

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 9/22/15 [] Consent [] Regular
[X] Public Hearing
Department
Submitted By: 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, amending the Palm Beach County Commission on Ethics Ordinance, Ordinance 2011-10, Creating and Providing Qualifications for Commission on Ethics Hearing Officers; 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 Appeals; Providing for a 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 the Palm Beach County Commission on Ethics Ordinance as a countywide Ordinance in May of 2011, in accordance with the County Charter. The Charter amendments, which were approved by the voters in November 2010, also called for the establishment of a drafting committee to review and recommend proposed changes to the Commission on Ethics Ordinance. This amendment was proposed by the Commission on Ethics and recommended for approval by the ordinance drafting committee. This amendment would allow a respondent in an enforcement case to have his or her hearing conducted by a hearing officer instead of the Commission on Ethics. This proposed change is based on a recommendation by OPPAGA as part of its final report concerning Commission on Ethics operations. Countywide (LB)

Background and Policy Issues: The Palm Beach County Code of Ethics applies to all county and municipal officials and employees, lobbyists, their principals and employers, and vendors. This amendment only impacts how a person accused of a violation of the Code of Ethics is tried. It gives that person the option of having their case tried by the Commission on Ethics or a hearing officer.

Attachment:
1. Proposed Ordinance Amendments

Recommended by:  9/1/2015
Steve Cullen, Executive Director Date
Approved by:  9/2/15
Brad Merriman, Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

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

Reporting Category_____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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


OFMB
9/2


Contract Development and Control
9.3.15

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

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

1
2
3 AN ORDINANCE OF THE BOARD OF COUNTY
4 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,
5 AMENDING THE PALM BEACH COUNTY COMMISSION ON
6 ETHICS ORDINANCE, ORDINANCE 2011- 10, CREATING AND
7 PROVIDING QUALIFICATIONS FOR COMMISSION ON
8 ETHICS HEARING OFFICERS; PROVIDING FOR
9 PROCEDURE ON COMPLAINTS FILED; PROVIDING FOR
10 PUBLIC HEARING PROCEDURES; PROVIDING FOR
11 NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES;
12 PROVIDING FOR DISMISSAL OF COMPLAINTS; PROVIDING
13 FOR FRIVOLOUS OR GROUNDLESS COMPLAINTS;
14 PROVIDING FOR APPEALS; PROVIDING FOR SAVINGS
15 CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT;
16 PROVIDING FOR SEVERABILITY; PROVIDING FOR
17 INCLUSION IN THE CODE OF LAWS AND ORDINANCES;
18 AND PROVIDING FOR AN EFFECTIVE DATE.
19

20 WHEREAS, based on a referendum on November 2, 2010, concerning proposed
21 amendments to the Palm Beach County Charter, a majority of voters in the County and in every
22 municipality in Palm Beach County elected to require the Board of County Commissioners to
23 adopt an ordinance to establish a countywide Commission on Ethics with the authority to review,
24 interpret, render advisory opinions and to enforce the countywide Palm Beach County Code of
25 Ethics and to provide ethics training for the benefit of local governments, citizens groups and the
26 general public; and

27 WHEREAS, the Palm Beach County Board of County Commissioners adopted the Palm
28 Beach County Commission on Ethics Ordinance, Ordinance 2011-10 on May 17, 2011; and

29 WHEREAS, the Board of County Commissioners finds that amending the Commission
30 on Ethics Ordinance to allow hearing officers to conduct public hearings concerning alleged
31 violations of the Code of Ethics will enhance the integrity of the Commission on Ethics
32 enforcement procedures; and

33 WHEREAS, the Board of County Commissioners further finds that the amendments set
34 forth herein advances the purposes and intent of the Palm Beach County Charter amendments
35 approved by the electorate on November 2, 2010; and

36 WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its
37 authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes,
38 the Palm Beach County Charter, hereby adopts the Palm Beach County Commission on Ethics
39 Ordinance; and

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

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

44 **Part 1.** Section 2-260 is amended as follows:

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

46 * * *

47 (d) *Preliminary investigation and public hearing.* A preliminary investigation shall be
48 undertaken by the commission on ethics of each legally sufficient complaint over which the
49 commission on ethics has jurisdiction to determine whether there is probable cause to believe
50 that a violation has occurred. If, upon completion of the preliminary investigation, the
51 commission on ethics finds no probable cause to believe that a violation has been committed, the
52 commission on ethics shall dismiss the complaint with the issuance of a report to the
53 complainant and the respondent. If the commission on ethics finds from the preliminary
54 investigation probable cause to believe that a violation has been committed, it shall set the matter
55 for a public hearing and notify complainant and respondent via certified mail, hand delivery, or
56 courier. The commission on ethics or the hearing officer conducting the public hearing may
57 conduct such further investigation as it deems necessary, and may enter into such stipulations
58 and settlements as it finds to be just and in the best interest of the citizens of the county. The
59 public hearing provided for in this section shall be held within one hundred twenty (120) days of
60 the probable cause determination unless extended by the commission on ethics or the hearing
61 officer conducting the public hearing for good cause based on the request of a party or on its own
62 initiative.

