

**Appendix to Municipalities'
Response to Order to Show Cause**

<u>Document</u>	<u>Pages</u>
1. Municipalities' Complaint for Declaratory Relief filed November 14, 2011, including exhibits as follows:	001-025
a. Exhibit 1 – Ordinance No. 2009-049 adopted December 15, 2009 (Original Ordinance)	026-037
b. Exhibit 2 – Ordinance No. 2010-041 adopted September 28, 2010 (Amended Ordinance)	038-042
c. Exhibit 3 – Ordinance No. 2010-019 adopted July 20, 2010 (Ballot Ordinance)	043-050
d. Exhibit 4 – Implementing Ordinance adopted May 17, 2011	051-077
2. Municipalities' Motion for Partial Summary Judgment filed August 30, 2012, including exhibits as follows:	078-109
a. Exhibit 1 – Ordinance No. 2010-019 adopted July 20, 2010 (Ballot Ordinance)	110-117
b. Exhibit 2 – Implementing Ordinance adopted May 17, 2011	118-144
c. Invoices	145-148

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO:

50 2011 CA 017953 XXXX

TOWN OF GULF STREAM, VILLAGE OF
TEQUESTA, CITY OF RIVIERA BEACH, TOWN
OF JUPITER, CITY OF DELRAY BEACH,
TOWN OF PALM BEACH SHORES, TOWN OF
MANALAPAN, VILLAGE OF WELLINGTON,
TOWN OF MANGONIA PARK, CITY OF PALM
BEACH GARDENS, TOWN OF HIGHLAND
BEACH, TOWN OF LAKE PARK, CITY OF
WEST PALM BEACH, TOWN OF OCEAN
RIDGE, CITY OF BOCA RATON, municipal
corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

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SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF
RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM
BEACH SHORES, TOWN OF MANALAPAN, VILLAGE OF WELLINGTON, TOWN OF
MANGONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH,
TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE,
CITY OF BOCA RATON, municipal corporations of the State of Florida, ("Municipalities"),
sue Defendant, PALM BEACH COUNTY (the "County"), for declaratory relief as follows:

GENERAL ALLEGATIONS

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

2. This action arises from the County's demand that the Municipalities pay a portion of the costs associated with the countywide Office of Inspector General Program. The Municipalities do not bring this action to overturn the Inspector General Program. Instead, the Municipalities bring this action solely to contest the funding mechanism for the Program. The funding mechanism is unlawful and unenforceable against the Municipalities given that it is contrary to law. For the funding of the Inspector General Program to be lawful, the County must fund it in its entirety.

3. The County is a political subdivision of the State of Florida.

4. The Municipalities are municipal corporations of the State of Florida.

5. This court has jurisdiction over the parties and the subject matter as all parties are located in Palm Beach County, the ordinances at issue were adopted in Palm Beach County and this lawsuit seeks declaratory relief.

6. Venue is proper in Palm Beach County.

7. Pursuant to Ch. 164, Fla. Stat., the Municipalities will file a motion to abate this proceeding until the parties can participate in the statutory conflict resolution procedure.

FACTS COMMON TO ALL COUNTS

History of Countywide Programs in Palm Beach County

8. Palm Beach County adopted a "home rule" Charter in 1985 ("the Charter"). Article I, Section 1.3 of the Charter sets forth the relationship between County ordinances or regulations and Municipal ordinances or regulations which conflict with one another. In accordance with this Charter section, Municipal ordinances prevail over County ordinances to the extent of any conflict, except in instances where the voters of both the County and the Municipalities have voted in a referendum to amend the County Charter to create a "countywide" regulation on a particular subject matter.

9. The approval of a "countywide" regulation by referendum vote makes that regulation applicable in both the County and the Municipalities within the County. The referendum process is initiated by a "Charter Ordinance," which has been adopted by the Board of County Commissioners ("BCC") and which describes the proposed "countywide" regulation to be voted on.

10. Prior to 2010, five amendments to the Charter occurred. All of these amendments were initiated by the BCC, and were the subject of a Charter Ordinance.

11. Each of these amendments proposed countywide regulation on a particular subject matter over which the County wanted to achieve uniform regulation within the municipalities as well as the unincorporated portions of the County. Each of these amendments was approved by the voters in both the Municipalities and the unincorporated portions of the County after a referendum vote. These amendments included:

- A. The Protection of Wells and Wellfields;
- B. Countywide Impact Fees;
- C. The creation of a Countywide Planning Council and Land Use Element (repealed);
- D. The establishment of a countywide level of service for certain roads; and
- E. Voluntary Annexation.

12. Each countywide program enumerated above has been and continues to be entirely funded by appropriations from the BCC. All were administered and staffed by the County Administrator through the appropriate County Department, with the exception of the Countywide Planning Council, which had its own staff.

13. The Municipalities are not required to share in the costs of any of these countywide programs.

14. The Countywide Planning Council was an independent agency with an Executive Director, planners, administrative personnel, and a General Counsel. Article VII, Section 7.15 of

the County's Charter provided: *"The planning council shall annually adopt a budget and submit it to the board of county commissioners... The county shall fund the planning council each year in an amount reasonably sufficient to permit the planning council to accomplish its responsibilities."* Accordingly, although the Countywide Planning Council was an independent agency, it was at all times entirely funded by an annual appropriation by the BCC until the program was repealed.

New Ethics Regulations in Palm Beach County and the Creation of the Office of Inspector General

15. Following the conviction of three County Commissioners for crimes they committed while in office and related to their official duties, the BCC initiated and adopted ordinances intended to more strictly regulate themselves and County employees (collectively referred to as the "Ethics Regulations").

16. The Ethics Regulations included Ordinances establishing a new Code of Ethics, a Commission on Ethics to enforce the Code of Ethics, and an Office of Inspector General (the "Inspector General"), which was designed to detect misconduct involving abuse, corruption, fraud, waste, inefficiencies and mismanagement in County government.

Implementation of the Ethics Regulations Via Four (4) Inconsistent Ordinances

A. Original Ordinance

17. The Inspector General's Original implementing Ordinance (Ordinance No. 2009-049), which was applicable only in the unincorporated portions of Palm Beach County, was adopted by the BCC on December 15, 2009 (the "Original Ordinance"). A copy of the Original Ordinance is attached hereto as Exhibit 1 and incorporated herein by reference.

18. Section 2(B)(4) of the Original Ordinance described the County's funding mechanism for the Inspector General as follows:

The costs of reviews, audits, inspections and investigations by the Inspector General shall be defrayed in part by imposition of a fee which shall be equal to one quarter of one percent (0.25%) of the contract price (hereinafter "IG contract fee). [emphasis added.]

19. The County imposed the IG contract fee on vendors and contractors that had contracts with the County unless an exception applied.

20. Section 2(B)(4) of the Original Ordinance provided that the IG contract fee did not apply to the following contracts:

- a. Contracts for legal services;
- b. Auditing contracts;
- c. Contracts under one thousand dollars (\$1,000), except for decentralized purchase orders as set forth in the Palm Beach County Purchasing Ordinance, section 2-51(f)(1)(l);
- d. Federal, state and local government-funded grants;
- e. Interlocal agreements;
- f. Revenue-generating contracts; and
- g. Purchases made pursuant to the State of Florida Department of Revenue approved Sales Tax Recovery Program.

21. Section 2(H) of the Original Ordinance, entitled "Financial Support and Budgeting" established the County's sole responsibility to appropriate for and fund the Inspector General during fiscal year 2009-2010 as follows:

In order to ensure adequate funding for the prompt establishment of the Inspector General pending implementation, the Board of County Commissioners hereby approves an amount equal to three hundred twenty thousand dollars (\$320,000) to fund all Inspector General operations for the remainder of the 2009-2010 fiscal year.

B. Amended Ordinance

22. On September 28, 2010, the BCC adopted Ordinance No. 2010-041 to, among other things, amend the funding mechanism that was contained in the Original Ordinance (the "Amended Ordinance"). A copy of the Amended Ordinance is attached hereto as Exhibit 2 and incorporated by reference.

23. Section 2-423(4) of the Amended Ordinance provided that the funding mechanism for the Inspector General would now be as follows:

The costs of reviews, audits, inspections and investigations by the inspector general shall be funded at minimum in an amount equal to one quarter of one (0.25) percent of contracts entered into by the county, as may be adjusted as necessary (hereinafter "minimum funding percentage"). [emphasis added.]

24. This new funding mechanism eliminated the IG contract fee imposed on vendors and contractors to fund the Inspector General Program and instead stated that the County itself would fund the Program in an amount equal to one quarter of one percent (0.25%) of County contracts.

25. The same contracts mentioned in paragraph 20 above were exempt from the new minimum funding percentage.

26. Section 2-429 of the Amended Ordinance again confirmed that the County was solely responsible to fund the Inspector General for the remainder of the 2009-2010 fiscal year in an amount equal to \$320,000.00.

C. Ballot Question Ordinance

27. Prior to and after its adoption of the Ethics Regulations, the BCC unilaterally determined that it was necessary to extend the Ethics Regulations to the Municipalities. To do so, the BCC adopted Ordinance No. 2010-019 on July 20, 2010 (the "Ballot Ordinance"). A copy of the Ballot Ordinance is attached hereto as Exhibit 3 and incorporated herein by reference.

28. The Ballot Ordinance called for a referendum to be held at the next election to ask the voters of Palm Beach County whether to amend the County Charter and create a countywide Code of Ethics, a countywide Commission on Ethics and a countywide Office of Inspector General. Once approved, these countywide programs would be applicable in all municipalities in addition to the unincorporated areas of the County where they were already in effect.

29. With respect to the proposed countywide Commission on Ethics and its funding, Section 8.2 of the Ballot Ordinance provided: "The Commission on Ethics shall be *adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.*" [emphasis added.]

30. The Ballot Ordinance did not require the Municipalities to pay a proportionate share of the funding for the operation of the Commission on Ethics if the referendum were passed.

31. Rather, the Ballot Ordinance only contemplated that the County and any governmental entities who *elected* to enter into interlocal agreements with the County to voluntarily come under the jurisdiction of the Commission on Ethics would share in the funding of this Office.

32. The use of the language "that elect to" was intended to apply to the Constitutional Offices, the School District of Palm Beach County, the Health Care District or other governmental entities should those entities elect to enter into interlocal agreements with the County to share in the funding of the Commission on Ethics.

33. The Ballot Ordinance's funding mechanism for the Commission on Ethics, to the extent it did not require the Municipalities to share in the cost of the program, was consistent with the previously adopted countywide programs mentioned in paragraph 11 above.

34. With respect to the funding for the countywide Inspector General Program, the Ballot Ordinance proposed a funding mechanism that was materially different than the one used for the Commission on Ethics. The Ballot Ordinance proposed Section 8.3 of the Ballot Ordinance, entitled "Inspector General," contains the following statement at line 10:

The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority

of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance.

35. According to Section 8.3 of the Ballot Ordinance, Municipalities, for the first time since the County became a Charter County, would be required to share in the cost of a countywide program.

36. Sections 8.3 and 8.4(a) of the Ballot Ordinance also contained provisions demonstrating that the County retained the exclusive authority to fund the Office of the Inspector General and that the Municipalities were powerless to determine the funding that was to be expended for this Office. Section 8.3 provides:

The Board of County Commissioners may increase or decrease the Funding Base upon a showing of need for such adjustment based upon criteria contained in the Implementing Ordinance but in no event shall the Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General.

Section 8.4 further provides:

The Board of County Commissioners has adopted ordinances establishing and providing for the funding, authority and powers of the Palm Beach County Commission on Ethics and the Office of Inspector General (the "Existing Ordinances").

37. With respect to the actual ballot language to be presented to the voters, Part 2 of the Ballot Ordinance, entitled "Referendum and Ballot Language," stated:

On November 2, 2010, a general election is to be held, and in accordance with the requirements of the Constitution and Laws of Florida, the following question shall be placed on the ballot by the Supervisor of Elections:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS COMMISSION AND INDEPENDENT INSPECTOR GENERAL

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving

this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?

**YES
NO**

38. The actual ballot language was silent as to the specific method to be used in funding the Inspector General Program.

39. Both the Ballot Ordinance and actual ballot language were silent as to the anticipated budget for, or the estimated annual costs to be paid by the County and the Municipalities to fund the Inspector General program.

40. Both the Ballot Ordinance and actual ballot language were silent as to what contracts would be included in calculating the amount equal to 0.25% of contracts to fund the Inspector General program.

41. Since the Ballot Ordinance and ballot language were silent on the issue of estimated costs and what contracts would be included in the 0.25% of contracts calculation, the only ordinances available for review by the voters prior to the referendum that discussed these issues were the Original Ordinance and the Amended Ordinance. The current cost of the Inspector General Program is more than 8 times higher than what was shown in these Ordinances.

42. On November 2, 2010, the referendum vote on the Ethics Regulations was held. A majority of the voters of each of the 38 Municipalities and of Palm Beach County as a whole approved the Ballot as presented in the preceding paragraph 37.

D. Implementing Ordinance

43. On May 17, 2011, the County Commission adopted the ordinance implementing the newly approved countywide Inspector General Program and providing for the funding for said Program (the "Implementing Ordinance"). The Implementing Ordinance repealed the Original Ordinance (Ordinance No. 2009-049). A copy of the Implementing Ordinance is attached hereto as Exhibit 4 and incorporated herein by reference.

44. The Implementing Ordinance proposed an entirely different method to fund the Inspector General's Office than what had been utilized in the Original Ordinance (Ordinance No. 2009-049), the Amended Ordinance (Ordinance No. 2010-041), and the Ballot Ordinance (Ordinance No. 2010-019).

45. The Implementing Ordinance provides that the County and Municipalities' proportionate share for the costs of the Inspector General Office are to be based on the actual expenses of the County and each Municipality as reported to the Florida Department of Financial Services Local Government Electronic Reporting System ("LOGGER"). In this regard, Section 2-429(1) and (2) of the Implementing Ordinance, entitled "Financial support and budgeting," provides as follows:

(1) The county and municipalities shall fund the inspector general's office proportionately, based on the actual expenses of each governmental entity as recorded in the most recent audited year and reported in the Florida Department of Financial Services Local Government Electronic Reporting system (LOGGER), pursuant to section 218.32, Florida Statutes, as may be amended.

(2) The County and each municipality's proportionate share shall be based on each entity's actual expenses as defined in the then current Uniform Accounting System Manual, published by the State of Florida, Department of Financial Services, Bureau of Local Government, and shall include the following Object Categories: 30 - Operating Expenditures/Expenses; 60 - Capital Outlay; and 80 - Grants and Aids. Notwithstanding the above, however, law enforcement, pension funds, electric utility services,

fire control and intergovernmental transfer costs shall not be included in the proportionate share calculation.

(emphasis added).

46. The Implementing Ordinance contains a contradictory statement that the funding base for the Inspector General's Office is not based on "actual expenses," but is based on an amount equal to one quarter of one percent (0.25%) of contracts as was provided for in the Ballot Ordinance. Section 2-429.1(1) and (2) of the Implementing Ordinance, entitled "Funding Base," provides in relevant part:

(1) The funding base is a minimum level of funding, determined as a percentage of contract activity of the governmental entities subject to the authority of the inspector general ... The funding base is currently set at an amount equal to one quarter of one percent (0.25%) of the contracts as described in section 2-429(2)

(2) ... In no event shall the funding base be reduced below one quarter of one percent unless such reduction is made by the inspector general.

47. The Implementing Ordinance does not describe how the funding base, which is based on contract amounts, relates to the County and Municipality's proportionate share calculation, which is based on actual expenses.

