

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 19, 2010 [] Consent [X] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY'S OFFICE

Submitted For: PALM BEACH COUNTY COMMISSION ON ETHICS

I. EXECUTIVE BRIEF

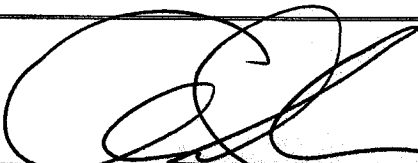
Motion and Title: Staff recommends motion to: Approve an Interlocal Agreement with the Town of Lantana to engage the services of the Palm Beach County Commission on Ethics.

Summary: The Lantana Town Council adopted an ordinance subjecting the Town to the jurisdiction and authority of the Palm Beach County Commission on Ethics. This Interlocal Agreement will allow the Town to engage the services of the Commission on Ethics and its Executive Director. This action addresses the Town's desire to subject itself to the County's ethics regulations prior to consideration of a Charter amendment this November. The Charter amendment, if approved by voters, will allow the County to adopt ethics regulations applicable in each municipality that voted in favor of the amendment. Districts 3, 4, 7 (LB)

Background and Justification: In response to the State's Grand Jury Report in 2009, the Board of County Commissioners sought to create a set of ethics regulations that would apply uniformly to all government agencies in Palm Beach County. In furtherance of this goal, the Commission placed a Charter amendment on the November 2, 2010 ballot that would require the establishment by ordinance of a Code of Ethics, a Commission on Ethics, and an Office of Inspector General. If approved by the electorate, these ordinances will apply in all municipalities approving the referendum. The Town of Lantana desires to subject itself to the County's regulatory framework before the referendum and subsequent adoption of countywide ordinances. This agreement will remain in effect for one year, or until it is superseded by countywide ordinance.

Attachments:

- 1. Interlocal Agreement
- 2. Town Ordinance adopting Palm Beach County's current regulations by reference

Recommended by: 
Alan Johnson, Executive Director Date

Approved by: N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
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 X 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
 6/12/10



 Contract Development and Control
 6/12/10

B. Legal Sufficiency:



 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

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

ATTACHMENT 1

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is made on _____, 2010, between the Town of Lantana, a Florida municipal corporation located in Palm Beach County, Florida ("Public Entity"), and Palm Beach County, a political subdivision of the State of Florida ("County"), each one constituting a public agency as defined in Part I of Chapter 163, *Florida Statutes*.

WITNESSETH

WHEREAS, Section 163.01, *Florida Statutes*, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, *Florida Statutes*, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the Palm Beach County Commission on Ethics Ordinance (the Commission on Ethics Ordinance No. 2009-050) permits the Commission on Ethics of Palm Beach County ("the Commission on Ethics"), subject to approval by the Board of County Commissioners, to negotiate agreements or memoranda of understanding with municipalities, special districts, and other public offices and entities, authorizing the Commission on Ethics to exercise any and all authority, functions and powers set forth in the Commission on Ethics Ordinance for the benefit of such Public Entity.

WHEREAS, Public Entity wishes to have the Commission on Ethics exercise such authority, functions and powers for Public Entity's benefit.

NOW THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

Section 1. Purpose

The purpose of this Agreement is to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics Ordinance as to Public Entity's operations.

Section 2. Representative/Monitoring Position

The County's representative/contract monitor during the term of this Agreement shall be Alan S. Johnson, Executive Director, whose telephone number is (561) 233-0724.

The Public Entity's representative/contract monitor during the term of this Agreement shall be Public Entity's Town Manager, Michael Bornstein, whose telephone number is (561) 540-5010.

