

5 F-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 20, 2010 Consent [] Regular [X]
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: on preliminary reading and to advertise for Public Hearing on May 18, 2010 at 9:30 a.m.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, creating the "Palm Beach County Water Utilities Tampering Ordinance"; providing for a title; providing for authority; providing for definitions; providing for applicability; providing for violations; providing for penalties for service account holders; providing for penalties for non-service account holders; providing for alternative enforcement provisions; providing for rental property; providing for the delegation of designation of Water Utilities Department employees as Code Enforcement Officers; providing for inclusion in the Code Enforcement Citation Ordinance of Palm Beach County, Florida; 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 penalties; providing for captions; and providing for an effective date.

Summary: This Ordinance will allow the Water Utilities Department (Department) to assess fines for tampering with or making unauthorized connections to the Department's utility system. Tampering and unauthorized connections are threats to the public health, safety, and welfare because such actions may allow for injection of contaminating materials into the water system. Tampering and unauthorized connections are also financially detrimental to the Department and its customers because services are obtained without payment to the Department. The Ordinance will allow Water Utilities Department employees to impose fines on service account holders, issue citations as Code Enforcement Officers, or use alternative code enforcement methods through the Planning, Zoning and Building Department. The proposed fines will be \$250 for tampering with or unauthorized connection to the Department's utility system, and \$400 for the introduction of any materials into the Department's utility system. The \$250 fines were increased from the initial draft ordinance per Board direction. The \$400 fine is the maximum allowed by the citation process. A Special Master may impose higher fines under the alternative code enforcement methods. Countywide (MJ)

Background and Justification: In the past, the Department has not had an effective tool for dealing with tampering or unauthorized connections. There have been hundreds of examples of meters being removed and service straight-piped, meter locks being broken when customers are disconnected for non-payment, and water being taken from fire hydrants to fill trucks. There is currently no fee authorized in the Department's Uniform Policies and Procedures (UPAP) for tampering or unauthorized connections. This Ordinance will establish a structure of fines that should discourage such activity.

Attachments:

1. Ordinance
2. Exhibit 1

Recommended By: Brian Ben Department Director Date: 4/5/2010

Approved By: Sharon O'Bryen Assistant County Administrator Date: 4/13/2010

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Operating Expenses	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	0 <i>See below</i>	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Budget Account No.: Fund Dept Unit Object
Various

Is Item Included in Current Budget? Yes No X

Reporting Category

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

C. Department Fiscal Review: Debra Morset

III. REVIEW COMMENTS

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

* Fiscal Impact is undeterminable at this time.

[Signature] 4/13/10
OFMB
4/8/10
2/12/10

[Signature] 4/14/10
Contract Development and Control
4/14/10

B. Legal sufficiency:

[Signature] 4/14/10
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

1
2 **ORDINANCE NO. 2010-_____**
3

4 **AN ORDINANCE OF THE BOARD OF COUNTY**
5 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,**
6 **CREATING THE “PALM BEACH COUNTY WATER UTILITIES**
7 **TAMPERING ORDINANCE”;** **PROVIDING FOR A TITLE;**
8 **PROVIDING FOR AUTHORITY; PROVIDING FOR**
9 **DEFINITIONS; PROVIDING FOR APPLICABILITY;**
10 **PROVIDING FOR VIOLATIONS; PROVIDING FOR PENALTIES**
11 **FOR SERVICE ACCOUNT HOLDERS; PROVIDING FOR**
12 **PENALTIES FOR NON-SERVICE ACCOUNT HOLDERS;**
13 **PROVIDING FOR ALTERNATIVE ENFORCEMENT**
14 **PROVISIONS; PROVIDING FOR RENTAL PROPERTY;**
15 **PROVIDING FOR THE DELEGATION OF DESIGNATION OF**
16 **WATER UTILITIES DEPARTMENT EMPLOYEES AS CODE**
17 **ENFORCEMENT OFFICERS; PROVIDING FOR INCLUSION IN**
18 **THE CODE ENFORCEMENT CITATION ORDINANCE OF PALM**
19 **BEACH COUNTY, FLORIDA; PROVIDING FOR REPEAL OF**
20 **LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY;**
21 **PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND**
22 **ORDINANCES; PROVIDING FOR ENFORCEMENT;**
23 **PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS;**
24 **AND PROVIDING FOR AN EFFECTIVE DATE.**

