

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

Meeting Date: May 17, 2011

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COMMISSION ON ETHICS

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: an ordinance of the Board of County Commissioners of Palm Beach County, Florida, repealing the Palm Beach County Commission on Ethics Ordinance, Ordinance 2009-050, as amended, and adopting a new countywide Palm Beach County Commission on Ethics Ordinance; providing for creation and jurisdiction; providing for membership qualifications, terms and vacancy; providing for applicability of the code of ethics; providing for organization of the Commission on Ethics; providing for powers and duties; providing for extended jurisdiction by interagency agreements; providing for financial support; providing for procedure on complaints filed; providing for public hearing procedures; providing for notification and referral to other authorities; providing for dismissal of complaints; providing for frivolous or groundless complaints; providing for effect on other laws; providing for prospective jurisdiction; providing for personnel proceeding; providing for statute of limitations; providing for advisory opinion; providing for appeals; providing for savings clause; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the code of laws and ordinances; and providing for an effective date.

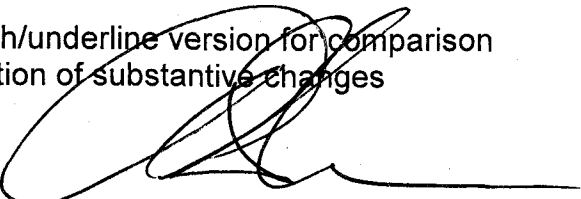
Summary: The Board of County Commissioners adopted an ordinance creating the Palm Beach County Commission on Ethics as part of a series of ethics reforms begun in December 2009. Since then, the Board proposed charter amendments requiring in part the adoption of an ordinance extending the jurisdiction of the Commission on Ethics to the municipalities in Palm Beach County. The charter amendments, which were approved by the voters in November 2010, also called for the establishment of a drafting committee to propose recommended changes to the existing Commission on Ethics Ordinance for countywide application. This ordinance is the product of the committee's work. A brief description of substantive changes to this ordinance is included as Attachment 3. Countywide (LB)

(Continued on page 3)

Attachments:

1. Ordinance
2. Strike-through/underline version for comparison
3. Brief description of substantive changes

Recommended by: _____



Alan Johnson, Executive Director

05/09/2011
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	<u>475,626</u>				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>475,626</u>				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No

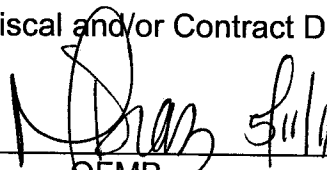
Budget Account No.: Fund 484 Department 290 Unit 2100 Object Various
Reporting Category _____

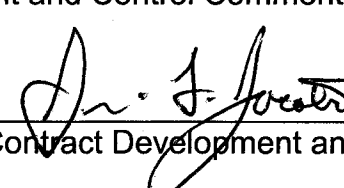
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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


 _____ OFMB 5/11/11
 SN 5/11/11


 _____ Contract Development and Control 5/11/11

B. Legal Sufficiency:


 _____ Assistant County Attorney

C. Other Department Review:

Department Director

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

(Continued from page 1)

Background and Policy Issues: The Palm Beach County Commission on Ethics will be empowered to review, interpret, render advisory opinions and enforce the Palm Beach County Code of Ethics, countywide. The Commission on Ethics will also provide training and outreach programs for county and municipal employees and officials, county and municipal vendors, and other entities that do business with the County and municipalities. Other local governmental agencies will be able to employ the services of and be subject to the Commission on Ethics by contract. To ensure independence, Commission on Ethics members have been appointed by one university president and four collegial bodies, not one of which is subject to the jurisdiction of the Commission on Ethics. The board is composed of a former law enforcement official with experience investigating white collar crime or public corruption, an attorney with experience in ethics regulation, an ethics educator, a certified public accountant, and a former elected official. The Commission on Ethics, along with one representative each from the State Attorney and Public Defender, make up the Inspector General Committee. The Inspector General Committee selects the Inspector General, decides whether or not to renew the term of office for the Inspector General, receives and reviews annual reports from the Inspector General, and may initiate and participate in proceedings to remove the Inspector General.

1 **WHEREAS**, the purpose of the Palm Beach County Commission on Ethics is to serve as the
2 guardian of the public trust by, among other things, educating elected and appointed officials and
3 other public servants and those who do business with local governments as to the required standards
4 of ethical conduct and enforcing those standards of conduct; and

5 **WHEREAS**, it is not the intent of the Board of County Commissioners that the Palm Beach
6 County Commission on Ethics serve as a personnel board resolving personnel matters involving
7 County and municipal employees; and

8 **WHEREAS**, the Board of County Commissioners hereby determines that the Ordinance set
9 forth herein advances the purposes and intent of the Palm Beach County Charter amendments
10 approved by the electorate on November 2, 2010; and

11 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to its
12 authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the
13 Palm Beach County Charter, hereby adopts the Palm Beach County Commission on Ethics
14 Ordinance; and

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

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

19 **SECTION 1. THE PALM BEACH COUNTY COMMISSION ON ETHICS.**

20 The Palm Beach County Commission on Ethics, Ordinance 2009-050, is hereby repealed and
21 the new countywide Palm Beach County Commission on Ethics Ordinance is hereby adopted as set
22 forth in Exhibit 1 which is attached hereto and made a part hereof.

23 **SECTION 2. SAVINGS CLAUSE.**

24 All complaints, investigations, advisory opinions, recommended orders, final orders, requests
25 for advisory opinions, hearing processes, and all other functions of the Palm Beach County
26 Commission on Ethics, initiated or completed pursuant to Ordinance 2009-050 or Ordinance 2009-
27 051, as amended, shall remain in full force and effect. The membership and terms of each member
28 of the Commission on Ethics shall remain as originally established pursuant to Ordinance 2009-050.

29 **SECTION 3. REPEAL OF LAWS IN CONFLICT.**

30 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
31 repealed to the extent of such conflict.

1 **SECTION 4. SEVERABILITY.**

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

5 **SECTION 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

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

10 **PART 6. EFFECTIVE DATE.**

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

13 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
14 County, Florida, on this the ____ day of May, 2011.

15 SHARON R. BOCK
16 CLERK & COMPTROLLER

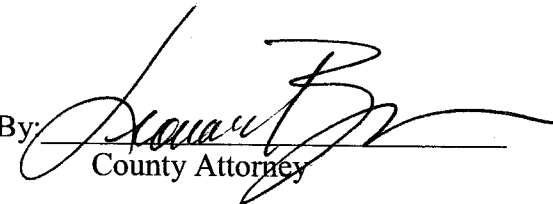
PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

17
18
19
20 By: _____
21 Deputy Clerk

By: _____
Karen T. Marcus, Chair

22
23
24
25 (SEAL)

26
27
28
29 APPROVED AS TO FORM AND
30 LEGAL SUFFICIENCY

31
32
33
34 By: 
35 County Attorney

36
37
38 Filed with the Department of State on the ____ day of _____, 20__.

EXHIBIT 1

1 Sec. 2-254. Creation and jurisdiction.

2 The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby
3 established. The jurisdiction of the commission on ethics shall extend to any person required to
4 comply with the countywide code of ethics, the county lobbyist registration ordinance, and the
5 county post-employment ordinance, and may further extend to persons or entities required to
6 comply with additional ordinances and regulations duly adopted by other county, local, or
7 municipal government and any commission, bureau, district, or other governmental entity
8 located in Palm Beach County as more fully set forth below. The jurisdiction of the commission
9 on ethics is not exclusive. Any person or entity subject to a complaint to the county's
10 commission on ethics may also be subject to a separate complaint to the state commission on
11 ethics or pursuant to a municipality's ethics ordinance. A finding by the county's commission on
12 ethics is not binding on the state and may not be binding on the municipality, depending on the
13 nature of the complaint and whether the municipality's ethics ordinance is more restrictive than
14 the countywide ethics code.

15
16 Sec. 2-255. Membership, qualifications, terms, vacancies.

17 (a) *Composition and appointment.* The commission on ethics shall be composed of five (5)
18 members. The members of the commission on ethics shall be appointed as follows:

19 (1) The president of the county association of chiefs of police shall be requested to appoint a
20 former law enforcement official with experience in investigating white collar crime or public
21 corruption.

22 (2) The president of the Hispanic Bar Association of Palm Beach County, the president of the F.
23 Malcolm Cunningham, Sr. Bar Association, and the president of the county bar association shall
24 be requested to appoint an attorney with experience in ethics regulation of public officials and
25 employees.

