the prompt establishment of the Commission on Ethics, the Board of County  
9 Commissioners hereby approves an amount equal to one hundred eighty thousand dollars (\$180,000)  
10 to fund all Commission on Ethics operations for the remainder of the 2009-2010 fiscal year.

11             B. The Commission on Ethics budget request shall be prepared on official county budget  
12 forms in a format prescribed by the County Office of Financial Management and Budget, shall be  
13 reviewed in a manner similar to that in which of other County Departments are reviewed, and shall  
14 be incorporated in the proposed budget and timely submitted to the Board of County Commissioners  
15 each year. Nothing contained herein shall be construed to prohibit the Commission on Ethics from  
16 submitting to the Board of County Commissioners supplemental budget requests which, if approved,  
17 shall constitute amendments to the county budget.

18             C. In addition to budgetary appropriations made by Palm Beach County, the Commission on  
19 Ethics may accept grants, contributions or appropriations from the federal government, state  
20 government, any municipality within Palm Beach County, or any academic institution or nonprofit  
21 entity which has not entered into a contract or transacted business with the County. The  
22 Commission on Ethics may accept grants, contributions or appropriations from an academic  
23 institution or nonprofit entity which has entered into a contract or transacted business with the  
24 County if the Board of County Commissioners by resolution approves the grant, contribution, or  
25 appropriation. No other grants, contributions or appropriations may be accepted by the Commission  
26 on Ethics.

27     **SECTION 7. PROCEDURE ON COMPLAINTS FILED.**

28             A. **Legally sufficient complaint.** Any person may file a complaint with the Commission on  
29 Ethics. Within thirty (30) days after receipt of a complaint by the Commission on Ethics, a copy  
30 shall be sent to the alleged violator, otherwise known as the Respondent. The Commission shall  
31 investigate all complaints following a finding by the Executive Director, with advice of Counsel to



1 the Commission on Ethics, that the complaint is legally sufficient. In order to be found legally  
2 sufficient, a complaint must:

- 3 (1) Be in writing, and executed on a form prescribed by the Commission on Ethics;
- 4 (2) Allege the elements of a violation within the Commission on Ethics' jurisdiction;
- 5 (3) Be based substantially upon the personal knowledge of the Complainant; and
- 6 (4) Be signed under oath or affirmation by the complaining person.

7 Upon a finding of legal sufficiency by the Executive Director, the Commission on Ethics shall  
8 initiate a preliminary investigation.

9 **B. Preliminary investigation and public hearing.** A preliminary investigation shall be  
10 undertaken by the Commission on Ethics of each legally sufficient complaint over which the  
11 Commission on Ethics has jurisdiction to determine whether there is probable cause to believe that a  
12 violation has occurred. If, upon completion of the preliminary investigation, the Commission on  
13 Ethics finds no probable cause to believe that a violation has been committed, the Commission on  
14 Ethics shall dismiss the complaint with the issuance of a report to the Complainant and the  
15 Respondent. If the Commission on Ethics finds from the preliminary investigation probable cause to  
16 believe that a violation has been committed, it shall notify Complainant and Respondent via certified  
17 mail, hand delivery, or courier, informing the person of his or her right to request a hearing within  
18 thirty (30) days of receipt of the notice. Upon request submitted to the Commission on Ethics in  
19 writing, any person who the Commission on Ethics finds probable cause to believe has committed a  
20 violation of a provision within its jurisdiction shall be entitled to a public hearing. Such person shall  
21 be deemed to have waived the right to a public hearing if the request is not received within thirty  
22 (30) days following receipt of the probable cause notification required by this subsection. The  
23 Commission on Ethics may on its own motion require a public hearing, may conduct such further  
24 investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to  
25 be just and in the best interest of the citizens of Palm Beach County. The public hearing provided  
26 for in this Section shall be held within ninety (90) days of the probable cause determination unless  
27 extended by the Commission on Ethics for good cause based on the request of a party or on its own  
28 initiative.

