

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: _____

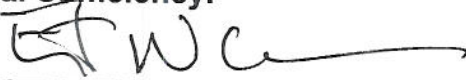
III. REVIEW COMMENTS

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

**Fiscal impact is indeterminate at this time.*



 OFMB Contract Development and Control
pm 1-27-11

B. Legal Sufficiency:

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Background (cont. from page 1): The County Attorney's office solicited input from the business community and other interested parties as directed by the Board. Written responses were received from the Florida Retail Federation and members of the Business Forum of Palm Beach County. The County Attorney's office also met with members of the Business Forum. One of the issues raised was that the ordinance would invite certain litigation for the County in the form of a complaint similar to that filed by the Florida Retail Federation against Miami-Dade County. That complaint alleges, in part, that the Miami-Dade County Wage Theft Ordinance violates the Florida Constitution in that it creates a process judicial in nature that awards monetary damages, thus violating separation of powers and the right to a jury trial. The complaint also alleges that the Miami-Dade Wage Theft Ordinance violates the constitutional provision prohibiting local governments from creating courts. This litigation is ongoing. Another issue raised was that a wage theft complaint filed and processed by the County would not offer finality to the employer because it cannot preclude an aggrieved employee from filing a claim regarding the same circumstances in another court of competent jurisdiction or through the U.S. Department of Labor, Wage and Hour Division. The Business Forum, along with the Legal Aid Society of Palm Beach County, also proposed an alternative to a County wage theft ordinance. This proposal includes a concerted educational effort targeting employers and employees, informing them of their rights and obligations under current federal and state law, and informing how employees how they could use the services of Legal Aid to resolve allegations of wage theft. Legal Aid would receive and process complaints of wage theft and try to conciliate a settlement agreement between the parties. If the complaint could not be settled, then Legal Aid would assign a staff attorney or *pro bono* attorney from its roster to represent the employee and file a complaint on his or her behalf in federal or state court, or with the U.S. Department of Labor, Wage and Hour Division, depending on the nature of the allegations. The Executive Director of Legal Aid has indicated that Legal Aid is ready, willing and able to undertake this effort and has access to attorneys bilingual in Spanish and other staff bilingual in Creole.

The County Attorney's office also received written responses from other interested parties, including People Engaged in Active Community Efforts (PEACE), and South Florida Interfaith Workers Justice. The County Attorney's office also met with members of PEACE. The central theme of their response was the absolute need for the County to implement a wage theft ordinance to address the widespread wage theft problem plaguing low-income workers who are unable, for various reasons, to utilize existing federal or state laws and remedies. One issue raised was the need for an added deterrent by imposing additional fines or penalties against employers found to have committed wage theft. Additional fines or penalties were not included in the proposed wage theft ordinance. Another issue raised was the need for timeframes and deadlines applied to the County to process wage theft complaints. These were not included in the proposed wage theft ordinance but could be addressed by policies and procedures prescribed by the County Administrator. Additional issues raised included the need for publicizing and advertising the provisions of the wage theft ordinance to the community at large and publishing educational materials and forms in Spanish and Creole to be distributed to affected populations. These issues could also be addressed by policies and procedures prescribed by the County Administrator.

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ORDINANCE NO. 2011-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING A PROCEDURE FOR EMPLOYEES WHO ARE THE VICTIMS OF WAGE THEFT TO RECOVER BACK WAGES; PROVIDING FOR SHORT TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR WAGE THEFT COMPLAINTS; PROVIDING FOR CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, establishes the right and power of counties to provide for the health and welfare of its residents and authorizes counties to adopt ordinances to exercise such powers in a manner consistent with general and special law; and

WHEREAS, wage theft, the unlawful under payment or non-payment of workers' wages within a reasonable time, is a serious and widespread problem;

WHEREAS, a significant portion of workers affected by wage theft are economically disadvantaged and low-income; and

WHEREAS, many of the workers affected by wage theft lack the ability or financial wherewithal to avail themselves of remedies currently available under federal and state law; and

WHEREAS, the Board of County Commissioners has determined that providing a more accessible county remedy for workers affected by wage theft would serve an important public purpose by providing aggrieved workers with a process to resolve wage theft complaints that is within their means.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Section 1. SHORT TITLE.

The provisions of this ordinance shall be known and cited as the Palm Beach County Wage Theft Ordinance.

