



January 18, 2012

**Department of Planning,
Zoning & Building**

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West Palm Beach, FL 33411-2741
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Zoning Division 233-5200
Building Division 233-5100
Code Enforcement 233-5500
Contractors Certification 233-5525
Administration Office 233-5005
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Board of County
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Mr. Wesley Blackman, AICP, Chairman, and
Members of the Land Development Regulation Advisory Board (LDRAB)
241 Columbia Drive
Lake Worth, FL 33460

RE: January 25, 2012 LDRAB/LDRC and Annual Organizational Meeting

Dear Mr. Blackman & Board Members:

Attached please find the agenda and supporting materials to assist you in preparing for the LDRAB/LDRC meeting on Wednesday, January 25, 2012. The LDRC portion of the meeting will be to address Internet Café Moratorium Ordinance.

The meeting will commence at **2:00 p.m.** in the Vista Center 1st Floor Kenneth S. Rogers Hearing Room (VC-1W-47), located at 2300 North Jog Road, West Palm Beach, Florida.

If you should have any questions or require additional information, please contact me at (561) 233-5206 or via email at WCross@pbcgov.org, or Monica Cantor, Senior Site Planner at (561) 233-5205 or via email at MCantor@pbcgov.org.

Sincerely,

William Cross, AICP
Principal Site Planner, Zoning Division

Attachments: January 25, 2012 LDRAB/LDRC Agenda and Supporting Materials

- c: Verdenia C. Baker, Deputy County Administrator
- Barbara Alterman, Esq., Executive Director, PZB
- Lenny Berger, Assistant County Attorney
- Bob Banks, Assistant County Attorney
- Jon MacGillis, ASLA, Zoning Director
- Maryann Kwok, Chief Planner, Zoning
- Monica Cantor, Senior Site Planner, Zoning
- Bryan Davis, Principal Planner, Planning
- John Rupertus, Senior Planner, Planning

PALM BEACH COUNTY

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)

JANUARY 25, 2012

BOARD MEMBERS

Wesley Blackman, AICP, Chair (PBC Planning Congress)

David Carpenter, RLA, Vice Chair (District 2)

Raymond Puzzitiello (Gold Coast Build. Assoc.)

Joanne Davis (District 1)

Vacant (League of Cities)

Barbara Katz (District 3)

Terrence N. Bailey (Florida Engineering Society)

Jim Knight (District 4)

Jose Jaramillo (A.I.A.)

Lori Vinikoor (District 5)

Rosa Durando (Environmental Organization)

Mike Zimmerman (District 6)

Michael Cantwell (PBC Board of Realtors)

Martin Klein, Esq. (District 7)

Gary Rayman (Fl. Surveying and Mapping Society)

Vacant (Member at Large/Alternate)

Maurice Jacobson (Condominium Association)

Vacant (Member at Large/Alternate)

Vacant (Association Gen. Cont. of America)

Board of County Commissioners

Shelley Vana
Chair, District 3

Steven L. Abrams
Vice Chair, District 4

Karen T. Marcus
Commissioner, District 1

Paulette Burdick
Commissioner, District 2

Burt Aaronson
Commissioner, District 5

Jess R. Santamaria
Commissioner, District 6

Priscilla A. Taylor
Commissioner, District 7

Robert Weisman
County Administrator



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**LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
WEDNESDAY, JANUARY 25, 2012 AGENDA
2300 NORTH JOG ROAD
1ST FLOOR KENNETH S. ROGERS HEARING ROOM (VC-1W-47), 2:00 P.M.**

A. CALL TO ORDER/CONVENE AS LDRAB

1. Roll Call
2. Additions, Substitutions and Deletions
3. Motion to Adopt Agenda
4. Adoption of November 16, 2011 Minutes (Exhibit A)

B. ANNUAL ORGANIZATION DISCUSSION

1. Meeting Procedures
 - a. Robert's Rules of Order (Attachment 1)
 - b. Review of Sunshine Law (Attachment 2)
 - c. Palm Beach County Code of Ethics – Guide for Elected Officials and Advisory Board Members (Attachment 3)
 - d. Palm Beach County Code of Ethics, Effective June 1, 2011 (Attachment 4)
 - e. LDRAB Rules of Procedure (Attachment 5)
2. 2011 Attendance (Attachment 6)
3. 2012 Board Members (Attachment 7)
4. 2012 Meeting Schedule (Attachment 8)
5. 2012 Work Plan
 - a. Deadlines/Scheduling for Proposed 2012 Amendments (Attachment 9)
 - b. Summary of Amendments Round 2012-01 (Attachment 10)
 - c. Subcommittees (Attachment 11)
6. Code Revision Webpage General Information (Attachment 12)

C. ULDC AMENDMENTS

1. Exhibit B – Internet Café Moratorium
2. Exhibit C - Waivers

D. CONVENE AS LDRAB

1. Proof of Publication
2. Consistency Determinations – See Exhibit B listed above.

E. RECONVENE AS LDRAB

F. PUBLIC COMMENTS

G. STAFF COMMENTS

1. Public Request Procedures for ULDC Amendments

H. ADJOURN

EXHIBIT A

**PALM BEACH COUNTY
LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
LAND DEVELOPMENT REGULATION COMMISSION (LDRC)**

Minutes of November 16, 2011 Meeting

On Wednesday, October 26, 2011 the Palm Beach County Land Development Regulation Advisory Board (LDRAB), met in the First Floor Conference Room (VC-1W-47), at 2300 North Jog Road, West Palm Beach, Florida.

A. CALL TO ORDER/CONVENE AS LDRAB

1. Roll Call

Chair Wes Blackman called the meeting to order at 2:00 p.m. Zona Case, Code Revision Zoning Technician, called the roll.

Members Present: 12

Wesley Blackman (PBC Planning Congress)
David Carpenter (District 2)
Joanne Davis (District 1) ***
Barbara Katz (District 3)
Jim Knight (District 4) *
Lori Vinikoor (District 5)
Michael Zimmerman (District 6)
Martin Klein (District 7)
Terrence Bailey (Florida Eng. Society)
Gary Rayman (Fl. Soc. of Prof. Land Surv.)
Raymond Puzzitiello (Gold Coast Build. Assoc.)
Rosa Durando (Environmental Organization) **

Members Absent: 3

Michael Cantwell (PBC Board of Realtors)
Jose Jaramillo (AIA)
Maurice Jacobson (Condominium Assoc.)

Vacancies: 4

Vacant (League of Cities)
Vacant (Assoc. Gnrl. Contractors. of America)
Vacant (Member At Large, Alt.)
Vacant (Member At Large, Alt.)

County Staff Present:

Leonard Berger, Assistant County Attorney
Jon MacGillis, Zoning Director
William Cross, Principal Site Planner, Zoning
Monica Cantor, Senior Site Planner, Zoning
Bryan Davis, Principal Planner, Planning
John Rupertus, Senior Planner, Planning
Timothy Sanford, Site Planner I, Zoning
Zona Case, Zoning Technician, Zoning
Bonnie Finneran, Director of Resources Protection Division, ERM
Robert Kraus, Senior Site Planner, ERM
John Reiser, Supervisor for the Wellfield Protection Program, ERM

2. Additions, Substitutions, and Deletions

Staff advised the chair that a copy of amendments to the agenda had been prepared. Motion to incorporate Additions, Substitutions, and Deletions to agenda by Martin Klein, seconded by Raymond Puzzitiello. The motion passed unanimously (9-0)

* Jim Knight arrives at 2:03 p.m.

3. Motion to Adopt Agenda

Motion to adopt the agenda as amended, by Martin Klein, seconded by Raymond Puzzitiello. The motion passed unanimously (10-0*).

4. Adoption of October 26, 2011 Minutes (Exhibit A)

Motion to adopt as amended by Martin Klein, seconded The motion passed unanimously (10-0*).

** Rosa Durando arrives at 2:05.

B. ULDC AMENDMENTS

1. Exhibit B: Article 2, Variance Standards

Exhibit B regarding variance standards was withdrawn from the agenda as presented in the amendment to the agenda.

2. Exhibit C: Public Notice

Mr. Cross started off by stating that the amendment addressed minor adjustments to the Public Notice Requirements. The BCC directed staff to research a better method of notifying the public due to complaints of County residents not being informed of Public Hearings. Mr. Cross stated that larger signs would now be required and that the notification boundary for Development Orders located in the Rural or Exurban Tiers

EXHIBIT A

PALM BEACH COUNTY LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) LAND DEVELOPMENT REGULATION COMMISSION (LDRC)

Minutes of November 16, 2011 Meeting

subject to Public Hearings would be increased to 1,000 ft for regular mail. Mr. MacGillis reiterated the direction given by the BCC and stated that the new signage will be twice the size as the old signage and will help increase public awareness of Public Hearings.

Motion to adopt by Martin Klein, seconded by Raymond Puzzitiello. The motion passed unanimously (11 - 0* **).

3. Exhibit D: Criteria for Rezoning

Mr. Cross clarified that Criteria for Rezoning was discussed last meeting where Christopher Roog of Gold Coast Builders gave a presentation requesting that certain rezoning requirements be encouraged not mandatory. Mr. Cross stated that a big obstacle to rezoning was the platting or re-platting requirement. Mr. Puzzitiello asked if Zoning could add language on line 24, page 11 to include "encouraged, but not required." Mr. MacGillis responded that adding that language would not be a problem.

Motion to adopt as amended by Martin Klein, seconded by Raymond Puzzitiello. The motion passed unanimously (11 - 0* **)

4. Exhibit E: Produce Stand

Ms. Cantor stated the proposed language within Exhibit E only pertained to the Urban/Suburban (U/S) Tier. She said that the formation of the Produce Stand Subcommittee was to address issues within the U/S Tier as a response to BCC direction. In addition, she stated that the subcommittee members were not in support of presenting this amendment at this time as it was better to have together the amendments for Produce Stand applicable to all Tiers. Ms. Cantor explained that a major challenge was addressing how to allow retail sales without making the use commercially oriented. Ms. Cantor stated that the language for the Agricultural Reserve Tier in the Plan is very restrictive as it clarifies where and how commercial uses are allowed.

Mr. Knight opposed moving forward because he felt the Produce Stand Subcommittee worked very hard and spent a great deal of time generating ideas that could be extremely beneficial to Palm Beach County. He further explained that he saw no reason to rush this amendment through and felt many issues should be bundled together as opposed to dealing with Produce Stand amendments piecemeal. He felt there was confusion in the Subcommittee about the different tiers as it relates to Produce Stands and expressed it was worthwhile to wait to get direction from the BCC.

Mr. Klein inquired why staff wants to move forward despite objections from the subcommittee. Mr. MacGillis explained that the intent of the subcommittee was to address Produce Stands strictly in the U/S Tier and that the topic was expanded upon during the subcommittee. He explained that Zoning needed to move forward based off of the directive of the BCC. Mr. Klein believed the best solution was to wait to the January 17th BCC Planning Hearing for direction when the workshop item to address Agricultural Reserve Tier issues gets discussed. Ms. Katz stated there is not urgency in addressing this topic now especially when the Agricultural Reserve Tier is going to be discussed. He thought the subcommittee and LDRAB's suggestions should be relayed to the BCC.

Motion to table to a meeting subsequent to the January 17th BCC Planning Hearing workshop or by BCC Zoning Hearing decision by Martin Klein, seconded by Terrence Bailey. Mr. MacGillis clarified that he will explain LDRAB recommendation at the BCC meeting on December 1 for Round of Amendments 2011-02. Mr. Blackman clarified that if the BCC takes action approving this topic as it is, LDRAB is not going to see it again unless directed otherwise by BCC. The motion passed unanimously (11 - 0* **)

5. Exhibit F: Wellfield Protection Program

Mr. Kraus explained that this Exhibit was based off of the BCC direction that remove the wellfield protection program from an Ad Valorem funded program to a participating Water Utility Cost Share Program and the language proposed is to make that conversion. This topic was presented to the League of Cities at the October 26, 2011 meeting with no comments.

ATTACHMENT 1

Robert's Rules of Order Summary

Pursuant to Art. 2.G.2.E.2, Robert's Rules of Order all meetings and board proceedings conducted by the Palm Beach County Zoning Division must be governed by Robert's Rules of Order. Robert's Rules of Order were created by Major Henry Robert in 1867 as a set of principles that guide and enforce order during formal assemblies and gatherings. These rules emulated parliamentary procedures applied by the US Congress, which in turn were based on the British Parliamentary Law. According to Robert's Rules of Order, parliamentary procedure is based on the consideration of the rights of the majority, the rights of the minority (especially a large minority greater than one-third), the rights of individual members, the rights of absentee members, and the rights of all of these groups taken together.

To view the revised Robert's Rules of Order please refer to the following website:
www.bartleby.com/176/72.htm.

Working in the Sunshine

*A Guide to the
Government in the
Sunshine Amendment
and the Code of Ethics*

**Palm Beach County
Board of County
Commissioners**



WORKING IN THE SUNSHINE

A Guide to the Sunshine Amendment and the Code of Ethics



Prepared by Palm Beach County Attorney's Office
Leonard Berger, Senior Assistant County Attorney

October 2007

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I. INTRODUCTION

This guide provides an overview of Florida's Government in the Sunshine regulations for Palm Beach County officials and employees. If you are an employee of Palm Beach County or a government official, whether elected or appointed to any County office or board, including any advisory body, then you are governed by these regulations: the Public Records Law, the Sunshine Law, and the Code of Ethics. While Florida's Government in the Sunshine regulations do not affect your every waking moment, chances are you will look to one or more of these laws for critical direction at various points in your public career. This guide also provides an overview of the federal honest services law.

Reading this guide will not make you an expert in the field, but it will give you a general understanding of the principles that drive these laws and the ability to recognize issues that need to be addressed *before* making a decision. You may wish to read the language of these laws for a complete understanding of what is required, and to be sure that anything contained in this guide has not been superseded by a more recent amendment.

Whenever in doubt about how these laws may apply to you, please contact the County Attorney's Office at (561) 355-2225. It is always best to identify and deal with a potential problem as early as possible, before it becomes a crisis.

II. CODE OF ETHICS

The public demands that its government operate ethically. As County officials and employees, you are held to a higher standard than your private sector counterparts. In order to meet this standard, you must be aware of any real or potential conflicts of interest that might arise between your public duties and your private pursuits. The Code of Ethics is not intended to

prevent you from participating in community activities or private economic pursuits available to the general public; it is intended only to ensure that public officials and employees carry out their duties fully, faithfully and ethically.

A good first step in avoiding a Code of Ethics violation, a potential violation, or even the appearance of one, is to ask yourself the following: How would an outside observer view this situation? Would it appear to the observer that you used your public position for your private benefit or the benefit of a relative or friend? Would it appear that you or your relative or friend received some sort of benefit or preferential treatment from the County as a result of your position? If the answer is yes, or even maybe, you should take steps to avoid a possible violation. If you are in doubt, the best approach for employees may be to disclose the situation to your supervisor so that, if necessary, the decision can be made for you by others. Whether you are a County official or employee, the County Attorney's Office is always available to answer questions about how to interpret a particular provision of the Code of Ethics, or how it may apply to you in a particular situation.¹

The following sections will take a closer look at the key provisions of the Code of Ethics.

A. PROHIBITED CONFLICTS OF INTEREST

Florida's Code of Ethics includes laws that prohibit public officials and employees from engaging in certain activities that create a conflict between one's public duties and private interests. These rules present absolute prohibitions that cannot be avoided by simply abstaining from a vote. Described briefly, County officials and employees acting as purchasing agents cannot in their private capacity do business with the

¹ Any County official or employee may request an advisory opinion of the state's Commission on Ethics. The Commission's duties include providing such opinions and recommending penalties to disciplinary officials for violations of the Code of Ethics. Many of the examples used to illustrate these rules are taken directly from published opinions of the Commission.

County. This prohibition extends to a spouse or child of the official or purchasing agent, and includes a business in which any of these individuals are officers or part owners.² County officials and employees are further prohibited from holding an employment or contractual relationship with any entity doing business with or being regulated by his or her agency, or having such a relationship that would create a frequently recurring conflict between public duties and private interests.³

Q & A

I do a lot of volunteer work for my local neighborhood association. Do I have a contractual relationship with them?

Whether you have a "contractual or employment relationship" with an entity doing business with or being regulated by your agency is generally a question of whether you receive some sort of compensation as a result of the relationship. Serving as a voluntary director of a nonprofit organization does not, for example, constitute a contractual relationship,⁴ nor does a marital relationship.⁵ On the other hand, you would have a contractual relationship with an entity as its paid corporate officer or a holder of its stock.⁶

These conflict of interest rules keep referring to my agency. What exactly does "agency" mean?

The Commission on Ethics has described an employee's "agency" as the "lowest departmental unit within which his influence might reasonably be considered to extend."⁷ This means that a County employee or official would not necessarily be precluded from doing business privately with every division

² §112.313(3), Florida Statutes.

³ §112.313(7)(a), Florida Statutes.

⁴ Commission on Ethics Opinion 89-33.

⁵ Commission on Ethics Opinion 90-77.

⁶ Commission on Ethics Opinion 86-36.

⁷ Commission on Ethics Opinion 93-31.

and subdivision of County government. The critical question in determining whether a prohibited conflict exists is whether the employee or official plays any conceivable role in the County's decision to do business with his or her private enterprise. Commission on Ethics Opinions on the subject are fact specific and do not always describe a clear boundary between prohibited and acceptable conduct. The best practice when confronted with a possible conflict under these rules is to contact the County Attorney's Office for an opinion.

These rules also prohibit me from working for a company that is regulated by the County. How can I avoid this conflict? If I am employed by a private company, isn't it bound to be regulated by the County in some way?

The Commission on Ethics interprets the term "regulate" narrowly, looking to the function of the regulation rather than the mere fact of it. An employee, for example, would not be prohibited from working for a pool cleaning service on weekends simply because the company holds an occupational license from the County. This sort of regulation involves a ministerial process from which the employee could not derive improper benefit by virtue of his or her public employment.⁸ On the other hand, a Code Enforcement Board member could not represent a person in a case before that board.

Can a person who serves on a board appear before that board on his or her own behalf?

The Code of Ethics does not prohibit a board member from appearing before his or her own board in the regulatory arena. Thus, a Board of Adjustment member could appear before the board to request a zoning variance on his or her own property, and a Code Enforcement Board member may appear before the board if his or her property is the subject of a code enforcement violation. Constitutional Due Process rights

ensure an individual's right to appear under such circumstances. Moreover, the rule in question simply prohibits a public officer from having a *contractual relationship* with an entity being regulated by his or her board.

MORE PROHIBITED CONFLICTS OF INTEREST

The remaining prohibited conflicts of interest can be described as "common sense" prohibitions. First, public officials and employees cannot accept anything of value when the official or employee knows, or should know under the circumstances, that it was given in order to influence some official act or decision. Public officials and employees cannot disclose or use information not available to the public obtained by reason of their position for private benefit. And finally, public officials and employees cannot corruptly use their position for private benefit.⁹

Q & A

How can I misuse government information? Isn't it all available to the public?

While Florida's open government laws require access to almost all government records, many government officials and employees have regular access to information not generally known to the public which could be used to their private advantage. For example, an employee with access to certain confidential information could violate this provision by using this information in his or her private capacity as a private investigator. A deputy clerk of the court who is also a real estate agent could violate this provision because of immediate access to information regarding property sales, foreclosure proceedings, probate proceedings, and matters in litigation. This provision could also be violated if an employee of a public agency forms a consulting firm offering a training program

⁸ Commission on Ethics Opinion 91-28.

⁹ See §112.313(2), -(4), -(6) and -(8), Florida Statutes.

based on the program the employee produced for the public agency.¹⁰

The law forbids me from accepting a gift when I “should know” that the gift was given to influence me. How am I supposed to know when a gift is given to me in order to influence me?

According to the Supreme Court of Florida, proof that a gift was given to a public official who might be in a position to help the donor one day is not enough by itself to establish a violation. Courts will look to the specific conduct of the official or employee and all of the surrounding circumstances to determine whether that person, with the exercise of reasonable care, should have known that a gift was given in exchange for some sort of improper benefit.¹¹ While there is no bright line test to guide your conduct in this area, courts explain that this law fairly describes a “zone of danger into which a public official or employee may not safely enter.” To avoid finding yourself in this “zone of danger,” it is wise to consider carefully who is giving you a gift and the possible reasons for the donor’s generosity. Would you feel comfortable explaining to your constituents, your supervisor, or the media that the gift in question was in no way related to your official duties? If you have any doubts about the propriety of accepting the gift, chances are that others will believe you have misused your public position.

B. EXCEPTIONS TO CONFLICTS OF INTEREST

In the years since these conflict rules were introduced, the Legislature has seen fit from time to time to adopt certain exemptions. The following is a partial list of the exemptions most commonly encountered.¹² You will not run afoul of the

prohibitions against doing business with your agency or having conflicting employment relationships if:

- 1) the business is rotated among all qualified suppliers of the product in the county;
- 2) the business is awarded by sealed, competitive bid and the official, his spouse, or child has not attempted to persuade County employees or officials to enter into the contract AND the official or employee files a statement with the County Supervisor of Elections disclosing his or her interest and the nature of the business AND this statement is filed before the bid is submitted;
- 3) the purchase is in response to an emergency and must be made to protect the health, safety and welfare;
- 4) the purchase is from a sole source in the county and the official or employee fully discloses his or her interest to the governing body;
- 5) the aggregate of such transactions does not exceed \$500 per calendar year;
- 6) public officials or employees in a private capacity purchase goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency; or
- 7) public officials or employees in a private capacity purchase goods or services from a business entity subject to the regulation of his or her agency where the price and terms of the transaction are available to similarly situated members of the general public and the official or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

¹⁰ See Commission on Ethics Opinions 83-46 and 79-8.

¹¹ See *Commission on Ethics v. Barker*, 677 So.2d 254 (Fla. 1996); *Goin v. Commission on Ethics*, 658 So.2d 1131 (Fla. 1st DCA 1995).

¹² See §112.313(12), Florida Statutes, for the complete list.

8) In addition, conflicts of advisory board members may be waived in a particular instance by a two-thirds vote of the appointing body, or the appointing individual if applicable, following full disclosure of the nature of the transaction.

C. VOTING CONFLICT, APPEARANCE OF VOTING CONFLICT, AND DISCLOSURE OF PERSONAL INTEREST OR RELATIONSHIP

When called upon to vote on a matter, a public official may be confronted with one of three possible scenarios: (1) a voting conflict, which requires the official to abstain from voting and publicly declare the conflict; (2) an appearance of voting conflict, in which the official may choose to abstain and publicly declare the apparent conflict; (3) a personal interest or relationship in the matter which does not amount to a voting conflict or an appearance of one, but still calls for public disclosure of the relationship or interest. All three scenarios will be addressed in turn.

