

5B-3

Meeting Date: September 14, 2010 [] Consent [X] Regular
[] Public Hearing

Submitted By: COUNTY ATTORNEY'S OFFICE

Submitted For: PALM BEACH COUNTY COMMISSION ON ETHICS

Motion and Title: **Staff recommends motion to:** Approve on preliminary reading and advertise for public hearing on September 28, 2010, at 9:30 a.m.: An ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending the Palm Beach County Code of Ethics, Palm Beach County Code Chapter 2, Article XIII (Ord. 2009-051) as follows: Amending Section 2-441 Title, Statement of Purpose; amending 2-442 Definitions; amending 2-443 Prohibited Conduct; amending 2-444 Gift Law; amending 2-448 Administration, Enforcement and Penalties; amending Palm Beach County Code Chapter 2, Article VIII, Lobbyist Registration Section 2-356, Enforcement; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the Code of Laws and Ordinances; providing for effective date.

Attachments:

1. Ordinance amending PBC Code of Ethics

Recommended by: _____
Alan Johnson, Executive Director **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	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	_____	_____	_____	_____	_____
 # ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

_____	_____
OFMB	Contract Development and Control

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

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

(continued from page 1)

December 15, 2009, as part of a series of ethics reforms. The Commission on Ethics, among other things, is authorized to review ordinances and state and federal laws relating to ethics and government, and to make recommendations to the County Commission as it deems appropriate. Pursuant to this authority, the Commission on Ethics reviewed the Code of Ethics and the Lobbyist Registration Ordinance, and recommends the amendments set forth in this Ordinance. Countywide (LB)

Background and Policy Issues: In addition to several clarifications, these amendments include the following substantive changes: (1) Conduct and disclosure standards for advisory board members will be expanded to reach to all individuals appointed by the Board of County Commissioners to serve on any advisory board, not just advisory boards created by the County Commission; (2) The restriction on advisory board members who are employed by entities that contract with the County will be eliminated in cases where the advisory board member's employer is a governmental entity; (3) Conflict rules for employees who seek part-time employment with an outside employer that contracts with the County will include a limited exception based on criteria demonstrating no conflict between the employee's public and private positions; and (4) The potential penalty for violating certain portions of the Code of Ethics will be increased from a second degree misdemeanor to a first degree misdemeanor.

ORDINANCE 2010-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE PALM BEACH COUNTY CODE OF ETHICS, PALM BEACH COUNTY CODE CHAPTER 2, ARTICLE XIII (ORD. 2009-051) AS FOLLOWS: AMENDING SECTION 2-441 TITLE, STATEMENT OF PURPOSE; AMENDING 2-442 DEFINITIONS; AMENDING 2-443 PROHIBITED CONDUCT; AMENDING 2-444 GIFT LAW; AMENDING 2-448 ADMINISTRATION, ENFORCEMENT AND PENALTIES; AMENDING PALM BEACH COUNTY CODE CHAPTER 2, ARTICLE VIII, LOBBYIST REGISTRATION SECTION 2-356, ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the Palm Beach County Charter, and section 112.326, Florida, adopted the Palm Beach County Code of Ethics and created the Palm Beach County Commission on Ethics (Commission on Ethics); and

WHEREAS, the Commission on Ethics is authorized to review ordinances and state and federal laws relating to ethics in government and to make recommendations to the Board of County Commissioners as it deems appropriate; and

WHEREAS, pursuant to said authority, the Commission on Ethics has reviewed the Palm Beach County Code of Ethics and the Lobbyist Registration Ordinance and recommends the changes set forth in this amending ordinance; and

32 **WHEREAS**, the Board of County Commissioners hereby determines that the
33 amendments set forth herein advance the purposes and intent of the Palm Beach County Code of
34 Ethics and Lobbyist Registration ordinances; and

35 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public
36 hearing to consider these amendments as required by law.

