

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

Meeting Date: December 15, 2009

[] Consent [] Regular
[X] Public Hearing

Department

Submitted By: **COUNTY ATTORNEY**

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to adopt:** 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
2. Summary of changes to Ordinance based on Board direction 12/1/2009

Recommended by: _____

County Attorney

Date

12/9/09

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)					
NET FISCAL IMPACT	180,000	198,500*	198,500*	198,500*	198,500*
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Budget?	Yes___ No <u>X</u>				
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



 Contract Development and Control

SN 12/9/09 10M 12-9-09

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

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

ORDINANCE NO. 2009-_____

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.

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY 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 Committee for Diversity and Inclusion shall be requested to
18 appoint an attorney with experience in ethics regulation of public officials and
19 employees.
- 20 (3) The President of Florida Atlantic University (FAU) shall be requested to appoint a
21 faculty member who teaches at an institution of higher education with a campus located
22 in Palm Beach County and who has taught a course in professional legal ethics or has
23 published or performed services in the field of professional legal ethics.
- 24 (4) The President of the Palm Beach Chapter of the Florida Institute of CPAs shall be
25 requested to appoint a member who possesses at least five years experience as a
26 Certified Public Accountant (CPA) with forensic audit experience.
- 27 (5) The Board of Directors of the Palm Beach County League of Cities, Inc. shall be
28 requested to appoint a person who has served as a former elected official for a
29 governmental entity in Palm Beach County.

30 All appointing officers identified in Section 2.A.(1) through (5) shall in good faith endeavor to
31 appoint members of the Commission on Ethics within forty-five (45) days of the effective date of

1 this Ordinance. Each appointing entity shall promptly provide notice of each appointment to the
2 County Administrator.

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

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

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

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

- 20 (1) Hold or campaign for any elective political office;
- 21 (2) Hold office in any political party or political committee;
- 22 (3) Actively participate in or contribute to any political action committee, or to any
23 campaign for state or local office or for any U.S. Congressional or Senate office serving
24 the State of Florida;
- 25 (4) Be employed by Palm Beach County, any municipality within Palm Beach County, or
26 any other governmental entity subject to the authority of the Commission on Ethics or
27 the Inspector General; or
- 28 (5) Allow his or her name to be used by a campaign in support of or against any candidate
29 for political office or any referendum or other ballot question. Nothing herein shall
30 preclude a member of the Commission on Ethics from signing a petition in support of or
31 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-XXXX), the Commission on Ethics shall serve with one delegate
16 each from the State Attorney's Office and Public Defender's Office for the Fifteenth Judicial Circuit
17 as the Selection Committee. The Selection Committee shall be authorized to select the Inspector
18 General, to determine whether or not to renew the term of an Inspector General, and to remove the
19 Inspector General as set forth in greater detail in the Palm Beach County Office of Inspector General
20 Ordinance.

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

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

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

30 A. The Commission on Ethics shall establish a fiscal year which coincides with that of Palm
31 Beach County. Pursuant to its annual budget process, the County shall provide sufficient financial

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

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

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

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

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

31 (1) Be in writing, and executed on a form prescribed by the Commission on Ethics;

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

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

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

26 **C. Investigations.** Investigations shall be conducted by Commission on Ethics staff or by
27 any other person or agency so designated by the Commission on Ethics under the supervision of the
28 Executive Director and/or the Inspector General. Investigations shall be limited to the allegations of
29 the complaint, but shall include an investigation of all facts and persons materially related to the
30 complaint at issue.

1 **D. Counsel.**

2 (1) Counsel to Commission on Ethics. The Commission on Ethics shall select counsel to
3 advise the Commission on Ethics.

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

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

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

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

23 **F. General Power of Subpoena.** The Commission on Ethics shall be empowered to
24 subpoena and investigate. In the case of a refusal to obey a request for documents or for an
25 interview during an investigation, the Commission on Ethics may subpoena relevant witnesses and
26 compel their attendance and testimony, administer oaths and affirmations, take evidence, and require
27 by subpoena the production of any books, papers, records, or other relevant items. The Commission
28 on Ethics may delegate to its staff the authority to administer oaths and affirmations. In the case of a
29 refusal to obey a subpoena issued to any person, the Commission on Ethics may make application to
30 any circuit court of this State which shall have jurisdiction to order the witness to appear before the
31 Commission on Ethics and to produce evidence, if so ordered, or to give testimony touching on the

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

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

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

23 **I. Motions.**

- 24 (1) All motions shall be in writing unless made on the record during a hearing, and shall
25 fully state the actions requested and the grounds relied upon. The motion shall include a
26 statement that the movant has conferred with the Advocate and all other parties of
27 record and shall state whether there is any objection to the motion.
- 28 (2) The original written motion shall be filed with the Commission on Ethics and a copy
29 served on all parties or their attorneys. The Commission on Ethics staff shall send a
30 copy of the motion to the chairperson.