26 (3) The president of Florida Atlantic University (FAU) shall be requested to appoint a faculty
27 member who teaches at an institution of higher education with a campus located in the county
28 and who has taught a course in professional legal ethics or has published or performed services
29 in the field of professional legal ethics.

30 (4) The president of the Palm Beach Chapter of the Florida Institute of CPAs shall be requested
31 to appoint a member who possesses at least five (5) years experience as a certified public
32 accountant (CPA) with forensic audit experience.

33 (5) The board of directors of the Palm Beach County League of Cities, Inc. shall be requested to
34 appoint a person who has served as a former elected official for a governmental entity in the
35 county.

36 All appointing officers or entities identified in subsections (a)(1) through (5) shall in good faith
37 endeavor to appoint members of the commission on ethics within forty-five (45) days of the
38 effective date of the ordinance from which this division is derived. Each appointing entity shall
39 promptly provide notice of each appointment to the county administrator.

40 (b) *Additional qualifications.* Each member of the commission on ethics shall be of outstanding
41 reputation for integrity, responsibility and commitment to serving the community. The members
42 of the commission on ethics should be representative of the community-at-large and should
43 reflect the racial, gender and ethnic make-up of the community. Before entering upon the duties
44 of office, each appointee on the commission on ethics shall take the prescribed oath of office
45 pursuant to Florida Constitution, Art. II §5(b). Members of the commission on ethics shall serve
46 without compensation.

47 (c) *Term.* The members of the commission on ethics shall serve staggered terms of four (4)
48 years each, provided that of the original members, two (2) members described in subsections
49 (a)(1) and (2) shall be appointed for an initial term of two (2) years. The remaining three (3)
50 members shall be appointed for an initial term of four (4) years. Thereafter, all members of the
51 commission on ethics shall serve terms of four (4) years.

52 (d) *Vacancies.* A vacancy occurring during or at the expiration of a member's term on the
53 commission on ethics shall be filled as provided in subsections (a) and (b), no later than sixty
54 (60) days after the vacancy occurs.

55 (e) *Additional requirements.* No individual, while a member of the commission on ethics,
56 shall:

57 (1) Hold or campaign for any elective political office;

58 (2) Hold office in any political party or political committee;

59 (3) Actively participate in or contribute to any political action committee, or to any campaign
60 for state or local office or for any U.S. Congressional or Senate office serving the State of
61 Florida;

62 (4) Be employed by Palm Beach County, any municipality within the county, or any other
63 governmental entity subject to the authority of the commission on ethics or the inspector general;
64 or

65 (5) Allow his or her name to be used by a campaign in support of or against any candidate for
66 political office or any referendum or other ballot question. Nothing herein shall preclude a
67 member of the commission on ethics from signing a petition in support of or against any
68 referendum or other ballot question.

69

70 **Sec. 2-256. Applicability of code of ethics ordinance.**

71 The countywide code of ethics ordinance shall be applicable to all persons and/or entities within
72 the jurisdiction of said ordinance and shall apply to the members and staff of the commission on
73 ethics.

74

75 **Sec. 2-257. Organization.**

76 (a) The commission on ethics shall elect one (1) of its voting members as chairperson who shall
77 serve a term of two (2) years. No chairperson shall be permitted to serve two (2) consecutive
78 terms.

79 (b) The commission on ethics shall adopt bylaws and rules of procedure which are consistent
80 with the provisions of this division and rules and regulations for the commission on ethics'
81 governance. The commission on ethics shall hold regular meetings in accordance with the
82 bylaws of the commission and may hold such other meetings as it deems necessary.

83 (c) All meetings of the commission on ethics shall be public, and written minutes of the
84 proceedings thereof shall be maintained by the commission on ethics. All actions taken at the
85 meetings of the commission on ethics shall be promptly and properly recorded. Copies of all
86 minutes, resolutions, decisions or advisory opinions of the commission on ethics shall be
87 forwarded to the clerk to the board of county commissioners no later than thirty (30) days
88 subsequent to any meeting of the commission on ethics.

89 (d) The commission on ethics shall be empowered to appoint an executive director and to
90 remove such appointee at will. The commission on ethics shall utilize a competitive selection
91 process when selecting an executive director. The commission on ethics shall fix the executive
92 director's salary, subject to ultimate budget approval by the board of county commissioners. The

93 executive director shall be empowered to appoint, remove, and suspend employees or agents of
94 the commission on ethics, subject to ultimate budget approval by the board of county
95 commissioners. The executive director shall be further empowered to adopt personnel and
96 management policies consistent with like policies in place for county personnel.

97
98 **Sec. 2-258. Powers and duties.**

99 (a) The commission on ethics shall be authorized to exercise such powers and shall be required
100 to perform such duties as are hereinafter provided. The commission on ethics shall be
101 empowered to review, interpret, render advisory opinions and enforce the:

- 102 (1) Countywide Code of Ethics;
103 (2) County Post-employment Ordinance; and
104 (3) County Lobbyist Registration Ordinance.

105 (b) As set forth in the Office of Inspector General, Palm Beach County, Florida Ordinance, the
106 commission on ethics shall serve with one (1) delegate each from the state attorney's office and
107 public defender's office for the Fifteenth Judicial Circuit as the inspector general committee. The
108 inspector general committee shall be authorized to select the inspector general, to determine
109 whether or not to renew the term of an inspector general, and to participate in the removal of the
110 inspector general as set forth in greater detail in the Office of Inspector General, Palm Beach
111 County, Florida Ordinance.

112 (c) The commission on ethics shall from time to time review ordinances and state and federal
113 laws relating to ethics in government and shall report and make recommendations to the board of
114 county commissioners and municipal elected officials as it deems appropriate.

115 (d) The commission on ethics shall develop and deliver ethics training and outreach programs for
116 the benefit of county and municipal employees and officials, county and municipal vendors,
117 nonprofit corporations, and other entities that do business with or are regulated by the county or
118 the municipalities located within the county. The commission on ethics may recommend that the
119 board enter into agreements with other entities to provide such training and outreach programs to
120 be administered by the commission on ethics.

121
122 **Sec. 2-258.1 Extended jurisdiction by interagency agreements.**

123 It is anticipated that taxing districts, and other public officials and entities will recognize and
124 desire to benefit from the services of the commission on ethics. The commission on ethics may
125 additionally be empowered to review, interpret, render advisory opinions, and enforce similar
126 rules or regulations duly adopted by any commission, bureau, district, or other governmental
127 entity located in the county, pursuant to agreements or memoranda of understanding between the
128 commission on ethics and said entity. The memorandum of understanding or agreement shall
129 include a provision for fees to be paid to the commission on ethics from the public entity in
130 exchange for such benefits at a rate established by the commission on ethics. All fees paid under
131 any such agreement shall be used solely to fund the operations of the commission on ethics and
132 its staff. Any such agreement or memorandum of understanding is subject to final approval of the
133 board, but such approval shall not be unreasonably withheld.

134
135 **Sec. 2-259. Financial support for the commission.**

136 (a) The commission on ethics shall establish a fiscal year which coincides with that of the
137 county. Pursuant to its annual budget process, the county shall provide sufficient financial
138 support for the commission on ethics to fulfill its duties as set forth in this division. The

139 commission on ethics shall timely submit to the board of county commissioners a budget request
140 including a reasonable estimate of operating and capital expenditures, which request shall not be
141 implemented until approved by the board of county commissioners.

142 (b) The commission on ethics budget request shall be prepared on official county budget forms
143 in a format prescribed by the county office of financial management and budget, shall be
144 reviewed in a manner similar to that in which of other county departments are reviewed, and
145 shall be incorporated in the proposed budget and timely submitted to the board of county
146 commissioners each year. Nothing contained herein shall be construed to prohibit the
147 commission on ethics from submitting to the board of county commissioners supplemental
148 budget requests which, if approved, shall constitute amendments to the county budget.

149 (c) In addition to budgetary appropriations made by the county, the board of county
150 commissioners, may, for the benefit of the commission on ethics, accept grants, contributions or
151 appropriations from the federal government, state government, any municipality within the
152 county, or any academic institution or nonprofit entity which has not entered into a contract or
153 transacted business with the county or any governmental entity subject to the provisions of this
154 ordinance. The commission on ethics may accept grants, contributions or appropriations from an
155 academic institution or nonprofit entity which has entered into a contract or transacted business
156 with the county if the board of county commissioners by resolution approves the grant,
157 contribution, or appropriation. No other grants, contributions or appropriations may be accepted
158 by the commission on ethics.