29 **C. Investigations.** Investigations shall be conducted by Commission on Ethics staff or by  
30 any other person or agency so designated by the Commission on Ethics under the supervision of the  
31 Executive Director and/or the Inspector General. Investigations shall be limited to the allegations of

1 the complaint, but shall include an investigation of all facts and persons materially related to the  
2 complaint at issue.

3 **D. Counsel.**

4 (1) Counsel to Commission on Ethics. The Commission on Ethics shall select counsel to  
5 advise the Commission on Ethics.

6 (2) Advocate. The Commission on Ethics shall retain legal counsel to serve as the  
7 Advocate. The Advocate shall prosecute cases before the Commission on Ethics. The  
8 Executive Director may serve as Advocate provided the Executive Director is a member  
9 of the Florida Bar in good standing.

10 (3) Counsel to the Commission on Ethics, the Advocate, or both may serve on a volunteer  
11 basis.

12 (4) Respondent. The Respondent may appear on his or her own behalf or may be  
13 represented by a lawyer. All notices and communications to a Respondent represented  
14 by a lawyer shall be made through Respondent's lawyer.

15 **E. Public Records Exemption.** The Commission on Ethics and its staff shall be considered  
16 "an appropriate local official" for the purposes of whistleblower protection provided for in  
17 section 112.3188(1), Florida Statutes. With the exception of the initial complaint filed in a matter,  
18 all records held by the Commission on Ethics and its staff related to an active preliminary  
19 investigation are confidential and exempt from disclosure in a manner consistent with the provisions  
20 in section 112.3188(2), Florida Statutes. Once a preliminary investigation is complete and a  
21 probable cause determination made, all other proceedings conducted pursuant to this subsection shall  
22 be public meetings within the meaning of chapter 286, Florida Statutes, and all other documents  
23 made or received by the Commission on Ethics shall be public records within the meaning of  
24 chapter 119, Florida Statutes.

25 **F. General Power of Subpoena.** The Commission on Ethics shall be empowered to  
26 subpoena and investigate. In the case of a refusal to obey a request for documents or for an  
27 interview during an investigation, the Commission on Ethics may subpoena relevant witnesses and  
28 compel their attendance and testimony, administer oaths and affirmations, take evidence, and require  
29 by subpoena the production of any books, papers, records, or other relevant items. The Commission  
30 on Ethics may delegate to its staff the authority to administer oaths and affirmations. In the case of a  
31 refusal to obey a subpoena issued to any person, the Commission on Ethics may make application to

1 any circuit court of this State which shall have jurisdiction to order the witness to appear before the  
2 Commission on Ethics and to produce evidence, if so ordered, or to give testimony touching on the  
3 matter in question. Any person who fails to obey the order may be punished in a court of law.  
4 Seventy-two hours prior to serving a subpoena, the Executive Director shall provide written notice to  
5 the State Attorney and the U.S. Attorney for the Southern District of Florida. The Commission on  
6 Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State  
7 Attorney or the U.S. Attorney for the Southern District of Florida. When the State Attorney or the  
8 U.S. Attorney for the Southern District of Florida has explicitly notified the Commission on Ethics  
9 in writing that the Commission's investigation is interfering with an ongoing criminal investigation  
10 or prosecution, the Commission on Ethics shall suspend service of subpoena, examination of  
11 witnesses, or other investigative activities as set forth in the notice.

12 **G. Subpoenas for discovery; discovery.** At any time after the Commission on Ethics  
13 orders a public hearing of the matter, the Commission on Ethics may issue subpoenas, as provided in  
14 Section 7.F., to effect discovery upon the written request of Respondent or Advocate. The  
15 requesting person shall give the name and address of each witness he or she wishes to have deposed  
16 and shall describe with particularity those documents or other items that the person wishes to have  
17 the witness produce pursuant to a subpoena *duces tecum*. The chairperson or a member of the  
18 Commission on Ethics designated by the chairperson may issue appropriate orders to effectuate the  
19 purposes of discovery and to prevent delay.

