



Agenda

October 31, 2011

Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

561.233.0724

FAX: 561.233.0735

Hotline: 877.766.5920

E-mail:

ethics@palmbeachcountyethics.com

Commissioners

Edward Rodgers, Chair

Manuel Farach, Vice Chair

Robin N. Fiore

Ronald E. Harbison

Bruce E. Reinhart

Executive Director

Alan S. Johnson

Executive Assistant

Gina A. Levesque

Staff Counsel

Megan C. Rogers

Senior Investigator

Mark E. Bannon

Investigator

James A. Poag

SPECIAL MEETING OF THE COMMISSION ON ETHICS TO DISCUSS PROPOSED COUNTY/LEAGUE OF CITIES LOBBYIST REGISTRATION ORDINANCE REVISIONS

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Discussion of Proposed Ordinance and Recommendations including public comments
- V. Adjournment

III – PROPOSED LOBBYIST REGISTRATION ORDINANCE

Staff analysis:

The original Palm Beach County Lobbyist Registration Ordinance, adopted in 2003, was not made a part of the 2010 Charter Referendum and was therefore not included in the referendum drafting committee’s revision of the Code of Ethics and Commission on Ethics Ordinances. Currently, the ordinance only applies to lobbyists, principals and employers of lobbyists who lobby county government. Additionally, definitions such as *lobbying* and *lobbyist* are inconsistent with definitions contained in the Code of Ethics.

Attorneys for Palm Beach County and the League of Cities have been drafting a revised countywide Lobbyist Registration Ordinance. The process began approximately three years ago when a five person committee was formed by the League, including three elected municipal officials (voting members) and two Lobbyists (non-voting members). Input from the County Attorney’s Office was obtained as well. Adoption of a countywide ordinance would be mandatory among the municipalities, unless they opt out with their own conflicting ordinance, and requires adoption by the BCC. The Board of the League of Cities was scheduled to consider the proposed ordinance on October 26, 2011.

Aside from amending the language to make the code applicable to municipalities, the revised ordinance amends the definitions of lobbying and lobbyist to match those contained in the Code of Ethics. It likewise adds a number of definitions currently in the ethics code but not contained in the current lobbyist ordinance (*official or employee, principal, persons and entities, advisory board*) and creates a central lobbyist registration location for countywide registration. It also provides for electronic signatures with confirmation as well as providing additional guidance for reporting of expenditures. It establishes an additional exception to the registration requirement for attorneys who represent persons or entities that are in litigation with the government when they contact a representative of that government agency (with agency counsel present) for a purpose directly related to the subject matter of a judicial proceeding, arbitration proceeding, mediation proceeding, or formal administrative hearing.

The Business Forum has submitted an alternative ordinance for consideration. The main differences include: limiting the definition of lobbying to include only governmental management and governmental procurement employees; extending the lobbyist exclusion to appearances at all public meetings (not just quasi-judicial or comp plan hearings); exempting employees of a principal “whose normal scope of employment does not include lobbying activities”; and further expands excluded expenditures from reporting requirements. In addition, the Business Forum is also recommending a number of changes to the Code of Ethics to conform with their proposed version of the Countywide Lobbyist Registration Ordinance.

Staff Recommendation:

The County Lobbyist Registration Ordinance has been in existence since 2003. The expenditure report requirements became effective in 2010. Most of the changes proposed by the League of Cities and County involve adapting the code to municipal government and conforming definitions to the Code of Ethics. Other substantive changes include establishing a central lobbyist registration location and adopting policies and procedures to allow electronic submission of registration information. Additionally, there are several clarifications regarding the expenditure reporting requirement. Staff considers these to be appropriate refinements to existing definitions and provisions.

Staff recommends acceptance of the County/League of Cities proposed Countywide Lobbyist Registration Ordinance. The ordinance proposed would conform to the definitions as contained in the current County Code of Ethics and other revisions adhere to the intent and structure of the existing lobbyist ordinance.

Staff does not recommend adopting the limiting modifications as submitted by the Business Forum.

Proposed Lobbyist Registration Ordinance: League of Cities/County

ARTICLE VIII. LOBBYIST REGISTRATION

Sec. 2-351. Title and purpose.

(a) This article may be cited as the "Palm Beach County Lobbyist Registration Ordinance."

