

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: May 18, 2021

Consent

Regular

Public Hearing

Department/Submitted By: COMMISSION ON ETHICS

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve on preliminary reading and advertise for public hearing on June 15, 2021 at 9:30 a.m.: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending chapter 2, article V, Division 8 of the Palm Beach County Code, the Palm Beach County Commission on Ethics Ordinance, as amended; amending section 2-255 (Membership, Qualifications, Terms, Vacancies); amending section 2-256 (Applicability of Code of Ethics Ordinance); amending section 2-257 (Organization); amending section 2-258 (Powers and Duties); amending section 2-258.1 (Extended Jurisdiction by Interagency Agreements); amending section 2-259 (Financial Support For The Commission); amending section 2-260 (Procedure on Complaints Filed); amending section 2-260.1 (Public Hearing Procedures); amending section 2-260.2 (Notification And Referral To Other Authorities); amending section 2-260.3 (Dismissal of Complaints); amending section 2-260.4 (Frivolous or Groundless Complaints); amending section 2-260.8 (Statute of Limitations); amending section 2-260.9 (Advisory Opinion); 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; providing for Enforcement; providing for Penalties; 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 review 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 review committee. These amendments would create a removal process for commissioners due to violation of any of the provisions listed in sec. 2-255(e); amend chair and vice-chair terms from two years to one year; provide for payment of advocates needed to present case where Commission on Ethics is seeking sanctions at the current hourly rate established by the county for outside legal services; provide for payment of hearing officers or special magistrates in accordance with the current schedule established by the county for hearing officers or special magistrates; require hearing officer or special magistrate to conducting final public hearings; require the Commission on Ethics Commissioners to determine appropriate penalty and render final order if the hearing officer or special magistrate finds a violation has been committed; and amend schedule for non-state reporting individuals to report qualified gifts from fiscal year to calendar year. Countywide (HJF)

**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. These amendments impact how a person accused of a violation of the Code of Ethics is tried. All final public hearings will be conducted by a hearing officer, and if found in violation, will be sent to the Commission on Ethics to make a determination of any sanctions to be assessed against Respondent, and to file a final order in the matter.

**Attachment:**

- 1. Proposed Commission on Ethics Ordinance Amendments

Recommended by: Mark E. Bannon 05/07/2021  
Mark E. Bannon, Executive Director Date

Approved by: Todd Bonlarron 5/13/2021  
Todd Bonlarron, Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_


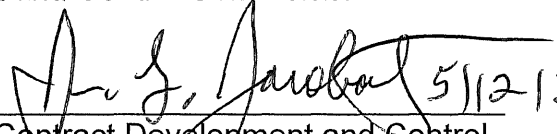
Reporting Category \_\_\_\_\_

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:

 5/11/21  
 OFMB 5-11-21 BR 5111
  5/12/21  
 Contract Development and Control  
 5-12-21 TW

B. Legal Sufficiency:

 5/12/21  
 Howard J. Falcon, III  
 Chief Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
 Department Director

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

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ORDINANCE NO 2021 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE V, DIVISION 8 OF THE PALM BEACH COUNTY CODE, THE PALM BEACH COUNTY COMMISSION ON ETHICS ORDINANCE, AS AMENDED ; AMENDING SECTION 2-255 (MEMBERSHIP, QUALIFICATIONS, TERMS, VACANCIES); AMENDING SECTION 2-256 (APPLICABILITY OF CODE OF ETHICS ORDINANCE); AMENDING SECTION 2-257 (ORGANIZATION); AMENDING SECTION 2-258 (POWERS AND DUTIES); AMENDING SECTION 2-258.1 (EXTENDED JURISDICTION BY INTERAGENCY AGREEMENTS); AMENDING SECTION 2-259 (FINANCIAL SUPPORT FOR THE COMMISSION); AMENDING SECTION 2-260 (PROCEDURE ON COMPLAINTS FILED); AMENDING SECTION 2-260.1 (PUBLIC HEARING PROCEDURES); AMENDING SECTION 2-260.2 (NOTIFICATION AND REFERRAL TO OTHER AUTHORITIES); AMENDING SECTION 2-260.3 (DISMISSAL OF COMPLAINTS); AMENDING SECTION 2-260.4 (FRIVOLOUS OR GROUNDLESS COMPLAINTS); AMENDING SECTION 2-260.8 (STATUTE OF LIMITATIONS); AMENDING SECTION 2-260.9 (ADVISORY OPINION); 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; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