Section 2. DEFINITIONS.

- (A) *Employee* shall mean a natural person who performs work within incorporated and unincorporated Palm Beach County while being employed by an employer, but shall not include any bona fide independent contractor.
- (B) *Employer* shall include any person who, acting either individually or as an officer, agent, or employee of another person, acts directly or indirectly in the interest of a person or entity employing an employee; but such term does not include:
 - (1) The United States or a corporation wholly owned by the government of the United States; or
 - (2) The State of Florida.
- (C) *Employ*. The meaning of "employ", including as used in the term employment, shall include to suffer or permit to work.

- 1 (D) *Independent contractor* shall have the same meaning as in the Internal Revenue Code
2 and implementing federal regulations.
3
- 4 (E) *Wage rate* shall mean any form of monetary compensation that the employee agreed
5 to accept in exchange for performing work for the employer, whether daily, hourly,
6 or by piece, but in all cases shall be equal to no less than the highest applicable rate
7 established by operation of any federal, state or local law.
8
- 9 (F) *Reasonable time* shall be presumed to be no later than fourteen (14) calendar days
10 from the date on which the work is performed unless the employer has established,
11 by policy or practice, a pay schedule whereby employees earn and are consistently
12 paid wages according to regularly recurring pay periods, in which case such pay
13 schedule shall govern.
14
- 15 (G) *Threshold amount* shall mean sixty dollars (\$60.00).
16
- 17 (H) *Wage theft* shall mean the failure of an employer to pay any portion of wages due to
18 an employee, according to the wage rate applicable to that employee, within a
19 reasonable time from the date on which that employee performed the work for which
20 those wages were compensation.
21
22

23 **Section 3. WAGE THEFT COMPLAINTS.**
24

- 25 (A) Wage Theft. For any employer to fail to pay any portion of wages due to an
26 employee, according to the wage rate applicable to that employee, within a
27 reasonable time from the date on which that employee performed the work for which
28 those wages were compensation, shall be wage theft, and shall entitle an employee,
29 upon a finding by a special master appointed by the county to receive back wages
30 from that employer.
31
- 32 (B) Procedures for wage theft complaints.
33
- 34 (1) Filing wage theft complaints.
35
- 36 (a) Threshold amount. In order for a complaint to be submitted to the
37 county by, or on behalf of, an aggrieved employee, that employee
38 must allege a wage theft violation in which the unpaid wages are
39 equal to or more than the threshold amount.
40
- 41 (b) Either of the following may file a written, signed complaint with the
42 County using procedures established by the county administrator:
43
- 44 (i) An employee aggrieved by wage theft; or
45
- 46 (ii) Any entity a member of which is aggrieved by a violation of
47 this article.
48
- 49 (c) A signed complaint for wage theft must be filed with the county in
50 the manner established by the county administrator no later than one
51 (1) year after the last date upon which the complainant employee
52 performed the work for a respondent employer with regard to which
53 the employee alleges wage theft ("filing deadline"); however, with
54 respect to alleged ongoing violations, once a complaint has been
55 made in compliance with the filing deadline, the county's capacity to
56 provide a remedy is limited by the statute of limitations provided in
57 Section 95.11, Florida Statutes, as amended, for an action for
58 payment of wages.

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- (d) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent or respondents and for the county to determine both that an allegation of wage theft has been made and that the threshold amount has been met.
- (2) Respondent.
 - (a) Upon the filing of any complaint, the county shall promptly determine whether the wage theft complaint alleges wage theft, names at least one respondent and meets the threshold amount criterion. The duty of the county to determine whether a complaint meets these criteria is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment by the county.
 - (b) Upon making such determination, the county shall serve the complaint and a written notice on the respondent or person charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties including, but not limited to, the right to a due process hearing on the matter before a special master and that the respondent may be responsible for the costs of the special master and other administrative costs incurred by the county in processing the complaint. Such service shall be by certified mail.
 - (c) Each respondent shall file an answer to the complaint with the county not later than thirty (30) days after receipt of the complaint and notice from the county, unless the respondent shows sufficient cause for delay past thirty (30) days as determined by the county.
- (4) Applicability of Florida Rules of Civil Procedure.
 - (a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, as amended, shall govern the computation of any period of time prescribed or allowed by this ordinance or by policies or procedures established by the county administrator pursuant to this ordinance.
 - (b) All papers or pleadings required by this chapter to be served may be served by certified mail, in accordance with Rule 1.080, Florida Rules of Civil Procedure, as amended, or as specified by policies or procedures established by the county administrator pursuant to this ordinance.
- (5) Standards for Resolving Factual Disputes.
 - (a) Adequate Records. When the following three conditions are met:
 - (I) Where by operation of some other statute or regulation, a respondent employer has an obligation to keep records of an employee's hours worked and/or records of compensation provided to an employee; and
 - (ii) Where such records are imprecise, inadequate or do not exist; and
 - (iii) Where a complainant employee presents sufficient evidence to show, as a matter of just and reasonable inference, the