(b) The board of county commissioners of the county and the governing bodies of the municipalities located within the county hereby determines that the operation of responsible government requires that the fullest opportunity be afforded to the people to petition their county and local governments for the redress of grievances and to express freely to the elected officials their opinions on legislation and other actions and issues; that to preserve and maintain the integrity of the governmental decision-making process, it is necessary that the identity and activities of certain persons who engage in efforts to influence the county commissioners, members of the local municipal governing bodies ~~county commissioners, mayors or chief executive officers that are not members of local municipal governing bodies,~~ county and municipal advisory board members, and county and municipal employees on matters within their official duties, be publicly and regularly disclosed. In accordance with Section 1.3 of the County Charter, this Ordinance shall not apply in any municipality that has adopted an ordinance in conflict governing the same subject matter.

(Ord. No. 03-018, § 1, 5-20-03)

Sec. 2-352. Definitions.

Unless expressly provided herein to the contrary, for purposes of this article, the following definitions will apply:

Advisory board shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

~~Advisory board will mean any advisory or quasi-judicial board created by the board of county commissioners.~~

Board will mean the board of county commissioners of Palm Beach County, Florida.

County commissioner will mean any member of the board of county commissioners of Palm Beach County, Florida.

Central Lobbyist Registration Site will mean the official location for countywide lobbyist registration.

~~Employee will mean all personnel employed by the board of county commissioners or by the municipalities.~~

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage,

defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

~~Lobbying shall mean seeking to influence the decision of any county commissioner, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board or board of county commissioners as applicable.~~

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. "Lobbyist" shall not include:

(1) Any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.

(2) Any person who is retained or employed for the purpose of representing an employer, principal or client only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing, provided the person identifies the employer, principal or client at the hearing.

(3) Any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal or client at the hearing.

(4) Any person who lobbies only in his or her individual capacity for the purpose of self-representation and without compensation.

(5) Any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.

~~Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal or most significant responsibilities to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. "Lobbyist" shall not include any employee as defined by this article when acting in the course of his or her employment, any elected local official when the official is lobbying on behalf of the governmental agency which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency by which the staff member is employed.~~

Local Municipal Governing Body will mean the councils and commissions of the municipalities located within Palm Beach County, Florida.

Member of Local Municipal Governing Body will mean any member of the municipal council or commission.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Palm Beach County Commission on Ethics means the commission established in section 2-254 et seq. to administer and enforce the ethics regulations set forth herein, and may also be referred to as the "commission on ethics" in this article.

Persons and entities shall be defined to include all natural persons, firms, associations, joint ventures, partnerships, estates, trusts, business entities, syndicates, fiduciaries, corporations, and all other organizations.

~~Person shall mean individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations (profit or not for profit), professional corporations, or associations, and all other groups or combinations however constituted.~~

Principal shall mean the person or entity a lobbyist represents, including a lobbyist's employer or client, for the purpose of lobbying.

(Ord. No. 03-018, § 2, 5-20-03; Ord. No. 03-055, Pt. I, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-353. Registration and expenditures.

(a) *Registration required.* Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official location for countywide lobbyist registration and which shall be known as the "Central Lobbyist Registration Site." The registration may be submitted in paper or electronic form pursuant to countywide policies and procedures. ~~A~~ Each lobbyist is required to submit a separate registration is required for each principal represented. A registration fee of twenty-five dollars (\$25.00) must be included with each registration form submitted. A registrant shall promptly send a written statement to county administration canceling the registration for a principal upon termination of the lobbyist's representation of that principal. This statement shall be signed by the lobbyist.

Lobbying prior to registration is prohibited. It is the responsibility of the lobbyist to keep all information contained in the registration form current and up to date.