159

160 **Sec. 2-260. Procedure on Complaints filed.**

161 (a) *Filing of complaints.*

162 (1) Any person may file a complaint with the commission on ethics.

163 (2) The Inspector General, Executive Director of the Commission on Ethics or the State
164 Attorney may file a complaint with the commission on ethics.

165 (b) *Legal sufficiency of complaints.*

166 (1) In order to be found legally sufficient, complaints filed by persons under section (a)1 above,
167 must:

- 168 a. Be in writing, and executed on a form prescribed by the commission on ethics;
169 b. Allege the elements of a violation within the commission on ethics' jurisdiction in the
170 complaint and/or supporting documents provided;
171 c. Be based substantially upon the personal knowledge of the complainant; and
172 d. Be signed under oath or affirmation by the complaining person.

173 (2) In order to be found legally sufficient, complaints filed by the Inspector General, Executive
174 Director of the Commission on Ethics or the State Attorney, must:

- 175 a. Be in writing, and executed on a form prescribed by the commission on ethics;
176 b. Allege the elements of a violation within the commission on ethics' jurisdiction in the
177 complaint and/or supporting documents provided;
178 c. Be sworn to by the person filing the complaint before a notary public and contain the
179 following language: "Personally known to me and appeared before me, _____,
180 whose signature appears below, being duly sworn, says that the allegations set forth in
181 this complaint are based upon facts which have been sworn to as true by a material
182 witness or witnesses and which if true would constitute the offenses alleged and that
183 this complaint is instituted in good faith."
184

185 Upon a finding of legal sufficiency by the executive director, the commission on ethics shall
186 initiate a preliminary investigation.

187

188 (c) *Documents Provided to the Respondent.* Within twenty (20) days of a legal sufficiency
189 finding, a copy of the complaint and all documents in support thereof shall be sent to the
190 alleged violator, otherwise known as the respondent.

191 (d) *Preliminary investigation and public hearing.* A preliminary investigation shall be
192 undertaken by the commission on ethics of each legally sufficient complaint over which the
193 commission on ethics has jurisdiction to determine whether there is probable cause to believe
194 that a violation has occurred. If, upon completion of the preliminary investigation, the
195 commission on ethics finds no probable cause to believe that a violation has been committed, the
196 commission on ethics shall dismiss the complaint with the issuance of a report to the
197 complainant and the respondent. If the commission on ethics finds from the preliminary
198 investigation probable cause to believe that a violation has been committed, it shall set the matter
199 for a public hearing and notify complainant and respondent via certified mail, hand delivery, or
200 courier. The commission on ethics may conduct such further investigation as it deems necessary,
201 and may enter into such stipulations and settlements as it finds to be just and in the best interest
202 of the citizens of the county. The public hearing provided for in this section shall be held within
203 one hundred twenty (120) days of the probable cause determination unless extended by the
204 commission on ethics for good cause based on the request of a party or on its own initiative.

205 (e) *Investigations.* Investigations shall be conducted by commission on ethics staff or by any
206 other person or agency so designated by the commission on ethics under the supervision of the
207 executive director and/or the inspector general. Investigations shall be limited to the allegations
208 of the complaint, but shall include an investigation of all facts and persons materially related to
209 the complaint at issue. Subsequent to the filing of a complaint and notice to the respondent, the
210 commission on ethics has an ongoing duty to disclose to the respondent any and all additional
211 documents, statements of witnesses and other evidence, not otherwise subject by statute to
212 nondisclosure, obtained by the commission pursuant to the ongoing investigation of a complaint.

213 (f) *Counsel.*

214 (1) Counsel to commission on ethics. The commission on ethics shall select counsel to advise
215 the commission on ethics.

216 (2) Advocate. The commission on ethics shall retain legal counsel to serve as the advocate. The
217 advocate shall prosecute cases before the commission on ethics. The executive director may
218 serve as advocate provided the executive director is a member of the Florida Bar in good
219 standing.

220 (3) Counsel to the commission on ethics, the advocate, or both may serve on a volunteer basis.

221 (4) Respondent. The respondent may appear on his or her own behalf or may be represented by
222 a lawyer. All notices and communications to a respondent represented by a lawyer shall be made
223 through respondent's lawyer.

224 (g) *Public records exemption.* The commission on ethics and its staff shall be considered "an
225 appropriate local official" for the purposes of whistleblower protection provided for in Florida
226 Statutes, § 112.3188(1). The complaint and all records held by the commission on ethics and its
227 staff related to an active preliminary investigation are confidential and exempt from disclosure in
228 a manner consistent with the provisions in Florida Statutes, §112.324(2) and (3) and §
229 112.3188(2). In addition, any proceeding conducted by the commission on ethics pursuant to a
230 complaint or preliminary investigation is exempt from the provision § 286.011, Florida Statutes,

231 and Article 1, § 24(b), Florida Constitution, as set forth in § 112.324(2) and (3), Florida Statutes.
232 Once a preliminary investigation is complete and a probable cause determination made, all other
233 proceedings conducted pursuant to this subsection shall be public meetings within the meaning
234 of Florida Statutes, ch. 286, and all other documents made or received by the commission on
235 ethics shall be public records within the meaning of Florida Statutes, ch. 119, subject to
236 whistleblower confidentiality as provided for in Florida Statutes § 112.3188(1).

237 (h) *General power of subpoena.* The commission on ethics shall be empowered to subpoena and
238 investigate. In the case of a refusal to obey a request for documents or for an interview during an
239 investigation, the commission on ethics may subpoena relevant witnesses and compel their
240 attendance and testimony, administer oaths and affirmations, take evidence, and require by
241 subpoena the production of any books, papers, records, or other relevant items. The commission
242 on ethics may delegate to its staff the authority to administer oaths and affirmations. In the case
243 of a refusal to obey a subpoena issued to any person, the commission on ethics may make
244 application to any circuit court of this state which shall have jurisdiction to order the witness to
245 appear before the commission on ethics and to produce evidence, if so ordered, or to give
246 testimony relevant to the matter in question. Any person who fails to obey the order may be
247 punished in a court of law. Seventy-two (72) hours prior to serving a subpoena, the executive
248 director shall provide written notice to the state attorney and the U.S. Attorney for the Southern
249 District of Florida. The commission on ethics shall not interfere with any ongoing criminal
250 investigation or prosecution of the state attorney or the U.S. Attorney for the Southern District of
251 Florida. When the state attorney or the U.S. Attorney for the Southern District of Florida has
252 explicitly notified the commission on ethics in writing that the commission's investigation is
253 interfering with an ongoing criminal investigation or prosecution, the commission on ethics shall
254 suspend service of subpoena, examination of witnesses, or other investigative activities as set
255 forth in the notice.

256 (i) *Subpoenas for discovery.* At any time after the commission on ethics orders a public hearing
257 of the matter, the commission on ethics may issue subpoenas, as provided in subsection (h), to
258 effect discovery upon the written request of respondent or advocate. The requesting person shall
259 give the name and address of each witness he or she wishes to have deposed and shall describe
260 with particularity those documents or other items that the person wishes to have the witness
261 produce pursuant to a subpoena *duces tecum*. The chairperson or a member of the commission on
262 ethics designated by the chairperson may issue appropriate orders to effectuate the purposes of
263 discovery and to prevent delay.

264 (j) *Subpoenas for public hearing.* The respondent and the advocate shall submit to the executive
265 director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing. The
266 lists shall contain the correct names and addresses of the witnesses and shall describe with
267 particularity those documents or other items that he or she wishes to have the witness bring to the
268 hearing pursuant to subpoena *duces tecum*. Subpoenas shall be issued as provided in subsection
269 (h).

270 (k) *Motions.*

271 (1) All motions shall be in writing unless made on the record during a hearing, and shall fully
272 state the actions requested and the grounds relied upon. The motion shall include a statement that
273 the movant has conferred with the advocate and all other parties of record and shall state whether
274 there is any objection to the motion.

275 (2) The original written motion shall be filed with the commission on ethics and a copy served
276 on all parties or their attorneys. The commission on ethics staff shall send a copy of the motion
277 to the chairperson.

278 (3) The chairperson, or a member of the commission on ethics designated by the chairperson,
279 shall conduct such proceedings and make such orders as are deemed necessary to dispose of
280 issues raised by motions, but is not required to hold a hearing on the motion in order to rule upon
281 it.