25 **WHEREAS,** Chapter 125, Florida Statutes, authorizes counties to adopt ordinances consistent
26 with general and special law to provide for the health, safety and welfare of its citizens; and

27 **WHEREAS,** Section 162.21, Florida Statutes, authorizes local governments to establish a civil
28 citation system for the enforcement of codes and ordinances; and

29 **WHEREAS,** the Board of County Commissioners, through its Water Utilities Department,
30 provides potable water, wastewater, and reclaimed water services to approximately 507,000 citizens of
31 Palm Beach County; and

32 **WHEREAS,** tampering with and unauthorized connections to the Water Utilities Department’s
33 potable water, wastewater, and reclaimed water systems is a threat to the public health, safety, and
34 welfare, in that said tampering or unauthorized connections may allow for infiltration of contaminating
35 materials into the Water Utilities Department’s potable water, wastewater, and reclaimed water systems;
36 and

37 **WHEREAS,** unauthorized connections to the Water Utilities Department’s potable water,
38 wastewater, and reclaimed water systems are detrimental to the Water Utilities Department and its
39 customers, in that said unauthorized connections may allow individuals to receive the benefit of the
40 Water Utilities Department’s services without paying for such services in violation of existing bond
41 covenants; and

1 **WHEREAS**, the Board of County Commissioners wishes to adopt the Palm Beach County
2 Water Utilities Tampering Ordinance to protect the health, safety, and welfare of the citizens of Palm
3 Beach County, as well as to prevent theft from the Water Utilities Department; and

4 **WHEREAS**, the Board of County Commissioners wishes to provide penalties for violations of
5 the Palm Beach County Water Utilities Tampering Ordinance; and

6 **WHEREAS**, the Board of County Commissioners wishes to delegate to the County
7 Administrator, or designee, the authority to designate Water Utilities Department employees as code
8 enforcement officers.

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

11 **Part I. RECITALS**

12 The foregoing recitals are hereby adopted and confirmed as being true and correct and are hereby
13 made a specific part of this ordinance.

14 **Part II. CREATION OF THE PALM BEACH COUNTY WATER UTILITIES TAMPERING**
15 **ORDINANCE:**

16 The Palm Beach County Water Utilities Tampering Ordinance is hereby created as follows:

17 **Section 1. Title.**

18 This ordinance shall be known as the “Palm Beach County Water Utilities Tampering
19 Ordinance.”

20 **Section 2. Authority.**

21 This ordinance is created in accordance with Chapter 125, Florida Statutes.

22 **Section 3. Definitions.**

23 As used in this ordinance, the following words and phrases have the meaning ascribed herein,
24 unless a different meaning is set forth in another section of this ordinance or the context clearly indicates
25 otherwise.

26 *Rental Property.* Any property, including a single family home, which is used or
27 occupied, in whole or in part, by any person other than the owner of said property as shown on the tax
28 records of Palm Beach County, pursuant to a rental agreement, either written or oral, between the owner
29 and a tenant.

1 *Service Account.* A customer account between the utility and a consumer of utility
2 service.

3 *Utility.* The Palm Beach County Water Utilities Department.

4 *Utility Asset(s).* Any meter, meter seal, pipe, wire lock, line, valve, main, hydrant,
5 treatment plant, storage tank, fencing, lateral, clean-out, collector, connection, interceptor, manhole, lift
6 station, pump station, well, deep injection well, monitoring well, appliance, appurtenance or other
7 apparatus or device owned, operated, or controlled by utility, and used for or in connection with the
8 utility system, regardless of whether said assets are located within the unincorporated area or
9 incorporated areas of Palm Beach County.