(b) *Registration form.* The registration form shall be prepared by county administration and shall require the following information: 1) the name, phone number and address of the lobbyist; 2) the name, phone number and address of the principal represented; 3) the date the lobbyist was initially retained by the principal; 4) the nature and extent of any direct business association or partnership the lobbyist and principal might have with any current county commissioner, member of a local municipal governing body, mayor or chief executive office that is not a member of a local municipal governing body, advisory board member, or employee; 5) the area of legislative interest; ~~and~~ (6) a statement confirming that the registrant is authorized to represent the principal; (7) signatures of both the registrant and principal where such signatures may be made electronically pursuant to countywide policies and procedures; and (8) the county or municipalities to be lobbied. ~~The form shall be signed by the registrant and the principal.~~

(c) *Registration exceptions.* Registration shall not be required for the following:

~~(1) County commissioners, advisory board members or employees discussing matters relevant to their official duties;~~

~~(2) Persons under contract with the county or municipalities as applicable who communicate with county commissioners, members of local municipal governing bodies, mayors or chief executive officers that are not members of a local municipal governing body, advisory board members or employees regarding issues related only to the performance of their services under their contract;~~

~~(3) Any person who lobbies only in his or her individual capacity for the purpose of self-representation; or~~

~~(4) Any person who appears before the board or advisory board in a quasi-judicial proceeding.~~

(2) Any attorney representing a client in an active or imminent judicial proceeding, arbitration proceeding, mediation proceeding where a mediator is present, or formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings, in which the county or municipality as applicable is a party, who communicates with county or municipal attorneys on issues related only to the subject matter of the judicial proceeding, arbitration proceeding, mediation proceeding, or formal administrative hearing. This exception to the registration requirement includes communications with other government officials and employees conducted during depositions, mediation, arbitration hearings or trial, judicial hearings or trial, and settlement negotiations for active litigation, so long as the county or municipal attorneys are present for those communications.

(d) *Reporting of expenditures.* Commencing ~~October~~ November 1, 2011, and ~~by October~~ November 1 of each year thereafter, all the lobbyists shall submit to ~~county administration the~~ Central Lobbyist Registration Site a signed statement under oath listing all expenditures made by the lobbyist in lobbying county or municipal officials and employees in excess of twenty-five dollars (\$25.00) for the preceding fiscal year commencing on October 1 and ending on September 30. A statement shall be filed even if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure category, including food and beverage, entertainment, research, communications, media advertising, publications, travel, lodging and special events. Political contributions and expenditures which are reported under election laws as well as campaign-related personal services provided without compensation are

excluded from the reporting requirements. A lobbyist or principal's salary, office overhead expenses and personal expenses for lodging, meals and travel also are excluded from the reporting requirements. Research is an office expense unless it is performed by independent contractors rather than by the lobbyist or the lobbyist's firm.

(1) The county administrator of the Central Lobbyist Registration Site shall provide notice of violation to any lobbyist who fails to timely file an expenditure report and shall also notify the county commission on ethics of this failure. In addition to any other penalties which may be imposed under this article, any lobbyist who fails to file the required expenditure report within thirty (30) days of the date of notice of violation shall be suspended from lobbying unless the notice of violation has been appealed to the commission on ethics.

(e) *False statements.* A lobbyist shall not knowingly make, or cause to be made, a false statement or misrepresentation in maintaining registration or when lobbying county commissioners, members of local municipal governing bodies, mayors or chief executive officers that are not members of local municipal governing bodies, advisory board members, or employees.

(f) *Existing County registrations.* All registrations on file and in effect with the County before the effective date of this ordinance shall remain in full force and effect.

(Ord. No. 03-018, § 3, 5-20-03; Ord. No. 03-055, Pt. II, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-354. Record of lobbying contacts.

(a) *Contact log.* Except when appearing before the board, local municipal governing body, or any advisory board, all persons shall sign, for each instance of lobbying, contact logs maintained and available in the office of reception of each department of county or municipal government as applicable. The person shall provide his or her name, whether or not the person is a lobbyist as defined in this article, the name of each principal, if any, represented in the course of the particular contact, and the subject matter of the lobbying contact. All contact logs shall be maintained by the County or municipality as applicable for a period of three (3) fiscal years, transmitted to the county administrator at the end of each calendar quarter.

(b) *Lobbying outside of county or municipal offices.* In the event that a lobbyist engages in lobbying which is outside of county or municipal offices as applicable, and which is a scheduled appointment initiated by any person for the purpose of lobbying, the lobbyist shall advise in writing the commissioner's office, the member of a local municipal governing board's office, the mayor or chief executive officer's office, the advisory board member's office, or the employee's department office as appropriate of the calendar scheduling of an appointment and the subject matter of the lobbying contact.

(Ord. No. 03-018, § 4, 5-20-03)

Sec. 2-355. Cone of silence.