Section 3. Effective Date and Term

This Agreement shall take effect upon execution of this Agreement by the Board of County Commissioners. The term of the Agreement will be for one (1) year, unless terminated earlier as set forth hererin. The parties may agree in writing to extend this Agreement for additional one (1) year terms prior to the end of any term by executing an addendum to that effect. This Agreement may be terminated at any time by either party upon ninety (90) days written notice to the other party. In the event the County adopts countywide ethics ordinances and regulations pursuant to its charter authority which supersede the ethics ordinances subject to this Agreement, this agreement will automatically terminate upon the effective date of the

countywide ethics regulations should the Town of Lantana electors approve the proposed Palm Beach County Charter Amendment to be placed on the November 2, 2010 ballot requiring the establishment by ordinance a Code of Ethics, a Commission on Ethics and an independent Inspector General made applicable to all municipalities approving such charter amendment. Upon notice of termination by Public Entity or termination by superseding regulations, any ongoing Public Entity investigations being conducted by the Commission on Ethics pursuant to this Agreement shall continue until completed.

Section 4. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics Ordinance and Code of Ethics Ordinance in regard to Public Entity's operations.

Those functions, authority and powers include the following:

- The Commission on Ethics shall have the authority to: (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complaints within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and (3) develop and deliver, or contract with other entities to develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.

- (B) The Commission on Ethics shall have the power to conduct investigations, and receive full and unrestricted access to the records of the Public Entity, all elected and appointed Public Entity officials and employees, Public Entity departments, divisions, agencies and instrumentalities, contractors and other persons and

entities doing business with the Public Entity and/or receiving Public Entity funds regarding any such contracts or transactions with the Public Entity.

- (C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with section 162.08, *Florida Statutes*. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- (D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal or administrative agencies. In the case of a possible violation of a rule, regulation or policy governing a Public Entity employee, the Executive Director or designee shall also notify the governing body of the Public Entity and the head of the Department for which the employee works.
- (E) The Commission on Ethics shall have the power to require officials and employees to participate in ethics training on a regular basis.
- (F) The Commission on Ethics' "hotline" will receive complaints related to Public Entity operations. The Public Entity will support and assist the Commission on Ethics in publicizing the "hotline" and encouraging the reporting of ethics violations by local citizens, officials and employees.
- (G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own initiative.

- (H) With the exception of the initial complaint filed in a matter, all records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in s. 112.3188(2), *Florida Statutes*.
- (I) The Commission on Ethics and its staff shall be considered “an appropriate local official” of the Public Entity for purposes of whistleblower protection provided by s. 112.3188(1), *Florida Statutes*.
- (J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Public Entity officials, employees, and any other persons covered by this Agreement. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- (K) The Commission on Ethics shall monitor the costs of investigations undertaken. The Commission on Ethics shall cooperate with other governmental agencies to recover restitution from other entities involved in willful misconduct in regard to Public Entity funds.
- (L) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in s. 57.105 *Florida Statutes*, or a complaint with malicious intent and with the knowledge that the complaint contains material false allegations, the commission shall order the complaining party to pay any costs and attorneys fees incurred by the commission and/or the alleged violator.

(M) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, final orders and advisory opinions.

(N) The Commission on Ethics shall annually prepare and publish a written report concerning the work and activities of the Office of Commission on Ethics.

Section 5. Funding and Budgeting by Public Entity

Notwithstanding any provisions to the contrary contained in Palm Beach County Ordinance No. 2009-050 as codified in part at Sub-section 2-258(b) of the County Code of Ordinances, the parties agree that all costs associated with the duties and responsibilities of the Commission on Ethics shall be adequately funded by The Palm Beach County Board of County Commissioners. County funding shall include all staff services and other resources to be provided in furtherance of this Agreement.

Section 6. Notice

All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by United States Mail to the following:

County

Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, Florida 33401
Attn: Denise Nieman, County Attorney

Public Entity

Town of Lantana
500 Greynolds Circle
Lantana, Florida, 33462
Attn: Town Manager

Section 7. Delegation of Duty

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or municipal officers.

Section 8. Filing

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County pursuant to Sec. 163.01(11), *Florida Statutes*.

Section 9. Liability

The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, *Florida Statutes*.

