

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 15, 2009

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, providing for title; creating and establishing the Palm Beach County Office of Inspector General; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the Code of Laws and Ordinances; providing for enforcement; providing for penalty; providing for captions; and providing for an effective date.

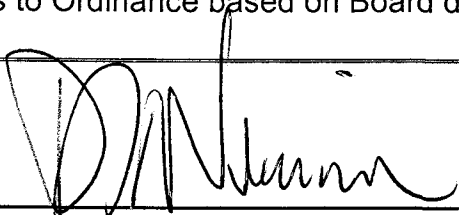
Summary: In response to the Presentment of the Palm Beach County Grand Jury regarding Investigation of Palm Beach County Governance and Public Corruption Issues, the Board of County Commissioners directed the County Attorney's Office to draft ordinances creating a local Code of Ethics, and establishing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

Background and Policy Issues: The Office of Inspector General will provide independent oversight of County operations. Under this Ordinance, the Inspector General will be authorized to conduct audits of, require reports from, and receive full and unrestricted access to the records of all County offices. Other local governmental agencies will be able to employ the services of and be subject to the Inspector General by contract. To ensure independence, the Inspector General will be selected by the Commission on Ethics and one representative each from the State Attorney and Public Defender. Removal requires a supermajority vote at two public hearings of the Board of County Commissioners and is subject to an independent investigation and recommendation by the Commission on Ethics.

Attachments:

1. Ordinance
2. Summary of changes to Ordinance based on Board direction 12/1/2009

Recommended by: _____


County Attorney

12/19/09
Date

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	320,000	402,500*	402,500*	402,500*	402,500*
External Revenues		<402,500>	<402,500>	<402,500>	<402,500>
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	320,000	- 0 -	- 0 -	- 0 -	- 0 -
		<i>** See OFMB comment</i>			
# ADDITIONAL FTE POSITIONS (Cumulative)					

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 Inspector General's budget request, other participants, & volume of contracts on which fee is applied.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

*** Beginning in FY 2011, revenue will be comprised of contract fee revenue (0.25%) and participation of other governmental entities.*

[Signature]

 OFMB

[Signature]

 Contract Development and Control

SN 12/9/09
[Signature]
12-9-09

B. Legal Sufficiency:

[Signature]

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

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ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR TITLE; CREATING AND ESTABLISHING THE PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 21, 2009, the Palm Beach County Grand Jury issued a final presentment in the investigation of Palm Beach County governance and public corruption issues; and

WHEREAS, the Grand Jury recommended that the Board of County Commissioners of Palm Beach County enact an ordinance establishing an independent Office of Inspector General with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the County, and entities funded in whole or in part by County tax dollars; and

WHEREAS, the Board of County Commissioners agrees with the Grand Jury's recommendation that an independent Palm Beach County Office of Inspector General should now be created and established by ordinance to provide independent oversight of County operations; and

WHEREAS, the Board of County Commissioners is committed to the highest standards of integrity, honesty, efficiency and accountability; and

WHEREAS, misconduct involving abuse, corruption, fraud, and mismanagement by elected and appointed County officials and employees, County agencies and instrumentalities, contractors, and other parties doing business with the County and/or receiving County funds, undermines public confidence in County government and prevents the County from operating honestly, efficiently and effectively; and

WHEREAS, it is critically important that County elected and appointed officials and employees discharge their duties and responsibilities in a lawful and ethical manner and be held accountable for their misconduct, inefficiency and ineffectiveness; and

WHEREAS, imposing the duty on all elected and appointed County officials and employees to cooperate with and report misconduct to the Inspector General will broaden and strengthen the

1 Inspector General’s ability to detect, investigate, eliminate, and deter misconduct by County officials
2 and employees, vendors and County-funded entities and promote integrity, honesty and efficiency in
3 County government; and

4 **WHEREAS**, this Ordinance will send an unmistakable message to the public about the
5 County’s commitment to rooting out and eliminating abuse, corruption, mismanagement and fraud.
6

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

9
10 **SECTION 1. TITLE.**

11 This Ordinance shall be titled the “Palm Beach County Office of Inspector General
12 Ordinance.”

13 **SECTION 2. PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL CREATED**
14 **AND ESTABLISHED.**

15 **A. Created and established.** There is hereby established the Palm Beach County Office of
16 Inspector General which is created in order to detect misconduct involving abuse, corruption, fraud,
17 waste, inefficiencies, and mismanagement by elected and appointed County officials and employees,
18 County agencies and instrumentalities, contractors, and other parties doing business with the County
19 and/or receiving County funds. The Inspector General shall head the Office of Inspector General.
20 The organization and administration of the Office of Inspector General shall be independent to
21 assure that no interference or influence external to the Office of Inspector General adversely affects
22 the independence and objectivity of the Inspector General.