(a) *Cone of silence* means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:

(1) Any person or person's representative seeking an award from such competitive solicitation; and

(2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.

(b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.

(c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence ~~shall remain in effect and subject to the terms of this section for~~ applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.

(d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

(e) The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.

(f) The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

(g) Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable.

(Ord. No. 03-018, § 5, 5-20-03; Ord. No. 03-055, Pt. 3, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-356. Enforcement.

(a) If the county administrator or municipal administrator as applicable is informed of any person who has failed to comply with the requirements of this article, he or she shall conduct a preliminary investigation as deemed necessary under the circumstances. In the event the county administrator or municipal administrator as applicable determines that a violation may have occurred based on the results of the investigation, the county administrator or municipal administrator as applicable shall forward the matter to the county commission on ethics for further investigation and enforcement proceeding as set forth in article XIII of this chapter, the

countywide code of ethics. For the purposes of further investigation and enforcement by the commission on ethics, a complaint submitted under this subsection by the county administrator or municipal administrator shall be deemed legally sufficient.

(b) The commission on ethics may process any other legally sufficient complaints of violations under this article pursuant to the procedures established in article XIII of this chapter.

(Ord. No. 03-018, § 6, 5-20-03; Ord. No. 2009-051, pt. 2, 12-15-09; Ord. No. 2010-043, pt. 6, 9-28-10)

Sec. 2-357. Penalties.

Violations of this article shall be punishable as follows:

(1) Failure to properly register as required by section 3-353 of this article shall be deemed a single violation, punishable by a fine of two hundred fifty dollars (\$250.00) per day for each day an unregistered lobbyist engages in lobbying activity, in an amount not to exceed a total of two thousand five hundred dollars (\$2,500.00).

(2) Failure to properly provide lobbying contact information as required by section 2-354 of this article shall be punishable by a fine of two hundred fifty dollars (\$250.00) for each violation.

(3) Violations of the cone of silence set forth in section 2-355 of this article shall be punishable by a fine of two hundred fifty dollars (\$250.00) for each violation.

(4) Any person who knowingly makes or causes to be made a false statement or misrepresentation in maintaining a lobbyist registration shall be subject to a fine of two hundred fifty dollars (\$250.00) for each violation.

(5) Any person who violates the provisions of this article more than once during a twelve-month period shall be prohibited from lobbying as follows: A second violation shall result in a prohibition of one (1) year; a third violation shall result in a prohibition of two (2) years.

(6) The penalties provided in this section shall be exclusive penalties imposed for any violation of the registration, contact log, and cone of silence requirements of this article. Willful and knowing violations of this article shall be referred by the commission on ethics to the state attorney for prosecution in the same manner as a ~~second~~ first degree misdemeanor pursuant to Florida Statutes, § 125.69. Failure or refusal of any lobbyist to comply with any order of the commission on ethics shall be punishable as provided by law, and shall otherwise be subject to such civil remedies as the county or municipality as applicable may pursue, including injunctive relief.

(Ord. No. 03-018, § 7, 5-20-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Secs. 2-358--2-370. Reserved.

Proposed Lobbyist Registration Ordinance: Business Forum Recommendations

ARTICLE VIII. LOBBYIST REGISTRATION

Sec. 2-351. Title and purpose.

(a) This article may be cited as the "Palm Beach County Lobbyist Registration Ordinance."

(b) The board of county commissioners of the county and the governing bodies of the municipalities located within the county hereby determines that the operation of responsible government requires that the fullest opportunity be afforded to the people to petition their county and local governments for the redress of grievances and to express freely to the elected officials their opinions on legislation and other actions and issues; that to preserve and maintain the integrity of the governmental decision-making process, it is necessary that the identity and activities of certain persons who engage in efforts to influence the county commissioners, members of the local municipal governing bodies, county commissioners, county and municipal advisory board members, and county and municipal [governmental management employees or governmental procurement](#) employees on matters within their official duties, be publicly and regularly disclosed.

(Ord. No. 03-018, § 1, 5-20-03)

Sec. 2-352. Definitions.

Unless expressly provided herein to the contrary, for purposes of this article, the following definitions will apply:

Advisory board will mean any advisory or quasi-judicial board created by the board of county commissioners or by the local municipal governing bodies.