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

43           WHEREAS, the Palm Beach County Board of County Commissioners adopted the Palm  
44 Beach County Commission on Ethics Ordinance, Ordinance 2011-10 on May 17, 2011 and adopted  
45 amendments in Ordinance 2015-032 on September 22, 2015;

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

          WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its

49 authority under Florida Constitution, Article VIII, Section 1 (g), Section 125.01, Florida Statutes,  
50 the Palm Beach County Charter, hereby amends the Palm Beach County Commission on Ethics  
51 Ordinance; and

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

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

56 **Part 1.** Section 2-255 is amended as follows:

57 **Section 2-255. Membership, qualifications, terms, vacancies.**

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

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

63 (2) The president of the Hispanic Bar Association of Palm Beach County, in conjunction  
64 with the president of the F. Malcolm Cunningham, Sr. Bar Association and the president  
65 of the ~~county bar association~~ Palm Beach County Bar Association, shall be requested to  
66 appoint an attorney with experience in ethics regulation of public officials and employees.

67 (3) The president of Florida Atlantic University (FAU) shall be requested to appoint a  
68 faculty member, who teaches at an accredited institution of higher education with a campus  
69 located within the county and ~~who~~ has taught a course in professional legal ethics or has  
70 published or performed services in the field of professional legal ethics.

71 (4) The president of the Palm Beach Chapter of the Florida Institute of CPAs shall be  
72 requested to appoint a single member who possesses at least five (5) years of experience  
73 as a certified public accountant (CPA) with forensic auditing and/or government  
74 accounting or government auditing ~~audit~~ experience.

75 (5) The board of directors of the Palm Beach County League of Cities, Inc. shall be  
76 requested to appoint a person who has served as a former elected official or a former  
77 manager, chief administrative officer, or chief executive officer for a governmental entity  
78 in the county.

79 All appointing officers or entities identified in subsections (a)(1) through (5) shall in good faith

80 endeavor to appoint members of the commission on ethics within forty-five (45) days of the  
81 effective date of the ordinance from which this division is derived. Each appointing entity shall  
82 promptly provide notice of each appointment to the executive director of the commission on ethics,  
83 inspector general, and the county administrator.

84 (b) Additional qualifications. Each member of the commission on ethics shall be of outstanding  
85 reputation for integrity, responsibility and commitment to serving the community. ~~The members~~  
86 ~~of the commission on ethics should be~~ Appointing entities should consider appointments to the  
87 commission on ethics that are representative of the community-at-large and should reflect the  
88 racial, gender, and ethnic make-up of the community. Before entering upon the duties of office,  
89 each appointee on the commission on ethics shall take the prescribed oath of office pursuant to  
90 Florida Constitution, Art. II §5(b). Members of the commission on ethics shall serve without  
91 compensation.

92 \* \* \*

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

94 \* \* \*

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

98 \* \* \*

99 (f) Removal process. If a violation of any of the enumerated requirements in subsection (e) herein  
100 and is substantiated, the commissioner in question, the appointing entity, and the other  
101 commissioners shall be notified. The commissioner may resign by providing notification to the  
102 executive director in writing, or the appointing entity may remove the commissioner from office  
103 by providing notification to the executive director in writing. If the commissioner does not resign  
104 or the appointing entity does not remove the commissioner from office, the executive director shall  
105 place the matter on the next agenda for the discussion. A commissioner can be removed from  
106 office by the commission upon a majority vote of the remaining commissioners.

107 **Part 2.** Section 2-256 is amended as follows:

108 **Section 2-256 – Applicability of code of ethics ordinance.**

109 The countywide code of ethics ordinance shall be applicable to all persons and/or entities within  
110 the jurisdiction of said ordinance and shall apply to the members ~~and staff~~ of the commission on

111 ethics.