Section 10. Remedies

This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 11. Time of the Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 12. Equal Opportunity Provision

Commission on Ethics and Public Entity agree that no person shall, on the grounds of

race, color, religion, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity and expression, or disability be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

Section 13. Captions

The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 14. Severability

In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

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Section 15. Entirety of Agreement

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

ATTEST

Sharon R. Bock, Clerk & Comptroller

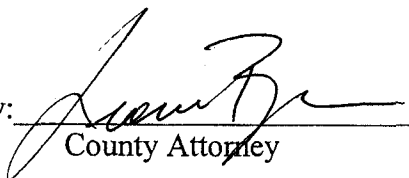
By: _____
Clerk

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

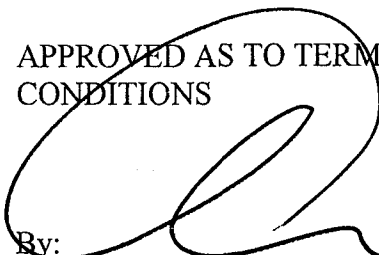
By: _____
Burt Aaronson, Chair

(SEAL)

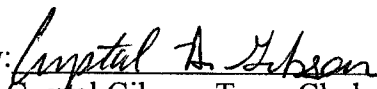
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
County Attorney

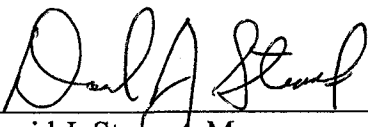
APPROVED AS TO TERMS AND
CONDITIONS

By:  _____
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

By:  _____
Crystal Gibson, Town Clerk

TOWN OF LANTANA

By:  _____
David J. Stewart, Mayor

(SEAL)

ATTACHMENT 2

ORDINANCE NO. O-10-2010

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LANTANA, FLORIDA, AMENDING CHAPTER 2. ADMINISTRATION. BY ADOPTING AN ENTIRELY NEW ARTICLE VII. TO BE ENTITLED "TOWN OF LANTANA ETHICS ORDINANCE" TO PROVIDE FOR INCORPORATION BY REFERENCE OF THE PALM BEACH COUNTY CODE OF ETHICS AND AUTHORIZATION FOR THE JURISDICTION OF THE COMMISSION ON ETHICS IN THE TOWN OF LANTANA AS AGREED TO IN A SEPARATE INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 2. ADMINISTRATION. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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 Board of County Commissioners and the Town Council of the Town of Lantana desire to have the Code of Ethics regulations and the Commission on Ethics jurisdiction apply to the Town of Lantana, subject to an agreement for such as set forth in an Interlocal Agreement between the Town and Palm Beach County; and

WHEREAS, the Board of County Commissioners and the Town of Lantana have entered into an Interlocal Agreement to provide services by the Commission on Ethics to the Town of Lantana in the same manner that as those services are provided to Palm Beach County as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LANTANA, FLORIDA, THAT:

Section 1: Chapter 2. Administration. of the Code of Ordinances of the Town of Lantana is hereby amended by creating an entirely new Article VII. to be entitled "Town of Lantana Ethics Ordinance" to provide for the adoption of the Palm Beach County ethics regulations by reference in the Town Code: providing that new Article VII. shall hereafter read as follows:

ARTICLE VII. TOWN OF LANTANA ETHICS ORDINANCE

Sec. 2-121. Town of Lantana Ethics Ordinance.

(a) The intent of this article is to provide for the adoption of the Palm Beach County Code of Ethics, by reference, as the Town's own ethics provisions and to authorize the jurisdiction of the Palm Beach County Commission on Ethics within the Town of Lantana so that these referenced County ethics regulations and the jurisdiction of the Commission on Ethics, as such regulations or jurisdiction may be amended in the future by the County, shall apply within the Town of Lantana.

(b) The Town of Lantana adopts by reference, and as its own, the Palm Beach County Code of Ethics, set forth in Palm Beach County Code in Chapter 2, Article XIII, at the following sections: sections 2-441 through 2-443; sub-sections 2-444(c), (d), and (e); and sections 2-445 through 2-448.

(c) The Palm Beach County Commission on Ethics, as referenced in the Palm Beach County Code in Chapter 2, Article V, at Division 8., in sections 2-254. through 2-260.10., as these sections may be amended, shall exercise jurisdiction in the Town of Lantana, subject to the provisions for same as set forth in the Interlocal Agreement between the Town and the County

concerning the applicability of the County's Code of Ethics and the Commission on Ethics within the Town of Lantana.