1. VOTING CONFLICT

In cases where a relationship or interest does not amount to a prohibited conflict by one of the circumstances described above, officials may still be required to publicly declare certain conflicts and abstain from voting. This law applies when a vote would result in a special private gain or loss to the official, any principal that retains the official, any subsidiary or parent organization of a principal that retains the official, or the official's relative or business associate.¹³ For the purposes of this law, a relative is defined as a parent, spouse, child, sibling, or in-law.¹⁴ The term "special private gain or loss" in almost all

circumstances refers to a direct financial interest.¹⁵ Suppose, for example, that you serve on a code enforcement board which is hearing a case concerning excessive noise in a particular neighborhood. Your son works for a company causing the noise, and a decision by your board to eliminate the noise would cost your son his job. This scenario does not describe the sort of prohibited business or contractual relationship discussed above, yet it is easy to see how your decision in this case could be improperly influenced by your son's position with the company.

Q & A

What does "special private gain" mean? Can I vote on a matter that would improve my entire neighborhood?

In determining whether a voting conflict exists, the Commission on Ethics looks to the size of the class of individuals relative to the official's opportunity for gain that would result from the vote. There was no voting conflict where, for example, a planning commissioner voted on a comprehensive plan amendment affecting 29,000 acres, merely because the commissioner's principal leased 300 of those acres.¹⁶ On the other hand, a planning commissioner would be prohibited from voting on a comprehensive plan amendment affecting 32,000 acres where the commissioner, his relatives, and business associates own 1,200 acres.¹⁷

Please explain what being "retained by a principal" means.

Whether you are "retained" by a principal for the purposes of voting conflicts is usually a function of whether you are receiving some sort of compensation from this principal. If,

¹⁵ See, e.g., *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170, 1173 n. 8 (Fla. 3d DCA 1984); *George v. City of Cocoa*, 78 F.3d 494 (11th Cir. 1996) ("A 'special private gain' described by the voting conflicts statute almost always (if not always) refers to a financial interest of the public official that is directly enhanced by the vote in question.")

¹⁶ Commission on Ethics Opinion 87-18.

¹⁷ Commission on Ethics Opinion 95-4.

¹³ §112.3143(3)(a), Florida Statutes.

¹⁴ §112.3143(1)(b), Florida Statutes.

for example, you are providing legal, engineering or other professional services for a client, or if you are a paid director of a corporation, you are “retained” under this law.¹⁸ You would not, on the other hand, be retained by your church simply because you are a member,¹⁹ or by a nonprofit corporation which you serve as an uncompensated director.²⁰ Finally, there is no voting conflict if you are retained by another public agency.²¹

What do I do if I have a voting conflict?

In the event of a voting conflict, a public official must abstain from voting, declare publicly the nature of his or her interest in the matter before the vote occurs, and within fifteen days of the vote, file a memorandum of voting conflict with the person responsible for recording the minutes of the meeting to be incorporated into the minutes.²² Elected officials are nevertheless allowed to participate in a matter prior to abstaining. Appointed officials, on the other hand, may not participate in matters that give rise to a voting conflict. Appointed officials must provide a copy of their memorandum of voting conflict to the other board members, and read the memorandum at the next public meeting after it has been filed. The term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at his or her direction.²³

2. APPEARANCE OF VOTING CONFLICT

There may be circumstances where a vote does not directly result in a special private gain or loss, but does create

¹⁸ Commission on Ethics Opinions 84-11 and 84-107.

¹⁹ Commission on Ethics Opinion 90-24.

²⁰ Commission on Ethics Opinion 84-50.

²¹ See, e.g., Commission on Ethics Opinions 91-20, 88-20 and 86-86.

²² The memorandum of voting conflict is known as Form 8B and is available from the County Attorney’s Office or may be printed directly from the Commission on Ethics Web site at <http://www.ethics.state.fl.us/>.

²³ §112.3143(4)(c), Florida Statutes.

the appearance of one. In this case, section 286.012, Florida Statutes, allows a public official to declare the apparent conflict and abstain from voting. But while this law allows the official to abstain, it also imposes an affirmative duty on the part of officials to vote on all matters unless “there is or appears to be a possible conflict of interest” under Florida’s Code of Ethics.²⁴ This law discourages use of the abstention to avoid a politically unpopular vote or otherwise manipulate the outcome of a particular vote. In determining what constitutes a possible conflict of interest under this statute, the Attorney General has explained that a public official must have a personal financial interest in a matter in order to abstain from voting.²⁵ The Commission on Ethics has similarly explained that a city council member may not abstain on a matter involving the member’s personal foe, explaining that the Code of Ethics is primarily concerned with a public official’s economic interests.²⁶

Q & A

Is there no better definition in the law of what constitutes a possible conflict of interest?

There is a fine line between a possible conflict where a public official may abstain, and an absence of conflict where the public official must vote. Of the few opinions that give guidance on the subject, the timing of an official act in relation to some private transaction plays an important role. In one case where no actual conflict existed at the time of a vote, the Commission on Ethics explained that a recent transaction connected to the matter gave rise to the appearance of a conflict. In that case, a city commissioner entered into a partnership to purchase a parcel of land which was ultimately sold to a third party. A few months later, the third party approached the city regarding a possible voluntary annexation. The Ethics

²⁴ §286.012, Florida Statutes.

²⁵ Attorney General Opinion 87-17.

²⁶ Commission on Ethics Opinion 79-14.

Commission noted that the commissioner had no ongoing relationship with the third party and expected none in the future. While no actual voting conflict existed under these facts, the Commission on Ethics noted that the commissioner could elect to abstain based on an appearance of voting conflict.²⁷ The scarcity of opinions on the subject suggests that abstention for a possible conflict is rarely used. When there is clearly no actual voting conflict, the best practice in most cases is simply to vote and disclose the nature of the personal interest or relationship that raised the concern.

3. DISCLOSURE OF A PERSONAL INTEREST OR RELATIONSHIP

Even when required by state law to cast a vote, a public official can ensure maximum transparency in government decision-making by disclosing certain relationships and interests related to the matter. For example, voting on a matter that would benefit a grandparent, longtime friend, former employer, former business associate, or favorite charity, may not amount to a voting conflict under state law. But by fully disclosing the nature of these facts and relationships before the vote, the public official eliminates the possibility of any secret motive, and can better demonstrate that the vote was made for the public good, not for private gain. This serves not only the primary intent of Florida's Code of Ethics, but also the dictates of the federal "honest services" law.

D. THE INTANGIBLE RIGHT TO HONEST SERVICES

Federal law prohibits engaging in fraudulent activity that would deprive another of the intangible right of honest services.²⁸ While not part of the state's Code of Ethics, this law certainly impacts local government officials and employees. Typical examples of activities prosecuted under this law include

bribery or failure to disclose a conflict of interest that results in personal gain.²⁹ Federal courts have not uniformly interpreted the reach of this law. The Fifth and Fourth Circuits have tied a deprivation of honest services to a violation of state law.³⁰ The First Circuit, on the other hand, has explained that while the defendant in one case violated a state law, such a violation is not necessary to find a conviction under the federal law.³¹ The Eleventh Circuit, the federal court that hears cases in Florida, has also ruled that proof of violation of state law is not necessary for a conviction under the federal law.³²

The Eleventh Circuit's interpretation of this law suggests a broader reach than some other circuits, but public officials in Florida convicted under this law uniformly misused their public office for personal gain which, in one fashion or another, could have amounted to violations of Florida's Code of Ethics. In *United States v. Hasner*, for example, the chairman of the Housing Finance Authority concealed commissions paid to him in connection with a real estate transaction where the property was to be developed with bonds issued by the Housing Finance Authority.³³ In *Lomelo v. United States*, the mayor of the City of Sunrise took part in a scheme in which public dollars were funneled to individuals for services that were never performed.³⁴ *Castro v. United States* was one of several trial court cases emanating from the so-called "Operation Court Broom" in which judges were convicted of appointing attorneys as special public defenders in exchange for kickbacks.³⁵ Finally, in *United States v. Lopez-Lukis*, a Lee County Commissioner took bribes from a lobbyist in exchange for votes and participated with the lobbyist in a blackmail campaign

²⁹ *United States v. Woodard*, 459 F.3d 1078 (11th Cir. 2006).

³⁰ *United States v. Brumley*, 116 F.3d 728 (5th Cir. 1997).

³¹ *United States v. Sawyer*, 85 F.3d 713 (1st Cir. 1996).

³² *United States v. Hasner*, 340 F.3d 1261 (11th Cir. 2003).

³³ *Hasner*, 340 F.3d at 1265-1266.

³⁴ 891 F.2d 1512, 1514 (11th Cir. 1990).

³⁵ 248 F.Supp.2d 1170 (S.D. Fla. 2003).

²⁷ Commission on Ethics Opinion 87-96.

²⁸ 18 U.S.C. §1346.

against a county commission candidate to maintain a balance on the Commission that was favorable to the lobbyist.³⁶ By any standard imaginable, the public officials in each of these cases clearly stepped over the line.

In describing its understanding of the federal law, the Eleventh Circuit may not specifically adopt standards established by Florida's Code of Ethics, but it certainly remains consistent with it. The very first sentence of Florida's Code of Ethics provides: "It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain"³⁷ As for the Eleventh Circuit's reading of the federal law:

When a government officer decides how to proceed in an official endeavor—as when a legislator decides how to vote on an issue—his constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes his decision based on his own personal interests—as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest—the official has defrauded the public of his honest services.³⁸

Both laws serve the same end, and the federal court decisions thus far have hardly been shocking given the actions of the public officials at issue. But the Eleventh Circuit has made it clear that its understanding of the federal law will not be limited to duties imposed by state law. As such, it is not possible to simply resort to the body of opinions regarding Florida's Code of Ethics to determine how the federal law might apply. While not foolproof, full disclosure of the nature

³⁶ 102 F.3d 1164 (11th Cir. 1997).

³⁷ §112.311(1), Florida Statutes.

³⁸ *Lopez-Lukis*, 102 F.3d at 1169.

of personal interests and relationships related to a vote, even when there is no conflict under state law, best addresses the issue. Properly done, the nature of this disclosure should demonstrate that the decision is based on the best interests of the public and not secretly made to serve a private interest. Better still, this practice will further enhance transparency in local government decision-making.

E. FINANCIAL DISCLOSURE AND THE GIFT LAW

These rules require certain County officials and employees to regularly report their financial interests and receipt of certain gifts. The Gift Law also sets forth a number of prohibitions and rules regarding gift valuation for reporting purposes.³⁹

Applicability

The following employees and officials are subject to the state's financial disclosure requirements and the requirements of the Gift Law:

- 1) All persons elected to office or appointed to fill an elective office, including any person who has qualified for elective office or who has been elected but has yet to assume responsibilities of the office.
- 2) All persons appointed to boards having the power to enforce local codes.
- 3) All persons appointed to local zoning or planning boards, including boards of adjustment or appeal boards, except those boards having only advisory functions.
- 4) All persons serving on a pension or retirement board having the power to invest pension or retirement funds, or the power to make a binding determination of

³⁹ See §§112.3145 and 112.3148, Florida Statutes, for a complete list of covered officials, rules and prohibitions.

one's entitlement to or amount of a pension or other retirement benefit.

5) All persons appointed to any other board who are required to file a financial disclosure by the appointing authority, or by state or local law or regulation.

6) The County Administrator, County Attorney, County Building Official, water resource coordinators, environmental control director, fire chief, any administrator with the authority to grant or deny land development permits, and purchasing agents with authority to make purchases exceeding \$15,000 in value.

If you are subject to the financial disclosure requirements, you should receive a financial disclosure form by mail no later than June 1. These forms are also available from the Palm Beach County Supervisor of Elections Office and online from the State Commission on Ethics Web site at <http://www.ethics.state.fl.us>.

What to file, when to file, where to file it

If you are covered by these rules you must file the financial disclosure form by July 1 of each year. You are also required to file this form no later than 30 days after taking the position. Elected officials file their form with the Commission on Ethics; others file with the Palm Beach County Supervisor of Elections Office. If you fail to timely submit the completed financial disclosure form, you will receive a delinquency notice. If you fail to respond to this delinquency notice, you will be subject to civil penalties. This disclosure form requires you to report your non-public sources of income and certain types of financial interests including certain types of real property holdings, ownership interests in certain types of businesses such as banks and utility companies, and certain financial liabilities you may have. If, after reading the form, you realize that you have nothing to disclose, mark "not applicable" on the form and file it anyway.

You are also required to file a final financial disclosure statement within 60 days of leaving your public position for the period between January 1 of the year in which you leave office and the last day of service. You are not required to file this final financial disclosure form if during this period you assume another public position that requires financial disclosure.

Those required to file a financial disclosure form are also subject to quarterly gift reporting requirements. You must file a quarterly gift report with the Commission on Ethics for any calendar quarter in which you receive a gift worth over \$100. The disclosure form is due no later than the last day of the following calendar quarter. For example, if the gift is received in March, it must be disclosed no later than June 30. This disclosure form requires a description of the gift, its value, the name and address of the donor, and the date received. You do not have to report gifts from relatives.⁴⁰ Like the financial disclosure form, this form is also available at the Commission on Ethics Web site. Unlike the financial disclosure form, you do not have to file the quarterly gift reporting form if you have nothing to report.

Gift definition and valuation

The gift reporting rules seem simple enough but, as the following section will reveal, a "gift" is not always a gift, and its value may not always be what it is worth. The law describes a "gift" as anything accepted by you or by another on your behalf including but not limited to real or personal property or its limited use; forgiveness of a debt; preferential terms on a debt, loan or other service; food or beverage; tickets to events, or membership dues. A "gift" does not include your salary or fees or gifts associated primarily with your employment; any award or plaque given in recognition of your civic, charitable or professional service; transportation provided to you by a public agency in relation to officially approved governmental business,

⁴⁰ See §112.3148(8)(a)1, Florida Statutes.

or the use of a public facility made available to you for a public purpose.

Q & A

How do I calculate the value of a gift?

Determining the value of a gift is not as simple as checking its price tag. The following rules address the more common questions of valuation:⁴¹

- 1) The value of a gift is determined using the actual cost to the donor, less taxes and gratuities. With respect to personal services provided, the reasonable and customary charge regularly charged for such service in your community shall be the value for reporting purposes.
- 2) Membership dues paid to the same organization during any twelve-month period shall be considered a single gift.
- 3) The value of entrance fees, admission fees, or tickets shall be the face value of the ticket or fee.
- 4) Transportation is valued on a round-trip basis and considered a single gift, unless only one-way transportation is provided. Transportation provided by private carrier is valued based on the same transportation provided by comparable commercial carrier. Lodging provided on consecutive days is considered a single gift.
- 5) The value of the gift is reduced by any compensation provided by you to the donor. This compensation must be given to the donor within ninety days of your receiving the gift. For example, a \$110 gift given to you may be valued at \$90 and therefore not subject to quarterly reporting if, within ninety days of

receiving the gift, you paid \$20 to the donor in exchange for it.

Prohibitions

The Gift Law prohibits you from receiving gifts from a lobbyist or the lobbyist's principal if the value of the gift exceeds \$100.⁴² According to the Gift Law, a lobbyist is one who, for compensation, seeks or sought during the preceding twelve months to influence some measure of governmental decision-making. Those who lobby Palm Beach County are required by local ordinance to register. A complete listing of registered lobbyists is maintained by the County and available online for your review at: <http://www.pbcgov.com/legislativeaffairs/lobbying.htm>. In order to avoid violating this prohibition, it is important to know first, whether you have a gift at all and second, whether the gift's value exceeds the \$100 limit.

F. RESTRICTION ON EMPLOYMENT OF RELATIVES

This law prohibits County officials and employees from seeking to appoint, employ, promote, or advance a relative in the agency in which the official or employee serves, or over which the official or employee exercises jurisdiction or control. For the purpose of this law, the term "relative" is quite broad. It is defined as one related to the official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

According to this law, the term "jurisdiction and control" does not include mere approval of budgets. Nor would

⁴¹ See §112.3148(7), Florida Statutes.

⁴² See §112.3148(4), Florida Statutes.

approval of across the board salary increases constitute a violation of this law.⁴³

G. PENALTIES

Penalties for violating the Code of Ethics include removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any financial benefit received as a result of the violation.⁴⁴ Any contracts entered into by the County in violation of the Code of Ethics are voidable as well. Violations of the federal honest services law carry the possibility of substantial fines, forfeiture of any gains received in violation of the law, and a prison sentence of up to twenty years.

III. PALM BEACH COUNTY POST-EMPLOYMENT ETHICS ORDINANCE

This local ordinance prevents certain employees from representing other parties in matters in which the County has an interest for at least six months following cessation of their employment with the County. Level-two employees, *i.e.*, assistant county administrators, assistant county attorneys, department heads, assistant department heads, division heads, auditors within the internal audit department, and deputy fire chiefs, must refrain from such representation for an additional six months in matters in which the employee participated substantially. Level-one employees, *i.e.*, county administrator, county attorney, internal auditor, fire rescue administrator, county engineer, deputy county administrator, chief deputy county attorney, deputy county engineer and director of planning, zoning and building, must refrain from such

⁴³ Commission on Ethics Opinion 90-62.

⁴⁴ See §112.317, Florida Statutes.

representation for an additional twelve months in matters in which the employee participated substantially.⁴⁵

This ordinance does not prevent former employees from representing themselves before a County board or department in personal matters. Nor does this ordinance prevent a former employee from contracting with the County to provide goods or services.

IV. SUNSHINE LAW

The principal aim of the Sunshine Law is to prevent government from conducting business behind closed doors. The law requires all meetings of any board or agency at which official acts are to be taken to be public. Since its adoption, the law has been broadly applied to cover each step of the decision-making process which leads to a board's official act. All advisory bodies that recommend action to the ultimate decision-making body must therefore meet "in the sunshine." In fact, any group, whether formally assembled or ad hoc in nature, must adhere to the Sunshine Law if it has been delegated any measure of decision-making authority. Complying with the requirements of the Sunshine Law is really rather simple and will be covered in a later section. The more difficult issues concern whether the Sunshine Law applies at all.

A. WHEN DOES THE SUNSHINE LAW APPLY?

According to Florida Statutes, all meetings of any agency or authority of the County at which official acts are to be taken are declared to be public meetings open to the public at all times.⁴⁶ The term "official acts" does not simply refer to the final vote of a board. Rather, this term describes every step in the decision-making process which leads to a board's final act. As such, a board cannot evade the law by meeting in private to resolve an issue only to summarily affirm its decision in a

⁴⁵ Palm Beach County Ordinance 88-30.

⁴⁶ See §286.011, Florida Statutes (1995).

subsequent public meeting.⁴⁷ Nor does the law allow two or more board members to privately discuss matters which may foreseeably come before their board.⁴⁸ This prohibition extends to all forms of electronic communication as well. Moreover, an individual who has been delegated the authority to act on behalf of an agency may be an "agency" for the purposes of the Sunshine Law.⁴⁹ In sum, any entity that has been delegated some measure of decision-making authority is covered by the Sunshine Law.

The critical factor in determining whether a board or committee is covered by the Sunshine Law is whether it functions as a decision-making body. For example, a staff committee formed to screen and recommend applicants for the position of dean at a state university was subject to the Sunshine Law. Even though applicants rejected by the committee nevertheless could be considered for hire, and the committee's recommendations overall could be disregarded, a court reasoned that the law applied because of the committee's involvement in the decision-making process.⁵⁰ In contrast, a group formed only for the purpose of fact finding in order to help the decision-making authority come to its own conclusion was not a committee covered by the Sunshine Law.⁵¹

It should be clear from the examples above that if you are appointed by the Board of County Commissioners to serve on an advisory board, your board is most certainly subject to the Sunshine Law. It should also be clear that there is no staff exception to the Sunshine Law. Employees for the most part only carry out the policies of the governing body and are not, therefore, covered by the Sunshine Law. But there are some limited situations where employees are called upon to engage in

decision-making on behalf of the governing body. In these circumstances, the Sunshine Law applies to employees as well.

B. WHAT IS REQUIRED TO COMPLY WITH THE SUNSHINE LAW?

The law requires reasonable notice of a meeting in order to make it a "public" meeting.⁵² Whether notice is reasonable depends on the board and the facts surrounding the required board action.⁵³ "Reasonable notice" can best be described as notice that, in light of the surrounding circumstances, is sufficient to inform and enable interested persons to attend the meeting. Public meetings must also be held at facilities that are reasonably accessible to the public.⁵⁴ The Sunshine Law prohibits government from conducting meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access.⁵⁵

In addition, the Sunshine Law requires minutes of public meetings to be promptly recorded and made available for public inspection.⁵⁶ Minutes must be in written form and need only contain a brief summary of the meeting.⁵⁷ There is no requirement to tape record public meetings, but if done, these recordings become public records and must be available for public inspection.⁵⁸

C. PENALTIES FOR VIOLATING THE SUNSHINE LAW

Any member of a board or committee subject to the Sunshine Law who knowingly violates its provisions is guilty of

⁵² *Yarbrough v. Young*, 462 So.2d 515 (Fla. 1st DCA 1985).

⁵³ *See, e.g., News and Sun-Sentinel Company v. Cox*, 702 F.Supp. 891 (S.D. Fla. 1988).

⁵⁴ *See, e.g., Attorney General Opinion 76-141.*

⁵⁵ *See* §286.011(6), Florida Statutes (1995).

⁵⁶ *See* §286.011, Florida Statutes (1995).

⁵⁷ *Attorney General Opinion 82-47.*

⁵⁸ *See* §119.01, Florida Statutes (1995); *Attorney General Opinion 86-21.*

⁴⁷ *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

⁴⁸ *Rowe v. Pinellas Sports Authority*, 461 So.2d 72 (Fla. 1984).

⁴⁹ *Krause v. Reno*, 366 So.2d 1244 (Fla. 3d DCA 1979).

⁵⁰ *Wood v. Marston*, 442 So.2d 934 (Fla. 1983).

⁵¹ *Cape Publications v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985).

a second degree misdemeanor, punishable by a prison term of up to sixty days, a fine of up to \$500, or both.⁵⁹ Furthermore, any elected or appointed official convicted of a misdemeanor may be removed from office by executive order of the Governor.⁶⁰ The statute provides in addition that any violation of the Sunshine Law is a noncriminal infraction punishable by a fine of up to \$500. Finally, reasonable attorneys' fees may be assessed against a board that violates the Sunshine Law.

Q & A

What happens to actions taken in violation of the Sunshine Law?

The Sunshine Law specifically provides that "no resolution, rule, or formal action shall be considered binding except as taken or made at an open meeting."⁶¹ Courts have accordingly nullified actions taken by a board in violation of the Sunshine Law. A zoning ordinance, for example, was declared invalid because it was adopted based in part upon the recommendations of a citizens' planning committee which met in private.⁶² In another instance, the court rendered void a contract to purchase property because the agency failed to give proper notice of a meeting.⁶³ A Sunshine Law violation can be cured with respect to the official action provided that the matter is given full consideration at a later public meeting.⁶⁴

Does the reasonable notice/reasonable access requirement include the right of the public to speak at a public meeting?