Board will mean the board of county commissioners of Palm Beach County, Florida.

County commissioner will mean any member of the board of county commissioners of Palm Beach County, Florida.

Central Lobbyist Registration Site will mean the official site for countywide lobbyist registration.

Employee will mean all personnel employed by the board of county commissioners or by the municipalities [who are governmental management employees or governmental procurement employees](#).

[Governmental Management Employee means with respect to the county or any of the municipalities, any employee of the county or any municipality who is a county commissioner, a member of a local municipal governing body, a mayor or chief executive officer, a manager reporting directly to any of the foregoing, or a department head, and who makes a written recommendation or participates in the final decision, approval, disapproval, or recommendation to the county commission or local municipal governing body, as applicable.](#)

[Governmental Procurement Employee means a public officer or employee having the final authority to commit the expenditure of public funds in excess of \\$1,000 through a contract for, or the purchase of, any goods, services, or the interest in real property for the county or any of the municipalities, as applicable.](#)

Lobbying shall mean seeking to influence ~~the~~[a](#) decision [through oral or written communication or an attempt to obtain the goodwill](#) of any county commissioner, any member of a local municipal governing body, any [mayor or chief executive officer that is not a member of a local municipal governing body, any](#) advisory board member, or any [governmental management employee or governmental procurement](#) employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory

board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal ~~or most significant responsibilities~~ responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. "*Lobbyist*" shall not include:

~~any employee as defined by this article when acting in the course of his or her employment~~ (1) any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.

(2) any person who is retained or employed for the purpose of representing an employer, principal or client during a meeting open to the public, provided the person identifies the employer, principal or client at the public meeting. This exclusion shall relate to the appearance at the public meeting only.

(3) any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in a meeting open to the public, so long as the expert identifies the employer, principal or client at the public meeting.

(4) any person who lobbies only in his or her individual capacity for the purpose of self-representation and without compensation.

(5) any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.

(6) any employee of a principal whose normal scope of employment does not include lobbying activities.

(7) An attorney or law firm representing a client in a judicial proceeding or in a formal administrative proceeding in which the county or municipality, as applicable, is a party, including any related depositions, discovery proceedings, mediation, settlement negotiations or other legal proceedings

Local Municipal Governing Body will mean the councils and commissions of the municipalities located within Palm Beach County, Florida.

Member of Local Municipal Governing Body will mean any member of the municipal council or commission.

Person shall mean individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations (profit or not-for-profit), professional corporations, or associations, and all other groups or combinations however constituted.

Principal shall mean the person or entity a lobbyist represents for the purpose of lobbying.

(Ord. No. 03-018, § 2, 5-20-03; Ord. No. 03-055, Pt. I, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-353. Registration and expenditures.

(a) *Registration required.* Prior to lobbying, all lobbyists shall submit an original, fully executed registration form to county administration, which shall serve as the official site for countywide lobbyist registration and which shall be known as the "Central Lobbyist Registration Site." A separate registration is required for each principal represented. A registration fee of twenty-five

dollars (\$25.00) must be included with each registration form submitted. A registrant shall promptly send a written statement to county administration canceling the registration for a principal upon termination of the lobbyist's representation of that principal. This statement shall be signed by the lobbyist. Lobbying prior to registration is prohibited.

(b) *Registration form.* The registration form shall be prepared by county administration and shall require the following information: 1) the name and address of the lobbyist; 2) the name and address of the principal represented; 3) the date the lobbyist was initially retained by the principal; 4) the nature and extent of any direct business association or partnership the lobbyist and principal might have with any current county commissioner, member of a local municipal governing body, advisory board member, or employee; 5) the area of legislative interest; and 6) a statement confirming that the registrant is authorized to represent the principal. The form shall be signed by the registrant and the principal.

(c) *Registration exceptions.* Registration shall not be required for the following:

(1) County commissioners, members of local municipal governing bodies, advisory board members or employees discussing matters relevant to their official duties;

(2) Persons under contract with the county or municipalities as applicable who communicate with county commissioners, members of local municipal governing bodies, advisory board members or employees regarding issues related only to the performance of their services under their contract;

(3) Any person who lobbies only in his or her individual capacity for the purpose of self-representation; or

(4) Any person who appears before the board, local municipal governing body, or advisory board in a quasi-judicial proceeding.