(d) The Palm Beach County Code of Ethics and Commission on Ethics ordinances provisions, set forth hereinabove, in existence as of the effective date of this Ordinance are hereby incorporated by reference into the Town Code of Ordinances and shall be kept on file in the office of the Town Clerk for reference purposes. In addition, a copy of the executed Interlocal Agreement between the Town and the County concerning such ethics provisions shall also be kept on file in the office of the Town Clerk.

(e) All references to county government provided for in the Palm Beach County Commission on Ethics and Code of Ethics ordinances, including but not limited to county elected and appointed officials, county employees, county divisions and departments, shall be deemed as reference to the corresponding elected and appointed officers, divisions and departments of the Town of Lantana as appropriate to effectuate the intent of this Ordinance.

Section 2: Each and every other section and subsection of Chapter 2. Administration. of the Code of Ordinances of the Town of Lantana shall remain the same and in full force and effect as previously adopted.

Section 3: All Ordinances or parts of Ordinances in conflict be and the same are hereby repealed.

Section 4: Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 5: Specific authority is hereby given to codify this Ordinance.

Section 6: The provisions of this ordinance shall take effect upon the effective date of the Interlocal Agreement authorizing the Palm Beach County Commission on Ethics to exercise its jurisdiction in the Town of Lantana. In the event the County adopts countywide ethics regulations pursuant to its charter authority which supersede this ordinance and the Town's electors approve the related charter amendment at the November 2, 2010 election, this ordinance shall stand repealed and the provisions shall be null and void upon the effective date of the countywide ethics regulations implementing this countywide charter authority through newly adopted ethics ordinances.

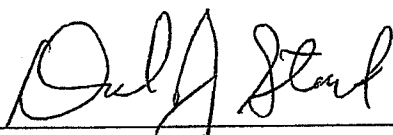
FIRST READING this 13th day of September, 2010.

SECOND AND FINAL READING this 27th day of September, 2010.

TOWN OF LANTANA

✓
Aye

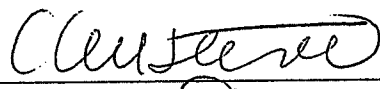
Nay



Mayor David J. Stewart

✓
Aye

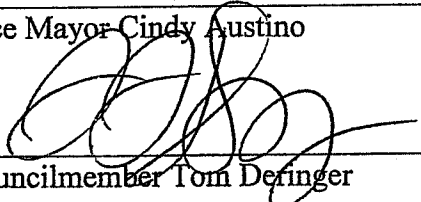
Nay



Vice Mayor Cindy Austino

✓
Aye

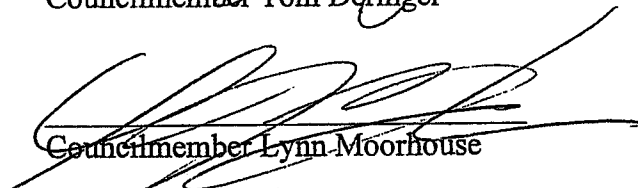
Nay



Councilmember Tom Derfinger

✓
Aye

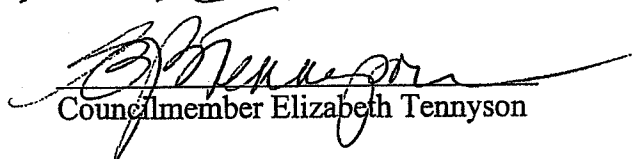
Nay



Councilmember Lynn Moorhouse

✓
Aye

Nay



Councilmember Elizabeth Tennyson

ATTEST:

Crystal G. Gibson
Town Clerk

(Seal)

Approved as to form and
legal sufficiency.

[Signature]
Town Attorney

CLERK'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PALM BEACH) SS:
TOWN OF LANTANA)

I, Crystal Gibson HEREBY CERTIFY THAT I am duly qualified
and Clerk of the Town of Lantana, Florida; that the above is a true and
correct copy of a Document the original of which is on file in the Office of
the Town Clerk of the Town of Lantana, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
official seal of the Town, this 1st day of October A.D. 2010

TOWN SEAL

Crystal G. Gibson
TOWN CLERK