112 **Part 3.** Section 2-257 is amended as follows:

113 **Section 2-257 – Organization.**

114 (a) The commission on ethics shall elect one (1) of its voting members as chairperson and one (1)  
115 of its voting members as vice chairperson who shall serve a one (1) year term of two (2) years. No  
116 chairperson shall be permitted to serve two (2) consecutive terms as chairperson in the same  
117 position. No vice chairperson shall be permitted to serve two (2) consecutive terms as vice  
118 chairperson.

119 (b) The commission on ethics shall adopt bylaws and rules of procedure ~~which~~ that are consistent  
120 with the provisions of this division and rules and regulations for the commission on ethics'  
121 governance. The commission on ethics shall hold regular meetings in accordance with the bylaws  
122 of the commission and may hold such other meetings as it deems necessary.

123 (c) All meetings of the commission on ethics that are not conducted in executive session as  
124 permitted by law shall be public, and written minutes of the proceedings thereof shall be  
125 maintained by the ~~commission on ethics~~ minutes department of the clerk of courts. All matters  
126 heard by the commission on ethics in executive session shall be audio recorded or audio/video  
127 recorded and made available to the public upon the conclusion of the matter. All actions taken at  
128 ~~the meetings of the commission on ethics shall be promptly and properly recorded.~~ Copies of all  
129 minutes, resolutions, decisions, or advisory opinions of the commission on ethics shall be  
130 published to the website of the commission on ethics forwarded to the clerk to the board of county  
131 ~~commissioners~~ no later than thirty (30) days subsequent to any meeting of the commission on  
132 ethics.

133 (d) The commission on ethics shall be empowered to appoint an executive director and to remove  
134 such appointee at will. The commission on ethics shall utilize a competitive selection process when  
135 selecting an executive director. The commission on ethics in consultation with county  
136 administration shall fix the executive director's salary, subject to ultimate budget approval by the  
137 board of county commissioners. The executive director shall be empowered to appoint, remove,  
138 and suspend employees or agents of the commission on ethics, subject to ultimate budget approval  
139 by the board of county commissioners. The executive director shall be further empowered to adopt  
140 personnel and management policies consistent with like policies in place for county personnel.

141 **Part 4.** Section 2-258 is amended as follows:

142 **Section 2-258 – Powers and duties.**

143 \*\*\*\*

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

151 \* \* \*

152 (d) The commission on ethics shall develop and deliver ethics training and outreach programs for  
153 the benefit of county and municipal employees and officials, county and municipal vendors,  
154 ~~nonprofit corporations~~ other public or private entities representing residents of the county or any  
155 municipality, and other entities that do business with or are regulated by the county or the  
156 municipalities located within the county. The commission on ethics may recommend that the board  
157 enter into agreements with other entities to provide such training and outreach programs to be  
158 administered by the commission on ethics.

159 **Part 5.** Section 2-258.1 is amended as follows:

160 **Section 2-258.1 – Extended jurisdiction by interagency agreements.**

161 It is anticipated that taxing districts and other public officials and entities will recognize  
162 and desire to benefit from the services of the commission on ethics. The commission on ethics may  
163 additionally be empowered to review, interpret, render advisory opinions, and enforce similar rules  
164 or regulations duly adopted by any commission, bureau, district, or other governmental entity  
165 located in the county, pursuant to agreements or memoranda of understanding between the  
166 commission on ethics and said entity. The memorandum of understanding or agreement shall  
167 include a provision for fees to be paid to the commission on ethics from the public entity in  
168 exchange for such benefits at a rate established by the commission on ethics. All fees paid under  
169 any such agreement shall be used solely to fund the operations of the commission on ethics and its  
170 staff. Any such agreement or memorandum of understanding is subject to final approval of the  
171 board of county commissioners, but such approval shall not be unreasonably withheld.

172 **Part 6.** Section 2-259 is amended as follows:

173 **Section 2-259 – Financial support for the commission**

174 (a) The commission on ethics shall establish a fiscal year ~~that which~~ coincides with that of the  
175 county. Pursuant to its annual budget process, the county shall provide sufficient financial support  
176 for the commission on ethics to fulfill its duties as set forth in this division. In consultation with  
177 the county office of financial management and budget. ~~The~~ commission on ethics shall timely  
178 submit to the board of county commissioners a budget request including a reasonable estimate of  
179 operating and capital expenditures, which request shall not be implemented until approved by the  
180 board of county commissioners.