The statute does not address the public's right to speak at a public meeting. Courts have suggested, however, that the right to "participate" in public meetings does not include the

⁵⁹ See §286.011(3)(b), Florida Statutes (1995).

⁶⁰ See §112.52, Florida Statutes (1995).

⁶¹ See §286.011, Florida Statutes (1995).

⁶² *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

⁶³ *TSI Southeast, Inc. v. Royals*, 588 So.2d 309 (Fla. 1st DCA 1991).

⁶⁴ See *Tolar v. School Board of Liberty County*, 398 So.2d 427 (Fla. 1981).

right to speak to each item.⁶⁵ There also exists ample authority to support a government's right to reasonably restrict the public's right to speak during public meetings.⁶⁶

Does the reasonable notice requirement include the requirement to prepare an agenda?

There is no requirement that an agenda be published as part of the reasonable notice requirement.⁶⁷ Moreover, in the event one is published, there is no requirement that the board adhere in lock step to the agenda as drafted.⁶⁸

V. PUBLIC RECORDS LAW

Along with the Sunshine Law, the Public Records Law forwards the principle of open government by ensuring public access to nearly all government records. This law is applied broadly by the courts to accomplish its intended effect. And while there exist hundreds of exceptions to the law, each is drafted narrowly by the Legislature and construed by the courts in like fashion. Nearly all documents concerning County business are more likely than not public records which must be made available for public inspection and copying upon request.

A. PUBLIC RECORDS DEFINED

State law defines "public records" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of any

⁶⁵ See *Law and Information Services v. City of Riviera Beach*, 670 So.2d 1014 (Fla. 4th DCA 1996) (citing *Wood v. Marston*, 442 So.2d 934 (Fla. 1983)).

⁶⁶ See, e.g., *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989).

⁶⁷ See *Law and Information Services v. City of Riviera Beach*, 670 So.2d 1014 (Fla. 4th DCA 1996).

⁶⁸ *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973).

agency.⁶⁹ The Supreme Court of Florida added to this definition that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁷⁰ As such, public records include not only those final or "official" government documents intended for public review, but also include drafts and interdepartmental memoranda which gave rise to the final document.

Carefully considering the terms used by the court in describing a public record—"perpetuate," "communicate" and "formalize"—should help you understand what is and what is not a public record. Was the document created in order to communicate an idea to another? Was it created in order to perpetuate or prolong the existence of an idea? Was it created in order to formalize an idea, to give it shape or definition? Consider the following common examples in light of these questions.

Public record—is it or isn't it?

Interoffice or intra-office memoranda which communicate information from one employee to another are likely public records. Drafts of official documents circulated among employees for comment are also public records, even if the information contained in them does not later become part of a formal public document. On the other hand, uncirculated rough drafts or notes intended only for your personal use, or dictation notes or tapes, would not be public records.⁷¹ Your appointment calendar, to the extent it includes your official duties, is a public record, as are travel itineraries and plane reservations related to your official duties.⁷² Tape recordings of

advisory board meetings are public records.⁷³ E-mail sent or received in connection with official business is a public record. Resumes, salaries and performance evaluations are all public records as well.⁷⁴

Q & A

Is my entire personnel file a public record?

Most personnel records are subject to the Public Records Law. The Supreme Court of Florida has explained that all records related to an employee's qualifications for the job or performance on the job are public records.⁷⁵ As noted above, records including your resume, salary and performance evaluations are public records. Any letter of reprimand or censure for failing to do your job properly is also a public record.⁷⁶ The Legislature has, however, enacted a number of exemptions to the law in order to strike a balance between the public's right to access government records and an employee's right to privacy. Social Security numbers of all current and former County employees are exempt.⁷⁷ Any medical information in your file which, if disclosed, would reveal your identity is exempt.⁷⁸ Examination questions and answer sheets of examinations administered by the County for employment purposes are also exempt.⁷⁹ Names and addresses of certain employees, such as code enforcement officers and firefighters, are exempt as well.⁸⁰

⁷³ Attorney General Opinion 86-21.

⁷⁴ See, e.g., *Byron, Harless*, 379 So.2d at 639-640.

⁷⁵ See *Michel v. Douglas*, 464 So.2d 545 (Fla. 1985).

⁷⁶ *News-Press Publishing Co. v. Wisher*, 345 So.2d 646 (Fla. 1977).

⁷⁷ §119.071(4)(a)1, Florida Statutes.

⁷⁸ §112.08(7) and §119.071(4)(b), Florida Statutes.

⁷⁹ §119.071(1)(a), Florida Statutes.

⁸⁰ §119.071(4)(d)1 and 5, Florida Statutes.

⁶⁹ §119.011(1), Florida Statutes.

⁷⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633 (Fla. 1980).

⁷¹ See, e.g., *Byron, Harless*, 379 So.2d 633; *State v. Kokal*, 562 So.2d 324 (Fla. 1990).

⁷² Attorney General Opinion 72-356.

Is written correspondence with the County Attorney's Office protected by the attorney-client privilege?

No. The Public Records Law provides a limited work product exemption, but it is not nearly as broad as the attorney-client privilege enjoyed by the private sector. The exemption is limited to documents prepared by or at the direction of the agency attorney exclusively for ongoing or imminent litigation which reflect the attorney's legal theory or litigation strategy. These documents lose exemption status at the close of the litigation.⁸¹ Florida Statutes provide certain additional exemptions for documents regarding insurance claims negotiations and claims filed with Risk Management.⁸²

How does the Public Records Law apply when the County does business with the private sector?

The Public Records Law balances the public's demand for open government with the private sector's need to maintain some level of confidentiality in the competitive marketplace. Sealed bids or proposals solicited by the County, for example, are exempt from disclosure until the County makes a selection, or within ten days after the bid or proposal opening, whichever comes sooner.⁸³ Trade secrets, under certain circumstances, are also exempt.⁸⁴ Private businesses, however, acting on behalf of the County may be subject to the Public Records Law.⁸⁵ Whether a company doing business with the County is acting "on behalf of" the County, however, is not an easily answered question. Courts view the issue on a case by case basis analyzing, for example, whether the business through its contract with the County performs a governmental function or

⁸¹ §119.071(1)(d)1, Florida Statutes; *State v. Coca Cola Bottling Co.*, 582 So.2d 1 (Fla. 4th DCA 1990).

⁸² §624.311(2) and §768.28(16), Florida Statutes.

⁸³ §119.071(1)(b), Florida Statutes.

⁸⁴ See §119.071(1)(f), Florida Statutes, which exempts computer processing software obtained by the County under a licensing agreement.

⁸⁵ See §119.011(2), Florida Statutes, including as part of the definition for "agency" businesses acting on behalf of a government agency.

whether the business plays an integral role in the County's decision-making.⁸⁶ Simply put, a government cannot evade the Public Records Law by entrusting its documents to private entities with which it does business.⁸⁷

B. WHAT IS REQUIRED TO COMPLY WITH THE PUBLIC RECORDS LAW?

The law requires that all public records remain available for examination and inspection at any reasonable time and under reasonable conditions. In responding to a request, you should take only the amount of time necessary to retrieve the record and review it to see if any exemptions to the law apply. The law also provides that copies of public records must be furnished upon request and payment of a fee.⁸⁸ Generally, the fee for copying a public record cannot exceed the actual cost of copying. The County may impose a special service charge if the nature or volume of records requested requires extensive clerical or supervisory assistance.⁸⁹ The County's policy regarding reproduction of public records, including fee assessment, is currently found in PPM CW-F-002.

Q & A

What exactly do "reasonable times" and "reasonable conditions" mean?

Despite the fact that laws often use the term "reasonable" to govern our conduct, the word can mean different things to different people. To help understand what the law considers reasonable, it is best to review what is considered *unreasonable*. Government cannot, for example, impose an automatic delay before a requested record is

⁸⁶ See, e.g., *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group*, 596 So.2d 1029 (Fla. 1992).

⁸⁷ See, e.g., *L.E. Harold v. Orange County*, 668 So.2d 1010 (Fla. 5th DCA 1996); *Wisner v. City of Tampa*, 601 So.2d 296 (Fla. 2d DCA 1992); *Times Publishing Co. v. City of St. Petersburg*, 558 So.2d 487 (Fla. 2d DCA 1990).

⁸⁸ §119.07(1)(a) and (4), Florida Statutes.

⁸⁹ §119.071(4)(d), Florida Statutes.

disclosed.⁹⁰ Nor can a government establish a fixed time period during which records may be inspected.⁹¹ Courts have determined that it is unreasonable to require a person to give some reason for reviewing a public record.⁹² It has also been found unreasonable to require a person to give his or her name or address, or to require that the request be made in writing.⁹³ Courts have also disapproved of a government's refusal to honor a public records request because it was overbroad.⁹⁴ If presented with a request that is too broad or vague to identify the records sought, you must notify the requesting party that you require more information in order to produce the document. In sum, this "reasonableness" standard has been construed to prevent a government from adopting policies that hinder the public's broad right of access to public records.

How will I know if a document is exempt under the law?

There are literally hundreds of exemptions to the Public Records Law scattered throughout all five volumes of the Florida Statutes, so chances are pretty good that you will not know whether an exemption applies. While these exemptions number in the hundreds, they are extremely narrow in scope, so chances are also pretty good that an exemption will not apply to the document being requested. Please contact the County Attorney's Office *before* you decide to refuse a public records request because of an exemption.

⁹⁰ *Tribune Company v. Cannella*, 458 So.2d 1075 (Fla. 1984).

⁹¹ See Attorney General Opinions 92-9; 75-70, and Attorney General Informal Opinion Letter to Christina Riotte, May 21, 1990.

⁹² *News-Press Publishing Co., Inc. v. Gadd*, 388 So.2d 276 (Fla. 2d DCA 1980).

⁹³ See, e.g., *Bevan v. Wanicka*, 505 So.2d 1116 (Fla. 2d DCA 1987); Attorney General Opinions 91-76 and 92-38.

⁹⁴ *Lorei v. Smith*, 464 So.2d 1330 (Fla. 2d DCA 1985).

What if a public document contains some information that is exempt?

Consult the County Attorney's Office first to determine whether the portion of the record in question is exempt. If an exemption applies, you are required to provide only that portion or portions of the document that is not exempt.⁹⁵ To do so, you may employ any method, such as masking the exempt information, as long as you do not destroy the exempted portion.⁹⁶

What if the record requested does not exist?

The Public Records Law requires that the public be allowed access to public documents. It does not, however, require you to create a new report to accommodate a request. Under this law, a person may examine the County's records regarding its road improvement expenditures, for example, but you do not need to honor a request to examine a report of those expenditures by Commission District if such a report does not exist.

What if I cannot answer questions about what the record means?

The Public Records Law requires access, not explanations. A finance officer would be required to produce the County's finance records for public inspection, but is not required by the Public Records Law to explain or answer questions regarding those finance records.⁹⁷

C. PENALTIES

Those who knowingly violate the Public Records Law are guilty of a first degree misdemeanor, punishable by a fine of up to \$1,000, a prison term of up to one year, or both. Elected officials are in addition subject to suspension and removal from office or impeachment.

⁹⁵ §119.071(1)(b), Florida Statutes.

⁹⁶ Attorney General Opinion 84-81.

⁹⁷ Attorney General Opinion 92-38.



**Palm Beach County
Board of County Commissioners**

Jeff Koons,, Chairman
Burt Aaronson, Vice Chairman
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Prepared by the County Attorney's Office
Reprint March 2008

Palm Beach County Code of Ethics Guide for Elected Officials and Advisory Board Members 2011 Edition

I. PROHIBITED CONDUCT

As elected public officials or appointees to quasi-judicial or advisory boards, you must carry out your duties fully, faithfully and ethically. Using your position for private benefit is a breach of the public trust. In addition to preventing the use of one's public office to obtain a special financial benefit, the code of ethics fosters transparency of relationships and transactions for those within government as well as those who do business with government.

The jurisdiction of the Commission on Ethics extends to county government, all municipalities within Palm Beach County, and all political subdivisions who have adopted the code of ethics by agreement.

A. Misuse of public employment

You cannot use your position in any way when you know or should know with the exercise of reasonable care that it would result in a *special* FINANCIAL BENEFIT to:

1. You;
2. A household member, spouse or domestic partner or their outside business or employer;
3. Your relatives or their outside business or employer;
4. An outside employer or business of yours or your spouse or domestic partner or someone who you know works for that business;
5. A customer or client of your outside employer or business;
6. Someone who owes you, or who you owe, at least \$10,000, NOT including a loan you might have with a financial institution;
7. A non-profit organization where you or your spouse serve as an officer or director.

If you know, or should know that your official actions will financially benefit you or any of the above persons, organizations or businesses that are connected to you differently than others in the same situation, such an action would constitute a misuse of your public office or employment. If the official action in question *is a vote you would cast as a member of your board*, you can avoid this Code violation by disclosing the nature of the conflict and abstaining as explained in paragraph C below.

What does FINANCIAL BENEFIT mean?

Anything of value that can be obtained through the exercise of your position that is *not shared* with similarly situated members of the general public. Similarly situated means that everyone affected by a decision benefits in the same way.

Example: In the course of her normal duties, a municipal clerk who accepts a fee from her brother does nothing wrong so long as the fee is no different from the fee charged to a stranger for the same public service.

What does REASONABLE CARE mean?

That degree of care, which a person of ordinary prudence would exercise in the same or similar circumstances.

B. Corrupt misuse of official position

You cannot use your official position, property or resource within your trust, to CORRUPTLY secure a special benefit, privilege or exemption for *any* person.

What does CORRUPTLY mean?

An official act taken with wrongful intent *and* for the purpose of receiving *any* benefit, not just financial benefit, which is inconsistent with the proper performance of your public duties.

Example: you may not wrongfully use your public position to threaten a member of the public or a business owner, even if you would not financially benefit from making that threat.

C. Disclosure of Voting Conflicts

You must abstain from voting on and not participate in any matter before your board, council or commission that will result in a *special* FINANCIAL BENEFIT to you or those persons or entities described in the misuse of official position section. In order to comply with the code, you will need to comply with the following procedure:

1. Publicly disclose the nature of the conflict before your board discusses the issue; and
2. Abstain when the vote takes place and do not personally participate in the matter; and
3. File a state voting conflict form (8B) with the clerk of your board, council or commission as required by state law and provide a copy to the Palm Beach County Commission on Ethics. (Form 8B is available on our website at www.palmbeachcountyethics.com)

D. Contractual Relationships

Sections A, B and C regulate the way you perform your duties as an Official. This section controls contracts you might have in your private capacity that could conflict with your public duties. The general rule is that you cannot enter into any contract or other transaction with the public entity you serve (municipal, county, or taxing district). This includes any contract or transaction between the government you serve and *you, your outside employer, or any business you may own* (minimum 5 percent of the business' assets). This section does not include;

- Any purchase of goods or services from your municipality/county available to the general public.

An **outside employer** includes any business that employs you for compensation and is not another government agency.

An **outside business** includes any business located in the county or which does business with or is regulated by your government employer where you own at least 5% of the business.

E. Exceptions to the contractual relationships prohibition

There are seven (7) additional exceptions to the contractual relationships provision.

1. Your outside employer is another government or government agency.
2. If you are an advisory board member, and your board does not regulate, oversee, manage or provide policy recommendations regarding the contract, the prohibition does not apply, but you are required to disclose the nature of the contract and your interest in it. Contact the staff person in charge of your board for details on how to properly disclose.
3. If you are a member of a board that is purely advisory, and your board provides regulation, oversight, management, or policy-setting recommendations regarding the contract, you may still serve and maintain your contract but you must apply for a waiver. Waivers are available for purely advisory board members only; elected officials cannot apply for a waiver.
 - Your board must be purely advisory; that means it does not make decisions.
 - You must publicly disclose your interest in the contract.
 - You must request a waiver from your local governing body and it must be approved by a majority plus one of its members.¹
 - If you are a member of a decision-making board, and your board provides regulation, oversight, management, or policy setting recommendations

¹ If you are appointed to an advisory board by an individual rather than a commission or council, a waiver is still available; apply for a waiver from the person who appointed you. The waiver must take place at a public hearing after full disclosure of your interest in the contract.

regarding the contract, no waiver is permitted and you may not serve on that advisory board or commission.

4. The contract is awarded under a system of sealed competitive bidding to the lowest bidder, and you, your relatives or member of your household; do not work in the department that will enforce, oversee or administer the contract, have not used or attempted to use any influence to obtain the contract and you file a statement with the Supervisor of Elections and the Commission on Ethics prior to submitting the bid disclosing your interest.
5. An emergency purchase or contract in order to protect the health, safety, or welfare of the public.
6. Your outside employer or business is the only source of supply in your municipality/ county and you fully disclose your interest to your public employer and the Commission on Ethics prior to the transaction.
7. The total amount of the transaction is not, in total, more than \$500 per calendar year.

F. Travel Expenses

Unless waived by your governing body, as an elected official or advisory board member, you cannot accept payment or reimbursement of any travel expenses from any contractor, vendor, service provider, bidder or proposer doing business with your public employer.

1. Travel expenses include, but are not limited to, transportation, lodging, meals, registration fees and incidentals.
2. This prohibition does not extend to expenses reimbursed or paid directly by your government.
3. This prohibition does not extend to expenses reimbursed or paid by other governmental entities or by organizations of which your government is a member if your travel is related to that membership.
 - Example: The National Association of Counties or the League of Cities.
4. Your governing body may waive this prohibition at a public meeting by majority vote.

G. Contingent Fee Prohibition

No person can offer, give or accept a contingency fee which is dependent on the passage, defeat or other decision by an elected body, an employee authorized to act on behalf of the elected body, or an advisory board or committee. This does not apply to real estate brokers, attorneys representing clients in judicial proceedings or formal administrative hearings, and salespeople who are paid by commission as part of a compensation package which is ordinary and customary within the industry.

Contingency Fee: a fee, bonus, commission or non-monetary benefit as compensation dependant on an action or decision taken.

H. Honestly in Applications for Positions

No person applying for employment, appointment to an advisory board or seeking a contract with the county or a municipal government may make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with that employment or application.

I. Disclosure or Use of Certain Information

As an elected official or advisory board member, you cannot disclose or use information gained through your position, but not available to members of the public, for personal gain or benefit, or the personal gain or benefit of others.

II. GIFT LAW DEFINITIONS

A. Gift – Anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, or goods that you do not pay for. Food and beverage consumed at a single setting or a meal are considered a single gift. State statute and the Florida Administrative Code are used to establish the value of certain gifts.

B. Vendor – A person or entity that sells goods or services, sells or leases real or personal property, or has a pending bid to sell or lease to your municipality/county government.

C. Lobbying – To seek to influence a decision of government through oral or written communication or an attempt to obtain the good will of an employee or official of that government.

D. Lobbyist – Someone who is paid to lobby on behalf of a principal. A lobbyist can be an outside contractor or an employee whose principal responsibility is lobbying government on behalf of their employer.

E. Know or should know – If you know you have accepted a gift valued at more than \$100 from a vendor, lobbyist, principal or employer of a lobbyist doing business or lobbying your government (advisory board or department under your board's authority), you may have violated the code of ethics. Similarly, if you have reason to believe that the person giving you a gift valued at more than \$100 is a vendor or a lobbyist, principal or employer of a lobbyist, you have an obligation to check before accepting the gift.

1. Lobbyists are required to register with Palm Beach County and to identify their employers. You can access county lobbyist information at:
http://www.pbcgov.org/plrapplication/asp/PLRSearchPublicView_New.aspx
2. Palm Beach County has a vendor database. You can access county vendor information at: <http://pbcgov.com/registeredvendors/>.

3. Your municipality may or may not have a list of lobbyists or vendors accessible to you. Currently, the Commission on Ethics is working to establish municipal lobbyist and vendor databases.

III. GIFT LAW PROHIBITIONS

- A. You cannot ask for or accept a gift of *any value* in return for, or because of, the way you perform your duties as an elected official or advisory board member. This includes thank you gifts or tips for an official public action or legal duty performed, withheld or violated.
- B. As an elected official, you cannot solicit gifts of any value from someone you know is a vendor, lobbyist, or principal or employer of a lobbyist doing business with your government if the gift is for your financial benefit, the benefit of your relative or household member or another public official or employee. (For advisory board members, this prohibition extends *only* to those doing business with, or lobbying, your board or the county or municipal department under your board's authority.)
- C. Over the course of the calendar year, you cannot accept or ask for gifts worth more than \$100 in the aggregate from a person *who you know or should know with the exercise of reasonable care*, is a vendor, lobbyist, or any principal or employer of a lobbyist who sells or leases real or personal property, provides goods or services or lobbies the government you serve. (For advisory board members, this prohibition extends *only* to those doing business with, or lobbying, your board or the county or municipal department under your board's authority.)
- D. Over the course of the calendar year, a vendor, lobbyist, principal or employer of a lobbyist may not give gifts worth more than \$100 to a person he or she knows is an elected official or advisory board member of the county or municipality doing business with the vendor or being lobbied. (For advisory board members, this prohibition extends *only* to those doing business with, or lobbying, your board or the county or municipal department under your board's authority.) The definition of vendor extends to any person or entity that, due to the nature of their business, may respond to a published invitation to bid or other procurement opportunities.

E. Gift Law Reporting

1. *Elected officials and advisory board members who are reporting individuals under state law.* You will continue to file quarterly reports with the state, and send a copy of that report to the Palm Beach County Commission on Ethics. You do not have to fill out an additional annual report.
2. *All other advisory board members:* If you receive any non exempt gift worth more than \$100 (single gift, not aggregate), you must file an annual gift disclosure report with the Palm Beach County Commission on Ethics no later than November 1st for the period

ending September 30th of each year. If you do not receive a gift worth more than \$100 you do not have to file an annual gift disclosure report (keep in mind that you may not accept a gift greater than \$100 from a vendor, lobbyist, principal or employer of a lobbyist doing business with your board or department). The gift form is available on our website at www.palmbeachcountyethics.com and requires the following information:

- a. Date received; and
 - b. Description of gift; and
 - c. Value of gift; and
 - d. Name and address of the person giving the gift.
3. The following are exceptions to the *county* gift law reporting requirements (you do not have to report these gifts).
- a. Political contributions specifically authorized by state or federal law;
 - b. Gifts from relatives or members of one's household;
 - c. Personal gifts over \$100 so long as the gift is *NOT from a vendor, lobbyist, or principal or employer of a lobbyist* and the circumstances demonstrate that the gift was motivated by a personal or social relationship, not an attempt to influence the performance of your official duties.;
 - d. Awards for professional or civic achievement ;
 - e. Materials such as books, reports, periodicals, or pamphlets which are solely informational or of an advertising nature;
 - f. Gifts solicited by public officials on behalf of their government for a public purpose;
 - g. Inheritance or other devise; or
 - h. Registration fees and other costs associated with educational or governmental conferences as long as your attendance is for a government purpose and is related to your duties and responsibilities as an employee.
4. The following gifts *must be reported* but may be accepted according to the following provisions:
- a. You may accept a ticket, pass or admission to public events, appearances or ceremonies that are related to county or municipal business from a non-profit sponsor that does not employ lobbyists. If the value exceeds \$100, you may only accept the ticket, pass or admission from a representative who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist who transacts business with or lobbies your public employer.
 - b. You may accept a ticket, pass or admission from a sponsor organization if tickets are part of the sponsor organizations contract with the county or municipality.