37 **NOW, THEREFORE**, be it ordained by the Board of County Commissioners of Palm
38 Beach County, Florida, that:

39 **Part 1. Sec. 2-441 Title; statement of purpose, is amended as follows:**

40 This article shall be known as the Palm Beach County Code of Ethics. This code of ethics
41 is enacted pursuant to Florida Constitution, Article VIII, section 1(g), Florida Statutes, ch. 125,
42 and the Charter of Palm Beach County. The purpose of this code is to provide additional and
43 more stringent ethics standards as authorized by Florida Statutes, § 112.326. This code shall not
44 be construed to authorize or permit any conduct or activity that is in violation of Florida Statutes,
45 ch. 112, pt. III. This code of ethics shall be deemed additional and supplemental to any and all
46 state and federal laws governing ethical conduct of officials and employees, as well as all local
47 laws, rules, regulations and policies governing personnel matters.

48 Officials and employees in the public service shall be conscious that public service is a
49 public trust, shall be impartial and devoted to the best interests of the people of Palm Beach
50 County, and shall act and conduct themselves so as not to give occasion for distrust of their
51 impartiality.

52 Nothing herein shall abridge employees' constitutional right to collective bargaining.
53

54 **Part 2. Section 2-442, Definitions, is amended as follows:**

55 Sec. 2-442. Definitions.

56 The following words, terms and phrases, when used in this article, shall have the meanings
57 ascribed to them in this section, except where the context clearly indicates a different meaning:

58 *Lobbyist* shall mean any person who is employed and receives payment, or who contracts
59 for economic consideration, for the purpose of lobbying on behalf of a principal, and shall
60 include an employee whose principal or most significant responsibilities to the employer is
61 overseeing the employer's various relationships with government or representing the employer in
62 its contacts with government. "Lobbyist" shall not include any employee, ~~or contract employee,~~
63 or independent contractor of a governmental agency lobbying on behalf of that agency, any
64 elected local official when the official is lobbying on behalf of the governmental agency which
65 the official serves, or any member of the official's staff when such staff member is lobbying on
66 an occasional basis on behalf of the governmental agency by which the staff member is
67 employed.

68 *Official or employee* means any official or employee of the county, whether paid or
69 unpaid, and includes all members of an office, board, body, advisory board, council,
70 commission, agency, department, district, division, committee, or subcommittee of the county.
71 The term "official" ~~when used alone~~ shall mean members of the board of county commissioners,
72 and members of ~~any advisory or quasi-judicial board created~~ appointed by the board of county
73 commissioners to serve on any advisory, quasi judicial, or any other board of the county, state, or
74 any other regional, local, municipal, or corporate entity.

Outside employer or business includes:

(1) Any entity, other than the county, the state, or any other regional, local, or municipal government entity, of which the official or employee is a member, official, director, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses, or

(2) Any entity located in the county or which does business with or is regulated by the county, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the members of the official or employee's household or relatives.

Part 3. Section 2-443. Prohibited conduct, is amended as follows:

a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

* * *

(3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

* * *

99 (d) *Exceptions and waiver.* The requirements of subsections (a) and (c) above may be waived
100 as they pertain to advisory board members by the board of county commissioners upon full
101 disclosure of the transaction or financial benefit prior to the waiver and an affirmative vote of
102 five (5) members of the board of county commissioners. In addition, no official or employee
103 shall be held in violation of subsection (a) or (c) if:

104 * * *

105 (5) Notwithstanding any provision to the contrary, subsection (c) shall not be construed to
106 prevent an employee from seeking part-time employment with an outside employer who has
107 entered into a contract for goods or services with the county provided that:

108 _____ (a) The employee or relative of the employee does not work in the county department
109 which will enforce, oversee or administer the subject contract; and

110 _____ (b) The outside employment would not interfere with or otherwise impair his or her
111 independence of judgment or otherwise interfere with the full and faithful performance of his or
112 her public duties to the county; and

113 _____ (c) the employee or relative of the employee has not participated in determining the
114 subject contract requirements or awarding the contract; and

115 _____ (d) the employee's job responsibilities and job description will not require him or her to
116 be involved in the outside employer's contract in any way including, but limited to, its
117 enforcement, oversight, administration, amendment, extension, termination or forbearance; and

118 _____ (e) the employee demonstrates compliance with applicable merit rules regarding outside
119 employment and obtains written permission from his or her supervisor; and

120 (f) The employee has obtained a conflict of interest opinion from the Commission on
121 Ethics finding no conflict exists regarding the subject contract. The request for advisory opinion
122 must be made in writing and set forth and include all pertinent facts and relevant documents.