1 amount of work done or the extent of work done or what
2 compensation is due for the work done;

3
4 (b) Then the burden of imprecision falls on the respondent whose
5 obligation it was to keep accurate records and the respondent must
6 come forward with evidence of the precise amount of work performed
7 or with evidence to negate the reasonableness of the inference to be
8 drawn from the complainant's evidence. If the respondent fails to
9 meet this burden, the special master may award approximate damages
10 based on the complainant's evidence.
11

12 (6) Conciliation.

13
14 (a) It is the policy of the county to encourage conciliation of complaints.
15 The county will work with the parties in an attempt to conciliate an
16 agreement resolving the complaint. If possible, a written conciliation
17 agreement resolving the dispute between the complainant and the
18 respondent shall be executed prior to the referral of the matter to a
19 special master.
20

21 (b) A conciliation agreement arising out of such conciliation shall be an
22 agreement between the respondent and the complainant.
23

24 (c) Whenever a party believes that the other party has breached a
25 conciliation agreement, the aggrieved party may file a civil action in
26 a court of competent jurisdiction for enforcement of such agreement.
27

28 (d) Nothing said or done in the course of attempting conciliation under
29 this ordinance may be used as evidence in any subsequent proceeding
30 under this ordinance or otherwise without the written consent of both
31 parties.
32

33 (7) Hearing before special master.

34
35 (a) Within fifteen (15) days after the service of the complaint on the
36 respondent, and after determination that the complaint meets the
37 threshold and other requirements, any party may submit to the county
38 a written request for a hearing before a special master. The county
39 shall appoint a special master that it deems to be qualified to hear
40 wage theft matters pursuant to procedures established by the county
41 administrator. In conducting any hearing to determine whether a
42 violation of this chapter has occurred, the special master shall have
43 the authority to administer oaths and receive evidence. The special
44 master shall have the authority to consolidate two or more complaints
45 into a single hearing where such complaints name the same
46 respondent or respondents, and involve sufficiently similar allegations
47 of fact to justify consolidation.
48

49 (b) All parties shall appear at the hearing in person, with or without
50 counsel, and may submit evidence, cross-examine witnesses, and
51 otherwise be heard. Testimony taken at the hearing shall be under
52 oath and a transcript shall be made available at cost to any interested
53 party.
54

55 (c) The special master may direct the parties to submit a pre-hearing
56 statement addressing the issues of law and fact that will be involved
57 in such hearing, identify the witnesses that will testify, and provide a
58 list of all documents or other types of exhibits that will be submitted.

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The special master may also direct each party to provide this information as well as copies of the listed documents or other types of exhibits to the opposing party.

- (d) Upon the conclusion of the hearing, a final order shall be issued by the special master and served upon the parties setting forth written findings of fact and conclusions of law. This order is final and appealable by writ of certiorari pursuant to the Florida Rules of Appellate Procedure.
- (e) In any proceeding under this ordinance, the burden of proof by a preponderance of the evidence rests upon the complainant.
- (8) Representation by non-lawyer advocate. Any person may be represented by counsel in any proceeding herein. Any party, including corporate entities, as an alternative to counsel, may be represented by a non-lawyer advocate authorized by that party in any proceeding herein unless specifically disallowed by the special magistrate for good cause.
- (9) Enforcement by private persons or by the State of Florida.
 - (a) Enforcement by private persons.
 - (i) If during the pendency of a wage theft complaint but prior to the issuance of a final decision by a special master, a complainant employee brings a private action in their own right, whether under state law, federal law, or both, in any state or federal court or administrative forum to seek unpaid wages based upon the same facts and allegations as the complainant employee's complaint to the county, or affirmatively or by consent opts to participate in any such litigation or administrative proceeding, that complainant employee's complaint of wage theft shall be deemed withdrawn with respect to any respondent employer named as a defendant in such action. This section shall be interpreted narrowly so as to leave unaffected any cumulative rights that were not the subject of the complaint.
 - (ii) The county, upon becoming aware of any private action described herein, shall notify and advise the complainant and any respondent subject to the private action in writing within fifteen (15) days of this provision and its effect on the complaint. Within thirty (30) days of the issuance of such notice and if the private action is not voluntary dismissed by the complainant, the county will dismiss, with prejudice, the complaint only with respect to the respondent or respondents who are named as a defendant to the private action.
 - (b) Enforcement by the State of Florida. If at any time during the pendency of a complaint of wage theft, the county becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage violations involving the same facts as the complainant employee's complaint to the county, the county will dismiss, either with or without prejudice, the complainant employee's complaint with respect to the respondent or respondents named in such state enforcement action. The county shall advise the complainant and any respondent of such dismissal.