10 *Utility Service.* The provision of potable water, wastewater, or reclaimed water service
11 from the utility to a consumer, regardless of whether said consumer is residential, commercial,
12 industrial, government, or other class of consumer.

13 *Utility System.* The potable water, wastewater, and reclaimed water system of the Utility.

14 **Section 4. Applicability.**

15 This ordinance shall apply to the utility system, including all assets of the utility system,
16 regardless of whether the utility system and/or utility asset is located within the unincorporated area or
17 incorporated areas of Palm Beach County.

18 **Section 5. Violations.**

19 It shall be unlawful for any person, without the written consent of the utility:

20 (a) To tamper, alter, meddle with, injure, remove, bypass or otherwise hinder or disturb,
21 or to cause, permit, suffer, let or allow to be tampered, altered, meddled with, injured, removed,
22 bypassed or otherwise hindered or disturbed, any utility asset, in such a manner as to cause loss or
23 damage; or to prevent any meter installed for registering water, wastewater, or reclaimed water from
24 registering the quantity which would otherwise pass through the same; or to alter or break the wire lock
25 or seal of any such meter; or in any way to hinder or interfere with the proper action or just registration
26 of any such meter or device; or to use, waste, or suffer the waste, by any means, of water, wastewater, or
27 reclaimed water passing through any utility asset, after such utility asset has been tampered, altered,
28 meddled with, injured or otherwise hindered or disturbed; or

29 (b) To introduce any material of any kind whatsoever into any portion of the utility
30 system, regardless of whether or not it could contaminate the utility system; or

1 (c) To make or cause, permit, suffer, let or allow to be made any connection with a
2 utility asset in such manner as to use, without the written consent of the utility, water, wastewater, or
3 reclaimed water service; or to cause to be supplied any water, wastewater, or reclaimed water service,
4 from the utility to any person, firm, or corporation through any orifice, faucet, or other outlet
5 whatsoever, without such service being reported for payment or such water, wastewater, or reclaimed
6 water passing through a meter provided by the utility and used for measuring and registering the
7 quantity of water, wastewater, or reclaimed water passing through the same.

8 **Section 6. Penalties for Service Account Holders.**

9 In those instances where a violation of this ordinance results in the unauthorized provision of
10 utility service to any dwelling unit, place of business, or other building with a service account with the
11 utility, or (b) otherwise is related to a utility asset connected with a service account, the fines set forth in
12 Exhibit 1 attached hereto, may be imposed on said service account. In addition, said service account
13 may be subject to discontinuance until such violation is discontinued, full payment is made for the fine,
14 full payment is made for such unpaid utility service calculated on proper classification and rate
15 schedules, and reimbursement in full is made to the utility for any extra expenses incurred by the utility
16 as the result of such unauthorized use, including administrative costs, testing, inspections, court costs,
17 and attorneys fees. The failure to pay any fees in accordance with this section shall be subject to all
18 delinquent account procedures of the utility, including the filing of a lien against any property for which
19 a service account exists.

20 **Section 7. Penalties for Non-Service Account Holders.**

21 In those instances where a violation of this ordinance (a) results in the unauthorized provision of
22 utility service to any dwelling unit, place of business, or other building which does not have a service
23 account with the utility, or (b) is unrelated to the unauthorized provision of utility service to any
24 dwelling unit, place of business, or other building, violators may be cited in accordance with Chapter
25 8.5, Article II, Palm Beach County Code, the "Code Enforcement Citation Ordinance of Palm Beach
26 County, Florida". The fines set forth in Exhibit 1 attached hereto may be imposed on violators. In
27 addition, should any individual cited under this section for the unauthorized provision of utility service
28 to a dwelling unit, place of business, or other building desire to open a service account with utility for
29 said dwelling unit, place of business, or other building, said individual shall, prior to service initiation,
30 be required to reimburse the utility for unpaid utility service calculated on proper classification and rate
31 schedules, and also make full reimbursement to the utility for any extra expenses incurred by the utility

1 as the result of such unauthorized use, including administrative costs, testing, inspections, court costs,
2 and attorneys fees.