282 (4) Every written motion may be accompanied by, or included in, a written memorandum
283 stating the grounds upon which the motion is based. Other parties to a proceeding may, within
284 seven (7) days of service of a written motion, file written memoranda in opposition.

285 (l) *Prehearing conferences.* The chairperson, or a member of the commission on ethics
286 designated by the chairperson, may conduct one (1) or more prehearing conferences for the
287 purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing
288 the possibilities of settlement of the issues, examining exhibits and documents, exchanging
289 names and addresses of witnesses, and resolving other procedural matters.

290 (m) *Exchange of witness lists.* Unless otherwise ordered by the chairperson or a member of the
291 commission on ethics designated by the chairperson as a result of a prehearing conference, the
292 advocate and the respondent(s) or counsel for respondent(s) shall exchange the names and
293 addresses of witnesses at least ten (10) days prior to the public hearing, with a copy being
294 provided to the chairperson. Names and addresses of witnesses discovered subsequently shall be
295 disclosed to the other party or parties and to the chairperson as soon as possible. Failure to
296 disclose the name and address of a witness may result in the exclusion of the witness's testimony,
297 according to the rule applied in civil judicial proceedings.

298

299 **Sec. 2-260.1. Public hearing procedures.**

300 (a) *Presentation of the case.* The advocate shall present his or her case first. Respondent may
301 then present his or her case. Rebuttal evidence may be permitted in the discretion of the
302 commission on ethics.

303 (b) *Opening and closing statements.* Opening and closing statements may be presented by the
304 advocate and the respondent. The advocate may make the first statement and the respondent may
305 follow. Rebuttal by the advocate may be permitted or may be denied.

306 (c) *Evidence.*

307 (1) Stipulations may be received and are encouraged as to uncontested matters.

308 (2) Oral evidence shall be taken only on oath or affirmation.

309 (3) The respondent and the advocate shall have the right: to present evidence relevant to the
310 issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach
311 any witness regardless who first called him or her to testify.

312 (4) The hearing shall not be conducted according to technical rules relating to evidence and
313 witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement
314 or explain other evidence, but shall not be sufficient itself to support a finding. The rules of
315 privilege shall be effective to the same extent that they are now or hereafter may be recognized
316 in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The commission on
317 ethics shall not allow the introduction into evidence of an affidavit of a person when that person
318 can be called to testify; this shall not preclude the admission of a deposition of such a person,
319 however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

320 (d) *Transcript of proceedings.* The proceedings shall be recorded by recording instruments or
321 by a court reporter. Respondent may, at his or her own expense, provide a court reporter or
322 recording instruments. The commission on ethics may provide a court reporter. No transcript of
323 the proceedings shall be prepared unless requested by the commission on ethics or by the
324 respondent. If the respondent requests that a transcript be prepared by a court reporter, the
325 respondent shall pay the expense of transcription. If the Respondent requests that the commission
326 on ethics prepare a transcript from recording instruments and the commission on ethics grants
327 such request, the respondent shall pay the commission on ethics the actual cost of transcription.
328 If a court reporter records the proceedings, the court reporter's transcript shall be the official
329 transcript.

330 (e) *Proposed public report.* After the conclusion of the hearing, the respondent and the
331 advocate may present written proposed public reports, within a time designated by the
332 chairperson or a member of the commission on ethics designated by the chairperson. If a
333 proposed public report is filed by the respondent or the advocate, each proposed finding in the
334 proposal that is rejected shall be accompanied by a statement summarizing the reasons for
335 rejection.

336 (f) *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is
337 ordered by the commission on ethics, and after further investigation or discovery is made by the
338 advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there
339 is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall
340 specifically state the grounds upon which it is made. The motion shall be heard by the
341 commission on ethics in accordance with the procedure provided for in section 2-260(i).

342 (g) *Public order imposing penalty.* Upon completion of any hearing initiated under this
343 subsection, the commission on ethics shall make a finding and public report as to whether any
344 provision within its jurisdiction has been violated. If the commission on ethics finds, by clear and
345 convincing evidence, based upon competent substantial evidence in the record, that a violation
346 has been committed, the commission on ethics shall issue an order imposing the appropriate
347 penalty as provided in the ordinance being enforced. The public report and final order shall
348 include a determination as to whether the violation was intentional or unintentional. The
349 commission on ethics shall, within twelve (12) months of the filing of a complaint, render a final
350 order disposing of said complaint unless extended by the commission for good cause. If a person
351 fails to comply with an order issued by the commission on ethics, the commission on ethics may
352 make application to any circuit court of this state which shall have jurisdiction to order the
353 violator to comply with the order of the commission on ethics. Any violator who fails to obey the
354 order may be punished by the court.
355

356 **Sec. 2-260.2. Notification and referral to other authorities.**
357 As provided for by ordinance within its jurisdiction, the commission on ethics shall refer a matter
358 to the state attorney or any other appropriate official or agency having authority to initiate
359 prosecution when deemed appropriate. The state attorney or other appropriate agency may
360 decline prosecution or enforcement of any matter referred under this division and refer the matter
361 back to the commission on ethics. The commission on ethics shall notify the State of Florida
362 Commission on Ethics, the state attorney, the U.S. Attorney for the Southern District of Florida,
363 and other appropriate law enforcement agencies within ten (10) days of a finding of no probable
364 cause or of a final order disposing of a complaint.

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Sec. 2-260.3. Dismissal of complaints.

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal. The commission on ethics may, at the request of the state attorney or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Southern District of Florida.

Sec. 2-260.4. Frivolous or groundless complaints.

In any case in which the commission on ethics determines that the complaining party filed a frivolous or groundless complaint as defined in Florida Statutes, § 57.105, or a complaint with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission on ethics shall order the complaining party to pay any costs and attorney's fees incurred by the commission on ethics and/or the alleged violator. The determination by the commission on ethics regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

Sec. 2-260.5. Effect on other laws.

The provisions of this division shall be deemed supplemental to any other applicable county ordinance or state or federal law and are not intended to replace or repeal any provision of state or federal law or of this Code.

Sec. 2-260.6. Prospective jurisdiction.

The commission on ethics shall be empowered to consider alleged violations within its jurisdiction committed on or after the effective date of the ordinances set forth in section 2-258(a), as each may be amended from time to time. Any alleged violation committed before the effective date of any such ordinance or amendment shall be governed by the applicable law in effect at the time of the alleged violation.

Sec. 2-260.7. Personnel proceeding.

Where an employee of the county or other governmental entity subject to the jurisdiction of this ordinance is alleged to have violated an ordinance within the jurisdiction of the commission on ethics and, based upon the same set of facts, is subject to an ongoing disciplinary action initiated by the county or other governmental entity subject to the jurisdiction of this ordinance the commission on ethics shall stay consideration of a complaint until the conclusion of the personnel proceeding. Nothing herein shall abridge employees' constitutional right to collective bargaining.

Sec. 2-260.8. Statute of limitations.

410 No action may be taken on a complaint filed more than two (2) years after the violation is alleged
411 to have occurred unless a person, by fraud or other device, prevents discovery of the violation.
412 Where the allegations are the subject of a personnel proceeding or where the complainant is
413 required to exhaust his or her administrative remedies prior to filing a complaint, the statute of
414 limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of
415 administrative remedies.

416

417 **Sec. 2-260.9. Advisory opinion.**

418 Any person within the jurisdiction of the commission on ethics, when in doubt about the
419 applicability or interpretation of any provision within the commission on ethics' jurisdiction to
420 himself or herself in a particular context, may submit in writing the facts of the situation to the
421 commission on ethics with a request for an advisory opinion to establish the standard of public
422 duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to
423 ten days before the commission on ethics convenes a public meeting to consider the request. An
424 advisory opinion shall be rendered by the commission on ethics on a timely basis, and each such
425 opinion shall be numbered, dated and published.

426

427 **Sec. 2-260.10. Appeals.**

428 (a) Any final order of the commission on ethics may be appealed by filing a petition for writ of
429 certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The commission
430 on ethics shall provide the index and record on appeal when required by, and in accordance with,
431 the Florida Rules of Appellate Procedure. A fee shall be charged by the commission on ethics for
432 the preparation and transmission of the record on appeal to the court of appropriate jurisdiction.
433 Such fee may be waived by the executive director if the party requesting the record is indigent.

434 (b) Costs or fees may not be assessed against the commission on ethics in any appeal from a
435 final order or advisory opinion issued by the commission on ethics pursuant to this division.