48. Section 2-429(8) of the Implementing Ordinance further provides that:

The county and each municipality's proportionate share for the period of June 1, 2011 through September 30, 2011 shall be as set forth in Exhibit A which is attached hereto and incorporated herein by reference. The Office of the Clerk and Comptroller shall invoice the County, upon adoption of this ordinance, \$946,764. This amount is based on the estimated expenses through June 1, 2011 of \$483,333, plus the County's proportionate share as reflected on Exhibit A. The Office of the Clerk and Comptroller shall invoice each municipality for their proportionate share as set forth in subsection (7) beginning with the first invoice on October 10, 2011.

49. Exhibit A referred to in Sec. 2-429(8) provides that the Municipalities' proportionate share of funding for the Inspector General for the period June 1, 2011 through September 30, 2011 is \$327,898.

50. There is no provision in the Implementing Ordinance which gives the Municipalities the right to control their proportionate share of the funding for the Inspector General's Office.

51. The County issued its first invoice to the Municipalities for the Inspector General funding on October 10, 2011.

COUNT I - DECLARATORY RELIEF
(UNLAWFUL TAX AS TO MUNICIPALITIES)

52. The Municipalities reallege and incorporate by reference paragraphs 1 through 51 as if fully stated in this count.

53. The County is currently requiring the Municipalities to pay their proportionate share for the Countywide Inspector General Program.

54. The County's imposition of cost sharing on the Municipalities is not lawful.

55. The required municipal shares do not constitute a user fee.

56. There is no rational nexus between the service being performed by the Inspector General and the share charged. In fact, the Inspector General may never review, audit or investigate a contract that is the subject of the funding base or that constitutes an actual expense of the Municipality even though the County contends the proportionate share is based on these items. Additionally, the proportionate share is not voluntary under the Countywide Program; the Municipalities are required to pay their proportionate share.

57. The required municipal shares do not constitute a special assessment. Special assessments are tied to special benefits for real property. The shares are not related to any benefit to real property.

58. Given that the Municipalities' required shares do not constitute a user fee or a special assessment, they can only be a tax.

59. There has been no provision by general law or the State Constitution authorizing the County to levy this tax. Therefore, this tax is unlawful and unenforceable.

60. The voters approved the ballot question making the Municipalities subject to the Inspector General Program. The fact that the voters approved the ballot question, however, does not make it legal. *See Gaines v. City of Orlando*, 450 So.2d 1174 (Fla. 5th DCA 1984) (a charter provision that conflicts with the state constitution or state law is not any more lawful simply because the charter provision was adopted by the electorate).

61. As an alternative to the current funding method for the Inspector General Program, the County has previously stated that it can require County and municipal vendors to pay a 0.25% contract fee on every contract they enter into with the County or Municipalities (the "IG Contract Fee").

62. Under this alternative funding method, the County has stated that the Municipalities would be responsible for imposing the IG Contract Fee on their respective vendors and collecting said Fee.

63. This IG Contract Fee is the same one that the County previously followed pursuant to the Original Ordinance (Ordinance No. 2009-049), but repealed pursuant to the Amended Ordinance (Ordinance No. 2010-041).

64. The Implementing Ordinance (Ordinance No. 2011-009), which contains the current funding mechanism, does not mention that the Inspector General Program will be funded pursuant to the IG Contract Fee.

65. The County cannot unilaterally change the current funding mechanism to something different than that which was set forth in the Ballot Ordinance.

66. Further, the County's imposition of the IG Contract Fee on vendors to fund the Inspector General Program constitutes an unlawful tax and is unenforceable for the same reasons as set forth in paragraphs 55-59 above.

67. There are no legal means by which the Municipalities can pass this cost on to vendors or collect this unlawful Fee from vendors.

68. The Municipalities cannot be compelled to implement a program to collect an unlawful tax.

69. The Municipalities are in doubt as to their rights and the effect of the County's actions as described above.

70. There is a real and present controversy concerning the legality of the County's actions regarding the funding for the Inspector General Program.

71. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. The Municipalities shall not be required to share in the expenses of the Inspector General Program;
- b. The Municipalities shall not be required to implement a program to collect the IG Contract Fee from its vendors to fund the Inspector General Program;

- c. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;
- d. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program are unlawful and unenforceable; and
- e. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances.

COUNT II - DECLARATORY RELIEF
(UNLAWFUL FUNDING MECHANISM DUE TO PAYMENT
FOR THE SAME SERVICES TWICE)

72. The Municipalities reallege and incorporate by reference paragraphs 1 through 51 as if fully stated in this count.

73. The Ballot Ordinance and Implementing Ordinance both require that Municipalities pay a proportionate share for the Countywide Inspector General Program.

74. The required proportionate cost sharing is unlawful and unenforceable.

75. Municipal residents, whether individuals or businesses, pay the same ad valorem county taxes as those residents living in unincorporated areas.

76. A portion of these ad valorem county taxes paid by municipal residents go toward paying for the County's share of the Inspector General Program.

77. Municipal residents, therefore, already pay for the Inspector General Program through their payment of ad valorem county taxes.

78. Under the current funding mechanism, these same municipal residents also are required to pay ad valorem municipal taxes, a portion of which goes toward the Municipalities' share of the Inspector General Program.

79. Under the current funding mechanism, municipal residents are required to pay for the services of the Inspector General twice while the residents of the unincorporated areas of the County are only required to pay for the services of the Inspector General once.

80. A taxpayer receives the same services from the IG, whether he or she is within an incorporated municipality or the unincorporated areas of the County. A municipal taxpayer receives no additional services in exchange for paying more.

81. The funding for the Inspector General Program is inequitable to municipal residents. The Municipalities are being forced to take taxpayer monies away from municipal programs to fund the Inspector General Program when municipal residents have already paid their share of ad valorem county taxes.

82. The County should be required to pay for the entire countywide Inspector General Program as it has done for all other countywide programs approved by referendum.

83. The Municipalities are in doubt as to their rights regarding the payment of the amounts demanded by the County to fund the countywide Inspector General Program.

84. There is a real and present controversy concerning the lawfulness of the County's actions regarding the funding for the Inspector General Program.

85. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. Municipal residents are entitled to pay a single fee for the Inspector General's services, rather than a county fee and a municipal fee for these services;

- b. The Municipalities shall not be required to pay an additional share of the expenses for the Inspector General Program over and above the county taxes already expended for this Program;
- c. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;
- d. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program are unlawful and unenforceable; and
- e. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances.

COUNT III - DECLARATORY RELIEF
(LACK OF CHARTER AUTHORITY)

86. The Municipalities reallege and incorporate by reference paragraphs 1 through 51 as if fully stated in this count.

87. Pursuant to the Implementing Ordinance (Ordinance No. 2011-009), Municipalities are required to fund the Inspector General Program via the LOGER System even though this was not the funding method approved by the voters by their passage of the Ballot Question in November, 2010.

88. The Ballot Ordinance (Ordinance No. 2010-019) approved by the voters stated that the Inspector General Program would be funded at minimum in an amount equal to one quarter of one percent (0.25%) of contracts.

89. The Ballot Ordinance did not mention the LOGER System.

90. None of the past Ordinances dealing with the Office of Inspector General in fact have mentioned the LOGER System as the funding mechanism for the Program.

91. The first mention of the LOGER System to fund the Inspector General Program occurred on May 17, 2011, when the BCC adopted the Implementing Ordinance (Ordinance 2011-009). This was more than 6 months after the voters approved the Ballot Question.

92. The LOGER System is quite different than the funding method of utilizing an amount equal to one quarter of one percent (0.25%) of contracts as outlined in the Ballot Ordinance or its predecessor Ordinances. The LOGER System calculates the amount available to fund the Inspector General each year based on the County and the Municipalities' actual expenses rather than on contracts amounts.

93. The actual expenses calculation provides for a much broader funding base than the one outlined in the Ballot Ordinance or its predecessor Ordinances.

94. Given that the funding mechanism contained in the Implementing Ordinance is so different from the funding mechanism contained in the Ballot Ordinance that was considered by the voters, there is no charter authority for the County to require the Municipalities to remit payment for their share of the Inspector General Program via the LOGER system.

95. The Municipalities are in doubt and uncertain as to what amount (if any) they should remit to Palm Beach County to pay for their proportionate share of the funding for the Inspector General because the LOGER System was not mentioned in the Ballot Ordinance, was not submitted to the voters for approval, and was not mentioned by ordinance until the adoption of the Implementing Ordinance (Ordinance No. 2011-009) in May, 2011.

96. There is a real and present controversy concerning the lawfulness of the County's actions regarding the funding for the Inspector General program.

97. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. There is no charter authority allowing the County to calculate the funding available to the Inspector General or the Municipalities' proportionate share of that funding based on the LOGER System;
- b. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program via the LOGER System are unlawful and unenforceable; and
- c. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances.

COUNT IV - DECLARATORY RELIEF
(UNLAWFUL CONFLICT WITH GENERAL LAW)

98. The Municipalities reallege and incorporate by reference paragraphs 1 through 51 as if fully stated in this count.

99. The Florida Constitution authorizes municipalities to "exercise any power for municipal purposes except as otherwise provided by law." Art. VIII, Sec. 2(b), Fla. Const.

100. Under Chapter 166 of the Florida Statutes, the Municipal Home Rule Powers Act, Municipalities are expressly empowered to exercise any power for municipal purposes, except when expressly prohibited by law.

101. Budgeting and the appropriation of taxes collected by municipalities are activities or powers which may be exercised by municipal corporations under Chapter 166, Florida Statutes.

102. In particular, Section 166.241, Florida Statutes, provides the statutory framework for municipalities to adopt and amend their budgets.

103. By requiring the Municipalities to fund the Inspector General Program, the County is attempting to compel the Municipalities to adopt budgets, which appropriate funds to carry out the functions of the Program.

104. The County imposes an amount on the Municipalities to pay each year based on the funding base and demands that the Municipalities appropriate the necessary monies to cover this amount without regard to what municipal programs will lose funding or face budget cuts as a result.

105. Pursuant to the Florida Constitution and the Municipal Home Rule Powers Act, municipalities retain the exclusive right to appropriate funds as each municipality finds necessary in responsible operation of municipal government.

106. Pursuant to Fla. Stat. 166.241, only the governing body of a municipality can appropriate funding to carry out the services and programs for its citizens. The County does not have the authority to compel the Municipalities to appropriate funds.

107. The County's demand that the Municipalities appropriate funds for the Inspector General Program is unlawful and unenforceable given that it takes the authority to control municipal budgets and the appropriation of funds away from the Municipalities.

108. The Municipalities' loss of budgetary control is compounded by the fact that Section 8.3 of the County's Charter and Section 2-429.1(2) of the Implementing Ordinance allow the BCC to increase the funding base for the Inspector General Program after a showing of need for such adjustment.

109. Neither the County's Charter or the Implementing Ordinance permit the Municipalities to participate in the decision to increase the funding base.

110. The Implementing Ordinance provides that the Municipalities are bound by the decision of the BCC and must appropriate funds accordingly if the funding base is increased.

111. Section 2-429.1(1)(a) of the Implementing Ordinance also permits the Inspector General to submit supplemental budget requests to the BCC for approval during the course of a fiscal year.

112. The Implementing Ordinance does not permit the Municipalities to participate in the decision on whether to grant the supplemental budget requests even though the Municipalities will already have approved their budgets for that fiscal year.

113. The Implementing Ordinance provides that the Municipalities are bound by the decision of the BCC and must appropriate funds accordingly if the supplemental budget requests are approved.

114. The Municipalities are in doubt as to their rights regarding the lawfulness of the requirement that they appropriate funds through their budgets to pay the amounts demanded by the County to fund the Inspector General Program.

115. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality and the Municipalities have refused to pay these invoices or have paid under protest.

116. There is a real and present controversy concerning the legality of the County's actions because the mandatory funding provisions of the County Charter and Implementing Ordinance unconstitutionally usurps municipal home rule powers and conflicts with general law.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. The Municipalities shall not be required to pay the expenses of the Inspector General Program;
- b. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;
- c. Any efforts by the County to require the Municipalities to appropriate funds to pay for the expenses of the Inspector General Program are unlawful and unenforceable;

- d. Section 8.3 of the Charter and subsequent Implementing Ordinance are unconstitutional as they are in conflict with the powers and duties granted to the Municipalities under the Florida Constitution and Chapter 166, Florida Statutes;
- e. Section 8.3 of the Charter and subsequent Implementing Ordinance are unconstitutional as they are in conflict with the budgeting powers granted to the Municipalities pursuant to Chapter 166.0241, Florida Statutes; and
- f. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances.

Dated this 14th day of November, 2011.

Respectfully submitted,

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ORDINANCE NO. 2009- 049

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR TITLE; CREATING AND ESTABLISHING THE PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 21, 2009, the Palm Beach County Grand Jury issued a final presentment in the investigation of Palm Beach County governance and public corruption issues; and

WHEREAS, the Grand Jury recommended that the Board of County Commissioners of Palm Beach County enact an ordinance establishing an independent Office of Inspector General with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the County, and entities funded in whole or in part by County tax dollars; and

WHEREAS, the Board of County Commissioners agrees with the Grand Jury's recommendation that an independent Palm Beach County Office of Inspector General should now be created and established by ordinance to provide independent oversight of County operations; and

WHEREAS, the Board of County Commissioners is committed to the highest standards of integrity, honesty, efficiency and accountability; and

WHEREAS, misconduct involving abuse, corruption, fraud, and mismanagement by elected and appointed County officials and employees, County agencies and instrumentalities, contractors, and other parties doing business with the County and/or receiving County funds, undermines public confidence in County government and prevents the County from operating honestly, efficiently and effectively; and

WHEREAS, it is critically important that County elected and appointed officials and employees discharge their duties and responsibilities in a lawful and ethical manner and be held accountable for their misconduct, inefficiency and ineffectiveness; and

WHEREAS, imposing the duty on all elected and appointed County officials and employees to cooperate with and report misconduct to the Inspector General will broaden and strengthen the

ORDINANCE NO. 2009 049

EXHIBIT

1

1 Inspector General's ability to detect, investigate, eliminate, and deter misconduct by County officials
2 and employees, vendors and County-funded entities and promote integrity, honesty and efficiency in
3 County government; and

4 WHEREAS, this Ordinance will send an unmistakable message to the public about the
5 County's commitment to rooting out and eliminating abuse, corruption, mismanagement and fraud.

6
7 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
8 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

9
10 **SECTION 1. TITLE.**

11 This Ordinance shall be titled the "Palm Beach County Office of Inspector General
12 Ordinance."

13 **SECTION 2. PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL CREATED**
14 **AND ESTABLISHED.**

15 A. Created and established. There is hereby established the Palm Beach County Office of
16 Inspector General which is created in order to detect misconduct involving abuse, corruption, fraud,
17 waste, inefficiencies, and mismanagement by elected and appointed County officials and employees,
18 County agencies and instrumentalities, contractors, and other parties doing business with the County
19 and/or receiving County funds. The Inspector General shall head the Office of Inspector General.
20 The organization and administration of the Office of Inspector General shall be independent to
21 assure that no interference or influence external to the Office of Inspector General adversely affects
22 the independence and objectivity of the Inspector General.

23 B. Functions, Authority and Powers.

24 (1) The Inspector General shall have the authority to: (a) make investigations of County
25 matters and publish the results of such investigations; (b) review and audit past, present
26 and proposed County programs, accounts, records, contracts, change orders and
27 transactions; and (c) prepare reports and recommendations to the Board based on such
28 investigations. All elected and appointed County officials and employees, County
29 agencies and instrumentalities, contractors and other parties doing business with the
30 County and/or receiving County funds shall fully cooperate with the Inspector General.