181 (b) The commission on ethics budget request shall be prepared by the county office of financial  
182 management and budget in consultation with the commission on ethics' executive director and  
183 staff on official county budget forms in a format prescribed by the county office of financial  
184 management and budget, shall be reviewed in a manner similar to that in which ~~of~~ other county  
185 departments are reviewed, and shall be incorporated in the proposed budget and timely submitted  
186 to the board of county commissioners each year. Nothing contained herein shall be construed to  
187 prohibit the commission on ethics from submitting ~~to the board of county commissioners'~~  
188 supplemental budget requests to the board of county commissioners which, if approved, shall  
189 constitute amendments to the county budget.

190 (c) In addition to budgetary appropriations made by the county, the board of county  
191 commissioners, may, for the benefit of the commission on ethics, accept grants, contributions or  
192 appropriations from the federal government, state government, any municipality within the county,  
193 or any academic institution or nonprofit entity ~~which~~ that has not entered into a contract or  
194 transacted business with the county or any governmental entity subject to the provisions of this  
195 ordinance. The commission on ethics may accept grants, contributions or appropriations from an  
196 academic institution or nonprofit entity ~~which~~ that has entered into a contract or transacted  
197 business with the county if the board of county commissioners, by resolution, approves the grant,  
198 contribution, or appropriation. No other grants, contributions, or appropriations may be accepted  
199 by the commission on ethics.

200 **Part 7.** Section 2-260 is amended as follows:

201 **Section 2-260 – Procedure on Complaints filed.**

202 (a) **Filing of complaints.**

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



204 (2) The ~~Inspector General, Executive Director~~ executive director of the commission on  
205 ethics~~Commission on Ethics~~, the inspector general, or the ~~State Attorney~~ state attorney  
206 may file a complaint with the commission on ethics.

207 (b) **Legal sufficiency of complaints.**

208 \* \* \*

209 (2) In order to be found legally sufficient, complaints filed by the ~~Inspector General,~~  
210 ~~Executive Director~~ executive director of the commission on ethics,  
211 the inspector general, or the ~~State Attorney~~ state attorney must:

212 \*\*\*

213 Upon a finding of legal sufficiency by the executive director or general counsel, ~~the~~ commission  
214 on ethics staff shall initiate a preliminary investigation.

215 \* \* \*

216 (d) **Preliminary investigation and public hearing.** A preliminary investigation shall be  
217 undertaken by the commission on ethics of each legally sufficient complaint over which the  
218 commission on ethics has jurisdiction to determine whether there is probable cause to believe  
219 that a violation has occurred. If, upon completion of the preliminary investigation, the  
220 commission on ethics finds no probable cause to believe that a violation has been committed,  
221 the commission on ethics shall dismiss the complaint with the issuance of a report to the  
222 complainant and the respondent. If the commission on ethics finds from the preliminary  
223 investigation probable cause to believe that a violation has been committed, it shall set the  
224 matter for a public hearing and notify ~~complainant and~~ respondent via certified mail, hand  
225 delivery, or courier. The commission on ethics may use telephone or electronic mail as a  
226 secondary means of notice. The commission on ethics or the hearing officer conducting the  
227 public hearing may order commission staff to conduct such further investigation as it deems  
228 necessary, and may enter into such stipulations and settlements as it finds to be just and in the  
229 best interest of the citizens of the county. The public hearing provided for in this section shall  
230 be held within one hundred twenty (120) days of the probable cause determination unless  
231 extended by the commission on ethics or the hearing officer ~~conducting the public hearing for~~  
232 good cause based on the request of a party or on its own initiative.

233 (e) **Investigations.** Investigations shall be conducted by commission on ethics staff or by any  
234 other person or agency so designated by the commission on ethics under the supervision of the

235 executive director ~~and/or the inspector general~~. Investigations shall be limited to the allegations  
236 of the complaint, but shall include an investigation of all facts and persons materially related  
237 to the complaint at issue. Where other potential violations of any ordinance within the  
238 commission on ethics' jurisdiction are found during an investigation of all facts and persons  
239 materially related to the complaint at issue, the additional violations may be added by the  
240 executive director by amendment of the complaint, or may be filed as a new complaint.  
241 Subsequent to the filing of a complaint and notice to the respondent, the commission on ethics  
242 has an ongoing duty to disclose to the respondent any and all additional documents, statements  
243 of witnesses and other evidence, not otherwise subject by statute to nondisclosure, obtained by  
244 the commission pursuant to the ongoing investigation of a complaint.