436 (c) Unless specifically ordered by the commission on ethics or by a court of competent
437 jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory
438 opinion of the commission on ethics.

439

1 **~~DIVISION 8. COMMISSION ON ETHICS*~~**
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 4 ~~*Cross references: Code of ethics, § 2-441 et seq.~~
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8 **Sec. 2-254. Creation and jurisdiction.**

9 The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby
 10 established. The jurisdiction of the commission on ethics shall extend to any person required to
 11 comply with the countywide code of ethics, the ~~countywide~~county lobbyist registration
 12 ordinance, and the ~~countywide~~county post-employment ordinance, and may further extend to
 13 persons or entities required to comply with additional ordinances and regulations duly adopted
 14 by other county, local, or municipal government and any commission, bureau, district, or other
 15 governmental entity located in Palm Beach County as more fully set forth below. The
 16 jurisdiction of the commission on ethics is not exclusive. Any person or entity subject to a
 17 complaint to the county's commission on ethics may also be subject to a separate complaint to
 18 the state commission on ethics or pursuant to a municipality's ethics ordinance. A finding by the
 19 county's commission on ethics is not binding on the state and may not be binding on the
 20 municipality, depending on the nature of the complaint and whether the municipality's ethics
 21 ordinance is more restrictive than the countywide ethics code.
 22 (Ord. No. 2009-050, § 1, 12-15-09)
 23

24 **Sec. 2-255. Membership, qualifications, terms, vacancies.**

25 (a) *Composition and appointment.* The commission on ethics shall be composed of five (5)
 26 ~~voting~~members. The members of the commission on ethics shall be appointed as follows:

27 (1) The president of the county association of chiefs of police shall be requested to appoint a
 28 former law enforcement official with experience in investigating white collar crime or public
 29 corruption.

30 (2) The president of the Hispanic Bar Association of Palm Beach County, the president of the F.
 31 Malcolm Cunningham, Sr. Bar Association, and the president of the county bar association shall
 32 be requested to appoint an attorney with experience in ethics regulation of public officials and
 33 employees.

34 (3) The president of Florida Atlantic University (FAU) shall be requested to appoint a faculty
 35 member who teaches at an institution of higher education with a campus located in the county
 36 and who has taught a course in professional legal ethics or has published or performed services
 37 in the field of professional legal ethics.

38 (4) The president of the Palm Beach Chapter of the Florida Institute of CPAs shall be requested
 39 to appoint a member who possesses at least five (5) years experience as a certified public
 40 accountant (CPA) with forensic audit experience.

41 (5) The board of directors of the Palm Beach County League of Cities, Inc. shall be requested to
 42 appoint a person who has served as a former elected official for a governmental entity in the
 43 county.

44 All appointing officers or entities identified in subsections (a)(1) through (5) shall in good faith
 45 endeavor to appoint members of the commission on ethics within forty-five (45) days of the

46 effective date of the ordinance from which this division is derived. Each appointing entity shall
47 promptly provide notice of each appointment to the county administrator.

48 (b) *Additional qualifications.* Each member of the commission on ethics shall be of outstanding
49 reputation for integrity, responsibility and commitment to serving the community. The members
50 of the commission on ethics should be representative of the community-at-large and should
51 reflect the racial, gender and ethnic make-up of the community. Before entering upon the duties
52 of office, each appointee on the commission on ethics shall take the prescribed oath of office
53 pursuant to Florida Statutes, ~~§ 876.05~~ Constitution, Art. II §5(b). Members of the commission on
54 ethics shall serve without compensation.

55 (c) *Term.* The members of the commission on ethics shall serve staggered terms of four (4)
56 years each, provided that of the original members, two (2) members described in subsections
57 (a)(1) and (2) shall be appointed for an initial term of two (2) years. The remaining three (3)
58 members shall be appointed for an initial term of four (4) years. Thereafter, all members of the
59 commission on ethics shall serve terms of four (4) years.

60 (d) *Vacancies.* A vacancy occurring during or at the expiration of a member's term on the
61 commission on ethics shall be filled as provided in subsections (a) and (b), no later than sixty
62 (60) days after the vacancy occurs.

63 (e) *Additional requirements.* No individual, while a member of the commission on ethics,
64 shall:

65 (1) Hold or campaign for any elective political office;

66 (2) Hold office in any political party or political committee;

67 (3) Actively participate in or contribute to any political action committee, or to any campaign
68 for state or local office or for any U.S. Congressional or Senate office serving the State of
69 Florida;

70 (4) Be employed by Palm Beach County, any municipality within the county, or any other
71 governmental entity subject to the authority of the commission on ethics or the inspector general;
72 or

73 (5) Allow his or her name to be used by a campaign in support of or against any candidate for
74 political office or any referendum or other ballot question. Nothing herein shall preclude a
75 member of the commission on ethics from signing a petition in support of or against any
76 referendum or other ballot question.

77 (~~Ord. No. 2009-050, § 2, 12-15-09~~)

78

79 **Sec. 2-256. Applicability of code of ethics ordinance.**

80 The countywide code of ethics ordinance shall be applicable to all persons and/or entities within
81 the jurisdiction of said ordinance and shall ~~specifically~~ apply to the members and staff of the
82 commission on ethics.

83 (~~Ord. No. 2009-050, § 3, 12-15-09~~)

84

85 **Sec. 2-257. Organization.**

86 (a) The commission on ethics shall elect one (1) of its voting members as chairperson who shall
87 serve a term of two (2) years. No chairperson shall be permitted to serve two (2) consecutive
88 terms.

89 (b) The commission on ethics shall adopt bylaws and rules of procedure which are consistent
90 with the provisions of this division and rules and regulations for the commission on ethics'

91 governance. The commission on ethics shall hold regular meetings in accordance with the
92 bylaws of the commission and may hold such other meetings as it deems necessary.

93 (c) All meetings of the commission on ethics shall be public, and written minutes of the
94 proceedings thereof shall be maintained by the commission on ethics. All actions taken at the
95 meetings of the commission on ethics shall be promptly and properly recorded. Copies of all
96 minutes, resolutions, decisions or advisory opinions of the commission on ethics shall be
97 forwarded to the clerk to the board of county commissioners no later than thirty (30) days
98 subsequent to any meeting of the commission on ethics.

99 (d) The commission on ethics shall be empowered to appoint an executive director and to
100 remove such appointee at will. The commission on ethics shall utilize a competitive selection
101 process when selecting an executive director. The commission on ethics shall fix the executive
102 director's salary, subject to ultimate budget approval by the board of county commissioners. The
103 executive director shall be empowered to appoint, remove, and suspend employees or agents of
104 the commission on ethics, subject to ultimate budget approval by the board of county
105 commissioners. The executive director shall be further empowered to adopt personnel and
106 management policies consistent with like policies in place for county personnel.

107 (Ord. No. 2009-050, § 4, 12-15-09)

108
109 **Sec. 2-258. Powers and duties.**

110 (a) The commission on ethics shall be authorized to exercise such powers and shall be required
111 to perform such duties as are hereinafter provided. The commission on ethics shall be
112 empowered to review, interpret, render advisory opinions and enforce the:

113 (1) Countywide Code of Ethics;

114 (2) ~~Countywide~~County Post-employment Ordinance; and

115 (3) ~~Countywide~~County Lobbyist Registration Ordinance.

116 ~~(b) It is anticipated that taxing districts, and other public officials and entities will recognize and~~
117 ~~desire to benefit from the services of the commission on ethics. The commission on ethics may~~
118 ~~additionally be empowered to review, interpret, render advisory opinions, and enforce similar~~
119 ~~rules or regulations duly adopted by any commission, bureau, district, or other governmental~~
120 ~~entity located in the county, pursuant to agreements or memoranda of understanding between the~~
121 ~~commission on ethics and said entity. The memorandum of understanding or agreement shall~~
122 ~~include a provision for fees to be paid to the commission on ethics from the public entity in~~
123 ~~exchange for such benefits at a rate established by the commission on ethics. All fees paid under~~
124 ~~any such agreement shall be used solely to fund the operations of the commission on ethics and~~
125 ~~its staff. Any such agreement or memorandum of understanding is subject to final approval of the~~
126 ~~board, but such approval shall not be unreasonably withheld.~~

127 ~~(c) As set forth in the countywide office of inspector general ordinance (Ord. No. 2009-049),~~

128 (b)As set forth in the countywide office of inspector general ordinance, the commission on ethics
129 shall serve with one (1) delegate each from the state attorney's office and public defender's office
130 for the Fifteenth Judicial Circuit as the ~~selection~~inspector general committee. The
131 ~~selection~~inspector general committee shall be authorized to select the inspector general, to
132 determine whether or not to renew the term of an inspector general, and to ~~remove~~participate in
133 the removal of the inspector general as set forth in greater detail in the ~~county~~countywide office
134 of inspector general ordinance.

