

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

Meeting Date: January 11, 2011 [] 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 City of Lake Worth to engage the services of the Palm Beach County Commission on Ethics.

Summary: The Lake Worth City Commission adopted an ordinance subjecting the City to the jurisdiction and authority of the Palm Beach County Commission on Ethics. This Interlocal Agreement will allow the City to engage the services of the Commission on Ethics and its Executive Director. This action addresses the City's desire to subject itself to the County's ethics regulations prior to adoption of countywide ethics regulations this Spring. Districts 3, 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. The amendment was approved by the electorate and as a result, countywide ethics regulations will be developed and adopted by the County Commission this Spring. The City of Lake Worth desires to subject itself to the County's regulatory framework before the adoption of countywide ordinances. This agreement will remain in effect until it is superseded by countywide ordinance.

Attachments:

1. Interlocal Agreement
2. 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 _____ No _____

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


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

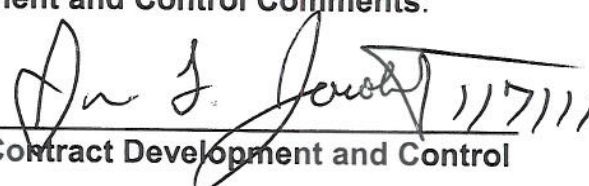
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

No fiscal impact.


OFMB 11/6/2011
11/5/11


Contract Development and Control 11/7/11

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 _____, 20____, between the City of Lake Worth, Florida, a 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) 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 City Manager, Susan A. Stanton, whose telephone number is (561) 586-1630.

Section 3. Effective Date and Term

This Agreement shall take effect upon execution of this Agreement by the Board of County Commissioners. This Agreement will then be in effect for one (1) year. This Agreement may be terminated by either party upon ninety (90) days written notice to the other party. In the event the County adopts countywide ethics regulations pursuant to its charter authority which supersede the ethics ordinances subject to this Agreement, this agreement will terminate upon the effective date of the countywide ethics regulations. 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

All costs associated with the duties and responsibilities of the Commission on Ethics are 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

Alan S. Johnson
Executive Director
Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, Florida 33411

Public Entity

Susan A. Stanton
City Manager
City of Lake Worth
7 North Dixie Highway
Lake Worth, Florida 33460

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.

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 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

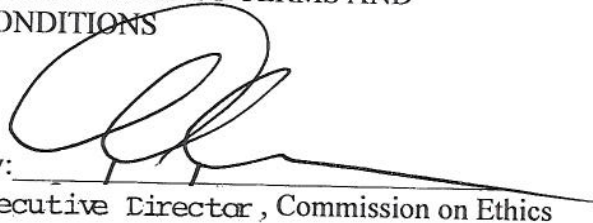
By: _____
_____, Chair

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

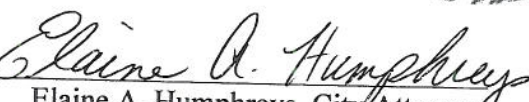
By: 
Executive Director, Commission on Ethics

ATTEST:

By: 
Pamela J. Lopez, City Clerk

 CITY OF LAKE WORTH, FLORIDA
By: 
Robert A. Varela, Mayor 12/14/10

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Elaine A. Humphreys, City Attorney

2010-29

ORDINANCE NO. 2010-29 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 2, ARTICLE XII, TO CREATE A NEW ETHICS CODE TO BE ENTITLED "CODE OF ETHICS", AMENDING SECTION 2-100 TO INCORPORATE BY REFERENCE THE PALM BEACH COUNTY CODE OF ETHICS AND COMMISSION ON ETHICS ORDINANCES INTO THE CITY'S CODE OF ORDINANCES, AMENDING SECTION 2-101 TO PROVIDE FOR DISCLOSURE BY THE CITY'S ELECTED OFFICIALS OF ELECTION CAMPAIGN CONTRIBUTIONS WITH RESPECT TO MATTERS BEFORE THE CITY COMMISSION AND DISCLOSURE BY APPLICANTS FOR CITY CONTRACTS WHO HAVE MADE SUCH ELECTION CAMPAIGN CONTRIBUTIONS, DELETING AND RESERVING SECTION 2-102 AND AMENDING SECTION 2-103 TO INCLUDE A STATEMENT OF PURPOSE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN 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 Statutes, 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 City Commission of Lake Worth, Florida desire to have the Code of Ethics regulations and the Commission on Ethics jurisdiction to apply to City of Lake Worth for those regulations; and

WHEREAS, the Board of County Commissioners and the City of Lake Worth will be entering concurrently into an Interlocal Agreement for the Commission on Ethics to provide services to the City of Lake Worth, Florida in the same manner that as those services are provided to Palm Beach County as set forth herein; and

WHEREAS, the City of Lake Worth desires to create stricter ethics requirements regarding the disclosure by the City Commissioners of election campaign contributions with respect to matters before the City Commission; and

WHEREAS, the City of Lake Worth also desires to create stricter ethics requirements regarding the disclosure of election campaign contributions made to members of the City Commission by applicants for contracts being awarded by the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, THAT:

Section 1. The foregoing whereas clauses are true and correct and are now ratified and confirmed by the City Commission.