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1 (2) The Inspector General shall have the power to conduct audits of, require reports from,
2 and receive full and unrestricted access to the records of the Board, County
3 Administrator, all elected and appointed County officials and employees, County
4 departments, divisions, agencies and instrumentalities, contractors and other persons and
5 entities doing business with the County and/or receiving County funds regarding any
6 such contracts or transactions with the County. The Inspector General's jurisdiction
7 includes but shall not be limited to all projects, programs, contracts or transactions that
8 are funded in whole or in part by the County. The Inspector General may contract with
9 outside entities deemed necessary to perform the functions of that office. This
10 subsection does not apply to collective bargaining agreements.

11 (3) In the case of a refusal to obey a request by the Inspector General for documents or for
12 an interview, the Inspector General shall have the power to subpoena witnesses,
13 administer oaths, and require the production of records. Seventy-two hours prior to
14 serving a subpoena, the Inspector General shall provide written notice to the State
15 Attorney and the U.S. Attorney for the Southern District of Florida. The Inspector
16 General shall not interfere with any ongoing criminal investigation or prosecution of the
17 State Attorney or the U.S. Attorney for the Southern District of Florida. When the State
18 Attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified
19 the Inspector General in writing that the Inspector General's investigation is interfering
20 with an ongoing criminal investigation or prosecution, the Inspector General shall
21 suspend service of subpoena, examination of witnesses, or other investigative activities
22 as set forth in the notice. In the case of a refusal to obey a subpoena served to any
23 person, the Inspector General may make application to any circuit court of this State
24 which shall have jurisdiction to order the witness to appear before the Inspector General
25 and to produce evidence if so ordered, or to give testimony touching on the matter in
26 question.

27 (4) The costs of reviews, audits, inspections and investigations by the Inspector General
28 shall be defrayed by imposition of a fee which shall be equal to one quarter of one
29 percent (0.25%) of the contract price, as may be adjusted as necessary (hereinafter "IG
30 contract fee"). The IG contract fee shall not apply to the following contracts:

31 a. Contracts for legal services;

ORDINANCE NO. 2009 049

1 b. Auditing contracts;

2 c. Contracts under one thousand dollars (\$1,000), except for decentralized purchase
3 orders as set forth in the Palm Beach County Purchasing Ordinance, section 2-
4 51(0)(1)(I);

5 d. Federal, state and local government-funded grants;

6 e. Interlocal agreements;

7 f. Revenue-generating contracts; and

8 g. Purchases made pursuant to the State of Florida Department of Revenue approved
9 Sales Tax Recovery Program.

10 Notwithstanding the foregoing, the Board may authorize the inclusion of the IG contract
11 fee in any contract. Nothing contained in this subsection shall in any way limit the
12 powers of the Inspector General provided for in this Ordinance to perform audits,
13 inspections, reviews and investigations on all County contracts including, but not
14 limited to, those contracts specifically exempted from the IG contract fee.

15 (5) Where the Inspector General suspects a possible violation of any state, federal or local
16 law, or rule, regulation or policy, he or she shall notify the appropriate civil, criminal or
17 administrative agencies, including the Palm Beach County Commission on Ethics. In
18 the case of a possible violation of a rule, regulation or policy governing a County
19 employee, the Inspector General shall also notify the County Administrator and the head
20 of the Department for which the employee works. After referring the matter to the
21 appropriate entity for fact-finding, the Inspector General may assist the entity in
22 conducting the investigation.

23 (6) The Inspector General shall have the power without limitation to audit, investigate,
24 monitor, inspect and review the operations, activities, performance, and procurement
25 processes including, but not limited to, establishment of bid specifications, bid
26 submittals, activities of the contractor, its officers, agents and employees, lobbyists,
27 County staff, and officials, in order to ensure compliance with contract specifications
28 and detect corruption and fraud.

29 (7) The Inspector General shall have the power to receive, review and investigate any
30 complaints regarding County-funded projects, programs, contracts or transactions. The

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Inspector General shall establish a "hotline" to receive complaints, from either anonymous or identified persons.

(8) The Inspector General may exercise any of the powers contained this Ordinance upon his or her own initiative.

(9) The Inspector General shall be notified in writing prior to any meeting of a selection committee where any matter relating to the procurement of goods or services by the County is to be discussed. The notice required by this subsection shall be given to the Inspector General as soon as possible after a meeting has been scheduled, but in no event later than one business day prior to the scheduled meeting. The Inspector General may, at his or her discretion, attend all duly noticed County meetings relating to the procurement of goods or services as provided herein, and may pose questions and raise concerns consistent with the functions, authority and powers of the Inspector General.

(10) It is anticipated that municipalities, special districts, and other public officials and entities will recognize and desire to benefit from the services of the Palm Beach County Office of Inspector General. The Inspector General may negotiate agreements or memoranda of understanding with other public entities which would authorize the Inspector General to exercise any and all authority, functions and powers set forth in this Ordinance for the benefit of such public entity. The memorandum of understanding or agreement shall include a provision for fees to be paid to the Inspector General from the public entity in exchange for such benefits. Such fee shall be based on a rate established by the Inspector General and shall include, but not be limited to, the IG contract fee. Any such agreement or memorandum of understanding is subject to final approval of the Board, but such approval shall not be unreasonably withheld. For the purposes of the removal procedure set forth in Section 2.1. of this Ordinance, a "Funding Entity" shall mean a public entity that has entered into an agreement or memorandum of understanding to receive services of the Inspector General, and has provided funding in exchange for such services equal to at least 25% of the total annual budget of the Inspector General for Palm Beach County's fiscal year immediately preceding the fiscal year in which the removal procedure takes place.

(11) The Inspector General's records related to active investigations are confidential and exempt from disclosure, as provided by section 112.3188(2), Florida Statutes.

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1 (12) The Inspector General is considered "an appropriate local official" of the County for
2 purposes of whistleblower protection provided by section 112.3188(1), Florida Statute.

3 (13) The Inspector General may recommend remedial actions and may provide prevention
4 and training services to County officials, employees, and any other persons covered by
5 this Ordinance. The Inspector General may follow up to determine whether
6 recommended remedial actions have been taken.

7 (14) The Inspector General shall establish policies and procedures and monitor the costs of
8 investigations undertaken. The Inspector General shall cooperate with other
9 governmental agencies to recover such costs from other entities involved in willful
10 misconduct in regard to County funds.

11 (15) Nothing herein shall abridge employees' constitutional right to collective bargaining.

12 **C. Minimum Qualifications, Selection and Term of Office.**

13 (1) Minimum qualifications. The Inspector General shall be a person who:

14 a. Has at least ten (10) years of experience in any one or a combination of the following
15 fields:

16 (i) as a federal, state or local law enforcement officer/official;

17 (ii) as a federal or state court judge;

18 (iii) as a federal, state or local government attorney with expertise in investigating
19 fraud, mismanagement and corruption;

20 (iv) as an inspector general, certified public accountant, or internal auditor;

21 (v) as a person with progressive supervisory and managerial experience in an
22 investigative public agency similar to an inspector general's office;

23 b. Has managed and completed complex investigations involving allegations of fraud,
24 theft, deception or conspiracy;

25 c. Has demonstrated the ability to work with local, state and federal law enforcement
26 agencies and the judiciary;

27 d. Has a four-year degree from an accredited institution of higher learning;

28 e. Has not been employed by Palm Beach County or any other governmental entity
29 subject to the authority of the Inspector General Office during the two-year period
30 immediately prior to selection;

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1 f. Highly qualified candidates will also have audit-related skills and/or hold one or
2 more of the following professional certifications at the time of selection: certified
3 inspector general (CIG), certified inspector general investigator (CIGI), certified
4 inspector general auditor (CIGA), certified public accountant (CPA), certified internal
5 auditor (CIA), or certified fraud examiner (CFE).

6 (2) Selection. No official or employee of any governmental entity subject to the authority
7 of the Office of Inspector General shall participate in the selection of the Inspector
8 General. Responsibility for selecting the Inspector General shall be vested solely with
9 the Inspector General Selection Committee ("Selection Committee"). The Selection
10 Committee shall be comprised of the Commission on Ethics as established in Palm
11 Beach County Ordinance 2009-XXXX, the State Attorney for the Fifteenth Judicial
12 Circuit or his or her designee, and the Public Defender for the Fifteenth Judicial Circuit
13 or his or her designee. The chairperson of the Selection Committee shall be chairperson
14 of the Commission on Ethics. After thoroughly reviewing qualifications, background
15 information, and personal and professional referrals, the Selection Committee shall
16 notify the County Attorney of its selection. The County Attorney shall promptly notify
17 the Board that a selection has been made. The County Attorney shall assist the
18 Commission on Ethics to negotiate the terms of an employment contract with the
19 selected Inspector General as set forth in Section 2.D.

20 a. Initial Selection. Within thirty (30) days of the effective date of this Ordinance, the
21 Human Resources Department will solicit qualified candidates. Within one hundred
22 twenty (120) days of the effective date of this Ordinance, the Selection Committee shall
23 in good faith endeavor to select the Inspector General.

24 (3) Staffing of Selection Committee. The Human Resources Department shall provide staff
25 to the Selection Committee and as necessary will advertise the acceptance of resumes
26 for the position of Inspector General. All resumes received by the Human Resources
27 Department will be forwarded to the Selection Committee for consideration. The
28 Human Resources Department shall contract with an appropriate entity to ensure that
29 background checks are conducted on the candidates selected for interview by the
30 Selection Committee. The results of the background checks shall be provided to the
31 Selection Committee prior to the interview of candidates. Following the initial selection

7
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1 of the Inspector General, the Selection Committee, for future selection processes as
2 described in subsection C.(2) above, may continue to employ the services of the Human
3 Resources Department or may utilize its own staff to solicit candidates for Inspector
4 General. All advertisements for the acceptance of resumes for Inspector General shall
5 include a salary range commensurate with public officials of like experience and
6 expertise.

7 (4) Term. The Inspector General shall serve for a term of four (4) years. At least six (6)
8 months prior to the end of each contract term, the Selection Committee will determine
9 whether or not to renew the contract for an additional term of four (4) years, and shall
10 promptly notify the Inspector General of its decision. In the event the Selection
11 Committee elects not to renew the contract, the Selection Committee shall promptly
12 convene as necessary to solicit candidates for and to select a new Inspector General in
13 the same manner as described in subsection C.(2) above. The incumbent Inspector
14 General may submit his or her name as a candidate to be considered for selection. The
15 incumbent Inspector General shall serve until a successor is selected and assumes office.

16 (5) Vacancy. In case of a vacancy in the position of Inspector General, the chairperson of
17 the Selection Committee may appoint a member of the Inspector General's Office as
18 interim Inspector General within ten (10) days of the vacancy occurring, until such time
19 as a successor Inspector General is selected and assumes office. A successor Inspector
20 General shall be selected in the same manner as described in subsection C.(2) above,
21 except for the following specific time constraints: (a) solicitation for qualified
22 candidates for selection should be published within twenty (20) days, but no later than
23 forty (40) days of the date the vacancy occurs; and (b) the Selection Committee must in
24 good faith endeavor to convene and select an Inspector General within ninety (90) days
25 of the date the vacancy occurs.

26 D. Contract. The Commission on Ethics with the assistance of the County Attorney shall
27 negotiate a contract of employment with the Inspector General substantially consistent with the
28 terms included in contracts of other contractual employees of Palm Beach County. The Inspector
29 General shall be paid at a rate commensurate with public officials of like experience and expertise.
30 Before any contract shall become effective, the contract must be approved by a majority of the Board
31 present at a regularly scheduled Board meeting. The contract will cover the entire four-year term

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1 subject to the removal provisions in subsection 2.1 of this Ordinance. The contract will include a
2 provision requiring the Selection Committee to provide notice of its decision to renew or not to
3 renew the contract at least six (6) months prior to the termination of the contract. The contract shall
4 provide that the Inspector General may not represent a political party or be on any executive
5 committee thereof, or seek public office during his or her term of service or for four (4) years
6 thereafter. That limitation does not include seeking selection as Inspector General for a subsequent
7 term. The contract shall further provide that the Inspector General may not be a Lobbyist, as defined
8 in Palm Beach County Code, Section 2-352, for two years after term of service.

9 **E. Physical Facilities and Staff.**

10 (1) The County shall provide the Office of Inspector General with appropriately located
11 office space and sufficient physical facilities together with necessary office supplies,
12 equipment and furnishings to enable the Inspector General to perform his or her
13 functions.

14 (2) The Inspector General shall have the power to appoint, employ, and remove such
15 assistants, employees and personnel, and establish personnel procedures as deemed
16 necessary for the efficient and effective administration of the activities of the Office of
17 Inspector General.

18 **F. Procedure for Finalization of Reports and Recommendations Which Make Findings**

19 **as to the Person or Entity Being Reviewed or Inspected.** The Inspector General shall publish and
20 deliver finalized reports and recommendations to the Board and to the Palm Beach County
21 Commission on Ethics. Notwithstanding any other provision of this Ordinance, whenever the
22 Inspector General determines that it is appropriate to publish and deliver a report or recommendation
23 which contains findings as to the person or entity being reported on or who is the subject of the
24 recommendation, the Inspector General shall provide the affected person or entity a copy of the
25 report or recommendation. Such person or entity shall have fifteen (15) working days to submit a
26 written explanation or rebuttal of the findings before the report or recommendation is finalized.
27 Such timely submitted written explanation or rebuttal shall be attached to the finalized report or
28 recommendation. The requirements of this subsection shall not apply when the Inspector General, in
29 conjunction with the State Attorney or U.S. Attorney, determines that supplying the affected person
30 or entity with such report will jeopardize a pending criminal investigation.

ORDINANCE NO. 2009 049

1 G. Reporting. The Inspector General shall annually prepare and publish a written report
2 concerning the work and activities of the Office of Inspector General including, but not limited to,
3 statistical information regarding the disposition of closed investigations, audits and other reviews.
4 The annual report of the Inspector General shall be posted promptly on Palm Beach County's public
5 website.

6 H. Financial Support and Budgeting. Pursuant to its annual budget process, the County
7 shall provide sufficient financial support for the Inspector General's Office to fulfill its duties as set
8 forth in this Ordinance. In order to ensure adequate funding for the prompt establishment of the
9 Inspector General pending implementation, the Board of County Commissioners hereby approves an
10 amount equal to three hundred twenty thousand dollars (\$320,000) to fund all Inspector General
11 operations for the remainder of the 2009-2010 fiscal year. The Inspector General shall timely
12 deliver to the Board of County Commissioners a budget request including a reasonable estimate of
13 operating and capital expenditures, and shall include revenues, including, but not limited to,
14 projected IG contract fee revenues to be collected from the County and any other participating local
15 governments and public agencies. The Inspector General's budget request shall not be implemented
16 until approved by the Board of County Commissioners. The Inspector General shall establish a
17 fiscal year which coincides with that of Palm Beach County. Nothing contained herein shall be
18 construed to prohibit the Inspector General from transmitting to the County Commission
19 supplemental budget requests which, if approved by the Commission, shall constitute amendments to
20 the county budget.