(d) *Reporting of expenditures.* Commencing October 1, 2011, and on October 1 of each year thereafter, the lobbyist shall submit to county administration the Central Lobbyist Registration Site a signed statement under oath listing all expenditures made by the lobbyist in lobbying county or municipal officials and employees in excess of twenty-five dollars (\$25.00) for the preceding year. A statement shall be filed even if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure category, including food and beverage, entertainment, research, communications, media advertising, publications, travel, lodging and special events. Expenditures shall not include any item produced for use at a public meeting, research performed by a lobbyist, principal of a lobbyist or their respective organizations or required by any governmental applications. Expenditures for food, beverage, entertainment, travel, lodging and special events shall only include those made on behalf of a governmental management employee or governmental procurement employee.

(1) The county administrator of the Central Lobbyist Registration Site shall provide notice of violation to any lobbyist who fails to timely file an expenditure report and shall also notify the county commission on ethics of this failure. In addition to any other penalties which may be imposed under this article, any lobbyist who fails to file the required expenditure report within thirty (30) days of the date of notice of violation shall be suspended from lobbying unless the notice of violation has been appealed to the commission on ethics.

(e) *False statements.* A lobbyist shall not knowingly make, or cause to be made, a false statement or misrepresentation in maintaining registration or when lobbying county commissioners, members of local municipal governing bodies, advisory board members, or employees.

(Ord. No. 03-018, § 3, 5-20-03; Ord. No. 03-055, Pt. II, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-354. Record of lobbying contacts.

(a) *Contact log.* Except when appearing before the board, local municipal governing body, or any advisory board, all persons shall sign, for each instance of lobbying, contact logs maintained and available in the office of reception of each department of county or municipal government as applicable. The person shall provide his or her name, whether or not the person is a lobbyist as defined in this article, the name of each principal, if any, represented in the course of the particular contact, and the subject matter of the lobbying contact. All contact logs shall be transmitted to the county administrator administrator for the Central Lobbyist Registration Site at the end of each calendar quarter.

(b) *Lobbying outside of county or municipal offices.* In the event that a lobbyist engages in lobbying which is outside of county or municipal offices as applicable, and which is a scheduled appointment initiated by any person for the purpose of lobbying, the lobbyist shall advise the commissioner's office, the member of a local municipal governing board's office, the advisory board member's office, or the employee's department office as appropriate of the calendar scheduling of an appointment and the subject matter of the lobbying contact.

(Ord. No. 03-018, § 4, 5-20-03)

Sec. 2-355. Cone of silence.

(a) *Cone of silence* means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:

(1) Any person or person's representative seeking an award from such competitive solicitation; and

(2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.

(b) For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.

(c) The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence shall remain in effect and subject to the terms of this section for any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.

(d) The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner,

member of a municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

(e) The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.

(f) The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

(g) Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable.

(Ord. No. 03-018, § 5, 5-20-03; Ord. No. 03-055, Pt. 3, 11-18-03; Ord. No. 2009-051, pt. 2, 12-15-09)

Sec. 2-356. Enforcement.

(a) If the county administrator or municipal administrator as applicable is informed of any person who has failed to comply with the requirements of this article, he or she shall conduct a preliminary investigation as deemed necessary under the circumstances. In the event the county administrator or municipal administrator as applicable determines that a violation may have occurred based on the results of the investigation, the county administrator or municipal administrator as applicable shall forward the matter to the county commission on ethics for further investigation and enforcement proceeding as set forth in article XIII of this chapter, the countywide code of ethics. For the purposes of further investigation and enforcement by the commission on ethics, a complaint submitted under this subsection by the county administrator or municipal administrator shall be deemed legally sufficient.

(b) The commission on ethics may process any other legally sufficient complaints of violations under this article pursuant to the procedures established in article XIII of this chapter.

(Ord. No. 03-018, § 6, 5-20-03; Ord. No. 2009-051, pt. 2, 12-15-09; Ord. No. 2010-043, pt. 6, 9-28-10)

Sec. 2-357. Penalties.

Violations of this article shall be punishable as follows:

(1) Failure to properly register as required by section 3-353 of this article shall be deemed a single violation, punishable by a fine of two hundred fifty dollars (\$250.00) per day for each day an unregistered lobbyist engages in lobbying activity, in an amount not to exceed a total of two thousand five hundred dollars (\$2,500.00).