20 **H. Subpoenas for public hearing.** The Respondent and the Advocate shall submit to the  
21 Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing.  
22 The lists shall contain the correct names and addresses of the witnesses and shall describe with  
23 particularity those documents or other items that he or she wishes to have the witness bring to the  
24 hearing pursuant to subpoena *duces tecum*. Subpoenas shall be issued as provided in Section 7.F.

25 **I. Motions.**

26 (1) All motions shall be in writing unless made on the record during a hearing, and shall  
27 fully state the actions requested and the grounds relied upon. The motion shall include a  
28 statement that the movant has conferred with the Advocate and all other parties of  
29 record and shall state whether there is any objection to the motion.

1 (2) The original written motion shall be filed with the Commission on Ethics and a copy  
2 served on all parties or their attorneys. The Commission on Ethics staff shall send a  
3 copy of the motion to the chairperson.

4 (3) The chairperson, or a member of the Commission on Ethics designated by the  
5 chairperson, shall conduct such proceedings and make such orders as are deemed  
6 necessary to dispose of issues raised by motions, but is not required to hold a hearing on  
7 the motion in order to rule upon it.

8 (4) Every written motion may be accompanied by, or included in, a written memorandum  
9 stating the grounds upon which the motion is based. Other parties to a proceeding may,  
10 within seven (7) days of service of a written motion, file written memoranda in  
11 opposition.

12 **J. Prehearing conferences.** The chairperson, or a member of the Commission on Ethics  
13 designated by the chairperson, may conduct one or more prehearing conferences for the purpose of  
14 hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities  
15 of settlement of the issues, examining exhibits and documents, exchanging names and addresses of  
16 witnesses, and resolving other procedural matters.

17 **K. Exchange of witness lists.** Unless otherwise ordered by the chairperson or a member of  
18 the Commission on Ethics designated by the chairperson as a result of a prehearing conference, the  
19 Advocate and the Respondent(s) or counsel for Respondent(s) shall exchange the names and  
20 addresses of witnesses at least ten (10) days prior to the public hearing, with a copy being provided  
21 to the chairperson. Names and addresses of witnesses discovered subsequently shall be disclosed to  
22 the other party or parties and to the chairperson as soon as possible. Failure to disclose the name and  
23 address of a witness may result in the exclusion of the witness's testimony, according to the rule  
24 applied in civil judicial proceedings.

25 **SECTION 8. PUBLIC HEARING PROCEDURES.**

26 **A. Presentation of the case.** The Advocate shall present his or her case first. Respondent  
27 may then present his or her case. Rebuttal evidence may be permitted in the discretion of the  
28 Commission on Ethics.

29 **B. Opening and closing statements.** Opening and closing statements may be presented by  
30 the Advocate and the Respondent. The Advocate may make the first statement and the Respondent  
31 may follow. Rebuttal by the Advocate may be permitted or may be denied.

1           **C. Evidence.**

2           (1) Stipulations may be received and are encouraged as to uncontested matters.

3           (2) Oral evidence shall be taken only on oath or affirmation.

4           (3) The Respondent and the Advocate shall have the right: to present evidence relevant to  
5           the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and  
6           to impeach any witness regardless who first called him or her to testify.

7           (4) The hearing shall not be conducted according to technical rules relating to evidence and  
8           witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to  
9           supplement or explain other evidence, but shall not be sufficient itself to support a  
10          finding. The rules of privilege shall be effective to the same extent that they are now or  
11          hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence  
12          shall be excluded. The Commission on Ethics shall not allow the introduction into  
13          evidence of an affidavit of a person when that person can be called to testify; this shall  
14          not preclude the admission of a deposition of such a person, however, for any reason  
15          permissible in a court of law under the Florida Rules of Civil Procedure.