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

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

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

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

22 **SECTION 8. PUBLIC HEARING PROCEDURES.**

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

26 **B. Opening and closing statements.** Opening and closing statements may be presented by
27 the Advocate and the Respondent. The Advocate may make the first statement and the Respondent
28 may follow. Rebuttal by the Advocate may be permitted or may be denied.

29 **C. Evidence.**

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

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

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

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

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

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

27 **F. Motions to dismiss filed by Advocate.** After probable cause is found and a public
28 hearing is ordered by the Commission on Ethics, and after further investigation or discovery is made
29 by the Advocate, the Advocate may move to dismiss the proceeding if the Advocate concludes that
30 there is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall

specifically state the grounds upon which it is made. The motion shall be heard by the Commission on Ethics in accordance with the procedure provided for in Section 7.I.

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

SECTION 9. NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES.

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

SECTION 10. DISMISSAL OF COMPLAINTS.

Notwithstanding any other provision of this ordinance, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the Commission on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal. The Commission on Ethics may, at the

1 request of the State Attorney or any other law enforcement agency, stay an ongoing proceeding. The
2 Commission on Ethics shall not interfere with any ongoing criminal investigation of the State
3 Attorney or the U.S. Attorney for the Southern District of Florida.

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

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

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

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

16 **SECTION 13. PROSPECTIVE JURISDICTION.**

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

22 **SECTION 14. PERSONNEL PROCEEDING.**

23 Where an employee of Palm Beach County is alleged to have violated an ordinance within
24 the jurisdiction of the Commission on Ethics and, based upon the same set of facts, is subject to an
25 ongoing disciplinary action initiated by Palm Beach County, the Commission on Ethics shall stay
26 consideration of a complaint until the conclusion of the personnel proceeding. Nothing herein shall
27 abridge employees' constitutional right to collective bargaining.

28 **SECTION 15. STATUTE OF LIMITATIONS.**

29 No action may be taken on a complaint filed more than two (2) years after the violation is
30 alleged to have occurred unless a person, by fraud or other device, prevents discovery of the
31 violation. Where the allegations are the subject of a personnel proceeding or where the Complainant

1 is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of
2 limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of
3 administrative remedies.

4 **SECTION 16. ADVISORY OPINION.**

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

11 **SECTION 17. APPEALS.**

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

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

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

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

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

26 **SECTION 19. SEVERABILITY.**

27 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
28 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the
29 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 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
9 County, Florida, on this the ____ day of _____, 2009.

10 SHARON R. BOCK
11 CLERK & COMPTROLLER

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

12
13
14
15 By: _____
16 Deputy Clerk

By: _____
Burt Aaronson, Chair

17
18
19
20 (SEAL)

21
22
23
24 APPROVED AS TO FORM AND
25 LEGAL SUFFICIENCY

26
27
28
29 By:  _____
30 County Attorney

31
32
33 Filed with the Department of State on the ____ day of _____, 20__.

CHANGES TO COMMISSION ON ETHICS ORDINANCE

SECTION 2.

A. Composition and appointment.

* * *

All appointing officers identified in Section 2.A.(1) through (5) shall in good faith endeavor to
appoint members of the Commission on Ethics ~~shall be appointed within forty-five (45) days of~~
the effective date of this Ordinance. Each appointing entity shall promptly provide notice of
each appointment to the County Administrator. *(page 2, lines 30-31)*

* * *

SECTION 5.

* * *

C. As set forth in the Palm Beach County Office of Inspector General Ordinance (Palm
Beach County Ordinance 2009-XXXX), the Commission on Ethics shall serve with one delegate
each from the State Attorney's Office and Public Defender's Office for the Fifteenth Judicial
Circuit ~~to serve as a~~ the sSelection eCommittee. The Selection Committee shall be authorized to
select the Inspector General, to determine whether or not to renew the term of an Inspector
General, and to remove the Inspector General as set forth in greater detail in the Palm Beach
County Office of Inspector General Ordinance. ~~Upon initiation of procedures for the removal of~~
~~the Inspector General by the Board of County Commissioners or any other Funding Entity as~~
~~described in the Palm Beach County Office of Inspector General Ordinance (Palm Beach County~~
~~Ordinance No. 2009-____), the Commission on Ethics shall further be authorized to~~
~~independently investigate and report the results of such investigation to Board of County~~
~~Commissioners and any other Funding Entity.~~ *(page 5, starting at line 14)*