3 **Section 8. Alternative Enforcement Provisions.**

4 In addition to the enforcement provisions set forth in Section 6 and Section 7 herein, the
5 provisions of this ordinance may be enforced: (a) by the Palm Beach County Code Enforcement
6 Director pursuant to Section 162.01 et. seq., Florida Statutes, as may be amended or replaced; (b) by
7 Palm Beach County through the prosecution of violations in the name of the State of Florida pursuant to
8 the authority granted by Section 125.69, Florida Statutes, as may be amended or replaced; and (c) by any
9 other remedy available by law. Palm Beach County may pursue these or any other enforcement
10 remedies available and applicable to the County. Nothing contained herein shall prevent Palm Beach
11 County from taking such other lawful actions as are necessary to prevent or remedy any violation of this
12 ordinance.

13 **Section 9. Rental Property.**

14 The enforcement of this ordinance against rental property shall at all times comply with the
15 provisions of Section 125.485, Florida Statutes.

16 **Section 10. Delegation of Designation of Water Utilities Department Employees as Code**
17 **Enforcement Officers.**

18 Pursuant to Chapter 162, Florida Statutes, the Palm Beach County Board of County
19 Commissioners hereby delegates the authority to the County Administrator or designee to designate as
20 code enforcement officers those employees whose duty it is to enforce this ordinance.

21 **PART III. INCLUSION IN THE CODE ENFORCEMENT CITATION ORDINANCE OF**
22 **PALM BEACH COUNTY, FLORIDA:**

23 Schedule "A" of Chapter 8.5, Article II, Palm Beach County Code, the "Code Enforcement
24 Citation Ordinance of Palm Beach County, Florida" is hereby amended to include the list of infractions
25 attached hereto as Exhibit 1.

26 **PART IV. REPEAL OF LAWS IN CONFLICT:**

27 All local laws and ordinances in conflict with any provisions of this ordinance are hereby
28 repealed to the extent of such conflict.

1 **PART V. SEVERABILITY:**

2 If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason
3 held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall
4 not affect the remainder of this ordinance.

5 **PART VI. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

6 The provisions of this ordinance shall become and be made a part of the Palm Beach County
7 Code. The sections of this ordinance may be renumbered or relettered to accomplish such, and the word
8 “ordinance” may be changed to “section,” “article,” or other appropriate word.

9 **PART VII. ENFORCEMENT:**

10 This ordinance is enforceable by all means provided by law. Additionally, the County may
11 choose to enforce this ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

12 **PART VIII. PENALTY:**

13 Any violation of any portion of this ordinance shall be punishable as provided by law.

14 **PART IX. CAPTIONS:**

15 The captions, section headings, and section designations used in this ordinance are for
16 convenience only and shall have no effect on the interpretation of the provisions of this ordinance.

17 **PART X. EFFECTIVE DATE:**

18 The provisions of this ordinance shall become effective upon filing with the Department of State.

1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
2 County, Florida, on this the ____ day of _____, 20____.

3 SHARON R. BOCK, CLERK

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

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6

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By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

8

9

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY

12

13

14

By: _____
County Attorney

15

16

17

EFFECTIVE DATE: Filed with the Department of State on the ____ day of

18

_____, 20____.

EXHIBIT 1

<u>Code Provision</u>	<u>Description</u>	<u>Class</u>	<u>Fine Amount</u>
Section 5(a), Ordinance 2010-_____, Palm Beach County Water Utilities Tampering Ordinance	Tampering with Palm Beach County Water Utilities Department utility system.	IV	\$250.00
Section 5(b), Ordinance 2010-_____, Palm Beach County Water Utilities Tampering Ordinance	Introduction of materials into Palm Beach County Water Utilities Department utility system.	V	\$400.00
Section 5(c), Ordinance 2010-_____, Palm Beach County Water Utilities Tampering Ordinance	Unauthorized connections to Palm Beach County Water Utilities Department utility system.	IV	\$250.00