Again, you may only accept the ticket from a representative who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist who transacts business with or lobbies your public employer.

- c. You may accept expenditures made and value received in connection with events sponsored by non-profit organizations that receive public funds for attracting business or tourism to the county or your municipality, so long as that organization does not employ a lobbyist. You must be invited by a representative of the organization and that representative may not be a vendor, lobbyist or principal or employer of a lobbyist who transacts business with or lobbies your public employer.

F. Solicitations of Contributions on Behalf of a Non-Profit Charitable Organization

While you may never solicit a gift for an organization in exchange for the performance of your official duties as an elected official or advisory board member, you may solicit funds on behalf of non-profit organizations (charities) from anyone so long as they do not have a pending application or award of any nature before your government. You may not use county or municipal staff or resources to solicit contributions. Any solicitation must be disclosed on a form available at the Palm Beach County Commission website at www.palmbeachcountyethics.com and must contain the following information:

1. Name of the non-profit organization; and
2. The name of any person or entity that was contacted; and
3. The amount of funds solicited or pledged if known.

This form must be filed within 30 days after the event or if it is not related to an event then within 30 days from the date of the solicitation.

IV. Nepotism

As an elected official you may not appoint, employ, promote, advance or advocate for any of these things on behalf of your relatives or your domestic partner. Moreover, if you have advocated on behalf of your relative or domestic partner, as defined within this section, they may not accept any benefit of that advocacy. The anti-nepotism provision applies to all appointments with the following exceptions:

- A. Appointments to advisory boards in municipalities with a population under 35,000, except for land-planning and zoning boards; appointment to land-planning and zoning boards are always subject to the anti-nepotism provision.
- B. Any person who volunteers to provide emergency medical, firefighting or police services.

V. NONINTERFERENCE WITH COMMISSION ON ETHICS AND INSPECTOR GENERAL

- A. Elected officials and advisory board members shall not retaliate against, punish, threaten, harass, or penalize anyone for communicating, cooperating with, or assisting the Commission on Ethics or the Inspector General.
- B. Elected officials and advisory board members shall not interfere with, obstruct or attempt to interfere with or obstruct any investigation conducted by the Commission on Ethics or the Inspector General unless they have a valid legal basis.

VI. PALM BEACH COUNTY COMMISSION ON ETHICS

A. The Commission on Ethics

The Commission on Ethics is an independent body that will interpret and enforce the Code of Ethics, provide advisory opinions to all elected officials and advisory board members upon request, and provide for an ongoing public employee training program. If you are in doubt as to the applicability or interpretation of any provision within the code of ethics in a particular context, you may submit the facts of the situation in writing to the Commission on Ethics with a request for an opinion.

B. The Commission on Ethics will hear cases involving violations of the Code of Ethics

- 1. A violation of the Code of Ethics subjects a public official or advisory board member to public reprimand, a fine of up to \$500 and restitution for any pecuniary gain by the violator or any third party received as a result of a violation of the ethics code. Any contracts, permits, or any other government approvals gained as a result of a violation may be rescinded or declared void by the appropriate Board, Counsel or Commission of your government.
- 2. The Commission on Ethics may refer willful violations of the Code of Ethics to the State Attorney to be prosecuted as a first degree misdemeanor, punishable up to one year in the Palm Beach County Jail, \$1000 fine, or both.

Provisions that may subject you to prosecution are:

- (a) Misuse of public position; and
- (b) Voting conflicts; and
- (b) Entering into prohibited contractual relationships; and
- (c) Prohibition on accepting payment for travel expenses; and
- (d) Using false information in employment applications; and
- (e) Accepting or soliciting gifts that are prohibited by the Code of Ethics; and
- (f) Interfering with investigations of the Commission on Ethics or the Inspector General

VII. Advisory Opinions

Elected officials and advisory board members may seek guidance from the Commission on Ethics as to whether a particular course of action or series of facts would violate the code of ethics. Employees may submit all pertinent facts and circumstances in writing to the Commission on Ethics, 2633 Vista Parkway, West Palm Beach, FL 33411 or by e-mail to ethics@palmbeachcountyethics.com.

VIII. Other Rules, Codes and Statutes

As an elected official or advisory board member, you are required to adhere to state statutes as well as the Palm Beach County Code of Ethics. There may be additional municipal codes that govern your behavior as an official of that municipality. In addition, you may be subject to various county, municipal and departmental policies and procedures that may be more stringent than the requirements of the county ethics code. It is your responsibility to adhere to the appropriate rules and codes adopted by your county or municipal government. In any conflict whereby a local code or policy is less stringent than the county code of ethics, you are required to obey the county code.

IX. Revisions to the Code of Ethics

The Code of Ethics may be revised periodically by a Drafting Committee as provided by the 2010 county-wide referendum. Please refer to our website, www.palmbeachcountyethics.com, for any changes or updates to this edition of the Palm Beach County Code of Ethics Guide for Elected Officials and Advisory Board Members.

ATTACHMENT 4

CODE OF ETHICS

(Effective date June 1, 2011)

Sec. 2-441. Title; statement of purpose.

This article shall be known as the Palm Beach County Code of Ethics. This code of ethics is enacted pursuant to Florida Constitution, Article VIII, Section 1(g), Florida Statutes, ch. 125, and the Charter of Palm Beach County. The Municipalities located within Palm Beach County are subject to the provisions of this Code of Ethics pursuant to referendum. The purpose of this code is to provide additional and more stringent ethics standards as authorized by Florida Statutes, §112.326. This code shall not be construed to authorize or permit any conduct or activity that is in violation of Florida Statutes, ch. 112, pt. III. This code of ethics shall be deemed additional and supplemental to any and all state and federal laws governing ethical conduct of officials and employees, as well as all local laws, rules, regulations and policies.

Officials and employees in the public service shall be conscious that public service is a public trust, shall be impartial and devoted to the best interests of the people of Palm Beach County, and shall act and conduct themselves so as not to give occasion for distrust of their impartiality.

Nothing herein shall abridge employees' constitutional right to collective bargaining.

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Domestic partner is an adult, unrelated by blood, with whom an unmarried or separated official or employee has an exclusive committed relationship and maintains a mutual residence.

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Household Member includes anyone whose primary residence is in the official or employee's home, including non-relatives who are not rent payers or employees of the head of the household.

Inspector general shall mean the office established in article XII of this chapter.

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.

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.

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.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For

purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

- (3) The term outside employer or business shall not apply to an employee who is employed by a certified bargaining agent solely to represent employees.

Palm Beach County Commission on Ethics means the commission established in §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.

Relative unless otherwise specified in this ordinance, means an individual who is related to an official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the official or employee or who otherwise holds himself or herself out as or is generally known as the person whom the official or employee intends to marry or with whom the official or employee intends to form a household, or any other natural person having the same legal residence as the official or employee.

Transaction shall refer to the purchase or sale by the county or municipality of goods or services for a consideration.

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 employee.

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
 - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;

- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
 - (5) A customer or client of the official or employee's outside employer or business;
 - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
 - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to § 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
- (e) **Exceptions and waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and
-

provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to the waiver and an affirmative vote of a majority plus one of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person. In addition, no official or employee shall be held in violation of subsection (d) if:

- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
- (2) An emergency purchase or contract which would otherwise violate a provision of subsection (d) must be made in order to protect the health, safety, or welfare of the citizens of the county or municipality as applicable.
- (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.
- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - a. The employee or relative of the employee does not work in the county or municipal department as applicable which will enforce, oversee or administer the subject contract; and
 - b. The outside employment would not interfere with or otherwise impair his or her independence of judgment or otherwise interfere with the full and faithful performance of his or her public duties to the county or municipality as applicable; and
 - c. the employee or relative of the employee has not participated in determining the subject contract requirements or awarding the contract; and
 - d. the employee's job responsibilities and job description will not require him or her to be involved in the outside employer's contract in any way including, but limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance; and

- e. the employee demonstrates compliance with applicable merit rules regarding outside employment and obtains written permission from his or her supervisor; and
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the Commission on Ethics. The document shall contain written acknowledgment of compliance with the provisions of (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment.
 - g. Official law enforcement overtime or extra duty details. The provisions of subsection (d) shall be waived for outside employment when that employment consists of a certified police agency uniformed external security or extra duty detail, contracted or administered by the police agency as applicable. For the purpose of this subsection, all records of external, extra duty or overtime security details, including supervisor approval, identity of contracting parties, and including time, date and manner of detail shall be maintained by the individual contracting policy agency, records of which shall be accessible to the public subject to state public records disclosure exemptions.
- (f) *Accepting travel expenses.* No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any county or municipal contractor, vendor, service provider, bidder or proposer as applicable. The board of county commissioners or local municipal governing body as applicable may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the county or municipality as applicable is a member if the travel is related to that membership.
- (g) *Contingent fee prohibition.* No person shall, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person shall, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: an ordinance, resolution, action or decision of the board of county commissioners or local municipal governing body as applicable, any employee authorized to act on behalf of the board of county commissioners or local municipal governing body as applicable, the county administrator or municipal administrator as applicable, or any action or decision of an advisory board or committee. This prohibition does not apply to real estate brokers when acting in the course of their profession as regulated by §§475.001-475.5018, Florida Statutes, as may be amended. Nothing in this section may be construed to prohibit any salesperson from engaging in legitimate government business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company provided such compensation or commission is ordinary and customary in the industry. Nothing in this section may be construed to prohibit an attorney

from representing a client in a judicial proceeding or formal administrative hearing pursuant to a contingent fee arrangement.

- (h) *Honesty in applications for positions.* No person seeking to become an official or employee, or seeking to enter into a contract to provide goods or services to the county or municipality as applicable, may make any false statement, submit any false document, or knowingly withhold information about wrongdoing in connection with employment by or services to the county or municipality as applicable.
- (i) *Disclosure or use of certain information.* A current or former official or employee shall not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person.

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) 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.
- (b) (1) No advisory board member, or any other person 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) in the aggregate for the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist, who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority.
- (2) No lobbyist, vendor, or principal or employer of a lobbyist who lobbies an advisory board or any county or municipal department that is subject in any way to the advisory board's authority, influence or advice, 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 a member of that advisory board. For the purposes of this subsection 2-444(b)(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.
- (c) No county commissioner, member of a local governing body, mayor or chief executive officer 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 a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. No advisory board member or

any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice, where the gift is for the personal benefit of the advisory board member, another advisory board member, or an official, or any relative or household member of the official or employee.

- (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, provided that the employee knows or should know with the exercise of reasonable care that the principal employs a lobbyist.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
 - (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.
 - (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) 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 in 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 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).
 - b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by

the county commission on ethics and shall be in a form substantially similar in content as that required by state law.

- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes and the Florida Administrative Code as may be amended.
- (1) Exceptions. The provisions of subsection (g) shall not apply to:
- a. Political contributions specifically authorized by state or federal law;
 - b. Gifts from relatives, domestic partners, and dependents named on the official's or employee's latest federal income tax return, or one's household member;
 - c. Awards for professional or civic achievement;
 - d. Materials such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
 - e. Gifts solicited or accepted by county or municipal officials or employees as applicable on behalf of the county or municipality in performance of their official duties for use solely by the county or municipality for a public purpose;
 - f. Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;
 - g. Inheritance or other devise;
 - h. Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to §2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an official or employee of the county or municipality;
 - i. A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2);
 - j. Expenditures made in connection with an event sponsored by a nonprofit organization funded in whole or in part with public funds whose primary function is to encourage and attract tourism or other business opportunities for the benefit of Palm Beach County or the municipalities as applicable, provided the sponsor organization does not employ a lobbyist, and further provided that the invitation to the event is made by a representative of the sponsor organization and the representative is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the expenditure must be disclosed in accordance with the gift law reporting requirements of subsections 2-444(f)(1) and (f)(2).

- (h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.
- (1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited. The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable.
 - (2) To promote the full and complete transparency of any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics, the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the Commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitation.
 - (3) Officials and employees may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions described in this subsection.

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official. An individual may not be appointed, employed, promoted, or advanced in or to a position in the county or a municipality if such appointment, employment, promotion, or advancement has been advocated by an official, serving in or exercising jurisdiction or control over the county or municipality as appropriate, who is a relative or domestic partner of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this section shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This section does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide. Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

- (1) For the purposes of this section, " official" means any official or employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, "relative" means spouse, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

Sec. 2-446. Ethics training.

- (a) Officials and employees, as public servants, are considered stewards of the public trust and should aspire to the highest level of integrity and character. Officials and employees shall be informed of their ethical responsibilities at the start of their public service, and shall receive updates and training materials on ethics issues throughout the span of their public service. The county administrator or municipal administrator as applicable shall establish by policy a mandatory training schedule for all officials and employees which shall include mandatory periodic follow-up sessions. This policy may also address ethics training for entities that receive county or municipal funds as applicable.
- (b) The commission on ethics shall develop and deliver, or contract with other entities to develop and deliver, training programs. The commission on ethics shall coordinate and cooperate with all affected county or municipal entities, departments, agencies, boards, councils and commissions to ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.

Sec. 2-447. Noninterference.

It shall be a violation of this article for any person: (a) to retaliate against, punish, threaten, harass, or penalize any person for communicating, cooperating with, or assisting the commission on ethics or the inspector general; or (b) to interfere, obstruct or attempt to interfere or obstruct without valid legal basis any investigation conducted by the commission on ethics or the inspector general.

Sec. 2-448. Administration, enforcement and penalties.

- (a) The commission on ethics shall be empowered to review, interpret, render advisory opinions, and enforce this code of ethics pursuant to the procedures established in the county commission on ethics ordinance. Jurisdiction of the commission on ethics with respect to advisory opinions rendered shall extend to all county and municipal officials and employees, and all other persons and entities required to comply with the provisions of this code and the county lobbyist registration ordinance, including but not limited to lobbyists, their employers and principals, and contractors and vendors.
- (b) A finding by the commission on ethics of a violation of any part of this article shall subject the person or entity to public reprimand, a fine of up to five hundred dollars (\$500), or both. The commission on ethics may also order the person or entity to pay restitution when the person or entity or a third party has received a pecuniary benefit as a result of the person's violation.
- (c) Upon a finding of the commission on ethics that a violation of this article or the lobbyist registration ordinance resulted in a contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit conferred by the county or municipality as applicable, then such contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit may be rescinded or declared void by the board of county commissioners or the local municipal governing body as applicable.
- (d) The commission on ethics may in its discretion refer willful violations of §§2-443, 2-444(a), 2-444(b), 2-444(c), 2-444(e), or 2-447 to the state attorney. Pursuant to Florida Statutes, §125.69, a person who violates the sections of the article set forth in this §2-448(d) shall be subject to prosecution in the name of the state in the same manner as first degree misdemeanors are prosecuted, and upon conviction, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed one (1) year, or both.

LAND DEVELOPMENT REGULATION ADVISORY BOARD

"Rules of Procedure"



February 23, 2011

ATTACHMENT 5

Article I Introduction

- A. The Palm Beach County Unified Land Development Code, hereinafter referred to as the ULDC, authorizes the Land Development Regulation Advisory Board and Land Development Regulation Commission, herein after referred to as the LDRAB and LDRC to Rules of Procedures for the transaction of business.
- B. The within Rules of Procedure have been adopted by the LDRAB and LDRC, and all previously adopted Bylaws or Rules of Procedure are deemed repealed.

Article II Powers and Duties

- A. The LDRAB shall have the powers and duties as outlined in ULDC Art. 2.G.3.A.2, Powers and Duties, as amended. **[2/23/2011]**

Article III Membership, Officers and Staff

- A. The LDRAB shall be composed of members as outlined in ULDC Art. 2.G.3.A.3, Board Membership, as amended. **[2/23/2011]**
- B. The Zoning Director shall serve as the Secretary and the professional staff of the LDRAB as outlined in ULDC Art. 2.G.3.A.4, Staff, as amended. **[2/23/2011]**

Article IV Meetings

- A. General meetings and special meetings of the LDRAB shall be governed as outlined in ULDC Art. 2.G.2.E, Rules of Procedure, as amended. **[2/23/2011]**
- B. A member of the LDRAB shall be permitted to participate in a general or special meeting via telephone or teleconference if the following conditions are met:
 - 1. That the quorum necessary to take action and transact business is physically present at the meeting; and

ATTACHMENT 5

2. That the LDRAB, by a majority vote of the quorum present, determines that the extraordinary circumstances justify the members' absence.

Article V Subcommittees

- A. The LDRAB may create subcommittees, which will be governed by the regulations in Art. 2.G.3.A.5.b, Subcommittees, as amended, as well as the following regulations:
 1. At a minimum, the subcommittee shall be composed of two members. Membership shall include at least one LDRAB member. Interested parties who *have the necessary expertise on the specific Code amendment* may be appointed by a majority vote of the LDRAB; **[2/23/2011]**
 2. The subcommittee shall meet as often as determined necessary by the LDRAB;
 3. The presence of at least two members of the subcommittee, one of whom must be an LDRAB member, shall constitute a quorum necessary to take action and transact business;
 4. The location of all meetings shall be in PBC, Florida and all meetings shall be open to the public;
 5. The Zoning Director shall serve as the Secretary and the professional staff of the subcommittee;
 6. The County Attorney's Office shall provide counsel and interpretation on legal issues; and
 7. The subcommittee shall submit their findings at the next scheduled LDRAB meeting.

Article VI Amendments to the Rules of Procedures

- A. The LDRAB may amend these rules at a regular meeting by a majority vote of the quorum present.
- B. The LDRAB Secretary shall maintain a copy of the "Rules of Procedures" in the Zoning Division for the Public to view.

****Original document issued on May 14, 2004; amended on February 23, 2011.***

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ATTACHMENT 6

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) 2011 ATTENDANCE MATRIX

(Updated 11/17/11)

Seat	Member	District or Organization	Term Expires	2011 Dates											
				1/26 (Canceled)	2/23	3/23	4/27	5/25	6/22 (Canceled)	7/27 (Canceled)	8/24	9/28 (Canceled)	10/26	11/16	12/14 (Canceled)
1	Joanne Davis	District 1	Feb. 5, 2013		Y	Y	N	Y			Y		Y	*N	
2	David Carpenter	District 2	Feb. 7, 2012		Y	N	N	Y			Y		Y	Y	
3	Barbara Katz	District 3	Feb. 5, 2013		Y	Y	N	Y			Y		Y	Y	
4	Jim Knight	District 4	Feb. 7, 2012		Y	Y	Y	Y			Y		Y	Y	
5	Lori Vinikoor	District 5	Feb. 5, 2013		Y	Y	Y	Y			Y		Y	Y	
6	Mike Zimmerman	District 6	Feb. 7, 2012					Vacant			Vacant		Y	Y	
7	Martin Klein	District 7	Feb. 5, 2013		Y	Y	N	Y			N		Y	Y	
8	Raymond Puzziello	Gold Coast Builders Association	Feb. 5, 2013		Y	Y	Y	Y			Y		Y	Y	
9	Vacant (9)	League of Cities	Feb. 7, 2012	Vacant	Vacant	Vacant	Vacant	Vacant			Vacant		Vacant	Vacant	
10	Terrence Bailey	Florida Eng. Society	Feb. 5, 2013		*N	Y	N	N			Y		Y	Y	
11	Jose Jaramillo	American Institute of Architects	Feb. 7, 2012		Y	Y	Y	Y			Y		N	N	
12	Rosa Durando	Environmental Org.	Feb. 5, 2013		Y	Y	Y	Y			Y		N	Y	
13	Michael Cantwell	PBC Board of Realtors	Feb. 7, 2012		Y	Y	Y	Y			Y		Y	N	
14	Gary Rayman	Florida Society Prof. Surveyors	Feb. 5, 2013		Y	Y	Y	Y			N		Y	Y	
15	Maurice Jacobson	Condominium/HOA	Feb. 7, 2012		Y	N	Y	Y			N		Y	N	
16	Vacant (16)	Assoc. General Contractors of America	Feb. 3, 2010	Vacant	Vacant	Vacant	Vacant	Vacant			Vacant		Vacant	Vacant	
17	Wes Blackman	PBC Planning Congress	Feb. 7, 2012		Y	Y	Y	Y			N		Y	Y	
18	Vacant (18)	Alternate #1	Feb. 7, 2012		Y	N	N	N			N		N	Vacant	
19	Vacant (19)	Alternate #2	Feb. 7, 2012	Vacant	Vacant	Y	Y	N			Vacant		Vacant	Vacant	
Total Attendees:					14	13	10	13			10		13	11	
Legend/Notes:															
Y	Present														
Y	Present (Participated via teleconference with quorum physically present and Board approval)														
N	Absent														
*N	Absent (Attended less than ¾ of meeting)														
	ULDC Art. 2.G.2.B.1.c, Attendance: 1) "Lack of attendance is defined as a failure to attend three consecutive meetings..." or 2) "...a failure to attend two-thirds of the meetings scheduled during the calendar year. Also "Participation for less than three-fourths of a meeting shall be the same as a failure to attend a meeting."														
	A total of 12 meetings have been scheduled for 2011. Minimum attendance – eight meetings. Therefore, members cannot miss any more than 4 meetings. *Special meetings will not be a factor in calculating total attendance.														
Seat 9	Joni Brinkman resigned March 25, 2010.														
Seat 16	The Association of General Contractors of America did not appoint a representative to this vacant seat during 2011.														
Seat 18	Robert Schulbaum resigned November 16, 2011 due to conflicts with the Code of Ethic rules and his service at the Delray Alliace.														
Seat 19	Patrick Gleason resigned August 21, 2011 due to perceived conflict with Code of Ethics, section D.														