21 I. Removal. The Inspector General may be removed only for cause based upon specified
22 charges of the following: neglect of duty, abuse of power or authority, discrimination, or ethical
23 misconduct. The removal process shall be initiated at a duly noticed public hearing of either the
24 Board, the Selection Committee, or a Funding Entity as described in Section 2.B.(10) of this
25 Ordinance. An affirmative vote of five (5) members of the Board, an affirmative vote of five (5)
26 members of the Selection Committee, or an affirmative supermajority vote of a Funding Entity shall
27 be required to present the Inspector General with the charges and to proceed to final public hearings.
28 The Board, Selection Committee, or the initiating Funding entity, as appropriate, shall transmit a
29 copy of the charges to the Inspector General at least sixty (60) days prior to all final public hearings
30 which shall be convened by the Board, all Funding Entities, and the Selection Committee. The
31 Inspector General shall have an opportunity to be heard in person and by counsel at the final public

10
ORDINANCE NO. 2009 049

1 hearings prior to the votes being taken on his or her removal. The Inspector General may only be
2 removed upon the affirmative vote of five (5) members of the Board, five (5) members of the
3 Selection Committee, and a supermajority of all Funding Entities. A record of the proceedings,
4 together with the charges and findings thereon, shall be filed with the Clerk to the Board. The
5 Inspector General shall be removed without a public hearing in the event the Inspector General is
6 convicted of or enters a guilty plea or *nolo contendere* plea to a state or federal felony.

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

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

10 **SECTION 4. SEVERABILITY.**

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

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

15 The provisions of this Ordinance shall become and be made a part of the Palm Beach County
16 Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the
17 word "ordinance" may be changed to "section," "article," or other appropriate word.

18 **SECTION 6. ENFORCEMENT.**

19 This Ordinance is enforceable by all means provided by law, including seeking injunctive
20 relief in the Fifteenth Judicial Circuit Court in and for Palm Beach County.

21 **SECTION 7. PENALTY.**

22 Any person who:
23 A. retaliates against, punishes, threatens, harasses, or penalizes, or attempts to retaliate
24 against, punish, threaten, harass, or penalize any person for assisting, communicating or cooperating
25 with the Inspector General, or
26 B. who interferes, obstructs, impedes or attempts to interfere, obstruct or impede in any
27 investigation conducted by the Inspector General
28 shall be guilty of a violation of this Ordinance and punished, pursuant to section 125.69,
29 Florida Statutes, in the same manner as a second degree misdemeanor. Any potential violation of
30 this section shall be referred to the State Attorney for possible investigation and prosecution.

11
ORDINANCE (NO.) 2009 049

1 **SECTION 1. CAPTIONS.**

2 The captions, section headings, and section designations used in this Ordinance are for
3 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

4 **SECTION 2. EFFECTIVE DATE.**

5 The provisions of this Ordinance shall become effective January 1, 2010.

6
7 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm Beach
8 County, Florida, on this the 13th day of December, 2009.

9
10 **SHARON R. BOCK**
11 **CLERK & COMPTROLLER**

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

12
13
14 By 
15 Deputy Clerk

By 
16 Burt Arpaian, Chair



17
18
19
20 (SEAL)

21
22
23
24 **APPROVED AS TO FORM**
25 **AND LEGAL SUFFICIENCY**

26
27
28 By 
29 County Attorney

30
31
32 **EFFECTIVE DATE:** Filed with the Department of State on the 13th day of
33 December, 2009.

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ORDINANCE NO. 2009 049

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL ORDINANCE, PALM BEACH COUNTY CODE CHAPTER 2, ARTICLE XII (ORD. 2009-049) AS FOLLOWS: AMENDING SECTION 2-423 FUNCTIONS, AUTHORITY AND POWERS; AMENDING 2-425 CONTRACT; AMENDING 2-427 PROCEDURE FOR FINALIZATION OF REPORTS AND RECOMMENDATIONS; AMENDING 2-429 FINANCIAL SUPPORT AND BUDGETING; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the Palm Beach County Charter, adopted the Palm Beach County Office of Inspector General Ordinance; and

WHEREAS, the Board of County Commissioners and the Inspector General have reviewed said Ordinance and recommend the changes set forth in this amending ordinance; and

WHEREAS, the Board of County Commissioners hereby determines that the amendments set forth herein advance the purposes and intent of the Palm Beach County Office of Inspector General Ordinance; and

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

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Palm Beach County, Florida, that:

Part 1. Sec. 2-423. Functions, authority and powers, is hereby amended as follows:

(4) The costs of reviews, audits, inspections and investigations by the inspector general shall be ~~defrayed by imposition of a fee which shall be~~ funded at minimum in an amount equal to one quarter of one percent (0.25%) of the contracts entered into by the County prior, as may be



37 adjusted as necessary (hereinafter "~~IG contract fee~~" "minimum funding percentage"). The ~~IG~~
38 ~~contract fee~~ minimum funding percentage shall not apply to the following contracts:

- 39 a. Contracts for legal services;
- 40 b. Auditing contracts;
- 41 c. Contracts under one thousand dollars (\$1,000.00), ~~except for decentralized purchase orders as~~
42 ~~set forth in the county purchasing ordinance, section 2-51(9)(1)(i);~~
- 43 d. Federal, state and local government-funded grants;
- 44 e. Interlocal agreements;
- 45 f. Revenue-generating contracts; and
- 46 g. Purchases made pursuant to the State of Florida Department of Revenue approved Sales Tax
47 Recovery Program.

48 Notwithstanding the foregoing, the board may ~~authorize the inclusion of the IG contract fee in~~
49 ~~apply the minimum funding percentage to any contract to ensure the Inspector General receives~~
50 ~~sufficient funding to perform the functions and duties set forth in this ordinance.~~ Nothing
51 contained in this subsection shall in any way limit the powers of the inspector general provided
52 for in this article to perform audits, inspections, reviews and investigations on all county
53 contracts including, but not limited to, those contracts specifically exempted from the minimum
54 funding percentage ~~IG contract fee.~~

55 (5) Where the inspector general suspects a possible violation of any state, federal or local law,
56 or rule, regulation or policy, he or she shall notify the appropriate civil, criminal or
57 administrative agencies, ~~including the county commission on ethics.~~ In the case of a possible
58 violation of a rule, regulation or policy governing a county employee, the inspector general shall
59 also notify the county administrator and the head of the department for which the employee
60 works. ~~After referring the matter to the appropriate entity for fact finding, the inspector general~~
61 ~~may assist the entity in conducting the investigation.~~

62 . . .

63 (8) The inspector general may exercise any of the powers contained in this article upon his or
64 her own initiative.

65 . . .

66 (10) It is anticipated that municipalities, special districts, and other public officials and entities
67 will recognize and desire to benefit from the services of the county office of inspector general.

68 The inspector general may negotiate agreements or memoranda of understanding with other
69 public entities which would authorize the inspector general to exercise any and all authority,
70 functions and powers set forth in this article for the benefit of such public entity. The
71 memorandum of understanding or agreement shall include a provision for fees to be paid to the
72 inspector general from the public entity in exchange for such benefits. Such fee shall be based
73 on a rate established by the inspector general and shall include, but not be limited to, the
74 minimum funding percentage IG-contract-fee. Any such agreement or memorandum of
75 understanding is subject to final approval of the board, but such approval shall not be
76 unreasonably withheld. For the purposes of the removal procedure set forth in section 2-430, a
77 "funding entity" shall mean a public entity that has entered into an agreement or memorandum of
78 understanding to receive services of the inspector general, and has provided funding in exchange
79 for such services equal to at least twenty-five (25) percent of the total annual budget of the
80 inspector general for the county's fiscal year immediately preceding the fiscal year in which the
81 removal procedure takes place.

82 * * *

83 **Part 2. Sec. 2-425. Contract, is hereby amended as follows:**

84 The commission on ethics with the assistance of the county attorney shall negotiate a
85 contract of employment with the inspector general substantially consistent with the terms
86 included in contracts of other contractual employees of the county. The inspector general shall
87 be paid at a rate commensurate with public officials of like experience and expertise. Before any
88 contract shall become effective, the contract must be approved by a majority of the board present
89 at a regularly scheduled board meeting. The contract will cover the entire four-year term subject
90 to the removal provisions in section 2-430. The contract will include a provision requiring the
91 selection committee to provide notice of its decision to renew or not to renew the contract at least
92 six (6) months prior to the termination of the contract. The contract shall provide that the
93 inspector general may not represent a political party or be on any executive committee thereof, or
94 seek public office during his or her term of service, and shall not seek public office or
95 employment with any public entity subject to the jurisdiction of the Inspector General or for four
96 (4) years thereafter. That limitation does not include seeking selection as inspector general for a
97 subsequent term. The contract shall further provide that the inspector general may not be a
98 lobbyist, as defined in section 2-352 of this Code, for two (2) years after term of service.

99

100 **Part 3. Sec. 2-427. Procedure for finalization of reports and recommendations which**
101 **make findings as to the person or entity being reviewed or inspected, is hereby amended as**
102 **follows:**

103 The inspector general shall publish and deliver finalized reports and recommendations to
104 the board and to the county commission on ethics. Notwithstanding any other provision of this
105 article, whenever the inspector general determines that it is appropriate to publish and deliver a
106 report or recommendation which contains findings as to the person or entity being reported on or
107 who is the subject of the recommendation, the inspector general shall provide the affected person
108 or entity a copy of the findings report or recommendation. Such person or entity shall have
109 fifteen (15) working days to submit a written explanation or rebuttal of the findings before the
110 report or recommendation is finalized. Such timely submitted written explanation or rebuttal
111 shall be attached to the finalized report or recommendation. The requirements of this subsection
112 shall not apply in matters subject to the State of Florida's Whistle-blower's Act, or when the
113 inspector general, in conjunction with the state attorney or U.S. Attorney, determines that
114 supplying the affected person or entity with such report will jeopardize a pending criminal
115 investigation.

116

117 **Part 4. Sec. 2-429. Financial support and budgeting, is hereby amended as follows:**

118 Pursuant to its annual budget process, the county shall provide sufficient financial
119 support for the inspector general's office to fulfill its duties as set forth in this article. In order to
120 ensure adequate funding for the prompt establishment of the inspector general pending
121 implementation, the board of county commissioners hereby approves an amount equal to
122 three hundred twenty thousand dollars (\$320,000) to fund all inspector general operations for the
123 remainder of the 2009-2010 fiscal year. The inspector general shall timely deliver to the board
124 of county commissioners a budget request including a reasonable estimate of operating and
125 capital expenditures, and shall include revenues, including, but not limited to, projected
126 minimum funding percentage IG contract fee revenues to be collected from the county and any
127 other participating local governments and public agencies. The inspector general's budget
128 request shall not be implemented until approved by the board of county commissioners. The
129 inspector general shall establish a fiscal year which coincides with that of the county. Nothing

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2010 041

130 contained herein shall be construed to prohibit the inspector general from transmitting to the
131 county commission supplemental budget requests which, if approved by the commission, shall
132 constitute amendments to the county budget.

133 **Part 5. Repeal of Laws in Conflict.**

134 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
135 repealed to the extent of such conflict. The Palm Beach County Code of Ethics adopted by
136 Resolution 94-693 as amended by Resolution 2003-0962, is hereby repealed in its entirety.

137 **Part 6. Severability.**

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

141 **Part 7. Inclusion in the Code of Laws and Ordinances.**

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

146 **Part 8. Effective Date.**

147 The provisions of this Ordinance shall become effective October 1, 2010.

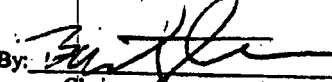
148 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
149 County, Florida, on this the 28 day of September, 2010.

150 SHARON R. BOCK
151 CLERK & COMPTROLLER

152
153 By: 
154 Deputy Clerk
155



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

156 By: 
157 Chairman
158 ~~But Amerson~~

159 (SEAL)

160
161 APPROVED AS TO FORM AND
162 LEGAL SUFFICIENCY

163
164 By: 
165 County Attorney
166

167
168 Filed with the Department of State on the 5th day of October, 2010.

C

ORDINANCE NO. 2010- 019

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHARTER OF PALM BEACH COUNTY, FLORIDA; PERTAINING TO ETHICS REGULATION, THE ESTABLISHMENT OF A COUNTY CODE OF ETHICS, AN INDEPENDENT COMMISSION ON ETHICS, AND AN INDEPENDENT OFFICE OF INSPECTOR GENERAL; PROVIDING FOR CHARTER AMENDMENT LANGUAGE; PROVIDING FOR REFERENDUM AND BALLOT LANGUAGE; PROVIDING FOR FORM OF NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 1(c), Article VIII of the Constitution of the State of Florida provides that by general law a county government may be established by charter; and

WHEREAS, the voters of Palm Beach County adopted the Charter of Palm Beach County on November 6, 1984, effective January 1, 1985; and

WHEREAS, the Charter of Palm Beach County provides that the Board of County Commissioners may propose a charter amendment by ordinance subject to voter approval; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined it is in the best interest of the citizenry of the County and will promote confidence in government to place a charter amendment on the ballot which will require the County to adopt by ordinance an independently appointed County Commission on Ethics adequately funded by the County Commission and an independently selected Office of Inspector General adequately funded by the County Commission and other governmental entities subject to the authority of the Inspector General; and



ORDINANCE NO. 2010 019 043

WHEREAS, passage of this Ordinance will allow the residents of Palm Beach County to vote on the proposed charter amendment at the general election held on November 2, 2010.

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

PART 1. AMENDMENT OF CHARTER

Subject to the approval of the electorate as required by the Constitution and Laws of Florida, the Charter of Palm Beach County shall be amended by adding a new subparagraph (6) to Sec. 1.3. Scope of County Ordinances; Conflict with Municipal Ordinances; by amending Sec. 3.2. Prevention of Conflict of Interest; and by adding Article VIII, Ethics Regulation, Sec. 8.1 County Code of Ethics, Sec. 8.2 Commission on Ethics, Sec. 8.3 Inspector General, and Sec. 8.4 Ordinance Preparation, Adoption and Amendment, as follows:

Sec. 1.3. Scope of County Ordinances; Conflict with Municipal Ordinances.

Municipal ordinances shall prevail over county ordinances to the extent of any conflict, regardless of the time of passage of the municipal ordinances, except that the county ordinances shall prevail over conflicting municipal ordinances:

• • •

(6) In matters related to the Ethics Regulation in accordance with Article VIII of this Charter. The Palm Beach County Code of Ethics, Palm Beach County Commission on Ethics and the Office of Inspector General in municipalities where the charter amendment is approved by a majority of voters in that municipality voting in the referendum as set forth in Sec. 6.3 of this Charter.

Sec. 3.2. Prevention of conflict of interest.

The Board of County Commissioners shall take whatever action is necessary on behalf of its residents to ensure that the County government's appointed officials, elected officials and employees abide by the code of ethics as set out in state law and the ethics regulations adopted by the Board of County Commissioners.

ARTICLE VIII. ETHICS REGULATION

Sec. 8.1. County Code of Ethics.

The County shall, by ordinance, adopt a Palm Beach County Code of Ethics, which shall be at least as stringent as Chapter 112, Part III, Florida Statutes, the Code of Ethics for Public Officers and Employees. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below.

Sec. 8.2. Commission on Ethics.

The County shall, by ordinance, establish an independent Commission on Ethics, comprised of a minimum of five members not appointed by or subject to removal by the County Commission or by any other entity subject to the jurisdiction of the Commission on Ethics, with the authority to review, interpret, render advisory opinions and to enforce the Palm Beach County Code of Ethics, and to provide ethics training to local governments, citizen groups and the general public of Palm Beach County. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below. The Commission on Ethics shall be adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.

Sec. 8.3. Inspector General.