63 * * *

64 (f) *Counsel.*

- 65 (1) Counsel to commission on ethics. The commission on ethics shall select counsel to
66 advise the commission on ethics.
- 67 (2) Advocate. The commission on ethics shall retain legal counsel to serve as the
68 advocate. The advocate shall prosecute cases before the commission on ethics or hearing
69 officer. The executive director may serve as advocate provided the executive director is a
70 member of the Florida Bar in good standing.

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

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

(k) *Motions.*

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

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

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

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

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

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

Part 2. Section 2-260.1 is amended as follows:

Sec. 2-260.1. Public hearing procedures.

(a) Right to public hearing. After finding of probable cause, a respondent is entitled to a public hearing on the complaint. The respondent may elect to have the hearing conducted by the commission on ethics or by a hearing officer selected from a list established by the Palm Beach

County Bar Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar Association of Palm Beach County. The associations will strive to reflect the racial, general and ethnic make-up of the community in creating and maintaining the list. The list of hearing officers shall contain no more than ten (10) names of individuals who shall serve on a rotating basis. Hearing officers shall serve without compensation. Hearing officers shall be appointed for a term of two (2) years. In order to be eligible for inclusion on the list, hearing officers shall have the following minimum qualifications:

(1) Be a member, in good standing of the Florida Bar for at least the preceding five years; and

(2) Be experienced in matters of governmental ethics, including the current version of the Palm Beach County Code of Ethics, related ordinances, and rules, practices and advisory opinions of the Palm Beach County Commission on Ethics; and

(3) Attorneys with prior judicial experience or experience as a hearing officer, mediator or special master shall be deemed uniquely qualified; and

(4) Be of outstanding reputation for integrity, responsibility and commitment to serving the community; and

(5) No individual, while a hearing officer for the commission on ethics, shall:

(a) Hold or campaign for any elective political office;

(b) Hold office in any political party or political committee;

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

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

(e) Allow his name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a hearing officer from signing a petition in support of or against any referendum or other ballot question.

(6) Hearing Officers shall be subject to the Palm Beach County Code of Ethics in the same manner as an individual serving as a Palm Beach County advisory board member.

163 (ba) Presentation of the case. The advocate shall present his or her case first. Respondent may
164 then present his or her case. Rebuttal evidence may be permitted in the discretion of the
165 commission on ethics or hearing officer.

166 (cb) Opening and closing statements. Opening and closing statements may be presented by the
167 advocate and the respondent. The advocate may make the first statement and the respondent may
168 follow. Rebuttal by the advocate may be permitted or may be denied.

169 (de) Evidence.

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

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

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

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

184 (ed) Transcript of proceedings. The proceedings shall be recorded by recording instruments or
185 by a court reporter. Respondent may, at his or her own expense, provide a court reporter or
186 recording instruments. The commission on ethics may provide a court reporter to any proceeding
187 conducted by the commission or a hearing officer. No transcript of the proceedings shall be
188 prepared unless requested by the commission on ethics, the hearing officer conducting the public
189 hearing, or by the respondent. If the respondent requests that a transcript be prepared by a court
190 reporter, the respondent shall pay the expense of transcription. If the Respondent requests that
191 the commission on ethics prepare a transcript from recording instruments and the commission on
192 ethics grants such request, the respondent shall pay the commission on ethics the actual cost of

transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

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

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

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

Part 3. Section 2-260.2 is amended as follows:

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

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

Part 4. Section 2-260.3 is amended as follows:

Sec. 2-260.3. Dismissal of complaints.

Notwithstanding any other provisions of this division, the commission on ethics or hearing officer conducting the public hearing 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 or hearing officer dismisses a complaint as provided in this subsection, the commission on ethics or hearing officer shall issue a public report stating with particularity its reasons for the dismissal. The commission on ethics or hearing officer conducting the public hearing may, at the request of the state attorney or any other law enforcement agency, stay an ongoing proceeding. The commission on ethics or hearing officer shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Southern District of Florida.

Part 5. Section 2-260.4 is amended as follows:

Sec. 2-260.4. Frivolous or groundless complaints.

In any case in which the commission on ethics or hearing officer conducting the public hearing 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 or hearing officer 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 or hearing officer regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

Part 6. Section 2-260.10 is amended as follows:

Sec. 2-260.10. Appeals.

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

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

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

Part 7. Savings Clause.

All complaints, investigations, advisory opinions, recommended orders, final orders, requests for advisory opinions, hearing processes, and all other functions of the Palm Beach County Commission on Ethics, initiated or completed pursuant to Ordinances 2011-10, 2011-11, or 2011-39, as may be amended, shall remain in full force and effect.

Part 8. Repeal of Laws in Conflict.

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

Part 9. Severability.

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

Part 10. Inclusion in the Code of Laws and Ordinances.

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

Part 11. Effective Date.

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

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the ____ day of _____, 2015.

SHARON R. BOCK	PALM BEACH COUNTY, FLORIDA, BY ITS
CLERK & COMPTROLLER	BOARD OF COUNTY COMMISSIONERS

By: _____	By: _____
Deputy Clerk	Shelley Vana, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
County Attorney

Filed with the Department of State on the ____ day of _____, 2015.