U:\Zoning\CODEREV\2012\LDRAB\Meetings\1-25-12 Kick off\4 Final Packet\10 Attach 6 - Attendance Matrix 2011.docx

ATTACHMENT 7

JANUARY 2012 – PALM BEACH COUNTY ZONING DIVISION LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) LAND DEVELOPMENT REGULATION COMMISSION (LDRC) CURRENT MEMBER LIST

Updated: January 12, 2012

SEAT	MEMBER (OCCUPATION)	DISTRICT OR ORGANIZATION	TERM ENDS
1	Joanne Davis (Growth Management Development)	District 1 Commissioner Marcus	February 5, 2013
2	David Carpenter (Landscape Architect)	District 2 Commissioner Burdick	February 3, 2015
3	Barbara Katz (Land Use Advisor)	District 3 Commissioner Vana	February 5, 2013
4	James Knight (Builder/Developer)	District 4 Commissioner Abrams	February 3, 2015
5	Lori Vinikoor (Community Activist)	District 5 Commissioner Aaronson	February 5, 2013
6	Mike Zimmerman (Registered Consulting Arborist)	District 6 Commissioner Santamaria	February 7, 2012*
7	Martin Klein (Commercial Law)	District 7 Commissioner Taylor	February 5, 2013
8	Raymond Puzzitiello (Residential Builder)	Gold Coast Builders Association	February 5, 2013
9	Vacant	PBC League of Cities	February 7, 2012 *
10	Terrence N. Bailey (Engineer)	Florida Engineering Society	February 5, 2013
11	Jose Jaramillo (Architect)	American Institute of Architects	February 7, 2012 *
12	Rosa Durando (Environmentalist)	Environmental Organization	February 5, 2013
13	Michael Cantwell (Realtor)	The PBC Board of Realtors	February 7, 2012 *
14	Gary Rayman (Surveyor)	Florida Surveying & Mapping Society	February 5, 2013
15	Maurice Jacobson (Citizen Representative)	Condominium/HOA Association	February 7, 2012 *
16	Vacant	Associated General Contractors of America	February 3, 2010
17	C. Wesley Blackman, AICP (AICP Planner)	PBC Planning Congress	February 7, 2012 *
18	Vacant	Alternate #1	February 7, 2012 *
19	Vacant	Alternate #2	February 7, 2012 *

Notes:

* Appointment of nominees for those seats expiring on February 7, 2012 scheduled for January BCC Public Hearing.

U:\Zoning\CODEREV\2012\LDRAB\Meetings\1-25-12 Kick off\4 Final Packet\11 Attach 7 - LDRAB Members list Org - term.docx

ATTACHMENT 8

**LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
LAND DEVELOPMENT REGULATION COMMISSION (LDRC)**

2012 MEETING DATES
(Updated 12/15/11)

DATE	DAY
January 25, 2012	Wednesday (4 th)
February 22, 2012	Wednesday (4 th)
March 28, 2012	Wednesday (4 th)
April 25, 2012	Wednesday (4 th)
May 23, 2012	Wednesday (4 th)
July 25, 2012	Wednesday (4 th)
August 22, 2012	Wednesday (4 th)
October 24, 2012	Wednesday (4 th)
November 14, 2012	Wednesday (2 nd) ⁽¹⁾
January 23, 2013	Wednesday (4 th)
(1). Meeting dates rescheduled to accommodate holidays.	

Meeting location and start times are typically as follows:

Planning, Zoning and Building Department
Vista Center
2300 North Jog Road
West Palm Beach, Florida 33411
Kenneth S. Rogers Hearing Room (VC-1W-47)
Meetings typically commence at 2:00 p.m.

DISCLAIMER:

Meetings are subject to change, cancellation, or may be continued, rescheduled, relocated, or commenced at a different time as necessary. (Reasons for the change include but not limited to length of agenda, as needed to respond to Hurricanes or other similar natural disasters, etc.).



**INTER-OFFICE COMMUNICATION
DEPARTMENT OF PLANNING, ZONING AND BUILDING
ZONING DIVISION**

TO: Interested County Staff and Related Agencies

FROM: Jon MacGillis, ASLA, Zoning Director *JM*

DATE: January 17, 2012

RE: **Deadlines/Scheduling for Proposed 2012 Unified Land Development Code (ULDC) Amendments**

This memo serves to notify interested County staff and related agencies of the deadlines for submittal and scheduling for 2012 ULDC amendments. The Zoning Division is proposing to undertake two rounds of amendments for 2012. As always, it is critical that you coordinate with Zoning to meet the established schedule and deadlines if you are anticipating any amendments. The tentative schedules for both rounds are provided below:

AMENDMENT ROUND 2012-01	
ACTIVITY	DATE
Deadline to submit amendment requests.	February 3, 2012
Deadline to submit backup documentation.	March 2, 2012
Land Development Review Advisory Board (LDRAB)/Land Development Regulation Commission (LDRC) Meetings.	January 25, 2012 (1) (2) February 22, 2012 (2) March 28, 2012 (2) April 25, 2012 May 23, 2012
BCC Hearing – Request for Permission to Advertise.	June 28, 2012
BCC Hearing – 1 st Reading.	July 26, 2012
BCC Hearing – 2 nd Reading and Adoption.	August 23, 2012
(1) Annual Meeting	
(2) First available meeting for Agency request will be April 25, 2012 LDRAB meeting.	

AMENDMENT ROUND 2012-02	
ACTIVITY	DATE
Deadline to submit amendment requests.	June 1, 2012
Deadline to submit backup documentation.	July 6, 2012
Land Development Review Advisory Board (LDRAB)/Land Development Regulation Commission (LDRC) Meetings.	July 25, 2012 August 22, 2012 October 24, 2012 November 14, 2012
BCC Hearing – Request for Permission to Advertise.	November 29, 2012
BCC Hearing – 1 st Reading.	January 3, 2013
BCC Hearing – 2 nd Reading and Adoption.	January 24, 2013

Deadlines to submit amendment requests must include the following:

- 1) Cover letter from Department or Division Director, or other authorized staff;

**Department of Planning,
Zoning & Building**

2300 North Jog Road
West Palm Beach, FL 33411-2741
(561) 233-5000

Planning Division 233-5300
Zoning Division 233-5200
Building Division 233-5100
Code Enforcement 233-5500
Contractors Certification 233-5525
Administration Office 233-5005
Executive Office 233-5228
www.pbcgov.com/pzb

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Board of County
Commissioners**

Shelley Vana, Chair

Steven L. Abrams, Vice Chairman

Karen T. Marcus

Paulette Burdick

Burt Aaronson

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman



- 2) Name, title and contact information of primary contact person (will be required to attend LDRAB, LDRC and BCC Hearings to answer any questions);
- 3) Location in ULDC of proposed amendment(s), to include exact article citation and title (or nearest relevant title), and page number(s); and,
- 4) A summary of each proposed amendment.

In addition to the above, deadlines to submit backup documentation shall include the following for each proposed amendment:

- 1) Verification that any interested or affected persons or organizations have been consulted during the initiation of amendments, and are being updated where applicable;
- 2) A detailed background and summary of each proposed amendment (including White Papers or other summaries, where necessary); and,
- 3) Preparation of amendment exhibits using file template provided by Zoning, providing citation and title, reason for amendment, and text, tables or images to be deleted, relocated or added. Templates and will be provided upon request.

Kick Off Meeting – Code Amendment Training:

A meeting will be held to review amendment submittal requirements and answer any questions. Attendance is not mandatory, but is highly encouraged.

Location: Vista Center, 2300 North Jog Road, Room VC-2E-12

Time: Wednesday, February 15, 2012, 3:00 p.m. to 4:00 p.m.

Please RSVP to Zona Case, Zoning Technician, at (561) 233-5566, or at ZCase@pbcgov.org.

If you should have any questions or require additional information regarding the proposed schedules, please contact me at 561-233-5234, or William Cross, Principal Site Planner, at (561) 233-5206, or at WCross@pbcgov.org.

JPM/WC/MC

c. Distribution List Attached

DISTRIBUTION LIST

Primary Recipients

The Honorable Shelley Vana, Chair, and Members of the Board of County Commissioners
Verdenia Baker, Deputy County Administrator
Robert P. Banks, Assistant County Attorney
Lenny Berger, Assistant County Attorney
Bevin Beaudet, Director, Water Utilities
Liz Bloeser, Director, Financial Management and Budget
Chuck Cohen, Executive Director, Palm Tran
Lisa DeLaRionda, Director, Public Affairs Department
Eric Call, Director, Parks and Recreation
Bonnie Finneran, Division Director, Environmental Resources Management
Sherry Howard, Director, Economic Development
Edward Lowery, Director, Housing and Community Development
Paul Milelli, Director, Public Safety Department
Bruce Pelly, Director, Department of Airports
Channell Wilkins, Director, Community Services
Joanne Koerner, Director of Land Development
Gary M. Sypek, Director of Planning, Department of Airports
Richard C. Radcliffe, Executive Director, League of Cities
Maurice Tobon, Director, Utilities Eng. Division, Water Utilities
Robert Robbins, Director, Environmental Resources Management
George Webb, County Engineer
Dan Weisburg, Director Traffic Engineering, Engineering and Public Works
Robert Weisman, County Administrator
Randy Whitfield, Director, Metropolitan Planning Organization
Audrey Wolf, Director, Facilities Development and Operations

Other Internal Distribution

Lorenzo Aghemo, Director, Planning Division
Barbara Alterman, Executive Director, PZ&B
Lisa Amara, Senior Planner, Planning Division
Rebecca Caldwell, Director, Building Division
William Cross, Principal Site Planner, Zoning Division
Bryan Davis, Principal Planner, Planning Division
Kurt Eismann, Director, Code Enforcement Division
Allan Ennis, Assistant Director Traffic Engineering, Engineering and Public Works
Wendy Hernandez, Zoning Manager, Zoning Division
Michael Howe, Senior Planner, Planning Division
Isaac Hoyos, Principal Planner, Planning Division
Robert Kraus, Senior Site Planner, Environmental Resources Management
Maryann Kwok, Chief Planner, Zoning Division
John Pancoast, Senior Planner, Monitoring
John Rupertus, Senior Planner, Planning Division
Patrick Rutter, Chief Planner, Planning Division
Alan Seaman, Principal Site Planner, Zoning Division
Willie Swoope, Impact Fee Coordinator, PZ&B
Houston L. Tate, Director, Office of Community Revitalization
Bruce Thomson, Principal Planner, Planning Division

Other Key Contacts

Dr. Alina Alonso, M.D., Director, Health Department
Pete Banting, Real Estate Specialist, Facilities Development and Operations
Richard Bogatin, Property Specialist, Facilities Development and Operations
Kristin Garrison, Planning Director, School District of Palm Beach County
Tim Granowitz, Principal Planner, Parks and Recreation Department
Michael Hambor, Engineer Supervisor III, Palm Beach County Health Department
Arthur Kirstein, IV, Agricultural Economic Development Coordinator, PBC Coop. Ext. Service
Thomas LeFevre, Engineer Supervisor, Palm Beach County Health Department
Jean Matthews, Senior Planner, Parks and Recreation
Eric McClellan, Senior Site Planner, Facilities Development and Operations
Elizée Michel, Executive Director, Housing and Community Development
John O'Malley, Director, Division of Environmental Health and Engineering

ATTACHMENT 10

Scheduled LDRAB/LDRC Meeting Dates

January 25, 2012 LDRAB
 February 22, 2012 LDRAB
 March 28, 2012 LDRAB
 April 25, 2012 LDRAB
 May 23, 2012 LDRAB/LDRC

ULDC Amendment Tracking Schedule

Round 2012-01

Updated 1/18/2012

Scheduled BCC Zoning Hearing Dates

June 28, 2012 (Request Permission to Advertise)
 July 26, 2012 (First Reading)
 August 23, 2012 (Adoption)

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subco mmitte	Status	PM
<u>2</u>	Clarify Approval Process for Waivers: Address use of term deviations and amend to use modify where applicable; and, identify all existing Waiver processes within the ULDC and ensure appropriately address under Art. 2, Development Review Procedures.	CR-2011-061	1/25/2012	5/23/2012	No	Open	M. Cantor/ W. Cross
<u>3</u>	Mobile Home Units to Modular: Clarify difference between Mobile Home Units and Modular Homes and create standards for modular homes if needed.	CR-2011-077	5/23/2012	5/23/2012	No	Open	Not determined
<u>3</u>	Art. 3.B.9, PBLA Overlay: Amend to delete references to the PBLA Committee (disbanded) and clarify Rezoning Criteria for undeveloped residential property to match the Comprehensive Plan.	CR-2011-092	2/22/2012	5/23/2012	No	Open	Monica Cantor
<u>3</u>	Art. 3.B.16, Urban Redevelopment Area Overlay (URAO): Ongoing list of glitches and minor revisions identified through implementation, industry feedback, DRO Agency Input, or Other.	CR-2011-094	5/23/2012	5/23/2012	No	Open	Bill Cross
<u>3</u>	Table 3.F.1.F, Use Matrix (TDD) - Allow MF in TND Neighborhood Center: Allow for vertical integration of multi-family residential within TND Neighborhood Center if minimum required land area (2%) and corresponding FAR is developed with neighborhood serving uses.	CR-2011-103	2/22/2012	5/23/2012	No	Open	Bill Cross
<u>3</u>	Art. 3.A.3.B.1, Standard District Rezoning Exceptions and Limitations: Clarify additional exemptions for Potentially Buildable Lot of Record for purposes of developing a Single Family Dwelling and any related accessory uses.	CR-2011-107	3/28/2012	5/23/2012	No	Open	Bill Cross
<u>3</u>	Art. 3.E.2.F.4.a.1), Frontage [Related to AGR PUD Development Area] (Page 163 of 228): Amend for consistency with FLUE Policy 1.5.1-i.4 (FLUE Page 31 dated 10/25/10), by including Acme Dairy Road extending south of Boynton Beach Blvd. to the L-28 canal.	CR-2012-001	2/22/2012	5/23/2012	No	Open	Bill Cross

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subco mmitte	Status	PM
<u>4</u>	AGR (#2 of 3) Agricultural Packing Plant in AGR Preserve: Concurrent adoption of ULDC amendments to coincide with changes proposed in Planning Amendment Round 2012-01 to allow an Agricultural Packing Plant in the Preserve Pod of an AGR PUD or TMD, per BCC direction on April 28, 2011. See also CR Case #2011-080.	CR-2011-052	5/23/2012	5/23/2012	No	Open	Monica Cantor
<u>4</u>	Convenience Store with Gas Sales - CL FLU Designation: to review location of the use in PDDs with CL FLU designation.	CR-2011-086	2/22/2012	5/23/2012	No	Open	William Cross
<u>4</u>	AGR (#1 of 3) Art. 4.B.1.A.83, Medical or Dental Office in INST (AGR Tier): Expand list of medical or dental office uses permitted in the INST FLU designation to coincide with concurrent Planning 2012-01 Round of Amendments to add additional parcels being added adjacent to the Bethesda West Hospital in the Agircultural Reserve Tier, and related FLUE	CR-2011-088	5/23/2012	5/23/2012	No	Open	Bill Cross
<u>6</u>	Table 6.A.1.D, General Parking Schematic: Update to reflect dimensions indicated in Table 6.A.1.D, Minimum Parking Dimensions for Non-residential Uses and Residential Uses with Shared Parking Lots	CR-2011-057	2/22/2012	5/23/2012	No	Open	Monica Cantor
<u>7</u>	Landscape code, general update:. Amendment includes general revision of the Landscape Code such as shade trees, wall and hedges height measurement, and general clean up of the article.	CR-2010-035			Yes	Open	Monica Cantor
<u>7</u>	Alternative Landscape Plan appeal provisions: Establish appeal provisions from denial of ALP or Tree Removal Permit. Establish appeal process for denials, whether in entirety or partial, of applications for an Alternative Landscape Plan (ALP). Research possibility of making the ALP a Type II Variance. Correct Glitches within the ALP language.	CR-2010-066			No	Open	Monica Cantor
<u>7</u>	Table 7.C.3, Minimum Tier Requirementsfor Multifamily	CR-2011-058			No	Open	To be determined
<u>7</u>	Correct glitch in Art. 7.F.9.B Determining Compatibility Buffer for Minor Utilities	CR-2011-060			No	Open	Not determined
<u>7</u>	Rural Parkway: To clarify requirements that have been based on conservation easements language and recent trend for developments to combine required planting material and R-O-W planting material in the same area.	CR-2011-085			No	Open	William Cross

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subco mmitte	Status	PM
<u>8</u>	Electronic Message Center Signs Displaying Fuel Sales Pricing: [Industry Request] Amend ULDC Art. 8.G.3.B, Electronic Message Center Signs to allow for LED panels displaying fuel prices for gasoline service stations or convenience stores with gas sales, subject to size and other limitations as may be necessary to address glare, incompatibility or other potential	CR-2011-006	2/22/2012	5/23/2012	No	Open	Bill Cross
<u>8</u>	Art. 8.G.1.A, Wall Signs - Clarify Building Frontage for Wall Signs: This amendment will address the need for alternate application of the term Building Frontage to accommodate larger developments where primary building frontages may not always be oriented towards the parcels frontage.	CR-2011-095	2/22/2012	5/23/2012	No	Open	M. Cantor/ W. Cross

ATTACHMENT 11

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) 2012 SUBCOMMITTEES	
PRODUCE STAND AND RELATED USES	
<p>This is a continuation of the Subcommittee convened for Round 2011-02: During the analysis and discussion of this topic in the previous round, staff were unable to work around limitations in the Comprehensive Plan to allow additional sale of products in Produce Stands located in the Agricultural Reserve (AGR) Tier. The specific Policies of the Plan related to this topic will be included as part of a larger discussion on the overall Agricultural Reserve Tier at a BCC Workshop scheduled for January 17, 2012. It is anticipated that the Board will provide further direction to staff on how to proceed with this issue.</p> <p>Discussion will continue also for other related uses such as Farmers Markets, Green Markets, and Community Vegetable Gardens to discuss use definitions, supplementary standards and approval processes. Any recommended amendments may be forwarded to the Use Matrix Subcommittee.</p>	
Project Manager: <i>Monica Cantor</i>	Location: Vista Center Room VC-1E-58
	Possible LDRAB Meeting: May 23, 2012
USE MATRIX TASK	
<p>Comprehensive review of the definitions, approval processes, thresholds and supplementary standards for uses regulated by the ULDC, including but not limited to: 1) Consolidate use matrices for all Zoning Districts to improve ease of use, improve consistency in approval processes between similar Zoning districts, ensure that most restrictive approval process is noted in matrices, and consider opportunities to consider more permitted by right or administrative approvals for some uses; 2) Review use definitions, to consider the following: address any changes in industry trends, consolidate similar uses, retire outdated uses, and introduce new uses as needed; 3) Determine if square footage or acreage thresholds can be increased or abandoned; and, 4) Simplify, update, and improve ease of use of Supplemental Use Standards.</p>	
Project Manager: <i>William Cross & Monica Cantor</i>	Location: Vista Center Room VC-1E-58
	LDRAB Meeting: TBD (Scheduled for Round 2012-02)
MOBILE HOME PARK – CONVERSION OF FEE SIMPLE LOTS TO MODULAR HOMES	
<p>Coordinate with Habitat for Humanity, industry representatives, Building Division, Land Development Division, and other interested development review agencies to ascertain feasibility of permitting the replacement of existing mobile home park units located on fee simple lots with modular housing units. Issues requiring attention may include development of property development regulations, parking standards, general recognition of mobile home parks predating the Mobile Home Park Planned Development (MHPD) option, among others. Will include efforts to solicit feedback from representatives or residents of potentially eligible mobile home parks to ascertain if suggested amendments might adversely impact mobile home owners.</p>	
Project Manager: <i>William Cross & Monica Cantor</i>	Location: Vista Center Room VC-1E-58
	LDRAB Meeting: TBD (Scheduled for Round 2012-02)
LANDSCAPE	
Address several subjects in Article 7, Landscaping.	
Project Manager: <i>William Cross & Monica Cantor</i>	Location: Vista Center Room VC-1E-58
	LDRAB Meeting: TBD (Scheduled for Round 2012-02)

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Zoning Division
Jon P. MacGillis, ASLA Zoning Director
[Message from the Zoning Director](#)

Current News Releases

Date Issued	Revised	Description
12/20/2010		Deadline/Scheduling for Proposed 2011 ULDC Amendments
11/22/2010	12/09/2010	2010-2012 ULDC Round of Amendments Schedule
11/09/2010	12/03/2010	DRC - November 2010 Updates to Procedures
10/15/2010	12/02/2010	2011 Official Zoning Calendar
09/27/2010	11/23/2010	Boca Del Mar/Mizner 2010-1728
09/02/2010		Consumer Applications
08/13/2010	08/23/2010	2010 Annual DRC Brown Bag
06/17/2010	12/20/2010	Type III Excavation Moratorium in EA
06/14/2010	11/23/2010	Urban Redevelopment Area (URA) 2010 Infill Redevelopment/URA
04/13/2010		

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Building Fee Estimator
Clerk & Controller
Contractor Tracking
Contractor Work in Progress
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PAPA - Property Appraiser
Technical Manual
ULDC Interactive Code
Zoning Fee Estimator

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Admin. Review & Public Info
Architecture Landscape Permit
Code Revision
Community Development
Organizational Chart
Staff Contacts

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Click "Interactive Code" to access the interactive ULDC web page, pdf version of ULDC articles, and the ordinances summary

Click "LDRAB/LDRC Meetings" to access general information pertaining to the LDRAB/LDRC such as agendas/minutes; meetings schedule; members; and, rules.

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Jon MacGillis, Director
Unified Land Development Code

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Code Amendments

LDRAB/LDRC Meetings

LDRAB Subcommittee

Click "Code Amendments" to access ULDC scheduled amendments per year, including Amendment packets presented to LDRAB/LDRC and BCC

Click "LDRAB Subcommittees" to access subcommittees' minutes, agendas, and schedule that take place within the round of amendments.

EXHIBIT B

INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)

1
2 Part 1. ULDC Art. 1.1.2, Definitions (pages 55 and 66 of 115), is hereby amended as follows:
3

Reason for amendments: [Zoning/Co. Atty.] To establish a moratorium on internet cafés until the ULDC is amended to establish standards for this use; to clarify that internet cafés are not considered indoor entertainment us; and to provide a definition for internet café.

4 CHAPTER I DEFINITIONS & ACRONYMS

5 Section 2 Definitions

6 E. Terms defined herein or referenced in this Article shall have the following meanings:

7 23. **Entertainment, Indoor** - An establishment offering games of skill to the general public for a
8 fee or charge and wholly enclosed in a building. Typical uses include bowling alleys, bingo
9 parlors, pool halls, billiard parlors and video game arcades. An internet café shall not be
10 considered an indoor entertainment use. [Ord. 2005-002]

11

12 I. Terms defined herein or referenced in this Article shall have the following meanings:

13

14 **32. Internet Café** – Any facility, whether identified as an arcade, game room, internet café,
15 sweepstakes redemption center or by any other name, that utilizes slot machines, simulated
16 gambling devices or similar equipment. A simulated gambling device means any device that,
17 upon connection with an object is available to play or operate a simulation of any game, and
18 which may deliver or entitle the person or persons playing or operating the device to a payoff,
19 including money, credit, tickets or tokens to be exchanged for cash or to receive merchandise
20 or any other thing of value. This definition only applies to establishments marketed to adults
21 and shall not apply to game rooms or arcades generally targeted to minors that do not utilize
22 slot machines, simulated gambling devices or similar equipment. The following rules of
23 construction apply to this definition of internet café:

24 a. The term “upon connection with an object” means insertion, swiping, passing in range, or
25 any other technical means of physically, electronically, or electromagnetically connecting
26 an object to a device, or inputting or inserting a password, code, account or user number,
27 or user name, into a device.