135 | ~~(d)~~ (c) The commission on ethics shall from time to time review ordinances and state and federal
136 | laws relating to ethics in government and shall report and make recommendations to the board of
137 | county commissioners and municipal elected officials as it deems appropriate.

138 | ~~(e)~~ (d) The commission on ethics shall develop and deliver ethics training and outreach programs
139 | for the benefit of county and municipal employees and officials, county and municipal vendors,
140 | nonprofit corporations, and other entities that do business with or are regulated by the county or
141 | the municipalities located ~~with~~ within the county. The commission on ethics may recommend that
142 | the board enter into agreements with other entities to provide such training and outreach
143 | programs to be administered by the commission on ethics.

144 | (~~Ord. No. 2009-050, § 5, 12-15-09~~)

145 | **Sec. 2-258.1 Extended jurisdiction by interagency agreements.**

146 | It is anticipated that taxing districts, and other public officials and entities will recognize and
147 | desire to benefit from the services of the commission on ethics. The commission on ethics may
148 | additionally be empowered to review, interpret, render advisory opinions, and enforce similar
149 | rules or regulations duly adopted by any commission, bureau, district, or other governmental
150 | entity located in the county, pursuant to agreements or memoranda of understanding between the
151 | commission on ethics and said entity. The memorandum of understanding or agreement shall
152 | include a provision for fees to be paid to the commission on ethics from the public entity in
153 | exchange for such benefits at a rate established by the commission on ethics. All fees paid under
154 | any such agreement shall be used solely to fund the operations of the commission on ethics and
155 | its staff. Any such agreement or memorandum of understanding is subject to final approval of the
156 | board, but such approval shall not be unreasonably withheld.

157 |

158 | **Sec. 2-259. Financial support for the commission.**

159 | (a) The commission on ethics shall establish a fiscal year which coincides with that of the
160 | county. Pursuant to its annual budget process, the county shall provide sufficient financial
161 | support for the commission on ethics to fulfill its duties as set forth in this division. The
162 | commission on ethics shall timely submit to the board of county commissioners a budget request
163 | including a reasonable estimate of operating and capital expenditures, which request shall not be
164 | implemented until approved by the board of county commissioners. ~~In order to ensure adequate~~
165 | ~~funding for the prompt establishment of the commission on ethics, the board of county~~
166 | ~~commissioners hereby approves an amount equal to one hundred eighty thousand dollars~~
167 | ~~(\$180,000.00) to fund all commission on ethics operations for the remainder of the 2009-2010~~
168 | ~~fiscal year.~~

169 | (b) The commission on ethics budget request shall be prepared on official county budget forms
170 | in a format prescribed by the county office of financial management and budget, shall be
171 | reviewed in a manner similar to that in which of other county departments are reviewed, and
172 | shall be incorporated in the proposed budget and timely submitted to the board of county
173 | commissioners each year. Nothing contained herein shall be construed to prohibit the
174 | commission on ethics from submitting to the board of county commissioners supplemental
175 | budget requests which, if approved, shall constitute amendments to the county budget.

176 | (c) In addition to budgetary appropriations made by the county, the board of county
177 | commissioners, may, for the benefit of the commission on ethics ~~may,~~ accept grants,
178 | contributions or appropriations from the federal government, state government, any municipality
179 | within the county, or any academic institution or nonprofit entity which has not entered into a
180 | contract or transacted business with the county. or any governmental entity subject to the

181 | provisions of this ordinance. The commission on ethics may accept grants, contributions or
182 | appropriations from an academic institution or nonprofit entity which has entered into a contract
183 | or transacted business with the county if the board of county commissioners by resolution
184 | approves the grant, contribution, or appropriation. No other grants, contributions or
185 | appropriations may be accepted by the commission on ethics.
186 | (~~Ord. No. 2009-050, § 6, 12-15-09~~)
187 |
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189 | **Sec. 2-260.- Procedure on ~~complaints~~Complaints filed.**

190 | ~~(a) (a) Legally sufficient complaint. Filing of complaints.~~

191 | ~~(1) Any person may file a complaint with the commission on ethics. Within thirty (30) days~~
192 | ~~after receipt of a complaint by the commission on ethics, a copy shall be sent to the alleged~~
193 | ~~violate, otherwise known as the respondent.~~

194 | ~~(2) The commission shall investigate all Inspector General, Executive Director of the~~
195 | ~~Commission on Ethics or the State Attorney may file a complaint with the commission on~~
196 | ~~ethics.~~

197 | ~~(b) Legal sufficiency of complaints following a finding by the executive director, with advice of~~
198 | ~~counsel to the commission on ethics, that the complaint is legally sufficient.~~

199 | ~~(1) In order to be found legally sufficient, a ~~complaint~~complaints filed by persons under section~~
200 | ~~(a)1 above, must:-~~

- 201 | ~~a. (1) Be in writing, and executed on a form prescribed by the commission on ethics;~~
202 | ~~b. (2) Allege the elements of a violation within the commission on ~~ethics'~~ethics'~~
203 | ~~jurisdiction in the complaint and/or supporting documents provided;~~
204 | ~~c. (3) Be based substantially upon the personal knowledge of the complainant; and~~
205 | ~~d. (4) Be signed under oath or affirmation by the complaining person.~~

206 | ~~Upon a finding of legal sufficiency by the executive director, the commission on ethics shall~~
207 | ~~initiate a preliminary investigation.~~

208 | ~~(2) (b) Complaints filed by inspector general, executive director or state attorney. The~~
209 | ~~inspector general, executive director of the commission on ethics or the state attorney may~~
210 | ~~file a complaint with the commission on ethics. In order to be found legally sufficient, the~~
211 | ~~complaintcomplaints filed by the Inspector General, Executive Director of the Commission~~
212 | ~~on Ethics or the State Attorney, must be:~~

- 213 | ~~a. Be in writing, and executed on a form prescribed by the commission on ethics;~~
214 | ~~b. Allege the elements of a violation within the commission on ethics' jurisdiction in the~~
215 | ~~complaint and/or supporting documents provided;~~
216 | ~~c. Be sworn to by the person filing the complaint before a notary public and contain the~~
217 | ~~following language: "Personally known to me and appeared before me,
218 | ~~_____, _____, whose signature appears below, being duly sworn, says~~
219 | ~~that the allegations set forth in this complaint are based upon facts which have been~~
220 | ~~sworn to as true by a material witness or witnesses and which if true would constitute~~
221 | ~~the offenses alleged and that this complaint is instituted in good faith. ~~Within five (5)~~~~
222 | ~~days after receipt of the complaint by the commission on ethics, a copy of the~~
223 | ~~complaint shall be sent to the alleged violator, otherwise known as the respondent."~~~~

224 | ~~(e)~~

225 | ~~Upon a finding of legal sufficiency by the executive director, the commission on ethics shall~~
226 | ~~initiate a preliminary investigation.~~

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(c) Documents Provided to the Respondent. Within twenty (20) days of a legal sufficiency finding, a copy of the complaint and all documents in support thereof shall be sent to the alleged violator, otherwise known as the respondent.

(d) Preliminary investigation and public hearing. A preliminary investigation shall be undertaken by the commission on ethics of each legally sufficient complaint over which the commission on ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission on ethics finds no probable cause to believe that a violation has been committed, the commission on ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall ~~notify complainant and respondent via certified mail, hand delivery, or courier, informing the person of his or her right to request a hearing within thirty (30) days of receipt of the notice. Upon request submitted to the commission on ethics in writing, any person who the commission on ethics finds probable cause to believe has committed a violation of a provision within its jurisdiction shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within thirty (30) days following receipt of the probable cause notification required by this subsection. The commission on ethics may on its own motion require a public hearing,~~ set the matter for a public hearing and notify complainant and respondent via certified mail, hand delivery, or courier. The commission on ethics may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. The public hearing provided for in this section shall be held within ~~ninety (90)~~ one hundred twenty (120) days of the probable cause determination unless extended by the commission on ethics for good cause based on the request of a party or on its own initiative.