16          **D. Transcript of proceedings.** The proceedings shall be recorded by recording instruments  
17          or by a court reporter. Respondent may, at his or her own expense, provide a court reporter or  
18          recording instruments. The Commission on Ethics may provide a court reporter. No transcript of  
19          the proceedings shall be prepared unless requested by the Commission on Ethics or by the  
20          Respondent. If the Respondent requests that a transcript be prepared by a court reporter, the  
21          Respondent shall pay the expense of transcription. If the Respondent requests that the Commission  
22          on Ethics prepare a transcript from recording instruments and the Commission on Ethics grants such  
23          request, the Respondent shall pay the Commission on Ethics the actual cost of transcription. If a  
24          court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

25          **E. Proposed public report.** After the conclusion of the hearing, the Respondent and the  
26          Advocate may present written proposed public reports, within a time designated by the chairperson  
27          or a member of the Commission on Ethics designated by the chairperson. If a proposed public report  
28          is filed by the Respondent or the Advocate, each proposed finding in the proposal that is rejected  
29          shall be accompanied by a statement summarizing the reasons for rejection.

30          **F. Motions to dismiss filed by Advocate.** After probable cause is found and a public  
31          hearing is ordered by the Commission on Ethics, and after further investigation or discovery is made

1 by the Advocate, the Advocate may move to dismiss the proceeding if the Advocate concludes that  
2 there is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall  
3 specifically state the grounds upon which it is made. The motion shall be heard by the Commission  
4 on Ethics in accordance with the procedure provided for in Section 7.I.

5 **G. Public order imposing penalty.** Upon completion of any hearing initiated under this  
6 subsection, the Commission on Ethics shall make a finding and public report as to whether any  
7 provision within its jurisdiction has been violated. If the Commission on Ethics finds, based upon  
8 competent substantial evidence in the record, that a violation has been committed, the Commission  
9 on Ethics shall issue an order imposing the appropriate penalty as provided in the ordinance being  
10 enforced. The public report and final order shall include a determination as to whether the violation  
11 was intentional or unintentional. The Commission on Ethics shall, within twelve (12) months of the  
12 filing of a complaint, render a final order disposing of said complaint unless extended by the  
13 Commission for good cause. If a person fails to comply with an order issued by the Commission on  
14 Ethics, the Commission on Ethics may make application to any circuit court of this State which shall  
15 have jurisdiction to order the violator to comply with the order of the Commission on Ethics. Any  
16 violator who fails to obey the order may be punished by the court.

17 **SECTION 9. NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES.**

18 As provided for by ordinance within its jurisdiction, the Commission on Ethics shall refer a  
19 matter to the State Attorney or any other appropriate official or agency having authority to initiate  
20 prosecution when deemed appropriate. The State Attorney or other appropriate agency may decline  
21 prosecution or enforcement of any matter referred under this Ordinance and refer the matter back to  
22 the Commission on Ethics. The Commission on Ethics shall notify the State of Florida Commission  
23 on Ethics, the State Attorney, the U.S. Attorney for the Southern District of Florida, and other  
24 appropriate law enforcement agencies within ten (10) days of a finding of no probable cause or of a  
25 final order disposing of a complaint.

26 **SECTION 10. DISMISSAL OF COMPLAINTS.**

27 Notwithstanding any other provision of this ordinance, the Commission on Ethics may, at its  
28 discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public  
29 interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of  
30 disposition and issue a letter of instruction to the Respondent when it appears that the alleged  
31 violation was inadvertent, unintentional or insubstantial. In the event the Commission on Ethics

1 dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public  
2 report stating with particularity its reasons for the dismissal. The Commission on Ethics may, at the  
3 request of the State Attorney or any other law enforcement agency, stay an ongoing proceeding. The  
4 Commission on Ethics shall not interfere with any ongoing criminal investigation of the State  
5 Attorney or the U.S. Attorney for the Southern District of Florida.