245 (f) **Counsel.**

246 (1) **Counsel to commission on ethics.** The executive director and general counsel of the  
247 commission on ethics shall act as select counsel to advise the commission on ethics.

248 (2) **Advocate.** The commission on ethics shall retain legal counsel to serve as the advocate.  
249 The advocate shall prosecute all probable cause hearings cases before the commission on  
250 ethics or where commission on ethics staff is recommending a finding of probable cause,  
251 and all final hearings before the hearing officer. The executive director or general counsel  
252 may serve as advocate, provided the executive director he or she is a member of the Florida  
253 Bar in good standing, and provided he or she serves as advocate only during proceedings  
254 before the commission on ethics or hearing officer where he or she is presenting a  
255 stipulation of settlement, is recommending a finding of no probable cause, or is  
256 recommending a dismissal. The advocate may serve on a volunteer basis.

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

258 (3-4) Respondent. The respondent may appear on his or her own behalf or may be represented  
259 by a lawyer. All notices and communications to a respondent represented by a lawyer shall  
260 be made through respondent's lawyer.

261 \* \* \*

262 (h) **General power of subpoena.** The commission on ethics shall be empowered to subpoena and  
263 investigate. In the case of a refusal to obey a request for documents or for an interview during  
264 an investigation, the commission on ethics may subpoena relevant witnesses and compel their  
265 attendance and testimony, administer oaths and affirmations, take evidence, and require by

266 subpoena the production of any books, papers, records, or other relevant items. The  
267 commission on ethics may delegate to its staff the authority to administer oaths and  
268 affirmations. In the case of a refusal to obey a subpoena issued to any person, the commission  
269 on ethics may make application to any circuit court of this state, which shall have jurisdiction  
270 to order the witness to appear before the commission on ethics and to produce evidence, if so  
271 ordered, or to give testimony relevant to the matter in question. Any person who fails to obey  
272 the order may be punished in a court of law. Seventy-two (72) hours prior to serving a  
273 subpoena, the executive director shall provide written notice to the state attorney and the U.S.  
274 Attorney for the Southern District of Florida. The commission on ethics shall not interfere with  
275 any ongoing criminal investigation or prosecution of the state attorney or the U.S. Attorney for  
276 the Southern District of Florida. When the state attorney or the U.S. Attorney for the Southern  
277 District of Florida has explicitly notified the commission on ethics in writing that ~~the~~  
278 ~~commission's investigation is interfering with an~~ he or she is conducting an ongoing criminal  
279 investigation or prosecution, and he or she believes the commission's investigation or other  
280 procedures may interfere with the ongoing investigation or prosecution, the commission on  
281 ethics shall suspend service of subpoena, examination of witnesses, or other investigative  
282 activities as set forth in the notice until such time as the ongoing investigation or prosecution  
283 is completed. During this period, the two-year statute of limitations under Section 2-260.8 of  
284 the Commission on Ethics Ordinance shall be tolled until the completion of the ongoing  
285 investigation or prosecution. During the tolled period, the commission on ethics staff shall  
286 contact the prosecuting authority every 90 days to determine the status of the investigation or  
287 prosecution until the completion of the ongoing investigation or prosecution.

288 (i) The Florida rules of civil procedure shall apply to discovery. The hearing officer may order  
289 any additional discovery that they deem fair and just.