123 **Part 4. Section 2-444. Gift law, is amended as follows:**

124 * * *

125 (e) For the purposes of this section, "gift" shall refer to the transfer of anything of economic
126 value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or
127 promise, or in any other form, without adequate and lawful consideration. Food and beverages
128 consumed at a single setting or a meal shall be considered a single gift, and the value of the food
129 and beverage provided at that sitting or meal shall be considered the value of the gift.

130 (1) Exceptions. The provisions of subsection (e) shall not apply to:

- 131 a. Political contributions specifically authorized by state law;
- 132 b. Gifts from relatives or members of one's household. For the purposes of this subsection,
133 "relative" means, spouse, parent, grandparent, child, sibling, uncle, aunt, first cousin, nephew,
134 niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
135 stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;
- 136 c. Awards for professional or civil achievement;
- 137 d. Materials such as books, reports, periodicals or pamphlets which are solely informational or
138 of an advertising nature;
- 139 e. Gifts solicited by county employees on behalf of the county in performance of their official
140 duties for use solely by the county in conducting official business;

141 f. Gifts solicited by commissioners on behalf of the county in performance of their official
142 duties for use solely by the county in conducting its official business.

143 **Part 5. Section 2-448. Administration, enforcement and penalties, is amended as follows:**

144 * * *

145 d) The commission on ethics may in its discretion refer violations of sections 2-443, 2-444(a),
146 2-444(b), 2-444(c), or 2-447 to the state attorney. Pursuant to Florida Statutes, § 125.69, a
147 person who violates the sections of the article set forth in this section 2-448(d) shall be subject to
148 prosecution in the name of the state in the same manner as first degree misdemeanors are
149 prosecuted, and upon conviction, such person shall be punished by a fine not to exceed ~~five~~
150 ~~hundred dollars (\$500.00)~~ one thousand dollars (\$1,000), imprisonment not to exceed ~~sixty (60)~~
151 days one year, or both.

152 **Part 6. Sec. 2-356. Enforcement, is amended as follows:**

153 (a) If the county administrator is informed of any person who has failed to comply with the
154 requirements of this article, he or she shall conduct a preliminary investigation as deemed
155 necessary under the circumstances. In the event the county administrator determines that a
156 violation may have occurred based on the results of the investigation, the county administrator
157 shall forward the matter to the county commission on ethics for further investigation and
158 enforcement proceeding as set forth in article XIII of this chapter, the county code of ethics. For
159 the purposes of further investigation and enforcement by the Commission on Ethics, a complaint
160 submitted under this subsection by the County Administrator shall be deemed legally sufficient.
161 (b) The Commission on Ethics may process any other legally sufficient complaints of violations
162 under this ordinance pursuant to the procedures established in article XIII of this chapter.

~~(b) A notice of violation shall be transmitted to the person indicating the nature of the violation and the penalty imposed. The lobbyist shall have up to thirty (30) days after the date of the notice to seek appeal of the penalty. In the event the lobbyist fails to submit an appeal in writing to the county administrator within thirty (30) days of the date of such notice, the violation shall be deemed final, and the penalty imposed shall be effective immediately.~~

Part 7. Repeal of Laws in Conflict.

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict. The Palm Beach County Code of Ethics adopted by Resolution 94-693 as amended by Resolution 2003-0962, is hereby repealed in its entirety.

Part 8. Severability.

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

Part 9. Inclusion in the Code of Laws and Ordinances.

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

Part 10. Effective Date.

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

184 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
185 County, Florida, on this the ____ day of _____, 2010.

186 SHARON R. BOCK
187 CLERK & COMPTROLLER
188

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

190 By: _____ By: _____
191 Deputy Clerk Chairman
192

194 (SEAL)

197 APPROVED AS TO FORM AND
198 LEGAL SUFFICIENCY

201 By: _____
202 County Attorney

204 Filed with the Department of State on the ____ day of _____, 2010.