23 **B. Functions, Authority and Powers.**

24 (1) The Inspector General shall have the authority to: (a) make investigations of County
25 matters and publish the results of such investigations; (b) review and audit past, present
26 and proposed County programs, accounts, records, contracts, change orders and
27 transactions; and (c) prepare reports and recommendations to the Board based on such
28 investigations. All elected and appointed County officials and employees, County
29 agencies and instrumentalities, contractors and other parties doing business with the
30 County and/or receiving County funds shall fully cooperate with the Inspector General.

1 (2) The Inspector General shall have the power to conduct audits of, require reports from,
2 and receive full and unrestricted access to the records of the Board, County
3 Administrator, all elected and appointed County officials and employees, County
4 departments, divisions, agencies and instrumentalities, contractors and other persons and
5 entities doing business with the County and/or receiving County funds regarding any
6 such contracts or transactions with the County. The Inspector General's jurisdiction
7 includes but shall not be limited to all projects, programs, contracts or transactions that
8 are funded in whole or in part by the County. The Inspector General may contract with
9 outside entities deemed necessary to perform the functions of that office. This
10 subsection does not apply to collective bargaining agreements.

11 (3) In the case of a refusal to obey a request by the Inspector General for documents or for
12 an interview, the Inspector General shall have the power to subpoena witnesses,
13 administer oaths, and require the production of records. Seventy-two hours prior to
14 serving a subpoena, the Inspector General shall provide written notice to the State
15 Attorney and the U.S. Attorney for the Southern District of Florida. The Inspector
16 General shall not interfere with any ongoing criminal investigation or prosecution of the
17 State Attorney or the U.S. Attorney for the Southern District of Florida. When the State
18 Attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified
19 the Inspector General in writing that the Inspector General's investigation is interfering
20 with an ongoing criminal investigation or prosecution, the Inspector General shall
21 suspend service of subpoena, examination of witnesses, or other investigative activities
22 as set forth in the notice. In the case of a refusal to obey a subpoena served to any
23 person, the Inspector General may make application to any circuit court of this State
24 which shall have jurisdiction to order the witness to appear before the Inspector General
25 and to produce evidence if so ordered, or to give testimony touching on the matter in
26 question.

27 (4) The costs of reviews, audits, inspections and investigations by the Inspector General
28 shall be defrayed in part by imposition of a fee which shall be equal to one quarter of
29 one percent (0.25%) of the contract price (hereinafter "IG contract fee"). The IG
30 contract fee shall not apply to the following contracts:

31 a. Contracts for legal services;

- b. Auditing contracts;
- c. Contracts under one thousand dollars (\$1,000);
- d. Federal, state and local government-funded grants; and
- e. Interlocal agreements.

Notwithstanding the foregoing, the Board may authorize the inclusion of the IG contract fee in any contract. Nothing contained in this subsection shall in any way limit the powers of the Inspector General provided for in this Ordinance to perform audits, inspections, reviews and investigations on all County contracts including, but not limited to, those contracts specifically exempted from the IG contract fee.

(5) Where the Inspector General suspects a possible violation of any state, federal or local law, or rule, regulation or policy, he or she shall notify the appropriate civil, criminal or administrative agencies, including the Palm Beach County Commission on Ethics. In the case of a possible violation of a rule, regulation or policy governing a County employee, the Inspector General shall also notify the County Administrator and the head of the Department for which the employee works. After referring the matter to the appropriate entity for fact-finding, the Inspector General may assist the entity in conducting the investigation.

(6) The Inspector General shall have the power without limitation to audit, investigate, monitor, inspect and review the operations, activities, performance, and procurement processes including, but not limited to, establishment of bid specifications, bid submittals, activities of the contractor, its officers, agents and employees, lobbyists, County staff, and officials, in order to ensure compliance with contract specifications and detect corruption and fraud.