28 b. The term “object” means a coin, bill, ticket, token, card, password, account or user
29 number, user name, code, or number, or other object obtained directly or indirectly
30 through payment of consideration or a donation or obtained as a bonus or supplement to
31 another transaction involving the payment of consideration or a donation.

32 c. The terms “play or operate” includes any activation of a device whether involving the use
33 of skill, the application of the element of chance, or both, or neither, or the
34 implementation of an outcome unpredictable to the person activating the device.

35 d. The term “simulation” includes simulation by means of a computer, computer system,
36 video display, video system or any other form of electronic video presentation.

37 [Renumber accordingly.]
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Notes:

Underlined indicates **new** text. If being relocated destination is noted in bolded brackets [**Relocated to:**].

~~Stricken~~ indicates text to be **deleted**.

Italicized indicates text to be relocated. Source is noted in bolded brackets [**Relocated from:**].

.... A series of four bolded ellipses indicates language omitted to save space.

EXHIBIT B

**INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)**

1
2 **Part 2. ULDC Table 3.B.2.A, Airport Use Regulations (page 22 of 228), is hereby amended as**
3 **follows:**
4

Reason for amendments: [Zoning/Co. Atty.] To amend all use matrices to reflect the establish of internet café as a new use.
--

Table 3.B.2.A – Airport Use Regulations

Use Type	Airport Related Uses	Non-Airport Related Uses	Corresponding Zoning District PDRs ⁽¹⁾	Note ⁽²⁾	Use Applicable to Specific Airport
....					
Recreation Uses					
....					
<u>Internet Café</u>					<u>45.1</u>
....					
[Ord. 2006-036] [Ord. 2008-003] [Ord. 2010-009] [Ord. 2010-022] [Ord. 2011-016]					

6
7
8 **Part 3. ULDC Table 3.B.14.E, WCRAO Sub-area Use Regulations (page 41 of 228), is hereby**
9 **amended as follows:**
10

Reason for amendments: [Zoning/Co. Atty.]To amend all use matrices to reflect the establish of internet café as a new use.

Table 3.B.14.E - WCRAO Sub-area Use Regulations

Sub-areas	NR	NRM	NG	NC	UG	UH	UI	NOTE (2)
....								
Recreation Uses								
<u>Internet Café</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
[Ord. 2006-004] [Ord. 2007-013] [Ord. 2009-040] [Ord. 2010-022] [Ord. 2011-016]								
Notes:								
1. Limited to lots with a CH or IND FLU Designation and corresponding zoning district. [Ord. 2006-004]								
2. A number in the NOTE column refers to Art 4.B, Supplementary Use Standards, which are applicable to the use. [Ord. 2006-004]								
3. Adult entertainment shall also be prohibited as an accessory use to other principal uses within the sub-areas. [Ord. 2007-013]								
4. Limited to lots with a CH or CL FLU Designation and corresponding zoning district. [Ord. 2007-013]								
Key:								
X Prohibited in Sub-area.								
- Subject to Use Regulations of zoning district.								
P Permitted by Right. [Ord. 2007-013] [2009-040]								
A Class A Conditional or Requested Use								

12
13
14 **Part 4. ULDC Table 3.B.15.F, IRO Permitted Use Schedule (page 75 of 228), is hereby amended**
15 **as follows:**
16

Reason for amendments: [Zoning/Co. Atty.] To amend all use matrices to reflect the establish of internet café as a new use.
--

Table 3.B.15.F - IRO Permitted Use Schedule (continued)

Use Type	Land Use				NOTE	Use Type	Land Use				NOTE
	C L	C H	C L	C H			C L	C H	C L	C H	
Recreation Uses											
....											
<u>Internet Café</u>					<u>45.1</u>						
....											
[Ord. 2010-005]											
Key:											
P Permitted by right.											
D Permitted subject to DRO approval.											
L Permitted by right, subject to accessory use limitations.											
S Permitted subject to Special Permit approval.											
A Permitted subject to Board of County Commission Approval.											

Notes:
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EXHIBIT B

INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)

1
2 Part 5. ULDC Table 3.B.16.E, PRA Use Matrix (page 88 of 228), is hereby amended as follows:
3

Reason for amendments: [Zoning/Co. Atty.] To amend all use matrices to reflect the establish of internet café as a new use.

4 Table 3.B.16.E - PRA Use Matrix (1)(2)(3)

Use Type	Transect Sub-Zones					Note
	UC 1	UC 2	UC 3	UI 1	UI 2	
....						
Recreational Uses						
....						
<u>Internet Café</u>						45.1
....						
[Ord. 2011-016]						
Note:						
1. Deviations from this table shall be prohibited.						
2. Any outdoor uses shall comply with Art. 3.B.16.E.4.a, Residential Setbacks						
3. Those uses that were legally established prior to the adoption of Zoning Resolutions R-10-1344 and R-10-1345 (Applications 2010-00667 and 00668, UC and UI Districts, respectively) shall be permitted to continue in accordance with Art. 1.E, Prior Approvals, or 1.F, Non-conformities. Change in use permitted subject to limitations of Art. 3.B.16.E.2.a, Right to Continue or Change Use.						
4. The change in use for a previously approved non-residential structure shall be permitted by right, if in compliance with Art. 3.B.16.E.2.a, Right to Continue or Change Use.						
Key:						
P Permitted by Right						
S Permitted subject to Special Permit approval.						
D Permitted subject to DRO approval.						
B Permitted subject to Zoning Commission Approval.						
A Permitted subject to Board of County Commission Approval.						

5
6 Part 6. ULDC Table 3.E.1.B, PDD Use Matrix (page 142 of 228), is hereby amended as follows:
7
8

Reason for amendments: [Zoning/Co. Att.] To amend all use matrices to reflect the establish of internet café as a new use.

9 Table 3.E.1.B - PDD Use Matrix Continued

Use Type	PUD					MUPD					MXPD		PIPD			LCC		NOTE				
	Pods					FLU					FLU		Use Zone			FLU						
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	I	C	I		M	R	C	C
....																						
Recreation Uses																						
....																						
<u>Internet Café</u>																						45.1
....																						
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2006-013] [Ord. 2008-037] [Ord. 2009-040] [Ord. 2010-005] [Ord. 2010-022]																						
Notes:																						
P Permitted by right																						
D Permitted subject to approval by the DRO																						
S Permitted in the district only if approved by Special Permit																						
R Permitted in the district only if approved by the Board of County Commissioners (BCC) as a requested use.																						

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EXHIBIT B

INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)

1
2 Part 7. ULDC, Table 3.F.1.F, Traditional Development Permitted Use Schedule (page 192 of
3 228), is hereby amended as follows:
4

Reason for amendments: [Zoning/Co. Att.] To amend all use matrices to reflect the establish of internet café as a new use.

5 Table 3.F.1.F - Traditional Development Permitted Use Schedule

District	TND						TMD				NOTES
	Urban/Suburban (U/S)			Exurban/Rural			U/S	Ex/Rural	AGR		
	Res	Neighborhood Center (NC)	Open Space/Rec	Res	NC	Open Space/Rec			Dev.	Preserve	
....											
Recreation Uses											
....											
<u>Internet Café</u>											45.1
....											
[Ord. 2005-002] [Ord. 2005-041] [Ord. 2006-004] [Ord. 2006-013] [Ord. 2008-037] [Ord. 2009-040] [Ord. 2010-005]											
Notes:											
P Permitted by right.											
D Permitted subject to approval by the DRO.											
S Permitted in the district only if approved by Special Permit.											
R Requested Use.											

6
7
8 Part 8. ULDC, Table 4.A.3.A - Use Matrix (page 14 of 161), is hereby amended as follows:
9

Reason for amendments: [Zoning/Co. Att.] To amend all use matrices to reflect the establish of internet café as a new use.

10 Table 4.A.3.A - Use Matrix Continued

Use Type	Zoning District/Overlay														NOTE					
	Agriculture/Conservation			Residential					Commercial					Industry/Public						
	P	A	A	AR		R	R	R	R	C	C	C	C	C		C	I	I	P	I
				R	U															
C	G	R	S	A	A															
....																				
Recreation Uses																				
....																				
<u>Internet Café</u>																			45.1	
....																				
[Ord. 2005-002] [Ord. 2006-013] [Ord. 2008-037] [Ord. 2009-040]																				
Key:																				
P Permitted by right																				
D Permitted subject to DRO approval																				
S Permitted subject to Special Permit approval																				
B Permitted subject to Zoning Commission approval																				
A Permitted subject to Board of County Commission approval																				

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EXHIBIT B

INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)

Part 9. ULDC Art. 4.B.1.A, Definitions and Supplementary Standards for Specific Uses (Page 50 of 170), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] BCC directed staff at the December 1, 2011 BCC Zoning Hearing to review and evaluate the practices of internet cafés and to impose a moratorium on new applications for internet café approvals.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

45. Entertainment, Indoor

An establishment offering games of skill to the general public for a fee or charge and wholly enclosed in a building. Typical uses include bowling alleys, bingo parlors, pool halls, billiard parlors and video game arcades. An internet café shall not be considered an indoor entertainment use. [Ord. 2005 – 002]

a. CRE District

An indoor entertainment shall not be located in a CRE district with RR FLU designation.

b. IL District

An indoor entertainment facility exceeding three acres in the IL district, the use shall rezone to the CRE district.

c. CC, CG, and MUPD Districts

- 1) An indoor entertainment use less than 3000 square feet is a permitted use.
- 2) Banquet and reception facilities as a principal use are subject to Class A conditional use or requested use.

....

45.1. Internet Café

Any facility, whether identified as an arcade, game room, internet café, sweepstakes redemption center or by any other name, that utilizes slot machines, simulated gambling devices or similar equipment. A simulated gambling device means any device that, upon connection with an object is available to play or operate a simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff, including money, credit, tickets or tokens to be exchanged for cash or to receive merchandise or any other thing of value. This definition only applies to establishments marketed to adults and shall not apply to game rooms or arcades generally targeted to minors that do not utilize slot machines, simulated gambling devices or similar equipment.

a. Definition Rules of Construction

The following rules of construction apply to this definition of internet café:

- 1) The term “upon connection with an object” means insertion, swiping, passing in range, or any other technical means of physically, electronically, or electromagnetically connecting an object to a device, or inputting or inserting a password, code, account or user number, or user name, into a device.
- 2) The term “object” means a coin, bill, ticket, token, card, password, account or user number, user name, code, or number, or other object obtained directly or indirectly through payment of consideration or a donation or obtained as a bonus or supplement to another transaction involving the payment of consideration or a donation.
- 3) The terms “play or operate” includes any activation of a device whether involving the use of skill, the application of the element of chance, or both, or neither, or the implementation of an outcome unpredictable to the person activating the device.
- 4) The term “simulation” includes simulation by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

b. Moratorium

- 1. The Board of County Commissioners of Palm Beach County does hereby impose a moratorium beginning on the effective date of this ordinance, upon the acceptance of zoning applications and all applicable requests for zoning approval for internet cafés; and,
- 2. This Ordinance shall expire upon the earlier of the following: one year from the effective date of this ordinance or upon the effective date of Unified Land Development Code amendments dealing with internet cafés to be considered by the Board of County Commissioners during the moratorium.

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EXHIBIT B

INTERNET CAFÉ
SUMMARY OF AMENDMENTS
(Updated 1/18/12)

1
2 Part 10. ULDC, Table.6.A.1.B, Minimum Off-Street Parking and Loading Requirement [Related
3 to Medical or Dental Office and Pain Management Clinics] (page of 161), is hereby
4 amended as follows:
5

6 Reason for amendments: [Zoning/Co. Atty.]

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements – Cont'd

Use Type: Commercial	Parking (1)	Loading (2)
...		
Internet Café	1 space per 200 sq. ft. or 1 per 3 seats, whichever is greater.	C
...		
[Ord. 2005-002] [Ord. 2005-041] [Ord. 2006-004] [Ord. 2008-037]		
Loading Key:		
Standard "A" - One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.		
Standard "B" - One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.		
Standard "C" - One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.		
Standard "D" - One space for each 50 beds for all facilities containing 20 or more beds.		
Standard "E" - One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA.		
The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.		

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

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Part 1. ULDC Art. 1.I.2, Definitions (page 108 of 115), is hereby amended as follows:

Reason for amendments: [Zoning] Establish definition of Waiver to distinguish from any other type of Development Order for modifications such as Variances.

CHAPTER I DEFINITIONS & ACRONYMS
Section 2 Definitions

W. Terms defined herein or referenced Article shall have the following meanings:
1. Waiver – A request to alter a specific ULDC provisions where alternative solutions to Code requirements are provided, subject to standards, performance criteria or limitations. Waivers are not intended to relieve specific financial hardship nor circumvent the intent of this Code.
[Renumber Accordingly]

Part 2. ULDC Art. 2.A.1.D.1, Processes [Related to Authority] (pages 11-12 of 85), is hereby amended as follows:

Reason for amendments: [Zoning] Clarify BCC, DRO and Zoning Director authority for the Waiver approval process.

CHAPTER A GENERAL
Section 1 Applicability

D. Authority
1. Processes
For the purposes of this Article, the authority of the BCC, ZC, DRO and Zoning Director shall be limited to the development order applications specified below. [Ord. 2006-036]
a. Board of County Commissioners (BCC)
The BCC, in accordance with the procedures, standards and limitations of this Article shall consider the following types of development order applications:
....
8) Type II Waivers, or other waivers as may be expressly stated; [Ord. 2008-003] [Ord. 2009-040]
....
c. Development Review Officer (DRO)
The DRO, in accordance with the procedures, standards and limitations of this Article and Art. 2.D, Administrative Process, shall consider the following types of development order applications: [Ord. 2006-036]
....
3) Subdivision Plan; ~~and~~ [Ord. 2006-036]
4) Uses indicated as "D" in Table 4.A.3.A, Use Matrix; ~~and~~ [Ord. 2006-036]
5) Type I Waivers.
....

Part 3. ULDC Art. 2.A.1.E.3.a, Preliminary Application [Related to Pre-Application Conference for LCC, IRO and PRA] (page 12-13 of 85), is hereby amended as follows:

Reason for amendments: [Zoning] Clarify requirements for Preliminary Application Conference for LCC, IRO or PRA applications.

CHAPTER A GENERAL
Section 1 Applicability

E. Pre-Application Conference (PAC)
3. Additional LCC, IRO and PRA Requirements
a. Preliminary Application
The preliminary application shall identify and document any proposed Type I or Type II Waivers ~~waivers~~; and include any previous BCC conditions of approval, if applicable. [Ord. 2010-005]

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Part 4. ULDC Art. 2.A.1.K.3, Board Action (pages 19 - 20 of 85), is hereby amended as follows:
2

Reason for amendments: [Zoning] Clarify reference for Type II Waiver Standards to differentiate from other Development Order standards and to facilitate location of text to the reader.

3 CHAPTER A GENERAL

4 Section 1 Applicability

5 K. Public Hearing Procedures

6 3. Board Action

7 a. Action by ZC

8 2) Rezoning, Class A Conditional Use, Requested Use, DOA, Type II Waivers

9 The ZC shall consider the application, the staff report, the relevant support materials,
10 the DRO certification and public testimony given at the hearing. After close of the
11 public hearing, the ZC shall recommend to the BCC that the application be approved,
12 approved with conditions, modified, continued, postponed or denied based upon: the
13 standards in Article 2.B.1.B, Standards, and Article 2.B.2.B, Standards, applicable to
14 all Conditional Uses, Requested Uses; Rezoning, and DOA's ~~and~~ ; or, the standards
15 in Article 2.B.2.G.3, Standards, applicable to all Type II Waivers. [Ord. 2008-003]
16 [Ord. 2011-016]

17
18 b. Action by BCC

19
20 3) Decision

21 At the conclusion of the final public hearing, the BCC shall approve, approve with
22 conditions, modify, postpone, withdraw, or deny the proposed development order
23 based ~~on~~ upon: the standards in Article 2.B.1.B, Standards, and Article 2.B.2.B,
24 Standards, or, the standards in Article 2.B.2.G.3, Standards, thereby adopting a
25 resolution approving, approving with conditions, or denying a proposed request by
26 not less than a majority of a quorum present. The resolution shall be filed with the
27 Clerk of the Circuit Court. [Ord. 2008-003]
28

29
30

31
32 Part 5. ULDC Art. 2.A.1.L.2.a, Action by DRO (page 21 of 85), is hereby amended as follows:
33

Reason for amendments: [Zoning] 1) Reorganize for consistency with similar sections applicable to ZC and BCC; and, 2) Clarify Code references to standards for Administrative Amendments and Type I Waiver, to facilitate location of text to the reader.

34 CHAPTER A GENERAL

35 Section 1 Applicability

36 L. Actions by Decision Making Bodies or Persons

37 2. Administrative Processes

38 a. Action by DRO

39 The DRO *shall approve, approve with conditions, revoke, deny or administratively*
40 *withdraw an application based upon the recommendation of the reviewing agencies,* in
41 accordance with the procedures, standards and limitations of this Code and Article 2.D,
42 ADMINISTRATIVE PROCESS, including where applicable: the standards of Art. 2.D.1.E,
43 Standards for Administrative Approval, and the standards of Art. 2.D.4.d, Standards,
44 applicable to Administrative Amendments; or, the standards of Art. 2.D.7.C, Standards,
45 applicable to Type I Waivers ~~shall approve, approve with conditions, revoke, deny or~~
46 ~~administratively withdraw an application based upon the recommendation of the~~
47 ~~reviewing agencies.~~
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Notes:

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Part 6. ULDC Art. 2.A.1.S.2.b., Processes [Related to Non-Judicial Relief Appeals] (pages 23-
2 25 of 85), is hereby amended as follows:
3

Reason for amendments: [Zoning] 1) Clarify that the the Development Review Appeal Board (DRAB) does not hear appeals for decisions on Type I Waivers made by the Development Review Officer (DRO); 2) Clarify that a Hearing Officer will hear appeals for DRO decisions on Type I Waivers other than URA, IRO, LCC or Green Architecture; and, 3) Delete reference to Zoning Director Waiver as all have been relocated under the Type I Waiver classification (i.e. subject to DRO approval).

4 CHAPTER A GENERAL

5 Section 1 Applicability

6 S. Appeal

7 2. Non-Judicial Relief

8 b. Processes

9

10 2) DRO Review

11 Any Person seeking Development Order approval from the DRO, except for Type I
12 Waivers, may appeal that decision to the DRAB according to the following: [Ord.
13 2005-002] [Ord. 2011-016]

14

15 6) ~~URAO, IRO, and LCC Type I Waiver and Green Architecture Waiver~~

16 a) URAO

17 Any Person seeking a URAO Type I Waiver from the DRO may appeal that
18 decision to the BCC pursuant to the procedures in Art. 2.A.1.S.2.b.1, Class B
19 Conditional Use. [Ord. 2011-016]

20 b) Other Type I Waivers

21 Any Person seeking ~~an IRO a~~ Type I Waiver, except for URAO, or LCC Type I
22 Waiver from the DRO and a Green Architecture Waiver may appeal that decision
23 to the Zoning Commission subject to the following: [Ord. 2011-016]

24 (1) The ZC shall consider the appeal petition within 60 days of its filing. [Ord.
25 2011-016]

26 (2) At the hearing, the ZC shall provide the petitioner, the applicant, and PBC
27 staff an opportunity to present arguments and testimony. [Ord. 2011-016]

28 (3) The ZC shall consider only the evidence presented to county staff at time of
29 the decision and the correctness of findings of fact or any condition imposed
30 by the DRO. [Ord. 2011-016]

31 (4) The ZC shall modify or reject only if substantial evidence is contrary to the
32 Plan, ULDC, or Official Zoning Map. [Ord. 2011-016]

33 7) ~~Zoning Director Waiver~~

34 ~~Any Person seeking a Waiver from the Zoning Director may appeal that decision to~~
35 ~~the Hearing Officer subject to the same procedures stated in Art. 2.A.1.S.2.b.4,~~
36 ~~Interpretations. [Ord. 2011-016]~~

37

40 Part 7. ULDC Art. 2.B.2.G, Type II URAO Waivers (pages 28 of 85), is hereby amended as
41 follows:
42

Reason for amendments: [Zoning] To identify all the requests that would fall under the Type II Waiver classification.

43 CHAPTER B PUBLIC HEARING PROCESS

44 Section 2 Conditional Uses, Requested Uses Development Order Amendments, Unique
45 Structures and Type II Waivers

46 G. Type II URAO Waivers

47 1. Purpose

48 The purpose of Type II Waivers is to allow flexibility for mixed use or infill redevelopment
49 projects, or site design or layout, where alternative solutions can be permitted, subject to
50 performance criteria or limitations. Type II Waivers are not intended to relieve specific
51 financial hardship nor circumvent the intent of this Code. A Type II Waiver may not be
52 granted if it conflicts with other sections of this Code, or the Florida Building Code. [Ord.
53 2011-016]

54 2. Applicability

Notes:

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Requests for Type II Waivers shall only be permitted where expressly stated within the ULDC
2 limited to the Urban Redevelopment Area Overlay (URAO) in accordance with Art. 3.B.16.G,
3 Type I and II URAO Waivers. [Ord. 2011-016]
4

Table 2.B.2.G, Summary of Type II Waivers (1)

Type II Waiver Summary List
GAO Minimum Density Requirements
Urban Redevelopment Area
PDD Frontage
PDD Cul-de-sacs
AGR TMD Parking Structure
AGR TMD Block Structure
Communication Towers
Large Scale Commercial Development Location of Front Side and Rear Parking
[Ord. 2012-]

5
6 **3. Standards**

7 When considering a Development Order application for a Type II Waiver, the BCC shall
8 consider the standards indicated below and any other standards applicable to the specific
9 Type II Waiver as contained in this Code. A Type II Waiver, which fails to meet any of these
10 the standards, shall be deemed adverse to the public interest and shall not be approved.
11 [Ord. 2011-016]

- 12 a. The ~~waiver~~ Waiver does not create additional conflicts with other requirements of the
13 ULDC, and is consistent with the stated purpose and intent for the Zoning district or
14 Overlay; [Ord. 2010-022] [Ord. 2011-016]
- 15 b. The ~~waiver~~ Waiver will not cause a detrimental effect on the overall design and
16 development standards of the project, and will be in harmony with the general site layout
17 and design details of the development; and, [Ord. 2010-022]
- 18 c. The alternative design option recommended as part of the ~~waiver~~ Waiver approval, if
19 granted, will not adversely impact adjacent properties. [Ord. 2010-022]

20
21
22 **Part 8. ULDC Art. 2.B.3, Type II Variance (page 32 of 85), is hereby amended as follows:**
23

Reason for amendments: [Zoning] Simplify applicability of time limitations for requests that do not require a building permit or other Development Order, typically used as a trigger to vest an approved Type II Variance.