~~(d)~~ (e) Investigations. Investigations shall be conducted by commission on ethics staff or by any other person or agency so designated by the commission on ethics under the supervision of the executive director and/or the inspector general. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue. Subsequent to the filing of a complaint and notice to the respondent, the commission on ethics has an ongoing duty to disclose to the respondent any and all additional documents, statements of witnesses and other evidence, not otherwise subject by statute to nondisclosure, obtained by the commission pursuant to the ongoing investigation of a complaint.

~~(e)~~ (f) Counsel.

(1) Counsel to commission on ethics. The commission on ethics shall select counsel to advise the commission on ethics.

(2) Advocate. The commission on ethics shall retain legal counsel to serve as the advocate. The advocate shall prosecute cases before the commission on ethics. The executive director may serve as advocate provided the executive director is a member of the Florida Bar in good standing.

(3) Counsel to the commission on ethics, the advocate, or both may serve on a volunteer basis.

(4) Respondent. The respondent may appear on his or her own behalf or may be represented by a lawyer. All notices and communications to a respondent represented by a lawyer shall be made through respondent's lawyer.

272 | ~~(f)~~ (g) *Public records exemption.* The commission on ethics and its staff shall be considered "an
273 | appropriate local official" for the purposes of whistleblower protection provided for in Florida
274 | Statutes, § 112.3188(1). ~~With the exception of the initial~~ The complaint filed in a matter, and all
275 | records held by the commission on ethics and its staff related to an active preliminary
276 | investigation are confidential and exempt from disclosure in a manner consistent with the
277 | provisions in Florida Statutes, ~~§ 112.3188(2), 112.324(2) and (3) and § 112.3188(2).~~ In addition,
278 | any proceeding conducted by the commission on ethics pursuant to a complaint or preliminary
279 | investigation is exempt from the provision § 286.011, Florida Statutes, and Article 1, § 24(b),
280 | Florida Constitution, as set forth in § 112.324(2)(a) and (3), Florida Statutes. Once a preliminary
281 | investigation is complete and a probable cause determination made, all other proceedings
282 | conducted pursuant to this subsection shall be public meetings within the meaning of Florida
283 | Statutes, ch. 286, and all other documents made or received by the commission on ethics shall be
284 | public records within the meaning of Florida Statutes, ch. ~~119~~ 119, subject to whistleblower
285 | confidentiality as provided for in Florida Statutes § 112.3188(1).

286 | ~~(g)~~ (h) *General power of subpoena.* The commission on ethics shall be empowered to subpoena
287 | and investigate. In the case of a refusal to obey a request for documents or for an interview
288 | during an investigation, the commission on ethics may subpoena relevant witnesses and compel
289 | their attendance and testimony, administer oaths and affirmations, take evidence, and require by
290 | subpoena the production of any books, papers, records, or other relevant items. The commission
291 | on ethics may delegate to its staff the authority to administer oaths and affirmations. In the case
292 | of a refusal to obey a subpoena issued to any person, the commission on ethics may make
293 | application to any circuit court of this state which shall have jurisdiction to order the witness to
294 | appear before the commission on ethics and to produce evidence, if so ordered, or to give
295 | testimony ~~touching on~~ relevant to the matter in question. Any person who fails to obey the order
296 | may be punished in a court of law. Seventy-two (72) hours prior to serving a subpoena, the
297 | executive director shall provide written notice to the state attorney and the U.S. Attorney for the
298 | Southern District of Florida. The commission on ethics shall not interfere with any ongoing
299 | criminal investigation or prosecution of the state attorney or the U.S. Attorney for the Southern
300 | District of Florida. When the state attorney or the U.S. Attorney for the Southern District of
301 | Florida has explicitly notified the commission on ethics in writing that the commission's
302 | investigation is interfering with an ongoing criminal investigation or prosecution, the
303 | commission on ethics shall suspend service of subpoena, examination of witnesses, or other
304 | investigative activities as set forth in the notice.

305 | ~~(h)~~ (i) *Subpoenas for discovery; ~~discovery.~~* At any time after the commission on ethics orders a
306 | public hearing of the matter, the commission on ethics may issue subpoenas, as provided in
307 | subsection ~~(gh)~~ (gh), to effect discovery upon the written request of respondent or advocate. The
308 | requesting person shall give the name and address of each witness he or she wishes to have
309 | deposed and shall describe with particularity those documents or other items that the person
310 | wishes to have the witness produce pursuant to a subpoena ~~-duces tecum-~~. The chairperson or a
311 | member of the commission on ethics designated by the chairperson may issue appropriate orders
312 | to effectuate the purposes of discovery and to prevent delay.

313 | ~~(i)~~ (j) *Subpoenas for public hearing.* The respondent and the advocate shall submit to the
314 | executive director a list of all witnesses he or she wishes to have subpoenaed to attend the
315 | hearing. The lists shall contain the correct names and addresses of the witnesses and shall
316 | describe with particularity those documents or other items that he or she wishes to have the

317 | witness bring to the hearing pursuant to subpoena *-duces tecum-*. Subpoenas shall be issued as
318 | provided in subsection (gh).

319 | (~~j~~–~~k~~) *Motions*.

320 | (1) All motions shall be in writing unless made on the record during a hearing, and shall fully
321 | state the actions requested and the grounds relied upon. The motion shall include a statement that
322 | the movant has conferred with the advocate and all other parties of record and shall state whether
323 | there is any objection to the motion.

324 | (2) The original written motion shall be filed with the commission on ethics and a copy served
325 | on all parties or their attorneys. The commission on ethics staff shall send a copy of the motion
326 | to the chairperson.

327 | (3) The chairperson, or a member of the commission on ethics designated by the chairperson,
328 | shall conduct such proceedings and make such orders as are deemed necessary to dispose of
329 | issues raised by motions, but is not required to hold a hearing on the motion in order to rule upon
330 | it.

331 | (4) Every written motion may be accompanied by, or included in, a written memorandum
332 | stating the grounds upon which the motion is based. Other parties to a proceeding may, within
333 | seven (7) days of service of a written motion, file written memoranda in opposition.

334 | (~~k~~–~~l~~) *Prehearing conferences*. The chairperson, or a member of the commission on ethics
335 | designated by the chairperson, may conduct one (1) or more prehearing conferences for the
336 | purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing
337 | the possibilities of settlement of the issues, examining exhibits and documents, exchanging
338 | names and addresses of witnesses, and resolving other procedural matters.

339 | (~~h~~–~~m~~) *Exchange of witness lists*. Unless otherwise ordered by the chairperson or a member of
340 | the commission on ethics designated by the chairperson as a result of a prehearing conference,
341 | the advocate and the respondent(s) or counsel for respondent(s) shall exchange the names and
342 | addresses of witnesses at least ten (10) days prior to the public hearing, with a copy being
343 | provided to the chairperson. Names and addresses of witnesses discovered subsequently shall be
344 | disclosed to the other party or parties and to the chairperson as soon as possible. Failure to
345 | disclose the name and address of a witness may result in the exclusion of the witness's testimony,
346 | according to the rule applied in civil judicial proceedings.

347 | (~~Ord. No. 2009-050, § 7, 12-15-09; Ord. No. 2010-042, pt. 1, 9-28-10~~)

348

349 | **Sec. 2-260.1. Public hearing procedures.**

350 | (a) *Presentation of the case*. The advocate shall present his or her case first. Respondent may
351 | then present his or her case. Rebuttal evidence may be permitted in the discretion of the
352 | commission on ethics.

353 | (b) *Opening and closing statements*. Opening and closing statements may be presented by the
354 | advocate and the respondent. The advocate may make the first statement and the respondent may
355 | follow. Rebuttal by the advocate may be permitted or may be denied.

356 | (c) *Evidence*.

357 | (1) Stipulations may be received and are encouraged as to uncontested matters.

358 | (2) Oral evidence shall be taken only on oath or affirmation.

359 | (3) The respondent and the advocate shall have the right: to present evidence relevant to the
360 | issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach
361 | any witness regardless who first called him or her to testify.