The County shall, by ordinance, establish an Office of Inspector General to provide independent oversight of publicly funded transactions, projects, and other local government operations. The ordinance shall be prepared, adopted, and amended pursuant to the procedures in Section 8.4 below (hereinafter "Implementing Ordinance"). The Implementing Ordinance shall provide that the Inspector General shall be selected by a Selection Committee, comprised of the Commission on Ethics, the State Attorney or designee, and the Public Defender or designee. The Implementing Ordinance shall further provide that the Inspector General shall serve a fixed term, and prior to completion of that term, may be removed only for cause and pursuant to a procedure requiring, at a minimum, supermajority votes at duly noticed public hearings of the Board of County Commissioners and the Selection Committee. The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance. The Board of County Commissioners may increase or decrease the Funding Base upon a showing of need for such adjustment based upon criteria contained in the Implementing Ordinance but in no event shall the Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General. The demonstration of need shall be subject to review and recommendation by the Review Committee, which recommendation shall only be overruled by a supermajority vote of the Board of County Commissioners. No adjustment shall occur if such adjustment results in the Office of the Inspector General not being adequately funded.

Sec. 8.4. Ordinance Preparation, Adoption, and Amendment.

Ordinances providing for implementation and funding of Article 8, Ethics Regulation, of the Palm Beach County Charter shall be prepared, adopted, and amended in the following manner:

(a) The Board of County Commissioners has adopted ordinances establishing and providing for the funding, authority and powers of the Palm Beach County Commission on Ethics and the Office of Inspector General (the "Existing Ordinances"). The drafting committee described below shall develop the ordinances enabling this Charter Amendment by beginning with the Existing Ordinances and making those changes necessary to conform the Existing Ordinances to the requirements of this Charter Amendment and proposing other such changes deemed necessary and proper by the drafting committee.

(b) Each ordinance shall be developed by a drafting committee consisting of two representatives appointed by the Board of County Commissioners: two representatives appointed by the Palm Beach County League of Cities, Inc. (the "League") or any successor entity to the League; the County Attorney or his or her designee; and the General Counsel for the League or his or her designee. In addition, the committee will include the Executive Director of the Palm Beach County Commission on Ethics for matters pertaining to the Code of Ethics and Commission on Ethics Ordinances, and will include the Inspector General for matters pertaining to the Inspector General Ordinance ("the Initial Ordinance Drafting Committee"). The Initial Ordinance Drafting Committee may by majority vote agree to add up to three additional members representing other governmental entities that are subject to the regulation of the Inspector General, the Commission on Ethics, or both.

(c) The Board of County Commissioners may adopt any ordinance recommended by the Initial Ordinance Drafting Committee (the "Recommended Ordinance") by an affirmative vote of four members of the Board. If the Board of County Commissioners desires to change any Recommended Ordinance, the Board shall refer all proposed changes to the Initial Ordinance Drafting Committee, which shall either modify the Recommended Ordinance to include a proposed change or recommend that a proposed change not be adopted. Adoption of any change to a Recommended Ordinance requires an affirmative vote of five members of the Board. If the Initial Ordinance Drafting Committee fails to submit the Recommended Ordinance to the Board of County Commissioners within 90 days of effective date of this charter amendment or fails to take action on a proposed change within 30 days of receipt of such change from the Board, the Board of County Commissioners may take action to adopt the ordinance by an affirmative vote of four members.

(d) Amendments to any of the ordinances adopted pursuant to Section 8 of the Charter may be proposed by the Board of County Commissioners, the League, the Ethics Commission, the Inspector General, or the Executive Director of the Commission on Ethics. All proposed amendments must be reviewed by a committee with the same make-up as the Initial Ordinance Drafting Committee (the "Review Committee"). The Review Committee's recommendation shall be forwarded to the Board of County Commissioners. Any change recommended by the Review Committee may be adopted by an affirmative vote of four members of the Board of County Commissioners. Adoption of any change not recommended by the Review Committee requires an affirmative vote of five members of the Board of County Commissioners. If the Review Committee fails to submit an ordinance amendment to the Board of County Commissioners within 90 days after referral of an amendment from one of the above parties, the

Board of County Commissioners may adopt the amendment by an affirmative vote of four members of the Board.

PART 2. REFERENDUM AND BALLOT LANGUAGE

On November 2, 2010, a general election is to be held, and in accordance with the requirements of the Constitution and Laws of Florida, the following question shall be placed on the ballot by the Supervisor of Elections:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS COMMISSION AND INDEPENDENT INSPECTOR GENERAL

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?

YES _____

NO _____

PART 3. FORM OF NOTICE

The form of notice of the election by which this Charter shall be submitted to a referendum shall contain the complete text of Parts 1 and 2 of this Ordinance.

PART 4. SEVERABILITY

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

7

ORDINANCE NO.

2010 019

049

PART 5. INCLUSION IN THE CHARTER

In the event this proposed amendment is approved by referendum, Part 1 of this Ordinance shall become and be made a part of the Home Rule Charter of Palm Beach County, Florida. The Articles or Sections of this Charter Amendment Ordinance may be renumbered or relettered to accomplish such, and the word "amendment" may be changed to "section," "article," or any other appropriate word.

PART 6. EFFECTIVE DATE

This Ordinance shall become law on January 1, 2011, if approved by a majority of those electors voting on the matter.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 20th day of July, 2010.

SHARON R. BOCK
CLERK AND COMPTROLLER

By: 
Deputy Clerk



PALM BEACH COUNTY, FLORIDA,
BOARD OF COUNTY COMMISSIONERS

By: 
Butch Anderson Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
County Attorney

Filed with the Department of State on the 23rd day of July, 2010.

ORDINANCE NO.

2010 019

050

1
2 **WHEREAS**, the Board of County Commissioners hereby determines that the Ordinance set
3 forth herein advances the purposes and intent of the Palm Beach County Charter amendments
4 approved by the electorate on November 2, 2010; and

5 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to its
6 authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the
7 Palm Beach County Charter, hereby adopts the Palm Beach County Office of Inspector General
8 Ordinance; and

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

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

13 **SECTION 1. THE PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL**

14 The Palm Beach County Office of Inspector General Ordinance, Ordinance 2009-049, as
15 amended, is hereby repealed, and the new countywide Office of Inspector General, Palm Beach
16 County, Florida Ordinance is hereby adopted as set forth in Exhibit 1, which is attached hereto and
17 made a part hereof.

18 **SECTION 2. SAVINGS CLAUSE.**

19 All investigations, audits, reviews, reports and all other activities performed by the Office of
20 Inspector General pursuant to its functions, authority and powers, initiated or completed pursuant to
21 Ordinance 2009-049, as amended, shall remain in full force and effect. The term of office of the
22 Inspector General selected pursuant to Ordinance 2009-049 shall remain as originally established.

23 **SECTION 3. RETROACTIVITY.**

24 Section 2-429(3) of the Office of Inspector General, Palm Beach County, Florida Ordinance
25 is expressly declared retroactive to April 1, 2011.

26 **SECTION 4. REPEAL OF LAWS IN CONFLICT.**

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

1 **SECTION 5. SEVERABILITY.**

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

5 **SECTION 6. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

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

9 **SECTION 7. CAPTIONS.**

10 The captions, section headings, and section designations used in this Ordinance are for
11 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

12 **SECTION 8. EFFECTIVE DATE.**

13 The provisions of this Ordinance shall become effective June 1, 2011.

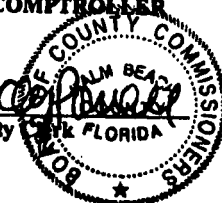
14 APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach
15 County, Florida, on this the 17th day of May, 2011.

16
17 **SHARON R. BOCK**
18 **CLERK & COMPTROLLER**

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

19
20
21
22 By: 
23 Deputy Clerk Florida

By: 
Karen T. Marcus, Chair



24
25
26
27 (SEAL)

28
29
30
31 **APPROVED AS TO FORM**
32 **AND LEGAL SUFFICIENCY**

33
34
35
36 By: 
37 County Attorney
38

39 **EFFECTIVE DATE:** Filed with the Department of State on the 25th day of
40 May, 2011.

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ARTICLE XII. INSPECTOR GENERAL

Sec.2-421. Title and Applicability.

(1) This article shall be titled the "Office of Inspector General, Palm Beach County, Florida Ordinance."

(2) The Office of Inspector General, Palm Beach County, Florida Ordinance shall apply to the following:

a. The board of county commissioners (hereinafter "the board") and all county departments;

b. The thirty eight (38) municipalities that approved the charter amendment in the countywide referendum held November 2, 2010;

c. Any other public entity that elects to be bound by this article by entering into a memorandum of understanding or other agreement in accordance with section 2-423(9); and

d. Any municipality formed after January 1, 2011, except to the extent that an ordinance adopted by that municipality at any time conflicts with this ordinance.

Sec. 2-422. Office created and established.

There is hereby established the office of inspector general which is created in order to promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies. The inspector general shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed county and municipal officials and employees, county and municipal agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors, and other parties doing business with the county or a municipality and/or receiving county or municipal funds. The inspector general shall head the office of inspector general. The organization and administration of the office of inspector general shall be independent to assure that no interference or influence external to the office of inspector general adversely affects the independence and objectivity of the inspector general.

Sec. 2-423. Functions, authority and powers.

(1) The inspector general shall have the authority to: (a) make investigations of county or municipal matters and publish the results of such investigations; (b) review and audit past, present and proposed county or municipal programs, accounts, records, contracts, change orders and transactions; and (c) prepare reports and recommendations to the board, or the subject municipality, or participating entities subject to section 2-421 (2) based on such audits or investigations. All elected and appointed county and municipal officials and employees, county

42 and municipal agencies and instrumentalities, contractors, their subcontractors and lower tier
43 subcontractors, and other parties doing business with the county or a municipality and/or
44 receiving county or municipal funds shall fully cooperate with the inspector general in the
45 exercise of the inspector general's functions, authority and powers. Such cooperation shall
46 include, but not be limited to providing statements, documents, records and other information,
47 during the course of an investigation, audit or review. The inspector general may obtain sworn
48 statements, in accordance with Florida Statutes, of all persons identified in this subsection as
49 well as other witnesses relevant to an investigation, audit or review. Such audits shall be
50 conducted in accordance with the current International Standards for the Professional Practice of
51 Internal Auditing as published by the Institute of Internal Auditors, Inc., or where appropriate, in
52 accordance with generally accepted governmental auditing standards. Such investigations will
53 comply with the General Principles and Standards for Offices of Inspector General as published
54 and revised by the Association of Inspectors General. The office of inspector general shall
55 develop and adhere to written policies in accordance with the accreditation standards set forth by
56 the Commission on Florida Law Enforcement Accreditation, Inc.

57 (2) The inspector general shall have the power to conduct audits of, require production of
58 documents from, and receive full and unrestricted access to the records of the board, each
59 municipality, county administrator, city administrator, city manager or other municipal
60 executive, all elected and appointed county and municipal officials and employees, county and
61 municipal departments, divisions, agencies and instrumentalities, contractors, their
62 subcontractors and lower tier subcontractors, and other persons and entities doing business with
63 the county or a municipality and/or receiving county or municipal funds regarding any such
64 contracts or transactions with the county or a municipality. Except as otherwise limited in this
65 subsection (2), the inspector general's jurisdiction includes but shall not be limited to all projects,
66 programs, contracts or transactions that are funded in whole or in part by the county or any
67 municipality. The inspector general may contract with outside entities deemed necessary to
68 perform the functions of that office. Any such contract is subject to final approval by the board,
69 but such approval shall not be unreasonably withheld. The inspector general may conduct
70 investigations and audits, issue reports, and make recommendations regarding collective
71 bargaining agreements. The inspector general shall conduct investigations and audits in
72 accordance with applicable laws, rules, regulations, policies and past practices. The inspector
73 general shall not interfere with collective bargaining negotiations.

74 (3) As provided in subsection (1), the inspector general can: require all county and municipal
75 officials and employees, contractors, their subcontractors and lower tier subcontractors, and other
76 persons and entities doing business with the county or a municipality and/or receiving county or
77 municipal funds to provide statements; administer oaths; and, require the production of
78 documents, records and other information. In the case of a refusal by an official, employee or
79 other person to obey a request by the inspector general for documents or for an interview, the
80 inspector general shall have the power to subpoena witnesses, administer oaths, and require the
81 production of documents. Seventy-two (72) hours prior to serving a subpoena, the inspector
82 general shall provide written notice to the state attorney and the U.S. Attorney for the Southern
83 District of Florida. The inspector general shall not interfere with any ongoing criminal
84 investigation or prosecution of the state attorney or the U.S. Attorney for the Southern District of
85 Florida. When the state attorney or the U.S. Attorney for the Southern District of Florida has
86 explicitly notified the inspector general in writing that the inspector general's investigation is
87 interfering with an ongoing criminal investigation or prosecution, the inspector general shall

88 suspend service of subpoena, examination of witnesses, or other investigative activities as set
89 forth in the notice. In the case of a refusal to obey a subpoena served to any person, the inspector
90 general may make application to any circuit court of this state which shall have jurisdiction to
91 order the witness to appear before the inspector general and to produce evidence if so ordered, or
92 to give testimony relevant to the matter in question.

93 (4) Where the inspector general suspects a possible violation of any state, federal, or local law,
94 he or she shall notify the appropriate law enforcement agencies. The county administrator and
95 each municipal manager, or administrator, or mayor where the mayor serves as chief executive
96 officer, shall promptly notify the inspector general of possible mismanagement of a contract
97 (misuse or loss exceeding \$5,000 in public funds), fraud, theft, bribery, or other violation of law
98 which appears to fall within the jurisdiction of the inspector general, and may notify the
99 inspector general of any other conduct which may fall within the inspector general's jurisdiction.
100 The county administrator and each municipal manager, or administrator, or mayor where the
101 mayor serves as chief executive officer, shall coordinate with the inspector general to develop
102 reporting procedures for notification to the inspector general.

103 (5) The inspector general shall have the power without limitation to audit, investigate, monitor,
104 inspect and review the operations, activities, performance, and procurement processes including,
105 but not limited to, bid specifications, bid submittals, activities of the contractor, their
106 subcontractors and lower tier subcontractors, its officers, agents and employees, lobbyists,
107 county and municipal staff and officials, in order to ensure compliance with contract
108 specifications and detect corruption and fraud.

109 (6) The inspector general shall have the power to receive, review and investigate any complaints
110 regarding any municipal or county-funded projects, programs, contracts or transactions. The
111 inspector general shall establish a "hotline" to receive complaints, from either anonymous or
112 identified persons.

113 (7) The inspector general may exercise any of the powers contained in this article upon his or her
114 own initiative.

115 (8) The inspector general shall be notified in writing prior to any duly noticed public meeting of a
116 procurement selection committee where any matter relating to the procurement of goods or
117 services by the county or any municipality is to be discussed. The notice required by this
118 subsection shall be given to the inspector general as soon as possible after a meeting has been
119 scheduled. The inspector general may, at his or her discretion, attend all duly noticed county or
120 municipal meetings relating to the procurement of goods or services as provided herein, and may
121 pose questions and raise concerns consistent with the functions, authority and powers of the
122 inspector general. The failure by the county or municipality to give written notice required by
123 this section does not constitute grounds for a protest regarding such procurement and shall not be
124 the cause for the stay of any procurement, and shall not be the basis to overturn the award of a
125 contract.