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(7) Enforcement.

(a) Order Issued. At the conclusion of a hearing and upon a finding of a wage violation, the special master shall issue a written order as follows:

- (1) If the preponderance of the evidence demonstrates wage theft, the special master shall order the employer to pay the affected employee within forty-five (45) days an amount equal to the amount of earned back wages that the respondent employer is found to have failed to pay the complainant employee; and
- (2) The special master may order the respondent employer to pay to the Board of County Commissioners an assessment of costs in an amount not to exceed actual administrative processing costs and costs of the hearing.

(b) Failure to Comply with Initial Order. If the special master finds that any respondent employer has failed to comply with the special master's order within forty-five (45) days after issuance of the special master's initial order, the special master may issue a further order to the respondent employer as follows:

- (1) The special master may, upon request of the respondent employer, grant the respondent an additional forty-five (45) days to comply with any portion of the order, unless such an extension has previously been granted; and
- (2) The special master may order the respondent employer, in addition to the payment of back wages ordered, to pay the prevailing complainant employee an amount equal to the interest rate established under Section 55.03(1), Florida Statutes, as amended, that accrues on the full amount of the award of back wages from the date that the special master's initial order was issued until the date upon which the amount is paid in full; and
- (3) The special master may order the respondent employer, in addition to assessment of costs ordered, to pay to the Board of County Commissioners an amount equal to the interest rate established under Section 55.03(1), Florida Statutes, as amended, that accrues on the full amount of the assessed costs from the date that the special master's initial order was issued until the date upon which the amount is paid in full.

(c) Joint and Severable Liability. In any order issued by the special master, the special master may specify two or more respondents as jointly and severally liable for any amount payable to the complainant or the county or both; however, the total amount the complainant or the county may receive from jointly and severally liable respondents shall not exceed the total amount for which respondents are jointly and severally liable.

(d) Cumulative Rights Preserved. Nothing in this article shall be construed to limit, preclude or in any way abrogate the cumulative rights or remedies available to employees at common law or by other statute that were not the subject of a complainant employee's complaint; such cumulative rights that shall be unaffected by the

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provisions of this ordinance unless they are made the subject of a complaint, shall include, but shall not be limited to, rights related to the violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.

(C) Policies and Procedures. The county administrator shall have the authority to prescribe rules and regulations by separate policy and procedure memoranda for the implementation and administration of this ordinance consistent with the provisions of this ordinance.

(D) Remedies non-exclusive. No remedy set forth in this ordinance is intended to be exclusive or a prerequisite for asserting a claim of relief or to enforce a right under this ordinance in a court of law. Violations of this ordinance may be prosecuted as set forth in Section 125.69, Florida Statutes, as amended.

Section 4. CAPTIONS.

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

Section 5. REPEAL OF LAWS IN CONFLICT.

All Palm Beach County ordinances in conflict with any provision of this ordinance are hereby repealed to the extent of any conflict.

Section 6. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, phrase, word or provision 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.

Section 7. 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 relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. EFFECTIVE DATE.

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

(Remainder of page intentionally left blank.)

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APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County,
Florida, on this the _____ day of _____, 2011.

ATTEST:
SHARON R. BOCK, Clerk & Comptroller

By: _____
Deputy Clerk

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

By: _____
Karen T. Marcus, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

EFFECTIVE DATE:
Filed with the Department of State on the _____ day of _____, 2011.