24 **CHAPTER B PUBLIC HEARING PROCESS**

25 **Section 3 Type II Variance**

26
27 **F. Conditions**

28 The Zoning Director, or County Engineer, or Airport Director, whichever is appropriate, may
29 recommend, and the ZC may impose, such conditions in a Development Order development
30 order for a Type II Variance variance as are necessary to accomplish the goals, objectives and
31 policies of the Plan and this Code, including limitations on size, bulk, location, requirements for
32 landscaping, buffering, lighting, and provisions of adequate ingress and egress, or exemptions for
33 applications not subject to building permits. Any violation of the Type II Variance variance or a
34 condition shall be a violation of this Code. [Ord. 2006-036]

35 **1. Request for Time Limitation Waiver**

36 ~~If a variance is requested for property that does not require a building permit to implement the~~
37 ~~use, then the applicant may request a waiver from Article 2.B.3.F.1, Request for Time~~
38 ~~Limitation Waiver, of this Chapter. If a waiver from the time limitation is requested, the~~
39 ~~applicant shall specifically request the waiver simultaneous with submittal of the application~~
40 ~~and provide a written justification for the request. The justification shall be reviewed by the~~
41 ~~appropriate variance review body, and if sufficient make a finding, as a condition of approval,~~
42 ~~that the variance is not subject to the time limitations of this Section or may require~~
43 ~~compliance with the variance approval by a specified time, as deemed appropriate.~~

44 **G. Effect of Development Order**

45
46 **2. Time Limitation**

47 Unless otherwise specified in the Development Order development order or a condition of
48 approval, construction shall be commenced pursuant to Table 2.E.3.B, Time Limitation of
49 Development Order for Each Phase, within 12 months of the variance approval date,
50 otherwise it shall become null and void. If more than one variance was granted, the use of

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

one of the variances shall vest the other variances. Permitted time frames do not change with successive owners.

a. Request for Time Extension

Upon written request, an extension of time for the variance or any condition thereof may be granted for a maximum of 24 months. No request for an extension shall be considered unless a written application requesting the extension is submitted to the appropriate Department prior to the date the development order or condition is to expire. Failure to submit an application for an extension within the time limits established by this Section shall render the development order for the variance null and void.

b. Exemption for Applications Not Subject to Building Permit

If a Type II Variance is requested that does not require a building permit to implement, then the applicant shall include a written statement with the application requesting a condition of approval to grant an exemption from time limitation requirements. Granting of the exemption from time limitations shall be subject to ZC approval of a condition of approval specifying that no building permit is necessary to vest the Type II Variance.

....

Part 9. ULDC Art. 2.D.1.F.1.f, DRO authority (page 38 of 85), is hereby amended as follows:

Reason for amendments: [Zoning] To identify that the Development Review Officer (DRO) has authority to impose conditions on Type I Waivers.

CHAPTER D ADMINISTRATIVE PROCESS

Section 1 Development Review Officer (DRO)

F. Conditions

1. DRO Authority

The DRO shall have the authority to recommend conditions of approval for Public Hearing development orders requiring BCC or ZC approval and impose conditions of approval for administrative development orders. Conditions of approval may be recommended or imposed to: **[Ord. 2009-040]**

f. Allow ~~s~~ specific requirements of the Code to be waived, provided the proposed development meets the specific requirements for ~~the waiver.~~ a Type I Waiver. **[Ord. 2009-040]**

Part 10. ULDC Art. 2.D.1.G.1, Amendments to BCC/ZC Approvals [Related to DRO Authority] (pages 38-39 of 85), is hereby amended as follows:

Reason for amendments: [Zoning] 1) Clarify limitation of DRO authority to relocate Requested or Conditional Uses approved by the ZC; 2) Clarify that the DRO may modify BCC/ZC approvals for Type II Waivers or Type II Variances, where limited to a reduction of the original request (e.g. a Type II Variance granting a 10 foot setback where 15 foot is required, may be reduced to anything greater than 10 feet [i.e. 12 foot]); and, 2) Clarify Allow the Development Review Officer (DRO) to amend Type II Waivers when the change proposed is consistent with the authority to amend BCC/ZC approvals.

CHAPTER D ADMINISTRATIVE PROCESS

Section 1 Development Review Officer (DRO)

G. Administrative Review

The DRO may approve amendments to Preliminary Plans approved by the BCC, and approve Final Plans, in accordance with the following procedures. **[Ord. 2007-001] [Ord. 2008-003] [Ord. 2009-040] [Ord. 2010-005] [Ord. 2010-022] [Ord. 2011-001]**

1. Amendments to BCC/ZC Approvals

The DRO shall have the authority to approve modifications to a Development Order approved by the BCC or ZC. An application for an amendment shall be submitted in accordance with Article 2.A.1, Applicability, and reviewed in accordance with the standards in Article 2.D.1.C, Review Procedures. Applications must be submitted on deadlines established on the Zoning Calendar. The authority of the DRO to modify a BCC or ZC approved plan shall be limited to the following: **[Ord. 2008-003] [Ord. 2010-005] [Ord. 2010-022] [Ord. 2011-001]**

j. Requested or Class A or B Conditional Uses ~~uses~~ shall remain in the location approved by the BCC or ZC, unless a condition of approval allows relocation; or, **[Ord. 2008-003] [Ord. 2010-005] [Ord. 2011-001]**

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
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- k. Modification to IRO or URAO Plans, provided that there are no conflicts with prior conditions of approval, any improvement or amenity used to garner support for a project, or testimony from Public Hearing(s); or, ~~and~~, [Ord. 2010-005] [Ord. 2010-022] [Ord. 2011-016]
 - l. Requests for Type I Waivers; or, ~~and~~ [Ord. 2011-016]
 - m. Requests to modify a Type II Waiver or a Type II Variance when the amendment request is more conforming to Code requirements.
-

Part 11. ULDC Art. 2.D.7, Type I Waiver (pages 44-45 of 85), is hereby amended as follows:

Reason for amendments: [Zoning] To identify requests that would fall under the Type I Waiver classification.

CHAPTER D ADMINISTRATIVE PROCESS

Section 7 Type I Waiver

A. Purpose

The purpose of Type I Waivers is to allow flexibility for mixed use or infill redevelopment projects, or site design or layout, where alternative solutions can be permitted, subject to performance criteria or limitations. Waivers are not intended to relieve specific financial hardship nor circumvent the intent of this Code. A Waiver may not be granted if it conflicts with other sections of this Code, or the Florida Building Code. [Ord. 2011-016]

B. Applicability

Requests for Type I Waivers shall only be permitted where expressly stated within the ULDC. apply to the following [Ord. 2011-016]

- ~~1. Infill Redevelopment Overlay (IRO), in accordance with Art. 3.B.15.G, IRO Waivers; [Ord. 2011-016]~~
- ~~2. Urban Redevelopment Area Overlay (URAO), in accordance with Art. 3.B.16.G, Type I and II URAO Waivers; and, [Ord. 2011-016]~~
- ~~3. Lifestyle Commercial Center (LCC), in accordance with Art. 3.E.8.D, LCC Waivers. [Ord. 2011-016]~~

Table 2.D.7.B, Summary of Type I Waivers (1)

Type I Waiver Summary List
<u>Infill Redevelopment Overlay (IRO)</u>
<u>Urban Redevelopment Overlay (URAO)</u>
<u>Lifestyle Commercial Center (LCC)</u>
<u>Commercial Greenhouse Loading Zones</u>
<u>Solid Waste Transfer Station Landscape Buffer Planting</u>
<u>Screening for Room Mounted Mechanical Equipment</u>
<u>Green Architecture</u>
<u>Loading Space Reduction</u>
<u>Requirements for Walls or Fences Where Adjacent to Existing Walls</u>
<u>Billboard Replacement – Billboard Location Criteria</u>
<u>[Ord. 2012-]</u>

C. Standards

When considering whether to approve, approve with conditions, or deny a Type I Waiver request, the DRO shall consider the following standards in addition to any other standards applicable to the specific Waiver as contained in this Code: [Ord. 2010-022] [Ord. 2011-016]

- 1. The Waiver waiver does not create additional conflicts with other requirements of the ULDC, and is consistent with the stated purpose and intent for the Zoning district or Overlay; [Ord. 2010-022] [Ord. 2011-016]
- 2. The Waiver waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development; and, [Ord. 2010-022]
- 3. The alternative design option recommended as part of the Waiver waiver approval, if granted, will not adversely impact adjacent properties. [Ord. 2010-022]

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1
2 Part 12. ULDC Art. 2.G.1.A.17 [Related to Powers and Duties] (page 68 of 85), is hereby
3 amended as follows:
4

Reason for amendments: [Zoning] To include Type II Waivers under the purview of the BCC.

5 CHAPTER G DECISION MAKING BODIES

6 Section 1 Board of County Commissioners

7 A. Powers and Duties

8 17. to hear, consider and approve, approve with conditions or deny applications for ~~Urban~~
9 ~~Redevelopment Area Overlay (URAO)~~ Type II Waivers and Waiver of Code Provisions for
10 Historic Resources; and, [Ord. 2011-016]
11
12

13 Part 13. ULDC Art. 2.G.3.H.2.g [Related to Historic Resources Review Board Power and Duties]
14 (pages 75-76 of 85), is hereby amended as follows:
15

Reason for amendments: [Zoning] Amended to clarify the Historic Resources Review Board has the authority to make recommendations to the BCC under Art. 9.B.4.B, Waiver of the Code Provisions, as applicable to Historic Structures. Authority to administer Art. 9, Archaeological and Historic Preservation falls under the authority of the PZ&B Executive Director, but is typically delegated to the County Archaeologist located within the Planning Division, so this process is not administered by the Zoning Division.

16 CHAPTER G DECISION MAKING BODIES

17 Section 3 APPOINTED BODIES

18 H. Historic Resources Review Board

19 2. Powers and Duties

20 g. pursuant to Article 9.B.4.B, Waiver of the Code Provisions, review and comment to the
21 BCC concerning waiver of Code provisions ~~of the Code~~ for properties within historic
22 districts and for properties designated as historic or archaeological sites or listed on the
23 PBC Register of Historic Places;
24
25

26 Part 14. ULDC Art. 2.G.3.M.2, Powers and Duties [Related to Zoning Commission] (pages 79-80
27 of 85), is hereby amended as follows:
28

Reason for amendments: [Zoning] To clarify that the Zoning Commission presides over decides upon appeals for Type I Waivers for Infill Redevelopment (IRO), Lifestyle Commercial Center (LCC) and Green Architecture.

29 CHAPTER G DECISION MAKING BODIES

30 Section 3 APPOINTED BODIES

31 M. Zoning Commission

32 2. Powers and Duties

33 The ZC shall have the following powers and duties under the provisions of this Code.

34

35 *and,*

36 ~~h. to consider and render a final decision on appeals of denials for Zoning Waivers; and,~~
37 [Ord. 2010-022] [Ord. 2011-016]

38 h to hear, consider and decide appeals from decisions of the DRO on applications for ~~Infill~~
39 ~~Redevelopment Overlay (IRO) or Lifestyle Commercial Centers (LCC)~~ Type I Waivers,
40 except URAO. [Ord. 2011-016]
41
42
43
44

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1
2 Part 15. ULDC Art. 2.G.4.G.2.h [Related to Powers and Duties and Development Review Officer]
3 (page 82 of 85), is hereby amended as follows:
4

Reason for amendments: [Zoning] Clarify that all Type I Waivers will be presented to and decided by the Development Review Officer (DRO).

5 CHAPTER G DECISION MAKING BODIES

6 Section 4 STAFF OFFICIALS

7 G. Development Review Officer (DRO)
8 2. Powers and Duties

9 h. to hear, consider and approve, approve with conditions or deny applications for ~~Infill~~
10 ~~Redevelopment Overlay (IRO), Urban Redevelopment Area Overlay (URAO), and~~
11 ~~Lifestyle Commercial Center (LCC)~~ Type I Waivers. [Ord. 2011-016]

12

13
14
15 Part 16. ULDC Art. 2.G.4.K.2, Jurisdiction, Authority and Duties [Related to the Executive
16 Director of Planning, Zoning and Building] (page 84 of 85), is hereby amended as
17 follows:
18

Reason for amendments: [Zoning] Clarify authority of the PZ&B Executive Director to waive review timeframe of Minor Utilities or Commercial Communication Towers during a declared state of emergency.

19 CHAPTER G DECISION MAKING BODIES

20 Section 4 STAFF OFFICIALS

21 K. Executive Director of Planning, Zoning and Building
22 2. Jurisdiction, Authority and Duties

23
24 c. to administer the PZB Department, including the Planning Division, the Zoning Division,
25 the Building Division, and the Code Enforcement Division; ~~and~~
26 d. to waive or modify development review fees upon demonstration that the applicant is
27 indigent pursuant to PBCHD standards, or the applicant can demonstrate review fees are
28 in excess of actual staff costs; ~~and,~~
29 e. to waive certain requirements as may be stated within this Code when a state of
30 emergency is declared.
31
32

33 Part 17. ULDC Art. 2.G.4.N.2.k, [Related to Jurisdiction, Authority and Duties and Zoning
34 Director] (page 85 of 85), is hereby amended as follows:
35

Reason for amendments: [Zoning] Delete jurisdiction to review administrative waivers, all of which have been relocated and consolidated under the Type I Waiver category, which falls under the authority of the Development Review Officer (DRO).

36 CHAPTER G DECISION MAKING BODIES

37 Section 4 STAFF OFFICIALS

38 N. Zoning Director
39 2. Jurisdiction, Authority and Duties

40 ~~k. to review and approve or deny requests for administrative waivers pursuant to the~~
41 ~~applicable section(s) of the ULDC. [Ord. 2009-040]~~
42
43

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Part 18. ULDC Art. 3.B.4.D.4.b, Minimum Density (pages 25 of 228), is hereby amended as
2 follows:
3

Reason for amendments: [Zoning] To clarify that provisions allowing for a waiver of density in the
Glades Area Overlay (GAO) will be classified as a Type II Waiver subject to BCC approval.

4 CHAPTER B OVERLAYS

5 Section 4 GAO, Glades Area Overlay

6 D. Use Regulations

7 4. Property Development Regulations (PDRs)

8 b. Type II Waiver - Minimum Density

9 The BCC may consider the waiver of the minimum density requirement as a Type II
10 Waiver for proposed development in the Glades area when:

- 11 1) The proposed development is consistent with the provisions of any applicable Joint
- 12 Planning Area Agreement, and;
- 13 2) An analysis is completed that addresses:
 - 14 a) the impact of a reduced density development on the overall infrastructure
 - 15 system;
 - 16 b) the compatibility of the proposed development with adjacent land uses; and
 - 17 c) the effect of the reduced density development on the ability of PBC to meet its
 - 18 goals, objectives and policies related to affordable housing. If the development is
 - 19 located in a municipal annexation area, the analysis must be performed by the
 - 20 annexing municipality.

21

24 Part 19. ULDC Art. 3.B.15.B, Infill Redevelopment Overlay (page 54 of 228), is hereby amended
25 as follows:
26

Reason for amendments: [Zoning] Specify IRO waivers are classified as Type I.

27 CHAPTER B OVERLAYS

28 Section 15 INFILL REDEVELOPMENT OVERLAY (IRO)

29 B. Applicability

30 The provisions of the IRO are optional, with the stipulation that when selected all new
31 development will be in compliance with this Section, excepting any permitted Type I Waivers
32 waivers. An applicant may elect to use the IRO regulations for parcels that meet the following
33 criteria: [Ord. 2010-005]

34

37 Part 20. ULDC Art. 3.B.15.F.6.d.2, Civic Building [Related to Infill Redevelopment Area Overlay
38 (page 70 of 228), is hereby amended as follows:
39

Reason for amendments: [Zoning] Specify IRO waivers are classified as a Type I.

40 CHAPTER B OVERLAYS

41 Section 15 INFILL REDEVELOPMENT OVERLAY (IRO)

42 F. Design and Development Standards

43 6. Building Standards

44 d. Special Building Standards

45 2) Civic Building

46 An applicant for a civic building may apply any one or combination of block, liner or
47 courtyard building type, or apply for a ~~waiver~~ Type I Waiver in accordance with Table
48 3.B.15.G, Type I IRO Waivers. [Ord. 2010-005]

49

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52
53

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Part 21. ULDC Art. 3.B.15.G, IRO Waivers (pages 82-83 of 228), is hereby amended as follows:

2 Reason for amendments: [Zoning] Amended to simplify redundant language for the IRO Waiver.

3 CHAPTER B OVERLAYS

4 Section 15 INFILL REDEVELOPMENT OVERLAY (IRO)

5 G. Type I IRO Waivers

6 The applicant may apply for ~~waivers~~ Type I Waivers for development standards in accordance
7 with Art. 2.D.7, Type I Waiver and Table 3.B.15.G, Type I ~~IRO~~ Waivers. The following table
8 summarizes the IRO development requirements and standards that eligible for could be
9 requested through a waiver the Type I Waiver process: [Ord. 2010-005] [Ord. 2011-016]

10 Table 3.B.15.G – Type I IRO Waivers

Requirements	Maximum Waiver	Minimum Justification Criteria of Review
Internal Street Standards		
....		

11
12
13 Part 22. ULDC Art. 3.B.16.F.9.a.5), Service and Loading Areas [Related to Urban
14 Redevelopment Area Overlay (URAO)] (page 105 of 228), is hereby amended as
15 follows:

16 Reason for amendments: [Zoning] Scrivener’s error to indicate URAO Waiver instead of PRA Waiver.

17 CHAPTER B OVERLAYS

18 Section 16 Urban Redevelopment Area Overlay (URAO)

19 F. PRA Design and Development Standards

20 9. Parking and Loading Standards

21 a. Location and Access

22 5) Service and Loading Areas

23 All service and loading areas shall be located along the rear or side of buildings, and
24 shall not be visible from usable open space areas, streets or abutting residential
25 neighborhoods. The service areas shall be located within the footprint of the building
26 or immediately adjacent to the building. Required loading space areas may be
27 waived, reduced in number or dimension, in accordance with Art. 6.B, Loading
28 Standards, or by ~~PRA-waiver~~ Art. 3.B.16.G, Type I and II URAO Waivers. [Ord.
29 2010-022]

30
31
32
33 Part 23. ULDC Art. 3.E.1.C.2, Performance Standards [Related to PDDs] (pages 146-147 of 228),
34 is hereby amended as follows:

35 Reason for amendments: [Zoning] To clarify that waivers from Planned Development Districts (PDDs)
Frontage and Cul-de-sacs will be classified as a Type II Waiver.

36 CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

37 Section 1 General

38 C. Objectives and Standards

39 2. Performance Standards

40

41 a. Access and Circulation

42 1) Minimum Frontage

43 PDDs shall have a minimum of 200 linear feet of frontage along an arterial or
44 collector street unless stated otherwise herein; [Ord. 2010-022]

45 a) Type II Waiver - Infill Development

46 The BCC may grant a Type II Waiver ~~waiver~~ to reduce the frontage requirement
47 in the U/S Tier upon demonstration by the applicant that the requirements
48 standards cannot be satisfied by any other means and by complying with the
49 following standards: [Ord. 2005 – 002] [Ord. 2010-022]

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

- 1 (1) the reduction is the minimum necessary to provide safe and adequate
- 2 access to the project; [Ord. 2005 – 002]
- 3 (2) the reduction will not result in any undue hardship or adverse impact on
- 4 adjacent property owners; [Ord. 2005 – 002]
- 5 (3) the reduction will not adversely effect the development of adjacent land in
- 6 accordance with the Plan and this Code; [Ord. 2005 – 002]
- 7 (4) the reduction is supported by the County Engineer and PZB; [Ord. 2005 –
- 8 002]
- 9 (5) where applicable, the reduction is necessary to allow for development of new
- 10 SR-7 EDO projects that establish access by means of interconnectivity
- 11 requirements of the overlay; - [Ord. 2010-022]

b) PUD Minimum

The BCC shall not reduce the frontage requirements below the following thresholds: [Ord. 2005 – 002]

- 15 (1) 1500 trips or less: 50' of frontage. [Ord. 2005 – 002]
- 16 (2) More than 1500 trips: 80' of frontage. [Ord. 2005 – 002]

Further reductions from the frontage requirements shall only be allowed by the ZC as a Type II variance in accordance with Art. 2.B.3, Variances. [Ord. 2005 – 002]

....
5) Cul-de-sacs

The objective of this provision is to recognize a balance between dead end streets and interconnectivity within the development. In order to determine the total number of local streets that can terminate in cul-de-sacs, the applicant shall submit a Street Layout Plan, pursuant to the Technical Manual. The layout plan shall indicate the number of streets terminating in cul-de-sacs, as defined in Article 1 of this Code, and how the total number of streets is calculated. During the DRO certification process, the addressing section shall confirm the total number of streets for the development, which would be consistent with how streets are named. Streets that terminate in a T-intersection providing access to less than four lots, or a cul-de-sac that abuts a minimum 20 foot wide open space that provides pedestrian cross access between two pods shall not be used in the calculation of total number of cul-de-sacs or dead end streets. [Ord. 2008-037]

- 34 a) 40 percent of the local streets in a PDD may terminate in a cul-de-sac or a dead-
- 35 end by right. [Ord. 2007-001] [Ord. 2008-037]
- 36 b) An additional 25 percent of the local streets in a PDD may terminate in a cul-de-
- 37 sac pursuant to a Type II Waiver ~~waiver~~ application approved by the BCC. The
- 38 BCC shall consider the following additional standards when deciding whether or
- 39 not to approve the Waiver ~~waiver~~. [Ord. 2007-001] [Ord. 2008-037]
- 40 (1) cul-de-sacs terminate in an open space that provides amenities accessible to
- 41 the residents of the development; and, [Ord. 2008-037]
- 42 (2) cul-de-sacs connect to a pedestrian system including but not limited to
- 43 sidewalks, and designated path or trail systems. [Ord. 2008-037]

44
45
46
47 Part 24. ULDC Art. 3.E.8.D, LCC Waivers (page 189 of 228), is hereby amended as follows:
48

Reason for amendments: [Zoning] To clarify that LCC Waivers would fall under the Type I Classification.