126 (9) It is anticipated that special districts and other public officials and entities will recognize and
127 desire to benefit from the services of the county office of inspector general. The inspector
128 general may negotiate agreements or memoranda of understanding with other public entities
129 which would authorize the inspector general to provide independent oversight of any or all of the
130 public entity's transactions, projects and operations, and to exercise any and all authority,
131 functions and powers set forth in this article for the benefit of such public entity. The
132 memorandum of understanding or agreement shall include a provision for fees to be paid to the
133 inspector general from the public entity in exchange for such benefits. Such fees shall be based

134 on a rate established by the inspector general to cover the cost of such benefits and shall include,
135 but not be limited to, one quarter of one percent of the contracts as described in section 2-429(2)
136 (hereafter the "funding base") subject to inspector general review under the agreement. The
137 funding base shall be subject to adjustment as set forth in section 2-429.1. Any such agreement
138 or memorandum of understanding is subject to final approval of the board, but such approval
139 shall not be unreasonably withheld. For the purposes of the removal procedure set forth in
140 section 2-430, a "funding entity" shall mean a public entity that has entered into an agreement or
141 memorandum of understanding to receive services of the inspector general, and has provided
142 funding in exchange for such services equal to at least twenty-five (25) percent of the total
143 annual budget of the inspector general for the county's fiscal year immediately preceding the
144 fiscal year in which the removal procedure takes place.

145 (10) The inspector general's records related to active audits, investigations and reviews are
146 confidential and exempt from disclosure, as provided by §112.3188(2) and Chapter 119, Florida
147 Statutes.

148 (11) The inspector general is considered "an appropriate local official" of the county and of any
149 municipality for purposes of whistleblower protection provided by §112.3188(1), Florida
150 Statutes.

151 (12) The inspector general may recommend remedial actions and may provide prevention and
152 training services to county and municipal officials, employees, and any other persons covered by
153 this article. The inspector general may follow up to determine whether recommended remedial
154 actions have been taken.

155 (13) The inspector general shall establish policies and procedures and monitor the costs of
156 investigations undertaken. The inspector general shall cooperate with other governmental
157 agencies to recover such costs from other entities involved in willful misconduct in regard to
158 county or municipal funds.

159 (14) Nothing herein shall abridge employees' constitutional right to collective bargaining.
160

161 **Sec. 2-423.1. Outreach.**

162 The inspector general will coordinate with the county administrator and municipal
163 manager or administrator to develop public awareness strategies to inform government officials
164 and employees, as well as the general public, of the authority and responsibilities of the office of
165 the inspector general. Such strategies shall include but not be limited to inclusion in the
166 government's web page with a link to the office of inspector general website, publication of
167 notices in the government's newsletters, and posting information about the office of inspector
168 general in government employee break rooms and other common meeting areas. The inspector
169 general shall provide on its website examples that illustrate fraud, waste, mismanagement,
170 misconduct and abuse.
171

172 **Sec. 2-424. Minimum qualifications, selection and term of office.**

173 (1) *Minimum qualifications.* The inspector general shall be a person who:

174 a. Has at least ten (10) years of experience in any one (1) or a combination of the following
175 fields:

176 1. As a federal, state or local law enforcement officer/official;

177 2. As a federal or state court judge;

178 3. As a federal, state or local government attorney with expertise in investigating fraud,
179 mismanagement and corruption;

180 4. As an inspector general, certified public accountant, or internal auditor;
181 5. As a person with progressive supervisory and managerial experience in an investigative
182 public agency similar to an inspector general's office;
183 b. Has managed and completed complex investigations involving allegations of fraud, theft,
184 deception or conspiracy;
185 c. Has demonstrated the ability to work with local, state and federal law enforcement agencies
186 and the judiciary;
187 d. Has a four-year degree from an accredited institution of higher learning;
188 e. Has not been employed by the county, any municipality or any other governmental entity
189 subject to the authority of the inspector general office during the two-year period immediately
190 prior to selection, unless such employment has been with the Office of Inspector General, Palm
191 Beach County, Florida.
192 f. Highly qualified candidates will also have audit-related skills and/or hold one (1) or more of
193 the following professional certifications at the time of selection: certified inspector general
194 (CIG), certified inspector general investigator (CIGI), certified inspector general auditor (CIGA),
195 certified public accountant (CPA), certified internal auditor (CIA), or certified fraud examiner
196 (CFE).
197 (2) *Selection.* No official or employee of any governmental entity subject to the authority of the
198 office of inspector general shall participate on the inspector general committee. Responsibility
199 for selecting the inspector general shall be vested solely with the inspector general committee.
200 The inspector general committee shall be comprised of the commission on ethics as established
201 in section 2-254 et seq. of this Code, the state attorney for the Fifteenth Judicial Circuit or his or
202 her designee, and the public defender for the Fifteenth Judicial Circuit or his or her designee. The
203 chairperson of the inspector general committee shall be chairperson of the commission on ethics.
204 After thoroughly reviewing qualifications, background information, and personal and
205 professional referrals, the inspector general committee shall notify the county attorney of its
206 selection. The county attorney shall promptly notify the board that a selection has been made.
207 (3) *Staffing of inspector general committee.* The county human resources department shall
208 provide staff to the inspector general committee and as necessary will advertise the acceptance of
209 resumes for the position of inspector general. All resumes received by the human resources
210 department will be forwarded to the inspector general committee for consideration. The human
211 resources department shall contract with an appropriate entity to ensure that background checks
212 are conducted on the candidates selected for interview by the inspector general committee. The
213 results of the background checks shall be provided to the inspector general committee prior to
214 the interview of candidates. Following the initial selection of the inspector general, the inspector
215 general committee, for future selection processes as described in subsection (2) above, may
216 continue to employ the services of the human resources department or may utilize its own staff to
217 solicit candidates for inspector general. All advertisements for the acceptance of resumes for
218 inspector general shall include a salary range commensurate with public officials of like
219 experience and expertise.
220 (4) *Term.* The inspector general shall serve for a term of four (4) years. At least six (6) months
221 prior to the end of each contract term, the inspector general committee will determine whether or
222 not to renew the contract for an additional term of four (4) years, and shall promptly notify the
223 inspector general of its decision. In the event the inspector general committee elects not to renew
224 the contract, the inspector general committee shall promptly convene as necessary to solicit
225 candidates for and to select a new inspector general in the same manner as described in

226 subsection (2) above. The incumbent inspector general may submit his or her name as a
227 candidate to be considered for selection. The incumbent inspector general shall serve until a
228 successor is selected and assumes office.

229 (5) *Vacancy.* In case of a vacancy in the position of inspector general, the inspector general
230 committee may appoint a member of the inspector general's office as interim inspector general
231 within ten (10) days of the vacancy occurring, until such time as a successor inspector general is
232 selected and assumes office. A successor inspector general shall be selected in the same manner
233 as described in subsection (2) above, except for the following specific time constraints: (a)
234 solicitation for qualified candidates for selection should be published within twenty (20) days,
235 but no later than forty (40) days of the date the vacancy occurs; and (b) the inspector general
236 committee must in good faith endeavor to convene and select an inspector general within ninety
237 (90) days of the date the vacancy occurs.

238
239 **Sec. 2-425. Contract.**

240 A designee from the commission on ethics, with the assistance of the county's human
241 resources department and the county attorney's office, shall negotiate a contract of employment
242 with the inspector general substantially consistent with the terms included in contracts of other
243 contractual employees of the county. For the purposes of contract negotiations, such designation
244 by the commission on ethics shall not be deemed a delegation of the commission on ethics'
245 decision making authority. The inspector general shall be paid at a rate commensurate with
246 public officials of like experience and expertise. Before any contract shall become effective, the
247 contract must be approved by a majority of the board present at a regularly scheduled board
248 meeting. The contract will cover the entire four-year term subject to the removal provisions in
249 section 2-430. The contract will include a provision requiring the inspector general committee to
250 provide notice of its decision to renew or not to renew the contract at least six (6) months prior to
251 the termination of the contract. The contract shall provide that the inspector general may not
252 represent a political party or be on any executive committee thereof, or seek public office during
253 his or her term of service, and shall not seek public office or employment with any public entity
254 subject to the jurisdiction of the inspector general for four (4) years thereafter. That limitation
255 does not include seeking selection as inspector general for a subsequent term. The contract shall
256 further provide that the inspector general may not be a lobbyist, as defined in section 2-352 of
257 this Code, for two (2) years after term of service.

258
259 **Sec. 2-426. Physical facilities and staff.**

260 (1) The county shall provide the office of inspector general with appropriately located office
261 space and sufficient physical facilities together with necessary office equipment and furnishings
262 to enable the inspector general to perform his or her functions.

263 (2) The inspector general shall have the power to appoint, employ, and remove such assistants,
264 employees and personnel, and establish personnel procedures as deemed necessary for the
265 efficient and effective administration of the activities of the office of inspector general.

266
267 **Sec. 2-427. Procedure for finalization of reports and recommendations which make**
268 **findings as to the person or entity being reviewed or inspected.**

269 The inspector general shall publish and deliver finalized reports and recommendations to
270 the board or the appropriate municipality, and to the county commission on ethics.
271 Notwithstanding any other provision of this article, whenever the inspector general determines

272 that it is appropriate to publish and deliver a report or recommendation which contains findings
273 as to the person or entity being reported on or who is the subject of the recommendation, the
274 inspector general shall provide the affected person or entity a copy of the findings. Such person
275 or entity, who is the subject of a finding or recommendation resulting from an investigation or
276 review, shall have ten (10) calendar days to submit a written explanation or rebuttal of the
277 findings before the report or recommendation is finalized. In the case of an audit, such person or
278 entity shall have twenty (20) calendar days to submit a written explanation or rebuttal of the
279 audit findings or before the report or recommendation is finalized. The inspector general shall
280 grant reasonable extensions of time for providing a written explanation or rebuttal upon written
281 request. Such timely submitted written explanation or rebuttal shall be attached to the finalized
282 report or recommendation. The requirements of this subsection shall not apply in matters subject
283 to the State of Florida's Whistle-blower's Act, or when the inspector general, in conjunction with
284 the state attorney or U.S. Attorney, determines that supplying the affected person or entity with
285 such report will jeopardize a pending criminal investigation.
286

287 **Sec. 2-428. Reporting.**

288 (1) Not later than December 31 of each year, the Inspector General shall prepare and publish a
289 written annual report summarizing the activities of the office during the immediately preceding
290 fiscal year ended September 30. The report shall be furnished to the inspector general
291 committee, the county administrator and the Palm Beach County League of Cities, Inc., and
292 posted on the inspector general's website. The report shall include, but need not be limited to: a
293 description of significant abuses and deficiencies relating to the administration of programs and
294 operations disclosed by investigations, audits, reviews, or other activities during the reporting
295 period; a description of the recommendations for corrective action made by the inspector general
296 during the reporting period with respect to significant problems, abuses, or deficiencies
297 identified; identification of each significant recommendation described in previous annual
298 reports on which corrective action has not been completed; and a summary of each audit and
299 investigation completed during the reporting period.

300 (2) The inspector general committee will meet with the inspector general every six months to
301 review the previous six month's activities and the inspector general's plans and objectives for the
302 upcoming six months.

303 **Sec. 2-429. Financial support and budgeting.**

304 (1) Pursuant to their annual budgeting processes, the county and each municipality shall
305 provide sufficient financial support for the inspector general's office to fulfill its duties as set
306 forth in this article. The county and municipalities shall fund the inspector general's office
307 proportionately, based on the actual expenses of each governmental entity as recorded in the
308 most recent audited year and reported in the Florida Department of Financial Services Local
309 Government Electronic Reporting system (LOGER), pursuant to section 218.32, Florida Statutes,
310 as may be amended.

311 (2) The county and each municipality's proportionate share shall be based on each
312 entity's actual expenses as defined in the then current Uniform Accounting System Manual,
313 published by the State of Florida, Department of Financial Services, Bureau of Local
314 Government, and shall include the following Object Categories: 30 - Operating
315 Expenditures/Expenses; 60 - Capital Outlay; and 80 - Grants and Aids. Notwithstanding the
316 above, however, law enforcement, pension funds, electric utility services, fire control, and
317 intergovernmental transfer costs shall not be included in the proportionate share calculation.

318 Nothing contained herein shall in any way limit the powers of the inspector general provided for
319 in this Ordinance to perform audits, inspections, reviews and investigations on all county and
320 municipal contracts.

321 (3) The inspector general shall establish and maintain a fiscal year which coincides with
322 that of the county. Beginning May 1, 2011, and every May 1 thereafter, the inspector general
323 shall deliver to the board a budget request including a reasonable estimate of operating and
324 capital expenditures and shall also include, but not be limited to, anticipated revenues from
325 sources other than the county and municipalities, and funds estimated to be received but not
326 expended in the current fiscal year. No later than April 1 of every year, the inspector general
327 shall deliver a preliminary budget request to the Palm Beach County League of Cities, Inc., and
328 be available to discuss the budget request with the League of Cities membership prior to May 1
329 of every year. The board shall meet with a delegation selected by the Palm Beach County League
330 of Cities, Inc., to discuss the budget request for each fiscal year. The county shall endeavor to
331 place the matter on a board agenda prior to June 15 of each year, but in no event later than June
332 30. The parties attending this meeting shall acknowledge the provisions of section 2-429.1(1).

333 (4) No later than the fifth business day in July of each year, the Office of the Clerk and
334 Comptroller shall prepare an allocation schedule based on the most current LOGER system data.
335 The proportionate share to be paid by the county and each municipality shall be reduced
336 proportionately by the anticipated revenues from sources other than the county and
337 municipalities and the amount of funds estimated to be received but not expended by the
338 inspector general in the current fiscal year.

339 (5) In the event the county or a municipality does not submit the most recent fiscal year
340 data in the LOGER system, the proportionate share for that municipality shall be based upon its
341 last LOGER system submittal, subject to an escalator for each year the submittal was not made.
342 The escalator shall be based on the Consumer Price Index for All Urban Consumers, U.S. City
343 Average, as set forth in section 193.155, Florida Statutes, as may be amended.

344 (6) The budget of the inspector general shall be subject to final approval of the board.
345 No later than September 30 of each year, the board shall set the inspector general budget for the
346 coming fiscal year and adjust the proportionate share of the county and each municipality
347 accordingly as described in this section.

348 (7) The Office of the Clerk and Comptroller shall invoice the county and each
349 municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April
350 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty
351 (30) days from the date of the invoice. Upon receipt, all funds shall be placed in the Office of
352 Inspector General, Palm Beach County, Florida Special Revenue Fund. In the event payment is
353 not timely received, the county or any municipality in compliance with this section may pursue
354 any available legal remedy.

355 (8) The county and each municipality's proportionate share for the period of June 1, 2011
356 through September 30, 2011 shall be as set forth in Exhibit A which is attached hereto and
357 incorporated herein by reference. The Office of the Clerk and Comptroller shall invoice the
358 County, upon adoption of this ordinance, \$946,764. This amount is based on the estimated
359 expenses through June 1, 2011 of \$483,333, plus the County's proportionate share as reflected
360 on Exhibit A. The Office of the Clerk and Comptroller shall invoice each municipality for their
361 proportionate share as set forth in subsection (7) beginning with the first invoice on October 10,
362 2011.

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364 **Sec. 2-429.1 Funding Base**

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(1) The funding base is a minimum level of funding, determined as a percentage of contract activity of the governmental entities subject to the authority of the inspector general. The purpose of establishing the funding base is to ensure the office is adequately funded. The funding base is currently set at an amount equal to one quarter of one percent (0.25%) of the contracts as described in section 2-429(2). Within ten (10) days following establishment of the allocation schedule as described in 2-429(4), the county will determine whether the calculated funding requirement meets the one quarter of one percent (0.25%) funding base. In the event the calculated funding requirement is less than one quarter of one percent (0.25%), but the inspector general's proposed budget is fully funded by the allocation schedule and revenues from sources other than the county and municipalities, the inspector general shall request a reduction of the funding base accordingly for that budget year. Nothing herein shall be construed to:

(a) Limit the calculated funding base to one quarter of one percent (0.25%), as may be required to adequately fund the Office of the Inspector General;

(b) Limit the inspector general's authority to request a budget that results in a calculated funding base that is less than one quarter of one percent (0.25%) at any time; or

(c) Prohibit the inspector general from transmitting to the county supplemental budget requests.