Code of Ethics: Business Forum Proposed Changes

Sec. 2-442. Definitions

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any [governmental management employee or governmental procurement](#) employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. "Lobbyist" shall not include:

- (1) any employee, contract employee, or independent contractor of a governmental agency or entity lobbying on behalf of that agency or entity, any elected local official when the official is lobbying on behalf of the governmental agency or entity which the official serves, or any member of the official's staff when such staff member is lobbying on an occasional basis on behalf of the governmental agency or entity by which the staff member is employed.
- (2) any person who is retained or employed for the purpose of representing an employer, principal or client ~~only during a publicly noticed quasi-judicial hearing or comprehensive plan hearing~~ [during a meeting open to the public](#), provided the person identifies the employer, principal or client at the ~~hearing~~ [public meeting](#). [This exclusion shall relate to the appearance at the public meeting only.](#)
- (3) any expert witness who is retained or employed by an employer, principal or client to provide only scientific, technical or other specialized information provided in ~~agenda materials or testimony only in a meeting open to the public~~ ~~hearings~~, so long as the expert identifies the employer, principal or client at the ~~hearing~~ [public meeting](#).
- (4) any person who lobbies only in his or her individual capacity for the purpose of self-representation and without compensation.
- (5) any employee, contract employee, or independent contractor of the Palm Beach County League of Cities, Inc., lobbying on behalf of that entity.
- (6) [any employee of a principal whose normal scope of employment does not include lobbying activities.](#)
- (7) [An attorney or law firm representing a client in a judicial proceeding or in a formal administrative proceeding in which the county or municipality, as applicable, is a party, including any related depositions, discovery proceedings, mediation, settlement negotiations or other legal proceedings.](#)

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term also includes contract personnel and contract administrators performing a government function, and chief executive officer who is not part of the local governing body.

The term “official” shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Vendor means any person or entity who has a pending bid proposal, an offer or request to sell goods or services, sell or lease real or personal property, or who currently sells goods or services, or sells or leases real or personal property, to the county or municipality involved in the subject contract or transaction as applicable. For the purposes of this definition a vendor entity includes ~~an owner, director, manager or~~ any private sector management employee.

NEW DEFINITIONS

Governmental Procurement Employee means a public officer or employee having the final authority to commit the expenditure of public funds in excess of \$1,000 through a contract for, or the purchase of, any goods, services, or the interest in real property for the county or any of the municipalities, as applicable.

Governmental Management Employee means...

_____ with respect to the county or any of the municipalities, any employee of the county or any municipality who is a county commissioner, a member of a local municipal governing body, a mayor or chief executive officer, a manager reporting directly to any of the foregoing, or a department head, and who makes a written recommendation or participates in the final decision, approval, disapproval, or recommendation to the county commission or local municipal governing body, as applicable;

Private Sector Management Employee means...

_____ with respect to a Vendor or a principal or employer of a lobbyist, any owner, officer, director, and any manager with responsibility for (i) the Vendor’s contracts with the county or the municipality, as applicable, or (ii) overseeing the employer’s various relationships with the county or the municipality, as applicable.

Sec. 2-444. Gift Law

(a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100.00) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

- (2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies the county or a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an official or employee of that county or municipality. For the purposes of this subsection 2-444(a)(2), the term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the county or a municipality.
- (d) For purposes of this section, a principal or employer of a lobbyist shall include any ~~officer, partner or director of the principal entity, or any employee of a principal who is not an officer, partner or director~~private sector management employee, provided that the employee knows or should know with the exercise of reasonable care that the principal employs a lobbyist.
- (F)(2) All other officials and employees who are not reporting individuals under state law.
- a. *Personal Gifts.* All officials and employees who are not reporting individuals under state law are not required to report gifts in excess of one hundred dollars (\$100.00) so long as those gifts are given to the official or employee by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the official or employee in the performance of his or her official duties. Factors to be considered on determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the official or employee obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a ~~vendor, lobbyist or a principal or employer of a~~ lobbyist that lobbies the county or municipality as applicable, then the official or employee shall not accept a gift in excess of \$100 in accordance with subsections (a)(1) and (b)(1).