Section 2. Chapter 2, Article XII of the City's Code of Ordinances, is hereby amended by amending Sections 2-100, 2-101 and 2-103 and deleting Section 2-102 to read as follows:

Chapter 2
ADMINISTRATION

* * *

ARTICLE XII. ~~GIFT REPORTING OBLIGATION~~ CODE OF ETHICS

Sec. 2-100. ~~Intent; applicability; definitions~~ Palm Beach County Code of Ethics and Commission on Ethics ordinances adopted by reference.

(a) ~~The city commission hereby adopts an internal reporting procedure for the receipt of gifts.~~

(b) ~~This code section is applicable to:~~

- ~~(1) Elected officials and their immediate family as defined in section 112.3148(2)(a), Florida Statutes.~~
- ~~(2) All board members, both quasi-judicial and advisory.~~
- ~~(3) City manager, city attorney, internal auditor, labor attorney, personnel director, police chief, fire chief, director of utilities and all division heads.~~

(c) ~~The definitions contained in sections 112.312 and 112.3148, Florida Statutes, shall be adopted for the purposes of this section.~~

The City of Lake Worth hereby adopts by reference as its own the Palm Beach County Code of Ethics, Palm Beach County Code, Chapter 2, Article XII, sections 2-441 through 2-443, section 2-444(c), (d), and (e), section 2-445 through section 2-448, and the Palm Beach County Commission on Ethics, Palm Beach County Code, Chapter 2, Article V, Division 8, sections 2-254 through 2-260.10, as may be amended.

Sec. 2-101. Reporting. Additional and supplemental disclosures requirements.

~~There shall be quarterly reports from all affected persons. However, disclosure of any gift as defined in this section shall be made prior to any action being taken regarding any dealings with the giver. Disclosure may be made verbally at a given meeting where official action can occur, but written disclosure must follow. Forms for reporting shall be available in the city clerk's office. A report shall be filed only if a gift or gifts have been received for that quarter. These reports shall be kept by the city clerk.~~

(a) Any elected official of the City of Lake Worth, who is a current sitting member of the City Commission and has accepted an election campaign contribution in an amount that is more than \$100 from an individual or business entity having an interest in a matter before the City Commission in which the City Commission will take action, must

publically disclose, both verbally and in writing, such contribution prior to any discussion or vote on the matter. The written disclosure must be submitted to the City Clerk.

(b) Any applicant coming before the City Commission for an award of a contract with the City and who has made an election campaign contribution in an amount that is more than \$100.00 to any elected official of the City Commission, who is a current sitting member of the Commission, must disclose such election campaign contribution, verbally and in writing, during the application or bidding process and before the award of the contract.

Sec. 2-102. Penalties.

~~An alleged violation of the disclosure obligation shall be reported to the city attorney. (If the subject of the alleged violation is the city attorney, the matter shall be reported to the labor attorney.) The city attorney shall prepare any available information and present a case to the city commission. The person who is the subject of the inquiry shall have an opportunity to present evidence, witnesses, and to rebut any testimony presented by the city attorney. Upon close of evidence, the city commission shall (1) determine if a violation has occurred, and (2) determine what, if any sanctions shall take place. Sanctions available shall be pursuant to section 112.501, Florida Statutes.~~

[Reserved]

Sec.2-103. Statement of purpose; conflict with Florida Statues.

Nothing in this section Article is intended to conflict with Chapter 112, Florida Statutes, Chapter 106, Florida Statutes, or the Palm Beach County Code of Ethics and Commission on Ethics ordinances. This Article shall not be construed to authorize or permit any conduct or activity that is in violation of Florida Statutes, ch.112, pt. III, Florida Statutes, ch.106, or the Palm Beach Code of Ethics and Commission on Ethics ordinances. This Article shall be deemed additional and supplemental to any and all state and federal laws governing ethical conduct of official and employees, as well as all local laws, rules, regulations and policies governing personnel matter.

Section 3. The Palm Beach County Code of Ethics and Commission on Ethics ordinances in existence as of the effective date of this Ordinance are hereby incorporated by reference and attached hereto as Exhibits 1 and 2, respectively.

Section 4. 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 City of Lake Worth as appropriate to effectuate the intent of this Ordinance.

Section 5. Each and every other provision of the City of Lake Worth Code of Ordinances not herein specifically amended, shall remain in full force and effect as originally adopted.

Section 6. All laws and ordinances applying to the City of Lake Worth in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 7. If any section or provision of this Ordinance or any portion thereof is declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of this Ordinance.

Section 8. The provisions of this ordinance shall take become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Vice Mayor Mulvehill, seconded by Commissioner Golden, and upon being put to a vote, the vote was as follows:

Mayor René A. Varela	AYE
Vice Mayor Suzanne Mulvehill	AYE
Commissioner Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Jo-Ann Golden	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 16th day of November 2010.

The passage of this Ordinance on second reading was moved by Vice Mayor Mulvehill, seconded by Commissioner Golden, and upon being put to a vote, the vote was as follows:

Mayor René A. Varela	AYE
Vice Mayor Suzanne Mulvehill	AYE
Commissioner Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Jo-Ann Golden	AYE

The Mayor thereupon declared this Ordinance duly passed and enacted on the 7th day of December 2010.

LAKE WORTH CITY COMMISSION

By: _____

René A. Varela, Mayor

ATTEST:

Pamela J. Lopez
Pamela J. Lopez, City Clerk