No adjustment to the calculated funding base shall occur if such adjustment results in the Office of the Inspector General not being adequately funded.

(2) On an annual basis the board of county commissioners may adjust the funding base percentage upon a showing of need which shall be based upon, but need not be limited to, the following criteria:

(a) additional expenses in a particular year necessitated by an extraordinarily large investigation or audit;

(b) the amount of increases or decreases in budget requests by the inspector general in prior years;

(c) the amount and frequency of supplemental budget requests made by the inspector general in prior years;

(d) the amount and frequency of surpluses and/or shortfalls in the inspector general's budget in prior years;

(e) the ability of the county and each municipality to bear an increase of the funding base percentage in a particular year.

The demonstration of need shall be subject to review and recommendation by the review committee as established in the Charter of Palm Beach County, section 8.3. The review committee's recommendation shall only be overruled by a supermajority vote of the board of county commissioners. In no event shall the funding base be reduced below one quarter of one percent unless such reduction is made by the inspector general.

404 **Sec. 2-430. Removal.**

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The inspector general may be removed only for cause based upon specified charges of the following: neglect of duty, abuse of power or authority, discrimination, or ethical misconduct. The removal process shall be initiated at a duly noticed public hearing of either the board, the inspector general committee, or a funding entity as described in section 2-423(9). An affirmative vote of five (5) members of the board, an affirmative vote of five (5) members of the inspector

410 general committee, or an affirmative supermajority vote of a funding entity shall be required to
411 present the inspector general with the charges and to proceed to final public hearings. The board,
412 inspector general committee, or the initiating funding entity, as appropriate, shall transmit a copy
413 of the charges to the inspector general at least sixty (60) days prior to all final public hearings
414 which shall be convened by the board, all funding entities, and the inspector general committee.
415 The inspector general shall have an opportunity to be heard in person and by counsel at the final
416 public hearings prior to the votes being taken on his or her removal. The inspector general may
417 only be removed upon the affirmative vote of five (5) members of the board, five (5) members of
418 the inspector general committee, and a supermajority of all funding entities. A record of the
419 proceedings, together with the charges and findings thereon, shall be filed with the clerk to the
420 board. The inspector general shall be removed without a public hearing in the event the inspector
421 general is convicted of or enters a guilty plea or *nolo contendere* plea to a state or federal
422 felony. Based upon specified charges of neglect of duty, abuse of power or authority,
423 discrimination, or ethical misconduct, one or more municipalities may file a petition for removal
424 with the general counsel for the Office of Inspector General. A petition for removal must be
425 duly authorized as a resolution outlining the specific charges and passed by a majority plus one
426 of the governing body. The petition for removal shall be transmitted to the inspector general
427 committee with a copy to the general counsel of the inspector general. The inspector general
428 committee shall decide whether to initiate the removal process or dismiss based on the petition.
429 The inspector general committee may investigate the allegations contained in the petition before
430 deciding whether to initiate the removal process. If the inspector general committee initiates the
431 removal process, the municipality or municipalities making the petition for removal shall have
432 the opportunity to be heard at the final public hearings prior to the votes being taken.
433

434 **Sec. 2-431. Enforcement.**

435 This Ordinance is enforceable by all means provided by law, including seeking injunctive
436 relief in the Fifteenth Judicial Circuit Court in and for Palm Beach County.
437

438 **Sec. 2-432. Penalty.**

439 Any person who:

440 (1) retaliates against, punishes, threatens, harasses, or penalizes, or attempts to retaliate
441 against, punish, threaten, harass, or penalize any person for assisting, communicating or
442 cooperating with the Inspector General, or

443 (2) who knowingly interferes, obstructs, impedes or attempts to interfere, obstruct or
444 impede in any investigation conducted by the Inspector General

445 shall be guilty of a violation of this Ordinance and punished, pursuant to section 125.69, Florida
446 Statutes, in the same manner as a second degree misdemeanor. Any potential violation of this
447 section shall be referred to the State Attorney for possible investigation and prosecution.
448

Inspector General FY 2011 Cost Allocation Schedule
 Estimated Costs from June 1 - September 30

County	Total Expenses	CR Adjustment		Adj. Expenses	Proportionate Share	
		FY 2008 - 4,088	FY 2009 - 2,098		%	2008/09
Adair	\$ 1,083,335,667			\$ 1,083,335,667	\$ 463,431	4.28%
Albany	\$ 1,544,714			\$ 1,544,714	713	0.05%
Baldwin	\$ 10,601,832			\$ 10,601,832	4,897	0.05%
Bacon	\$ 87,791,127			\$ 87,791,127	40,550	0.46%
Baymont Beach ¹	\$ 60,838,185	\$ 54,754		\$ 60,892,939	28,136	0.46%
Berkeley	\$ 283,710			\$ 283,710	131	0.05%
Blount	\$ 81,266			\$ 81,266	38	0.05%
Calhoun	\$ 84,562,787			\$ 84,562,787	33,059	0.39%
Chatham	\$ 37,688			\$ 37,688	17	0.05%
Cherokee	\$ 1,577,634			\$ 1,577,634	729	0.05%
Clatsop	\$ 5,142,025			\$ 5,142,025	2,375	0.05%
Clay	\$ 1,419,650			\$ 1,419,650	656	0.05%
Concho	\$ 860,512			\$ 860,512	397	0.05%
Cooper	\$ 4,807,248			\$ 4,807,248	2,267	0.05%
Corbin	\$ 967,976			\$ 967,976	447	0.05%
Crawford	\$ 1,119,758			\$ 1,119,758	517	0.05%
Crittenden	\$ 29,485,504			\$ 29,485,504	13,619	0.05%
Cross	\$ 377,379		340	\$ 377,719	175	0.05%
Custer	\$ 2,438,410			\$ 2,438,410	1,126	0.05%
Dallas	\$ 6,882,381			\$ 6,882,381	3,178	0.05%
Dallas	\$ 37,483,120			\$ 37,483,120	17,313	0.05%
Dallas	\$ 6,242,188			\$ 6,242,188	2,882	0.05%
Dallas	\$ 1,040,871			\$ 1,040,871	481	0.05%
Dallas	\$ 2,117,926			\$ 2,117,926	878	0.05%
Dallas	\$ 1,051,444		945	\$ 1,052,389	486	0.05%
Dallas	\$ 8,925,936			\$ 8,925,936	4,123	0.05%
Dallas	\$ 1,837,819			\$ 1,837,819	849	0.05%
Dallas	\$ 4,356,617		4,081	\$ 4,360,698	2,096	0.05%
Dallas	\$ 49,998,700			\$ 49,998,700	23,052	0.05%
Dallas	\$ 22,864,205			\$ 22,864,205	10,607	0.05%
Dallas	\$ 998,241			\$ 998,241	461	0.05%
Dallas	\$ 9,396,182			\$ 9,396,182	4,312	0.05%
Dallas	\$ 36,510,680			\$ 36,510,680	16,864	0.05%
Dallas	\$ 20,079,531			\$ 20,079,531	9,282	0.05%
Dallas	\$ 3,150,486			\$ 3,150,486	1,456	0.05%
Dallas	\$ 840,349			\$ 840,349	388	0.05%
Dallas	\$ 4,940,419			\$ 4,940,419	2,282	0.05%
Dallas	\$ 38,505,545			\$ 38,505,545	17,785	0.05%
Dallas	\$ 168,716,553			\$ 168,716,553	77,929	0.05%
TOTAL	\$ 2,712,899,893	\$ 218,930	\$ 60,121	\$ 2,713,238,990	1,200,000	100.00%

¹ 2009 data is not available for these municipalities. 2008 data was used for this chart.
² 2009 & 2008 data is not available for these municipalities. 2007 data was used for this chart.

1 ~~Inspector General Ordinance as codified (this version also includes sections 6 & 7~~
 2 ~~of Ordinance 2000-049 which was omitted by the municipal code corporation)~~
 3
 4

5 **ARTICLE XII. INSPECTOR GENERAL**
 6

7 **Sec. 2-421. Title and Applicability.**
 8

9 (1) This article shall be titled the "Palm Beach County Office of Inspector General,
 10 Palm Beach County, Florida Ordinance."

11 (Ord. No. 2000-049, § 1, 12-15-00 as amended by Ord. No. 2010-44)

12 (2) The Office of Inspector General, Palm Beach County, Florida Ordinance shall apply
 13 to the following:

14 a. The board of county commissioners (hereinafter "the board") and all county
 15 departments;

16 b. The thirty eight (38) municipalities that approved the charter
 17 amendment in the countywide referendum held November 2, 2010;

18 c. Any other public entity that elects to be bound by this article by entering
 19 into a memorandum of understanding or other agreement in accordance with section 2-
 20 423(9); and

21 d. Any municipality formed after January 1, 2011, except to the extent that an ordinance
 22 adopted by that municipality at any time conflicts with this ordinance.

23
 24 **Sec. 2-422. Office created and established.**

25 There is hereby established the county office of inspector general which is created in
 26 order to promote economy, efficiency, and effectiveness in the administration of and to prevent
 27 and detect misconduct involving fraud and abuse, corruption, in programs and operations
 28 administered or financed by the county or municipal agencies. The inspector general shall
 29 initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and
 30 eradicate fraud, waste, inefficiencies, and mismanagement, misconduct, and other abuses by
 31 elected and appointed county and municipal officials and employees, county and municipal
 32 agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors,
 33 and other parties doing business with the county or a municipality and/or receiving county or
 34 municipal funds. The inspector general shall head the office of inspector general. The
 35 organization and administration of the office of inspector general shall be independent to assure
 36 that no interference or influence external to the office of inspector general adversely affects the
 37 independence and objectivity of the inspector general.

38 (Ord. No. 2000-049, § 2(A), 12-15-00)

39
 40 **Sec. 2-423. Functions, authority and powers.**

41 (1) The inspector general shall have the authority to: (a) make investigations of county or
42 municipal matters and publish the results of such investigations; (b) review and audit past,
43 present and proposed county or municipal programs, accounts, records, contracts, change orders
44 and transactions; and (c) prepare reports and recommendations to the board, or the subject
45 municipality, or participating entities subject to section 2-421 (2) based on such audits or
46 investigations. All elected and appointed county and municipal officials and employees, county
47 and municipal agencies and instrumentalities, contractors, their subcontractors and lower tier
48 subcontractors, and other parties doing business with the county or a municipality and/or
49 receiving county or municipal funds shall fully cooperate with the inspector general in the
50 exercise of the inspector general's functions, authority and powers. Such cooperation shall
51 include, but not be limited to providing statements, documents, records and other information,
52 during the course of an investigation, audit or review. The inspector general may obtain sworn
53 statements, in accordance with Florida Statutes, of all persons identified in this subsection as
54 well as other witnesses relevant to an investigation, audit or review. Such audits shall be
55 conducted in accordance with the current International Standards for the Professional Practice of
56 Internal Auditing as published by the Institute of Internal Auditors, Inc., or where appropriate, in
57 accordance with generally accepted governmental auditing standards. Such investigations will
58 comply with the General Principles and Standards for Offices of Inspector General as published
59 and revised by the Association of Inspectors General. The office of inspector general shall
60 develop and adhere to written policies in accordance with the accreditation standards set forth by
61 the Commission on Florida Law Enforcement Accreditation, Inc.
62 (2) The inspector general shall have the power to conduct audits of, require ~~report~~ production
63 of documents from, and receive full and unrestricted access to the records of the board, each
64 municipality, county administrator, city administrator, city manager or other municipal
65 executive, all elected and appointed county and municipal officials and employees, county and
66 municipal departments, divisions, agencies and instrumentalities, contractors, their
67 subcontractors and lower tier subcontractors, and other persons and entities doing business with
68 the county or a municipality and/or receiving county or municipal funds regarding any such
69 contracts or transactions with the county, The or a municipality. Except as otherwise limited in
70 this subsection (2), the inspector general's jurisdiction includes but shall not be limited to all
71 projects, programs, contracts or transactions that are funded in whole or in part by the county, or
72 any municipality. The inspector general may contract with outside entities deemed necessary to
73 perform the functions of that office. ~~This subsection does not apply to collective bargaining~~
74 agreements. Any such contract is subject to final approval by the board, but such approval shall
75 not be unreasonably withheld. The inspector general may conduct investigations and audits, issue
76 reports, and make recommendations regarding collective bargaining agreements. The inspector
77 general shall conduct investigations and audits in accordance with applicable laws, rules,
78 regulations, policies and past practices. The inspector general shall not interfere with collective
79 bargaining negotiations.
80 ~~(3) In the case of a refusal~~ (3) As provided in subsection (1), the inspector general can: require
81 all county and municipal officials and employees, contractors, their subcontractors and lower tier
82 subcontractors, and other persons and entities doing business with the county or a municipality
83 and/or receiving county or municipal funds to provide statements; administer oaths; and, require
84 the production of documents, records and other information. In the case of a refusal by an
85 official, employee or other person to obey a request by the inspector general for documents or for
86 an interview, the inspector general shall have the power to subpoena witnesses, administer oaths,

87 and require the production of records documents. Seventy-two (72) hours prior to serving a
88 subpoena, the inspector general shall provide written notice to the state attorney and the U.S.
89 Attorney for the Southern District of Florida. The inspector general shall not interfere with any
90 ongoing criminal investigation or prosecution of the state attorney or the U.S. Attorney for the
91 Southern District of Florida. When the state attorney or the U.S. Attorney for the Southern
92 District of Florida has explicitly notified the inspector general in writing that the inspector
93 general's investigation is interfering with an ongoing criminal investigation or prosecution, the
94 inspector general shall suspend service of subpoena, examination of witnesses, or other
95 investigative activities as set forth in the notice. In the case of a refusal to obey a subpoena
96 served to any person, the inspector general may make application to any circuit court of this state
97 which shall have jurisdiction to order the witness to appear before the inspector general and to
98 produce evidence if so ordered, or to give testimony touching ~~on relevant~~ to the matter in
99 question.

100 (4) ~~The costs of reviews, audits, inspections and investigations by the inspector general shall~~
101 ~~be funded at minimum in an amount equal to one quarter of one percent (0.25%) of contracts~~
102 ~~entered into by the County, as may be adjusted as necessary (hereinafter "minimum funding~~
103 ~~percentage"). The minimum funding percentage shall not apply to the following contracts:~~

- 104 a. ~~Contracts for legal services;~~
- 105 b. ~~Auditing contracts;~~
- 106 c. ~~Contracts under one thousand dollars (\$1,000.00);~~
- 107 d. ~~Federal, state and local government funded grants;~~
- 108 e. ~~Interlocal agreements;~~
- 109 f. ~~Revenue generating contracts; and~~
- 110 g. ~~Purchases made pursuant to the State of Florida Department of Revenue approved Sales~~
111 ~~Tax Recovery Program.~~

112 Notwithstanding the foregoing, the board may apply the minimum funding percentage to
113 any contract to ensure the Inspector General receives sufficient funding to perform the functions
114 and duties set forth in this ordinance. Nothing contained in this subsection shall in any way limit
115 the powers of the inspector general provided for in this article to perform audits, inspections,
116 reviews and investigations on all county contracts including, but not limited to, those contracts
117 specifically exempted from the minimum funding percentage.