290 (†) (j) **Subpoenas for discovery.** At any time after the commission on ethics orders a public  
291 hearing of the matter, the ~~commission on ethics or~~ hearing officer conducting the public  
292 hearing may issue subpoenas, as provided in subsection (h), to effect discovery upon the  
293 written request of respondent or advocate. The requesting person shall ~~give~~ submit to the  
294 commission on ethics staff, for dissemination to the hearing officer, a list of all witnesses he  
295 or she wishes to have deposed. The list shall contain the name and address of each witness he  
296 ~~or she wishes to have deposed~~ and shall describe with particularity those documents or other

297 items that the person wishes to have the witness produce pursuant to a subpoena *duces tecum*.  
298 The ~~chairperson or a member of the commission on ethics designated by the chairperson, or~~  
299 ~~the~~ hearing officer may issue appropriate orders to effectuate the purposes of discovery and to  
300 prevent delay.

301 ~~(j)~~(k) **Subpoenas for public hearing.** The respondent and the advocate shall submit to ~~the~~  
302 ~~executive director~~ the commission on ethics staff, for dissemination to the hearing officer, a list  
303 of all witnesses he or she wishes to have subpoenaed to attend the hearing. The lists shall contain  
304 the correct names and addresses of the witnesses and shall describe with particularity those  
305 documents or other items that he or she wishes to have the witness bring to the hearing pursuant  
306 to subpoena *duces tecum*. Subpoenas shall be issued as provided in subsection (h).

307 ~~(k)~~ (l) **Motions.**

308 \* \* \*

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

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

316 (4) Every written motion may be accompanied by, or included in, a written memorandum stating  
317 the grounds upon which the motion is based. Other parties to a proceeding may, within  
318 seven (7) days of service of a written motion, file written memoranda in opposition. The  
319 hearing officer may accept additional information from the parties that is deemed relevant.  
320 The hearing officer may impose limitations that are deemed appropriate.

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

327 ~~(m)~~(n) **Exchange of witness lists.** Unless otherwise ordered by ~~the chairperson, a member of the~~

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

336 **Part 8.** Section 2-260.1 is amended as follows:

337 **Section 2-260.1 – Public hearing procedures.**

338 (a) ***Right to public hearing.*** After finding of probable cause, a respondent is entitled to a public  
339 hearing on the complaint. ~~The respondent may elect to have the hearing~~ shall be conducted by  
340 ~~the commission on ethics or by a hearing officer selected from a list of hearing officers or special~~  
341 ~~magistrates established by Palm Beach County, who have received training in the code of ethics~~  
342 ~~by commission on ethics staff. Payment for hearings officers conducting hearings for the~~  
343 ~~commission on ethics shall be paid by the county in accordance with the current schedule~~  
344 ~~established by the county for hearing officers or special magistrates at the time of the assignment~~  
345 ~~of the hearing officer to the matter to be heard. established by the Palm Beach County Bar~~  
346 ~~Association, the F. Malcolm Cunningham, Sr. Bar Association, and the Hispanic Bar~~  
347 ~~Association of Palm Beach County. The associations will strive to reflect the racial, general~~  
348 ~~and ethnic make-up of the community in creating and maintaining the list. The list of hearing~~  
349 ~~officers shall contain no more than ten (10) names of individuals who shall serve on a rotating~~  
350 ~~basis. Hearing officers shall serve without compensation. Hearing officers shall be appointed~~  
351 ~~for a term of two (2) years. In order to be eligible for inclusion on the list, hearing officers for~~  
352 ~~the commission on ethics shall have the following minimum qualifications:~~

- 353 (1) Be a member, in good standing of the Florida Bar for at least the preceding five years; and  
354 (2) Be ~~experienced~~ competent in matters of governmental ethics, including the current version  
355 of the Palm Beach County Code of Ethics, related ordinances, and rules, practices and  
356 advisory opinions of the Palm Beach County Commission on Ethics; and  
357 (3) Attorneys with prior judicial experience or experience as a hearing officer, magistrate,  
358 mediator or special master shall be deemed uniquely qualified; and

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

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

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

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

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

367 (d) Be employed by Palm Beach County, any municipality within the county, or any other  
368 governmental entity subject to the authority of the commission on ethics or the inspector  
369 general, other than as a county hearing officer or special magistrate;

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

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

376 (b) **Presentation of the case.** The advocate shall present his or her case first. Respondent may  
377 then present his or her case. Rebuttal evidence may be permitted ~~in~~ at the discretion of the  
378 ~~commission on ethics or hearing officer.~~