49 CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDS)

50 Section 8 Lifestyle Commercial Center Development (LCC)

51 D. Type I LCC Waivers

52 An applicant may seek Type I Waiver ~~waivers~~ from specific code requirements listed in
53 accordance with Art. 2.D.7, Type I Waiver, and Table 3.E.8.D, LCC Waivers. Type I Waiver
54 approval shall be granted prior to DRO certification. The following table summarizes the
55 development standards that could be requested through a Type I Waiver ~~waiver~~ process. [Ord.
56 2011-016]
57

Table 3.E.8.D – Type I LCC Waivers

Requirements	Waiver	Criteria of Review (1)
Main Street		
....		

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1
2 Part 25. ULDC Art. 3.F.2.A.2.d.1)a), AGR Exception [Related to AGR TMD Parking Structures
3 (page 204 of 228), is hereby amended as follows:
4

Reason for amendments: [Zoning] To clarify that some requirements for parking structures in the AGR Tier can be waived through a Type II Waiver.

5 CHAPTER F TRADITIONAL DEVELOPMENT DISTRICTS (TDDS)

6 Section 2 General Standards

7 A. Applicability

8 2) Connectivity

9 d. Parking Structures

10 1) U/S and AGR Tiers

11 a) ~~Type II Waiver AGR Exception~~

12 The requirement for structured parking in the AGR Tier may be waived by the
13 BCC upon approval of a Type II Waiver. [Ord. 2005 – 002]

14

15
16
17 Part 26. ULDC Art. 3.F.4.E.9.a, BCC Waiver [Related to TMD Structures] (page 225 of 228), is
18 hereby amended as follows:
19

Reason for amendments: [Zoning] To clarify that a TMD Block Structure requirement in the AGR tier can be waived through a Type II Waiver.

20 CHAPTER F TRADITIONAL DEVELOPMENT DISTRICTS (TDDS)

21 Section 4 Traditional Marketplace Development (TMD)

22 E. Standards Applicable to AGR Tier

23 9. Block Structure

24 a. ~~Type II BCC Waiver~~

25 An AGR TMD shall comply with Art. 3.F.2.A.1.b, Block Structure, except for the provision
26 below, unless waived through a Type II Waiver by the BCC upon the BCC determining
27 that the block structure proposed is functionally equivalent for the purpose of Art.
28 3.F.1.A.4, and Art. 3.F.4.A Purpose. The ~~Type II Waiver-waiver~~ may be granted only
29 upon the applicant’s agreement to be bound by the block configuration of the site plan
30 approved by the BCC. [Ord. 2005-002] [Ord. 2005 – 041]

31

32
33
34 Part 27. ULDC Art. 4.B.1.A.121.b.4), Loading [Related to Commercial Greenhouses] (page 98 of
35 170), is hereby amended as follows:
36

Reason for amendments: [Zoning] To establish that loading for a Commercial Greenhouse can be waived through a Type I Waiver.

37 CHAPTER B SUPPLEMENTARY USE STANDARDS

38 Section 1 Uses

39 A. Definitions and Supplementary Standards for Specific Uses

40 121.Shade House

41 b. Commercial Greenhouse

42 4) Parking and Loading

43 All parking and loading shall occur in the designated areas indicated on the site plan.
44 [Ord. 2006-004]

45 a) Parking

46 If vans, buses, or commercial loading vehicles are used for employee
47 transportation, required parking shall be configured to accommodate these
48 vehicles. [Ord. 2006-004]

49 b) Loading

50 Loading zones shall not be oriented towards residential uses, and shall be
51 setback from property lines a minimum of 250 feet, unless waived by the DRO
52 approved as a Type I Waiver. [Ord. 2006-004]

53

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 Part 28. ULDC Art. 4.B.1.A.123.d, Buffer [Related to Solid Waste Transfer Station] (page 99 of
2 170), is hereby amended as follows:
3

Reason for amendments: [Zoning] To establish that landscaping for Solid Waste Transfer Stations can be waived through a Type I Waiver.

4 CHAPTER B SUPPLEMENTARY USE STANDARDS

5 Section 1 Uses

6 A. Definitions and Supplementary Standards for Specific Uses
7 123.Solid Waste Transfer Station

8 d. Buffer

9 A minimum width of 50 feet ~~municipality incompatibility~~ buffer shall be provided adjacent
10 to an existing residential use, district or FLU designation: ~~The DRO may waive required~~
11 ~~Required~~ landscaping not visible from adjacent lots or streets ~~may be waived through a~~
12 ~~Type I Waiver.~~
13

14

15
16 Part 29. ULDC Art. 4.B.1.A.134.e, States of Emergency (page 103 of 170), is hereby amended as
17 follows:
18

Reason for amendments: [Zoning] Clarify that the Planning, Zoning and Building Executive Director may waive Minor Utilities review timeframes when state of emergency is declared.

19 CHAPTER B SUPPLEMENTARY USE STANDARDS

20 Section 1 Uses

21 A. Definitions and Supplementary Standards for Specific Uses
22 134.Utility, Minor

23 e. States of Emergency

24 The PZ&B Executive Director may ~~waive request a waiver from~~ the review timeframes ~~for~~
25 ~~each case in the event~~ of a declared ~~state of~~ emergency ~~that directly affects the~~
26 ~~permitting activities of the local Government.~~ [Ord. 2007-013]
27

28

29
30 Part 30. ULDC Art. 4.C.1, States of Emergency [Related to Stealth Towers] (page 112 of 170), is
31 hereby amended as follows:
32

Reason for amendments: [Zoning] Clarify that the Planning, Zoning and Building Executive Director may waive Commercial Communication Towers review timeframes when state of emergency is stated.

33
34 CHAPTER C COMMUNICATION TOWER, COMMERCIAL

35 Section 1 States of Emergency

36 The PZ&B Executive Director may ~~waive request a waiver to~~ the review timeframes ~~for each case in the~~
37 ~~event~~ of a declared ~~state of~~ emergency ~~that directly affects the permitting activities of the local~~
38 ~~Government.~~ [Ord. 2006-004]
39

40
41 Part 31. ULDC Art. 4.C.3.A.5., Waivers from Required Dimensional Criteria [Related to Stealth
42 Towers] (page 113 of 170), is hereby amended as follows:
43

Reason for amendments: [Zoning] To establish that Stealth Commercial Communication Towers would fall under the Type II Waiver classification.

44 CHAPTER C COMMUNICATION TOWER, COMMERCIAL

45 Section 3 Siting Requirements

46 A. Stealth Towers

47 5. Type II Waivers from Required Dimensional Criteria

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

A ~~Type II Waiver-waiver~~ from separation, setback, distance between towers, height, and similar dimensional criteria may be requested as provided in Article 4.C.3.K, Type II Waiver from Required Dimensional Criteria.

....

Part 32. ULDC Art. 4.C.3.B.5, Waivers (page 114 of 170), is hereby amended as follows:

Reason for amendments: [Zoning] To identify that Camouflage Commercial Communication Towers would be subject to Type II Waivers.

CHAPTER C COMMUNICATION TOWER, COMMERCIAL

Section 3 Siting Requirements

B. Camouflage Towers

5. Type II Waivers

A ~~Type II Waiver-waiver~~ from separation, setback, distance between towers, height, and similar dimensional criteria may be requested as provided in Article 4.C.3.K, Type II Waiver from Required Dimensional Criteria.

....

Part 33. ULDC Art. 4.C.3.K, Waiver from Required Dimensional Criteria (pages 128-130 of 170), is hereby amended as follows:

Reason for amendments: [Zoning] To identify that required dimensional criteria for Commercial Communication Towers would be subject to Type II Waivers.

CHAPTER C COMMUNICATION TOWER, COMMERCIAL

Section 3 Siting Requirements

K. Type II Waiver from Required Dimensional Criteria

A ~~Type II Waiver-waiver~~ from the separation, setback, distance between towers, height, and similar dimensional criteria applicable to communication towers may be allowed as provided in this Section.

1. Towers approved as a Class A or Class B Conditional Use

The dimensional criteria required by this Section may be reduced by the BCC for Class A conditional uses and Class B conditional uses subject to the criteria contained herein.

2. Towers Approved on an Administrative Basis

The dimensional criteria required by this Section may be reduced by the BCC for towers subject to review by the DRO or the building permit process subject to the criteria contained herein.

3. Requests for a Type II Waiver

When considering a request to allow a ~~Type II Waiver-waiver~~ from one or more required dimensional criteria, the BCC must determine that: the request complies with the intent of this Section and, the request is consistent with the criteria listed below.

4. Criteria for Granting a Type II Waiver

The following criteria shall be utilized by the BCC when considering requests for waivers. Each request for a waiver must be consistent with the following criteria listed below: Art. 4.C.2.K.4.a - 4.C.2.K.4.h. In addition, each request for a ~~Type II Waiver-waiver~~ must be consistent with one or more of the following criteria: ~~Art. 4.C.2.K.4.h~~ Art. 4.C.2.K.4.i - Art. 4.C.2.K.4.r.

a. Protection of Public Welfare

The ~~Waiver-waiver~~, if approved, will not be injurious to the uses in the area adjacent to the structure and otherwise will not be detrimental to the public welfare.

b. Economics

The ~~Waiver-waiver~~ is not granted based solely upon or in large measure due to costs associated with complying with all requirements of this Section.

c. Incompatibility Not Created

The ~~Waiver-waiver~~, if granted, will not result in an incompatibility between the proposed tower or communication facility and adjacent uses.

d. Exhaustion of Other Remedies

The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary within the defined search or propagation study area as all other waiver alternatives have been exhausted. Alternatives to a ~~Waiver-waiver~~ shall include but not be limited to such

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

- 1 techniques as collocation, use of stealth or camouflage structures, and use of building
2 mounted equipment and facilities.
- 3 **e. Minimum Waiver**
4 Grant of the ~~Waiver-waiver~~ is the minimum ~~Waiver-waiver~~ that will make possible the
5 reasonable use of the parcel of land, building, or structure.
- 6 **f. Consistent with the Plan**
7 Grant of the ~~Waiver-waiver~~ will be consistent with the purposes, goals, objectives, and
8 policies of the Plan and this Code.
- 9 **g. Not Detrimental**
10 The grant of the ~~Waiver-waiver~~ will not be injurious to the area involved or otherwise
11 detrimental to the public welfare.
- 12 **h. Prohibition of Service**
13 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
14 within the defined search or propagation study area so as not to prohibit the provision of
15 personal wireless, television, and related communication services as defined by the
16 Telecommunications Act of 1996 and rules of the FCC, if adopted.
- 17 **i. FAA Limitations**
18 The ~~Waiver-waiver~~ is required to comply with locational standards established by the
19 FAA.
- 20 **j. Lack of Technical Capacity**
21 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
22 within the defined search or propagation study area as existing towers or other structures
23 do not possess the capacity to allow reasonable technical service.
- 24 **k. Height of Existing Structures**
25 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
26 within the defined search or propagation study area as existing towers or other structures
27 are not of sufficient height to provide reasonable service.
- 28 **l. Lack of Structural Capacity**
29 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
30 within the defined search or propagation study area as existing towers or structures do
31 not have the structural capacity to accommodate the equipment needed to provide
32 reasonable service within the defined search or propagation study area.
- 33 **m. Interference**
34 The, subject to documentation provided by the applicant, is necessary within the defined
35 search or propagation study area due to interference that may be caused resulting from
36 such factors as collocation on existing towers or structures, the nature of other
37 communications equipment or signals, or other technical problems that would result in
38 interference between providers.
- 39 **n. Unreasonable Costs**
40 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
41 within the defined search or propagation study area as the fees, costs or contractual
42 provisions to collocate on or adapt an existing tower or structure for collocation are
43 unreasonable.
- 44 **o. More Appropriate Site**
45 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
46 within the defined search or propagation study area as a result of identification of a more
47 appropriate site that does not meet dimensional criteria, including such factors as
48 distance from residential uses, existence of permanent screening and buffering, and
49 location within a large scale non-residential area.
- 50 **p. Avoid Certain Locations**
51 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
52 within the defined search or propagation study area to avoid location in one or more of
53 the following:
54 1) officially designated wilderness areas, wildlife refuges, and wildlife management
55 areas;
56 2) officially designated vegetation and wildlife preserves;
57 3) habitats of threatened/endangered species, historical sites;
58 4) Indian religious sites;
59 5) locations which may cause significant alteration of wetlands, deforestation, or water
60 diversion;
61 6) night use of high intensity lights in residential areas;
62 7) environmentally sensitive lands acquired or leased by PBC; or
63 8) linked open space corridors as set forth in the Plan.
- 64 **q. Reduce Residential Impact**
65 The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary
66 within the defined search or propagation study area and will allow a proposed tower
67 location to reduce the impact on adjacent residential uses.

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

r. **Effect of Governmental Regulation or Restrictive Covenant**

The ~~Waiver-waiver~~, subject to documentation provided by the applicant, is necessary within the defined search or propagation study area due to governmental regulations or restrictive covenants which preclude location of a tower.

5. **Simultaneous Consideration**

A request for a ~~Type II Waiver-waiver~~ from one or more required dimensional criteria may be considered at the same time a related request for tower approval is considered. However, final BCC, ZC, or administrative approval shall not be granted until a final decision is rendered by the BCC.

Part 34. **ULDC Art. 4.C.4.D.1, Waiver of Distance Between Towers (page 132 of 170), is hereby amended as follows:**

Reason for amendments: [Zoning] 1) To identify that waiver for distance between towers will be classified as Type II Waiver; and, 2) To eliminate a glitch where a sentence is repeated twice.

CHAPTER C COMMUNICATION TOWER, COMMERCIAL

Section 4 Standards

D. Distances/Separation Between Towers

1. ~~Type II Waiver of Distance Between Towers~~

A ~~Type II Waiver waiver~~ to reduce the distance between towers may be granted subject to the requirements of Article 4.C.3.K, ~~Type II Waiver~~ from Required Dimensional Criteria. ~~A waiver to reduce the distance between towers may be granted subject to the requirements of Article 4.C.3.K, Waiver from Required Dimensional Criteria.~~

....

Part 35. **ULDC Art. 4.C.4.S, Nonconforming Lots of Record (page 137 of 170), is hereby amended as follows:**

Reason for amendments: [Zoning] To establish that Communication Towers on Nonconforming Lots of Record are not required to apply for Required Dimensional Criteria Type II Waiver as long as the structure is consistent with the sitting requirements of Article 4.C, Communication Tower, Commercial.

CHAPTER C COMMUNICATION TOWER, COMMERCIAL

Section 4 Standards

S. Nonconforming Lots of Record

Towers may be located on nonconforming lots of record provided the structure will comply with all sitting requirements of this Section without a ~~Type II Waiver-waiver~~ from any dimensional criteria as provided herein.

Part 36. **ULDC Art. 5.B.1.A.19.a.2)b)(2) [Related to Zoning Director discretion to exempt Mechanical Equipment Screening] (page 27 of 91), is hereby amended as follows:**

Reason for amendments: [Zoning] Establish that a Type I Waiver will be the procedure for applying for waivers from Roof Mounted Mechanical Equipment screening of the Right-of-Way.

CHAPTER B ACCESSORY AND TEMPORARY USES

Section 1 Supplementary Regulations

A. Accessory Uses and Structures

19. Mechanical Equipment

a. Applicability

2) Screening Requirements

b) ~~Type I Waiver - Exemption for Roof Mounted Mechanical Equipment~~

(2) Subject to ~~approval of a Type I Waiver Zoning Director discretion~~, the screening may not be required for any industrial use with industrial FLU designation if the equipment cannot be viewed from adjacent R.O.W. ~~In addition to the standards applicable to Type I Waiver, a~~ line of sight drawing may be required ~~by the DRO~~ to ensure compliance with screening of equipment. **[Ord. 2011-016]**

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1
2 Part 37. ULDC Art. 5.C.1.E.3.a, Green Architecture (page 35-38 of 91), is hereby amended as
3 follows:
4

Reason for amendments: [Zoning] Clarify that Green Architecture is subject to approval as a Type I Waiver, as amended in Round 2011-01, Ord. 2011-016.

5 CHAPTER C DESIGN STANDARDS

6 Section 1 Architectural Guidelines

7 E. Review Process

8 3. ~~Type I Waiver~~ - Green Architecture

9 a. Purpose and Intent

10 To encourage and promote the design and construction of green architecture. This
11 Section provides for ~~Type I Waivers waivers~~ from the architecture design guidelines,
12 provided the applicant can achieve the minimum points necessary to be classified as
13 Green Architecture. In order to design sustainable architecture, certain allowances for
14 ~~Type I Waivers waivers~~ in Section 5.C.1.H, Guidelines, need to be recognized and
15 allowed if minimum standards are met. The provisions in Table 5.C.1.E, Green
16 Architecture Designation Rating Program, provide alternative design solutions to achieve
17 green architecture while still complying with the general intent of the architecture
18 guidelines. [Ord. 2009-040]

19

20 d. Appeals

21 If the application is denied, the applicant may appeal the decision to the Zoning
22 Commission in compliance with the standards of Art. 2.A.1.S.2.b.6, ~~URAO, IRO, and LCC~~
23 Type I Waiver ~~and Green Architecture Waiver~~. [Ord. 2011-016]

24

25
26
27 Part 38. ULDC Art. 5.C.1.J.1, Non Judicial Remedies (page 44 of 91), is hereby amended as
28 follows:
29

Reason for amendments: [Zoning] Correct reference for consistency with the changes included in this exhibit.

30 CHAPTER C DESIGN STANDARDS

31 Section 1 Architectural Guidelines

32 J. Appeal

33 1. Non-Judicial Remedies

34 Any applicant aggrieved by an administrative interpretation or decision regarding this Chapter
35 who wishes to appeal the interpretation or decision shall file an appeal to the ZC and follow
36 the appeal procedures established in Art.2.A.1.S.2.b.6, ~~URAO, IRO, and LCC~~-Type I Waiver
37 ~~and Green Architecture Waiver~~. [Ord. 2005 – 002] [Ord. 2011-016]

38

39
40
41 Part 39. ULDC Art. 6.A.1.D.2.c.1), [Large Scale Commercial Development Related to Location of
42 Required Parking](page 13 of 39), is hereby amended as follows:
43

Reason for amendments: [Zoning] Clarify that prior BCC waiver process for Large Scale Commercial Development shall be processed as a Type II Waiver.

44 CHAPTER A PARKING

45 Section 1 General

46 D. Off-Street Parking

47 2. Location of Required Parking

48 c. Location of Front, Side, and Rear Parking

49 1) Large Scale Commercial Development

50 Developments with single tenants occupying 65,000 gross square feet or more shall
51 locate parking in accordance with Figure 6.A.1.D-3, Location of Front, Side, and Rear
52 Parking, as follows:

53 a) A maximum of 75 percent of required parking shall be located at the front.

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

- b) A minimum of 15 percent of required parking shall be located immediately fronting a side A entrance.
- c) A minimum of 25 percent of the required parking spaces at the side or rear, as indicated in Figure 6.A.1.D, Location of Front, Side and Rear Parking.
- d) **Type II Waiver**
The BCC may waive ~~these requirements as a Type II Waiver this requirement~~ if the applicant demonstrates there is an unusual site configuration ~~and/or~~ unique circumstances, and the alternative site design clearly meets the intent of this provision, by increasing the proximity of parking spaces to public entrances, reducing the visual blight of large expanses of surface parking areas, and improving pedestrian connectivity. [Ord. 2005- 002]

....

Part 40. ULDC Art. 6.B.1.H.7.a.2) Administrative Reduction [Related to Loading Space Reduction] (page 37 of 39), is hereby amended as follows:

Reason for amendments: [Zoning] Clarify that waiver provisions for loading zones for uses with less than 10,000 square feet shall be processed as a Type I Waiver.

CHAPTER B LOADING STANDARDS

Section 1 Loading

H. Dimensional Standards and Design Requirements

7. Loading Space Reduction

a. Reduction in Number of Spaces

2) ~~Type I Waiver-Administrative Reduction~~

For uses that contain less then 10,000 square feet of total GFA, the ~~applicant Zoning Director~~ may ~~apply for a Type I Waiver to eliminate the loading space required waive or reduce the loading standards.~~ [Ord. 2007-001]

....

Part 41. ULDC Art. 7.F.9.C.1, Walls and Fences (page 40 of 50), is hereby amended as follows:

Reason for amendments: [Zoning] To establish that walls or fences within an incompatibility buffer can be waived through a Type I Waiver.

CHAPTER F PERIMETER BUFFER LANDSCAPE REQUIREMENTS

Section 9 Incompatibility Buffer

C. Walls and Fences

Walls used in Type 1 incompatibility buffers shall not be CBS type with a continuous footer unless a minimum of ten clear feet is provided for landscaping.

1. Existing Walls or Fences

Where there is an existing wall or fence, ~~the Zoning Division~~ the applicant may ~~apply for a Type I Waiver to~~ waive the wall or fence requirement. The following conditions shall be considered when determining if the wall requirements may be waived:

- a. Condition of existing wall;
- b. Effectiveness of visual screen; and
- c. Type of construction.

Part 42. ULDC Art. 7.F.9.E, Special Standards (page 41 of 50), is hereby amended as follows:

Reason for amendments: [Zoning] To establish that an incompatibility buffer for pods adjacent to open space can be waived through a Type I Waiver.

CHAPTER F PERIMETER BUFFER LANDSCAPE REQUIREMENTS

Section 9 Incompatibility Buffer

E. Special Standards

The DRO may require incompatibility buffers for uses such as recreation and civic areas within a residential subdivision or pod. The ~~DRO may~~ applicant may ~~apply for a Type I Waiver to~~ waive

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EXHIBIT C

TYPE I AND II WAIVERS
SUMMARY OF AMENDMENTS
(Updated 1/19/12)

1 the incompatibility buffer for pods adjacent to open space that is 100 feet or greater in width.
2 [Ord. 2005 – 002]
3
4

5 Part 43. ULDC Art. 8.H.2, Billboards (page 36 - 37 of 39), is hereby amended as follows:
6

Reason for amendments: [Zoning] Clarify that DRO approves Type I Waiver for billboard location
criteria applicable to billboards located on Right-of-Ways.

7
8 CHAPTER H OFF-SITE SIGNS

9 Section 2 Billboards

10
11 F. Relocation of Billboards

12 Billboards may be relocated subject to the provisions of the billboard stipulated settlement
13 agreement or similar agreement. Billboard relocation shall occur as indicated below:

- 14 1. A billboard company shall notify the Zoning Division in writing of its intent to relocate a
15 billboard. The written notification shall be provided at least 30 days prior to the intended date
16 of demolition and relocation, unless otherwise waived by the Zoning Director.

17
18 G. Billboard Replacement

- 19
20 8. When an existing billboard is located on property that is being or has been acquired for public
21 road R-O-W purposes, the billboard location criteria of this Section may be waived subject to
22 approval of a Type I Waiver by the Zoning Director. The DRO may approve the Type I
23 Waiver for Zoning Director may waive the billboard location criteria when the width of the R-
24 O-W to be acquired will not allow billboard replacement consistent with the intent of this
25 Section.
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