6 **SECTION 11. FRIVOLOUS OR GROUNDLESS COMPLAINTS.**

7 In any case in which the Commission on Ethics determines that the complaining party filed a  
8 frivolous or groundless complaint as defined in section 57.105, Florida Statutes, or a complaint with  
9 malicious intent and with the knowledge that the complaint contains one or more false allegations, or  
10 with reckless disregard for whether the complaint contains material false allegations, the  
11 Commission on Ethics shall order the complaining party to pay any costs and attorney's fees incurred  
12 by the Commission on Ethics and/or the alleged violator. The determination by the Commission on  
13 Ethics regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

14 **SECTION 12. EFFECT ON OTHER LAWS.**

15 The provisions of this Ordinance shall be deemed supplemental to any other applicable Palm  
16 Beach County ordinance or state or federal law and are not intended to replace or repeal any  
17 provision of state or federal law or of the Palm Beach County Code.

18 **SECTION 13. PROSPECTIVE JURISDICTION.**

19 The Commission on Ethics shall be empowered to consider alleged violations within its  
20 jurisdiction committed on or after the effective date of the ordinances set forth in Section 5.A., as  
21 each may be amended from time to time. Any alleged violation committed before the effective date  
22 of any such ordinance or amendment shall be governed by the applicable law in effect at the time of  
23 the alleged violation.

24 **SECTION 14. PERSONNEL PROCEEDING.**

25 Where an employee of Palm Beach County is alleged to have violated an ordinance within  
26 the jurisdiction of the Commission on Ethics and, based upon the same set of facts, is subject to an  
27 ongoing disciplinary action initiated by Palm Beach County, the Commission on Ethics shall stay  
28 consideration of a complaint until the conclusion of the personnel proceeding.

29 **SECTION 15. STATUTE OF LIMITATIONS.**

30 No action may be taken on a complaint filed more than two (2) years after the violation is  
31 alleged to have occurred unless a person, by fraud or other device, prevents discovery of the

1 violation. Where the allegations are the subject of a personnel proceeding or where the Complainant  
2 is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of  
3 limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of  
4 administrative remedies.

5 **SECTION 16. ADVISORY OPINION.**

6 Any person within the jurisdiction of the Commission on Ethics, when in doubt about the  
7 applicability or interpretation of any provision within the Commission on Ethics' jurisdiction to  
8 himself or herself in a particular context, may submit in writing the facts of the situation to the  
9 Commission on Ethics with a request for an advisory opinion to establish the standard of public  
10 duty, if any. An advisory opinion shall be rendered by the Commission on Ethics on a timely basis,  
11 and each such opinion shall be numbered, dated and published.

12 **SECTION 17. APPEALS.**

13 A. Any final order of the Commission on Ethics may be appealed by filing a petition for writ  
14 of certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The Commission  
15 on Ethics shall provide the index and record on appeal when required by, and in accordance with, the  
16 Florida Rules of Appellate Procedure. A fee shall be charged by the Commission on Ethics for the  
17 preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such  
18 fee may be waived by the Executive Director if the party requesting the record is indigent.

19 B. Costs or fees may not be assessed against the Commission on Ethics in any appeal from a  
20 final order or advisory opinion issued by the Commission on Ethics pursuant to this ordinance.

21 C. Unless specifically ordered by the Commission on Ethics or by a court of competent  
22 jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory  
23 opinion of the Commission on Ethics.

24 **SECTION 18. REPEAL OF LAWS IN CONFLICT.**

25 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby  
26 repealed to the extent of such conflict.

27 **SECTION 19. SEVERABILITY.**

28 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any  
29 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the  
30 remainder of this Ordinance.



1 **SECTION 20. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

2 The provisions of this Ordinance shall become and be made a part of the Code of Laws and  
3 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or  
4 re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or  
5 other appropriate word.

6 **PART 21. EFFECTIVE DATE.**

7 The provisions of this Ordinance shall become effective January 1, 2010.

8  
9 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach  
10 County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

11 SHARON R. BOCK  
12 CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

13  
14  
15  
16 By: \_\_\_\_\_  
17 Deputy Clerk

By: \_\_\_\_\_  
Burt Aaronson, Chair

18  
19  
20  
21 (SEAL)

22  
23  
24  
25 APPROVED AS TO FORM AND  
26 LEGAL SUFFICIENCY

27  
28  
29  
30 By: \_\_\_\_\_  
31 County Attorney

32  
33  
34 Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.