379 \*\*\*\*

380 (d) *Evidence.*

381 \*\*\*\*

382 (4) The hearing shall not be conducted according to technical rules relating to evidence and  
383 witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to  
384 supplement or explain other evidence, but shall not be sufficient itself to support a  
385 finding. The rules of privilege shall be effective to the same extent that they are now  
386 recognized in civil actions or hereafter may be recognized in civil actions. Irrelevant and  
387 unduly repetitious evidence shall be excluded. The ~~commission on ethics or hearing~~  
388 officer shall not allow the introduction into evidence of an affidavit of a person when  
389 that person can be called to testify; this shall not preclude the admission of a deposition

390 of such a person, however, for any reason, permissible in a court of law under the Florida  
391 Rules of Civil Procedure.

392 (e) ***Transcript of proceedings.*** The proceedings shall be recorded by recording instruments or by  
393 a court reporter. Respondent may, at his or her own expense, provide a court reporter or  
394 additional recording instruments. The commission on ethics may provide a court reporter to  
395 any proceeding conducted by the commission or a hearing officer. No transcript of the  
396 proceedings shall be prepared unless requested by the commission on ethics, the hearing officer  
397 ~~conducting the public hearing~~, or by the respondent. If the respondent requests that a transcript  
398 be prepared by a court reporter, the respondent shall pay the expense of transcription. If the  
399 ~~Respondent~~ requests that the commission on ethics prepare a transcript from recording  
400 instruments and the commission on ethics grants such request, the respondent shall pay the  
401 commission on ethics the actual cost of transcription. If a court reporter records the  
402 proceedings, the court reporter's transcript shall be the official transcript.

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

409 \*\*\*\*

410 (h) ***Public report order imposing penalty.*** Upon completion of any hearing initiated under this  
411 subsection, the ~~commission on ethics or~~ hearing officer shall make a finding and public report  
412 as to whether any provision within its jurisdiction has been violated. If ~~the commission on~~  
413 ~~ethics or~~ hearing officer finds, by clear and convincing evidence, based upon competent  
414 substantial evidence in the record, that a violation has been committed, ~~the commission on~~  
415 ~~ethics or hearing officer shall issue an order imposing the appropriate penalty as provided in~~  
416 ~~the ordinance being enforced.~~ the hearing officer shall determine whether the violation was  
417 intentional or unintentional and include that determination in the public report. ~~The public~~  
418 ~~report and final order shall include a determination as to whether the violation was intentional~~  
419 ~~or unintentional.~~ The ~~commission on ethics or~~ hearing officer shall, within ninety (90) days of  
420 the final hearing ~~twelve (12) months of the filing of a complaint~~, render the public report and

421 submit it to the commission on ethics unless extended by the hearing officer for good cause, a  
422 final order disposing of said complaint unless extended by the commission or hearing officer  
423 for good cause. If a person fails to comply with an order issued by the commission on ethics  
424 or hearing officer, the commission on ethics on its own behalf or on behalf of the hearing  
425 officer may make application to any circuit court of this state which shall have jurisdiction to  
426 order the violator to comply with the order of the commission on ethics or hearing officer. Any  
427 violator who fails to obey the order may be punished by the court.

428 (i) *Order Imposing Penalty.* If the hearing officer finds that a violation has been committed, the  
429 commission on ethics shall hold a hearing to determine an appropriate penalty and render a final  
430 order imposing the appropriate penalty as provided in the ordinance being enforced and  
431 disposing of said complaint. The hearing provided for in this subsection shall be held within  
432 ninety (90) days of the issuance of the public report by the hearing officer, unless extended by  
433 the commission on ethics for good cause based on the request of a party or on its own initiative.  
434 If a person fails to comply with an order issued by the commission on ethics, the commission  
435 on its own behalf may make application to any circuit court of this state, which shall have  
436 jurisdiction to order the violator to comply with the order of the commission on ethics. Any  
437 violator who fails to obey the order may be punished by the court.

438 **Part 9.** Section 2-260.2 is amended as follows:

439 **Section 2-260.2 – Notification and referral to other authorities.**

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

449 **Part 10.** Section 2-260.3 is amended as follows:

450 **Section 2-260.3 – Dismissal of complaints.**

451 Notwithstanding any other provisions of this division, the commission on ethics or hearing officer



452 ~~conducting the public hearing~~ may, at its discretion:

453 (a) dismiss any complaint at any stage of disposition should it determine that the public interest  
454 would not be served by proceeding further, or

455 (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the  
456 respondent when it appears that the alleged violation was inadvertent, unintentional or  
457 insubstantial.