362 (4) The hearing shall not be conducted according to technical rules relating to evidence and
363 witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement
364 or explain other evidence, but shall not be sufficient itself to support a finding. The rules of
365 privilege shall be effective to the same extent that they are now or hereafter may be recognized
366 in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The commission on
367 ethics shall not allow the introduction into evidence of an affidavit of a person when that person
368 can be called to testify; this shall not preclude the admission of a deposition of such a person,
369 however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

370 (d) *Transcript of proceedings.* The proceedings shall be recorded by recording instruments or
371 by a court reporter. Respondent may, at his or her own expense, provide a court reporter or
372 recording instruments. The commission on ethics may provide a court reporter. No transcript of
373 the proceedings shall be prepared unless requested by the commission on ethics or by the
374 respondent. If the respondent requests that a transcript be prepared by a court reporter, the
375 respondent shall pay the expense of transcription. If the Respondent requests that the commission
376 on ethics prepare a transcript from recording instruments and the commission on ethics grants
377 such request, the respondent shall pay the commission on ethics the actual cost of transcription.
378 If a court reporter records the proceedings, the court reporter's transcript shall be the official
379 transcript.

380 (e) *Proposed public report.* After the conclusion of the hearing, the respondent and the
381 advocate may present written proposed public reports, within a time designated by the
382 chairperson or a member of the commission on ethics designated by the chairperson. If a
383 proposed public report is filed by the respondent or the advocate, each proposed finding in the
384 proposal that is rejected shall be accompanied by a statement summarizing the reasons for
385 rejection.

386 (f) *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is
387 ordered by the commission on ethics, and after further investigation or discovery is made by the
388 advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there
389 is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall
390 specifically state the grounds upon which it is made. The motion shall be heard by the
391 commission on ethics in accordance with the procedure provided for in section 2-260(i).

392 (g) *Public order imposing penalty.* Upon completion of any hearing initiated under this
393 subsection, the commission on ethics shall make a finding and public report as to whether any
394 provision within its jurisdiction has been violated. If the commission on ethics finds, by clear and
395 convincing evidence, based upon competent substantial evidence in the record, that a violation
396 has been committed, the commission on ethics shall issue an order imposing the appropriate
397 penalty as provided in the ordinance being enforced. The public report and final order shall
398 include a determination as to whether the violation was intentional or unintentional. The
399 commission on ethics shall, within twelve (12) months of the filing of a complaint, render a final
400 order disposing of said complaint unless extended by the commission for good cause. If a person
401 fails to comply with an order issued by the commission on ethics, the commission on ethics may
402 make application to any circuit court of this state which shall have jurisdiction to order the
403 violator to comply with the order of the commission on ethics. Any violator who fails to obey the
404 order may be punished by the court.

405 | (~~Ord. No. 2009-050, § 8, 12-15-09~~)

406

407 **Sec. 2-260.2. Notification and referral to other authorities.**

408 As provided for by ordinance within its jurisdiction, the commission on ethics shall refer a matter
409 to the state attorney or any other appropriate official or agency having authority to initiate
410 prosecution when deemed appropriate. The state attorney or other appropriate agency may
411 decline prosecution or enforcement of any matter referred under this division and refer the matter
412 back to the commission on ethics. The commission on ethics shall notify the State of Florida
413 Commission on Ethics, the state attorney, the U.S. Attorney for the Southern District of Florida,
414 and other appropriate law enforcement agencies within ten (10) days of a finding of no probable
415 cause or of a final order disposing of a complaint.

416 | (~~Ord. No. 2009-050, § 9, 12-15-09~~)

417

418 **Sec. 2-260.3. Dismissal of complaints.**

419 Notwithstanding any other provisions of this division, the commission on ethics may, at its
420 discretion: (a) dismiss any complaint at any stage of disposition should it determine that the
421 public interest would not be served by proceeding further, or (b) dismiss any complaint at any
422 stage of disposition and issue a letter of instruction to the respondent when it appears that the
423 alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on
424 ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue
425 a public report stating with particularity its reasons for the dismissal. The commission on ethics
426 may, at the request of the state attorney or any other law enforcement agency, stay an ongoing
427 proceeding. The commission on ethics shall not interfere with any ongoing criminal investigation
428 of the state attorney or the U.S. Attorney for the Southern District of Florida.

429 | (~~Ord. No. 2009-050, § 10, 12-15-09~~)

430

431 **Sec. 2-260.4. Frivolous or groundless complaints.**

432 In any case in which the commission on ethics determines that the complaining party filed a
433 frivolous or groundless complaint as defined in Florida Statutes, § 57.105, or a complaint with
434 malicious intent and with the knowledge that the complaint contains one or more false
435 allegations, or with reckless disregard for whether the complaint contains material false
436 allegations, the commission on ethics shall order the complaining party to pay any costs and
437 attorney's fees incurred by the commission on ethics and/or the alleged violator. The
438 determination by the commission on ethics regarding whether a complaint is frivolous or
439 groundless shall be deemed conclusive.

440 | (~~Ord. No. 2009-050, § 11, 12-15-09~~)

441

442 **Sec. 2-260.5. Effect on other laws.**

443 The provisions of this division shall be deemed supplemental to any other applicable county
444 ordinance or state or federal law and are not intended to replace or repeal any provision of state
445 or federal law or of this Code.

446 | (~~Ord. No. 2009-050, § 12, 12-15-09~~)

447

448 **Sec. 2-260.6. Prospective jurisdiction.**

449 The commission on ethics shall be empowered to consider alleged violations within its
450 jurisdiction committed on or after the effective date of the ordinances set forth in section 2-
451 258(a), as each may be amended from time to time. Any alleged violation committed before the
452 effective date of any such ordinance or amendment shall be governed by the applicable law in
453 effect at the time of the alleged violation.

454 | (~~Ord. No. 2009-050, § 13, 12-15-09~~)

455

456 | **Sec. 2-260.7. Personnel proceeding.**

457 | Where an employee of the county or other governmental entity subject to the jurisdiction of this
458 | ordinance is alleged to have violated an ordinance within the jurisdiction of the commission on
459 | ethics and, based upon the same set of facts, is subject to an ongoing disciplinary action initiated
460 | by the county, or other governmental entity subject to the jurisdiction of this ordinance the
461 | commission on ethics shall stay consideration of a complaint until the conclusion of the
462 | personnel proceeding. Nothing herein shall abridge employees' constitutional right to collective
463 | bargaining.

464 | (~~Ord. No. 2009-050, § 14, 12-15-09~~)

465

466 | **Sec. 2-260.8. Statute of limitations.**

467 | No action may be taken on a complaint filed more than two (2) years after the violation is alleged
468 | to have occurred unless a person, by fraud or other device, prevents discovery of the violation.
469 | Where the allegations are the subject of a personnel proceeding or where the complainant is
470 | required to exhaust his or her administrative remedies prior to filing a complaint, the statute of
471 | limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of
472 | administrative remedies.

473 | (~~Ord. No. 2009-050, § 15, 12-15-09~~)

474

475 | **Sec. 2-260.9. Advisory opinion.**

476 | Any person within the jurisdiction of the commission on ethics, when in doubt about the
477 | applicability or interpretation of any provision within the commission on ethics' jurisdiction to
478 | himself or herself in a particular context, may submit in writing the facts of the situation to the
479 | commission on ethics with a request for an advisory opinion to establish the standard of public
480 | duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to
481 | ten days before the commission on ethics convenes a public meeting to consider the request. An
482 | advisory opinion shall be rendered by the commission on ethics on a timely basis, and each such
483 | opinion shall be numbered, dated and published.

484 | (~~Ord. No. 2009-050, § 16, 12-15-09~~)

485

486 | **Sec. 2-260.10. Appeals.**

487 | (a) Any final order of the commission on ethics may be appealed by filing a petition for writ of
488 | certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The commission
489 | on ethics shall provide the index and record on appeal when required by, and in accordance with,
490 | the Florida Rules of Appellate Procedure. A fee shall be charged by the commission on ethics for
491 | the preparation and transmission of the record on appeal to the court of appropriate jurisdiction.
492 | Such fee may be waived by the executive director if the party requesting the record is indigent.
493 | (b) Costs or fees may not be assessed against the commission on ethics in any appeal from a
494 | final order or advisory opinion issued by the commission on ethics pursuant to this division.
495 | (c) Unless specifically ordered by the commission on ethics or by a court of competent
496 | jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory
497 | opinion of the commission on ethics.

498 | (~~Ord. No. 2009-050, § 17, 12-15-09~~)

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Summary of substantive changes

- Provided additional explanation of Commission on Ethics jurisdiction
- Relocated and expanded on provisions allowing entities other than the County and municipalities to contract for Commission on Ethics services
- Reorganized section outlining procedures for filing complaints
- Adding partial exemption to Sunshine Law and Public Records law provided by section 112.324, Florida Statutes
- Amending advisory opinion section to allow a person requesting an advisory opinion to withdraw the request at any time up to ten days before the Commission on Ethics convenes a meeting to consider the request