(7) The Inspector General shall have the power to receive, review and investigate any complaints regarding County-funded projects, programs, contracts or transactions. The Inspector General shall establish a "hotline" to receive complaints, from either anonymous or identified persons.

(8) The Inspector General may exercise any of the powers contained this Ordinance upon his or her own initiative.

(9) The Inspector General shall be notified in writing prior to any meeting of a selection committee where any matter relating to the procurement of goods or services by the

1 County is to be discussed. The notice required by this subsection shall be given to the
2 Inspector General as soon as possible after a meeting has been scheduled, but in no
3 event later than one business day prior to the scheduled meeting. The Inspector General
4 may, at his or her discretion, attend all duly noticed County meetings relating to the
5 procurement of goods or services as provided herein, and may pose questions and raise
6 concerns consistent with the functions, authority and powers of the Inspector General.

7 (10) It is anticipated that municipalities, special districts, and other public officials and
8 entities will recognize and desire to benefit from the services of the Palm Beach County
9 Office of Inspector General. The Inspector General may negotiate agreements or
10 memoranda of understanding with other public entities which would authorize the
11 Inspector General to exercise any and all authority, functions and powers set forth in this
12 Ordinance for the benefit of such public entity. The memorandum of understanding or
13 agreement shall include a provision for fees to be paid to the Inspector General from the
14 public entity in exchange for such benefits. Such fee shall be based on a rate established
15 by the Inspector General and shall include, but not be limited to, the IG contract fee.
16 Any such agreement or memorandum of understanding is subject to final approval of the
17 Board, but such approval shall not be unreasonably withheld. For the purposes of the
18 removal procedure set forth in Section 2.I. of this Ordinance, a "Funding Entity" shall
19 mean a public entity that has entered into an agreement or memorandum of
20 understanding to receive services of the Inspector General, and has provided funding in
21 exchange for such services equal to at least 25% of the total annual budget of the
22 Inspector General for Palm Beach County's fiscal year immediately preceding the fiscal
23 year in which the removal procedure takes place.

24 (11) The Inspector General's records related to active investigations are confidential and
25 exempt from disclosure, as provided by section 112.3188(2), Florida Statutes.

26 (12) The Inspector General is considered "an appropriate local official" of the County for
27 purposes of whistleblower protection provided by section 112.3188(1), Florida Statutes.

28 (13) The Inspector General may recommend remedial actions and may provide prevention
29 and training services to County officials, employees, and any other persons covered by
30 this Ordinance. The Inspector General may follow up to determine whether
31 recommended remedial actions have been taken.

1 (14) The Inspector General shall establish policies and procedures and monitor the costs of
2 investigations undertaken. The Inspector General shall cooperate with other
3 governmental agencies to recover such costs from other entities involved in willful
4 misconduct in regard to County funds.

5 (15) Nothing herein shall abridge employees' constitutional right to collective bargaining.

6 **C. Minimum Qualifications, Selection and Term of Office.**

7 (1) Minimum qualifications. The Inspector General shall be a person who:

8 a. Has at least ten (10) years of experience in any one or a combination of the following
9 fields:

10 (i) as a federal, state or local law enforcement officer/official;

11 (ii) as a federal or state court judge;

12 (iii) as a federal, state or local government attorney with expertise in investigating
13 fraud, mismanagement and corruption;

14 (iv) as an inspector general, certified public accountant, or internal auditor;

15 (v) as a person with progressive supervisory and managerial experience in an
16 investigative public agency similar to an inspector general's office;

17 b. Has managed and completed complex investigations involving allegations of fraud,
18 theft, deception or conspiracy;

19 c. Has demonstrated the ability to work with local, state and federal law enforcement
20 agencies and the judiciary;

21 d. Has a four-year degree from an accredited institution of higher learning;

22 e. Has not been employed by Palm Beach County or any other governmental entity
23 subject to the authority of the Inspector General Office during the two-year period
24 immediately prior to selection;

25 f. Highly qualified candidates will also have audit-related skills and/or hold one or
26 more of the following professional certifications at the time of selection: certified
27 inspector general (CIG), certified inspector general investigator (CIGI), certified
28 inspector general auditor (CIGA), certified public accountant (CPA), certified internal
29 auditor (CIA), or certified fraud examiner (CFE).

30 (2) Selection. No official or employee of any governmental entity subject to the authority
31 of the Office of Inspector General shall participate in the selection of the Inspector