458 In the event the commission on ethics or hearing officer dismisses a complaint as provided in this  
459 subsection, the commission on ethics or hearing officer shall issue a public report and final order  
460 stating with particularity its reasons for the dismissal. ~~The commission on ethics or hearing officer~~  
461 ~~conducting the public hearing may, at the request of the state attorney or any other law enforcement~~  
462 ~~agency, stay an ongoing proceeding. The commission on ethics or hearing officer shall not~~  
463 ~~interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the~~  
464 ~~Southern District of Florida.~~

465 **Part 11.** Section 2-260.4 is amended as follows:

466 **Section 2-260.4 – Frivolous or groundless complaints.**

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

475 \*\*\*\*\*

476 **Part 12.** Section 2-260.8 is amended as follows:

477 **Section 2-260.8 – Statute of limitations.**

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

483 proceeding or the exhaustion of administrative remedies. As provided in Section 2-260(h),  
484 where the commission on ethics has suspended investigative activities after the state  
485 attorney or the U.S. Attorney for the Southern District of Florida has notified the  
486 commission on ethics that the commission's investigation may interfere with an ongoing  
487 criminal investigation or prosecution, the statute of limitations shall be tolled until the  
488 completion of the ongoing investigation or prosecution.

489 (b) Notwithstanding any limitation of actions under subsection (a), a prosecution for willful  
490 violations referred to the State Attorney pursuant to Code of Ethics § 2-448(d) may be  
491 commenced at any time when the respondent is in public office or employment, within two  
492 (2) years from the time the respondent leaves public office or employment, or within two  
493 (2) years of the offense, whichever time is greater.

494 **Part 13.** Section 2-260.9 is amended as follows:

495 **Section 2-260.9 – Advisory opinion.**

496 Any person within the jurisdiction of the commission on ethics, when in doubt about the  
497 applicability or interpretation of any provision within the commission on ethics' jurisdiction to  
498 himself or herself in a particular context, may submit in writing the facts of the situation to the  
499 commission on ethics with a request for an advisory opinion to establish the standard of public  
500 duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to  
501 ten (10) days before the commission on ethics convenes a public meeting to consider the request.  
502 An advisory opinion shall be rendered by the commission on ethics on a timely basis, and each  
503 such opinion shall be numbered, dated and published.

504 **Part 14. Savings Clause.**

505 All complaints, investigations, advisory opinions, recommended orders, final orders,  
506 requests for advisory opinions, hearing processes, and all other functions of the Palm Beach County  
507 Commission on Ethics, initiated or completed pursuant to Ordinances 2011-10, 2011-11, or  
508 2011-39, as may be amended, shall remain in full force and effect.

509 **Part 15. Repeal of Laws in Conflict.**

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

512 **Part 16. Severability.**

513 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any

514 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect  
515 the remainder of this Ordinance.

516 **Part 17. Inclusion in the Code of Laws and Ordinances.**

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

521 **Part 18. Enforcement.**

522 This Ordinance is enforceable by all means provided by law. Additionally, the County  
523 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm  
524 Beach County.

525 **Part 19. Penalty.**

526 Any violation of any portion of this Ordinance shall be punishable as provided by law.

527 **Part 20. Effective Date.**

528 The provisions of this Ordinance shall become effective on July 1, 2021.

529 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach  
530 County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2021.

531 ATTEST:  
532 JOSEPH ABRUZZO, CLERK  
533 OF THE CIRCUIT COURT  
534 & COMPTROLLER

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

535  
536  
537 By: \_\_\_\_\_  
538 Deputy Clerk

By: \_\_\_\_\_  
Dave Kerner, Mayor

539  
540  
541 (SEAL)

542  
543 APPROVED AS TO FORM AND  
544 LEGAL SUFFICIENCY

545  
546  
547 By: \_\_\_\_\_  
548 County Attorney

549  
550 Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2021.