118 (5) ~~Where the inspector general suspects a possible violation of any state, federal, or local law,~~
119 ~~or rule, regulation or policy, he or she shall notify the appropriate civil, criminal or~~
120 ~~administrative law enforcement agencies. In the case of a possible violation of a rule, regulation~~
121 ~~or policy governing a county employee, the inspector general shall also notify the County~~
122 ~~administrator and the head of the department for each municipal manager, or administrator, or~~
123 ~~mayor where the mayor serves as chief executive officer, shall promptly notify the inspector~~
124 ~~general of possible mismanagement of a contract (misuse or loss exceeding \$5,000 in public~~
125 ~~funds), fraud, theft, bribery, or other violation of law which the employee works, appears to fall~~
126 ~~within the jurisdiction of the inspector general, and may notify the inspector general of any other~~
127 ~~conduct which may fall within the inspector general's jurisdiction. The county administrator and~~
128 ~~each municipal manager, or administrator, or mayor where the mayor serves as chief executive~~
129 ~~officer, shall coordinate with the inspector general to develop reporting procedures for~~
130 ~~notification to the inspector general.~~

131 (6) ~~The inspector general shall have the power without limitation to audit, investigate,~~
132 ~~monitor, inspect and review the operations, activities, performance, and procurement processes~~
133 ~~including, but not limited to, establishment of bid specifications, bid submittals, activities of the~~
134 ~~contractor, their subcontractors and lower tier subcontractors, its officers, agents and employees,~~

135 lobbyists, county and municipal staff, and officials, in order to ensure compliance with contract
136 specifications and detect corruption and fraud.

137 (7)-6) The inspector general shall have the power to receive, review and investigate any
138 complaints regarding any municipal or county-funded projects, programs, contracts or
139 transactions. The inspector general shall establish a "hotline" to receive complaints, from either
140 anonymous or identified persons.

141 (8)-7) The inspector general may exercise any of the powers contained in this article upon his or
142 her own initiative.

143 (9)-8) The inspector general shall be notified in writing prior to any duly noticed public meeting
144 of a procurement selection committee where any matter relating to the procurement of goods or
145 services by the county or any municipality is to be discussed. The notice required by this
146 subsection shall be given to the inspector general as soon as possible after a meeting has been
147 scheduled, ~~but in no event later than one (1) business day prior to the scheduled meeting.~~ The
148 inspector general may, at his or her discretion, attend all duly noticed county or municipal
149 meetings relating to the procurement of goods or services as provided herein, and may pose
150 questions and raise concerns consistent with the functions, authority and powers of the inspector
151 general. The failure by the county or municipality to give written notice required by this section
152 does not constitute grounds for a protest regarding such procurement and shall not be the basis
153 for the stay of any procurement, and shall not be the basis to overturn the award of a contract.

154 (40)-9) It is anticipated that ~~municipalities, special districts,~~ and other public officials and
155 entities will recognize and desire to benefit from the services of the county office of inspector
156 general. The inspector general may negotiate agreements or memoranda of understanding with
157 other public entities which would authorize the inspector general to provide independent
158 oversight of any or all of the public entity's transactions, projects and operations, and to exercise
159 any and all authority, functions and powers set forth in this article for the benefit of such public
160 entity. The memorandum of understanding or agreement shall include a provision for fees to be
161 paid to the inspector general from the public entity in exchange for such benefits. Such ~~fee~~ fees
162 shall be based on a rate established by the inspector general to cover the cost of such benefits and
163 shall include, but not be limited to, ~~the minimum one quarter of one percent of the contracts as~~
164 described in section 2-429(2) (hereafter the "funding percentage base") subject to inspector
165 general review under the agreement. The funding base shall be subject to adjustment as set forth
166 in section 2-429.1. Any such agreement or memorandum of understanding is subject to final
167 approval of the board, but such approval shall not be unreasonably withheld. For the purposes of
168 the removal procedure set forth in section 2-430, a "funding entity" shall mean a public entity
169 that has entered into an agreement or memorandum of understanding to receive services of the
170 inspector general, and has provided funding in exchange for such services equal to at least
171 twenty-five (25) percent of the total annual budget of the inspector general for the county's fiscal
172 year immediately preceding the fiscal year in which the removal procedure takes place.

173 (44)-10) The inspector general's records related to active audits, investigations and reviews are
174 confidential and exempt from disclosure, as provided by §112.3188(2) and Chapter 119, Florida
175 Statutes, § 442.3488(2).

176 (42)-11) The inspector general is considered "an appropriate local official" of the county and of
177 any municipality for purposes of whistleblower protection provided by §112.3188(1), Florida
178 Statutes, § 442.3488(4).

179 (43)-12) The inspector general may recommend remedial actions and may provide prevention
180 and training services to county and municipal officials, employees, and any other persons

181 covered by this article. The inspector general may follow up to determine whether recommended
182 remedial actions have been taken.

183 ~~(14)~~—(13) The inspector general shall establish policies and procedures and monitor the costs of
184 investigations undertaken. The inspector general shall cooperate with other governmental
185 agencies to recover such costs from other entities involved in willful misconduct in regard to
186 county or municipal funds.

187 ~~(15)~~—(14) Nothing herein shall abridge employees' constitutional right to collective bargaining.
188 (Ord. No. 2009-049, § 2(B), 12-15-09)

189

190 **Sec. 2-423.1. Outreach.**

191 The inspector general will coordinate with the county administrator and municipal
192 manager or administrator to develop public awareness strategies to inform government officials
193 and employees, as well as the general public, of the authority and responsibilities of the office of
194 the inspector general. Such strategies shall include but not be limited to inclusion in the
195 government's web page with a link to the office of inspector general website, publication of
196 notices in the government's newsletters, and posting information about the office of inspector
197 general in government employee break rooms and other common meeting areas. The inspector
198 general shall provide on its website examples that illustrate fraud, waste, mismanagement,
199 misconduct and abuse.

200

201 **Sec. 2-424. Minimum qualifications, selection and term of office.**

202 (1) *Minimum qualifications.* The inspector general shall be a person who:

203 a. Has at least ten (10) years of experience in any one (1) or a combination of the following
204 fields:

205 1. As a federal, state or local law enforcement officer/official;

206 2. As a federal or state court judge;

207 3. As a federal, state or local government attorney with expertise in investigating fraud,
208 mismanagement and corruption;

209 4. As an inspector general, certified public accountant, or internal auditor;

210 5. As a person with progressive supervisory and managerial experience in an investigative
211 public agency similar to an inspector general's office;

212 b. Has managed and completed complex investigations involving allegations of fraud, theft,
213 deception or conspiracy;

214 c. Has demonstrated the ability to work with local, state and federal law enforcement agencies
215 and the judiciary;

216 d. Has a four-year degree from an accredited institution of higher learning;

217 e. Has not been employed by the county, any municipality or any other governmental entity
218 subject to the authority of the inspector general office during the two-year period immediately
219 prior to selection; unless such employment has been with the Office of Inspector General, Palm
220 Beach County, Florida.

221 f. Highly qualified candidates will also have audit-related skills and/or hold one (1) or more of
222 the following professional certifications at the time of selection: certified inspector general
223 (CIG), certified inspector general investigator (CIGI), certified inspector general auditor (CIGA),
224 certified public accountant (CPA), certified internal auditor (CIA), or certified fraud examiner
225 (CFE).

226 (2) *Selection.* No official or employee of any governmental entity subject to the authority of the
227 office of inspector general shall participate in the selection of the inspector general committee.
228 Responsibility for selecting the inspector general shall be vested solely with the inspector general
229 selection committee (~~selection committee~~). The ~~selection~~ inspector general committee shall be
230 comprised of the commission on ethics as established in section 2-254 et seq. of this Code, the
231 state attorney for the Fifteenth Judicial Circuit or his or her designee, and the public defender for
232 the Fifteenth Judicial Circuit or his or her designee. The chairperson of the ~~selection~~ inspector
233 general committee shall be chairperson of the commission on ethics. After thoroughly reviewing
234 qualifications, background information, and personal and professional referrals, the
235 ~~selection~~ inspector general committee shall notify the county attorney of its selection. The county
236 attorney shall promptly notify the board that a selection has been made. ~~The county attorney~~
237 ~~shall assist the commission on ethics to negotiate the terms of an employment contract with the~~
238 ~~selected.~~ (3) *Staffing of inspector general as set forth in section 2-425.*
239 a. *Initial selection.* ~~Within thirty (30) days of the effective date of the ordinance from which this~~
240 ~~article is derived, the human resources department will solicit qualified candidates. Within one~~
241 ~~hundred twenty (120) days of the effective date of the ordinance, the selection committee shall~~
242 ~~in good faith endeavor to select the inspector general.~~
243 (3) *Staffing of selection committee.* The county human resources department shall provide
244 staff to the ~~selection~~ inspector general committee and as necessary will advertise the acceptance
245 of resumes for the position of inspector general. All resumes received by the human resources
246 department will be forwarded to the ~~selection~~ inspector general committee for consideration. The
247 human resources department shall contract with an appropriate entity to ensure that background
248 checks are conducted on the candidates selected for interview by the ~~selection~~ inspector general
249 committee. The results of the background checks shall be provided to the ~~selection~~ inspector
250 general committee prior to the interview of candidates. Following the initial selection of the
251 inspector general, the ~~selection~~ inspector general committee, for future selection processes as
252 described in subsection (2) above, may continue to employ the services of the human resources
253 department or may utilize its own staff to solicit candidates for inspector general. All
254 advertisements for the acceptance of resumes for inspector general shall include a salary range
255 commensurate with public officials of like experience and expertise.
256 (4) *Term.* The inspector general shall serve for a term of four (4) years. At least six (6) months
257 prior to the end of each contract term, the ~~selection~~ inspector general committee will determine
258 whether or not to renew the contract for an additional term of four (4) years, and shall promptly
259 notify the inspector general of its decision. In the event the ~~selection~~ inspector general committee
260 elects not to renew the contract, the ~~selection~~ inspector general committee shall promptly
261 convene as necessary to solicit candidates for and to select a new inspector general in the same
262 manner as described in subsection (2) above. The incumbent inspector general may submit his or
263 her name as a candidate to be considered for selection. The incumbent inspector general shall
264 serve until a successor is selected and assumes office.
265 (5) *Vacancy.* In case of a vacancy in the position of inspector general, the chairperson of the
266 ~~selection~~ inspector general committee may appoint a member of the inspector general's office as
267 interim inspector general within ten (10) days of the vacancy occurring, until such time as a
268 successor inspector general is selected and assumes office. A successor inspector general shall be
269 selected in the same manner as described in subsection (2) above, except for the following
270 specific time constraints: (a) solicitation for qualified candidates for selection should be
271 published within twenty (20) days, but no later than forty (40) days of the date the vacancy

272 occurs; and (b) the ~~election~~inspector general committee must in good faith endeavor to convene
273 and select an inspector general within ninety (90) days of the date the vacancy occurs.
274 (~~Ord. No. 2008-040, § 2(C), 12-16-08~~)
275

276 **Sec. 2-425. Contract.**

277 ~~The~~ A designee from the commission on ethics, with the assistance of the county's
278 human resources department and the county attorney's office, shall negotiate a contract
279 of employment with the inspector general substantially consistent with the terms included in
280 contracts of other contractual employees of the county. For the purposes of contract negotiations,
281 such designation by the commission on ethics shall not be deemed a delegation of the
282 commission on ethics' decision making authority. The inspector general shall be paid at a rate
283 commensurate with public officials of like experience and expertise. Before any contract shall
284 become effective, the contract must be approved by a majority of the board present at a regularly
285 scheduled board meeting. The contract will cover the entire four-year term subject to the removal
286 provisions in section 2-430. The contract will include a provision requiring the
287 ~~election~~inspector general committee to provide notice of its decision to renew or not to renew
288 the contract at least six (6) months prior to the termination of the contract. The contract shall
289 provide that the inspector general may not represent a political party or be on any executive
290 committee thereof, or seek public office during his or her term of service, and shall not seek
291 public office or employment with any public entity subject to the jurisdiction of the ~~inspector~~
292 Generalinspector general for four (4) years thereafter. That limitation does not include seeking
293 selection as inspector general for a subsequent term. The contract shall further provide that the
294 inspector general may not be a lobbyist, as defined in section 2-352 of this Code, for two (2)
295 years after term of service.
296 (~~Ord. No. 2008-040, § 2(D), 12-16-08~~)
297

298 **Sec. 2-426. Physical facilities and staff.**

299 (1) The county shall provide the office of inspector general with appropriately located office
300 space and sufficient physical facilities together with necessary office ~~supplies~~-equipment and
301 furnishings to enable the inspector general to perform his or her functions.
302 (2) The inspector general shall have the power to appoint, employ, and remove such assistants,
303 employees and personnel, and establish personnel procedures as deemed necessary for the
304 efficient and effective administration of the activities of the office of inspector general.
305 (~~Ord. No. 2008-040, § 2(E), 12-16-08~~)
306

307 **Sec. 2-427. Procedure for finalization of reports and recommendations which make**
308 **findings as to the person or entity being reviewed or inspected.**

309 The inspector general shall publish and deliver finalized reports and recommendations to
310 the board or the appropriate municipality, and to the county commission on ethics.
311 Notwithstanding any other provision of this article, whenever the inspector general determines
312 that it is appropriate to publish and deliver a report or recommendation which contains findings
313 as to the person or entity being reported on or who is the subject of the recommendation, the
314 inspector general shall provide the affected person or entity a copy of the findings. Such person
315 or entity, who is the subject of a finding or recommendation resulting from an investigation or
316 review, shall have ~~fifteen (15) working~~ten (10) calendar days to submit a written explanation or
317 rebuttal of the findings before the report or recommendation is finalized. In the case of an audit,

318 such person or entity shall have twenty (20) calendar days to submit a written explanation or
319 rebuttal of the audit findings or before the report or recommendation is finalized. The inspector
320 general shall grant reasonable extensions of time for providing a written explanation or rebuttal
321 upon written request. Such timely submitted written explanation or rebuttal shall be attached to
322 the finalized report or recommendation. The requirements of this subsection shall not apply in
323 matters subject to the State of Florida's Whistle-blower's Act, or when the inspector general, in
324 conjunction with the state attorney or U.S. Attorney, determines that supplying the affected
325 person or entity with such report will jeopardize a pending criminal investigation.
326 (Ord. No. 2008-049, § 2(F), 12-15-08)

327

328 **Sec. 2-428. Reporting.**

329 ~~The inspector general shall annually prepare and publish a written report concerning the~~
330 ~~work and activities of the office of inspector general including, but not limited to, statistical~~
331 ~~information regarding the disposition of closed investigations, audits and other reviews. The~~
332 ~~annual report of the inspector general shall be posted promptly on the county's public website.~~
333 ~~(Ord. No. 2008-049, § 2(G), 12-15-08)~~

334

335 (1) Not later than December 31 of each year, the Inspector General shall prepare and publish a
336 written annual report summarizing the activities of the office during the immediately preceding
337 fiscal year ended September 30. The report shall be furnished to the inspector general committee
338 and the Palm Beach County League of Cities, Inc., and posted on the inspector general's website.
339 The report shall include, but need not be limited to: a description of significant abuses and
340 deficiencies relating to the administration of programs and operations disclosed by
341 investigations, audits, reviews, or other activities during the reporting period; a description of the
342 recommendations for corrective action made by the inspector general during the reporting period
343 with respect to significant problems, abuses, or deficiencies identified; identification of each
344 significant recommendation described in previous annual reports on which corrective action has
345 not been completed; and a summary of each audit and investigation completed during the
346 reporting period.

347 (2) The inspector general committee will meet with the inspector general on an annual basis to
348 review the previous year's activities and the inspector general's plans and objectives for the
349 upcoming year.

350 **Sec. 2-429. Financial support and budgeting.**

351 ~~(1) Pursuant to its/their annual budget process/budgeting processes, the county and each~~
352 ~~municipality shall provide sufficient financial support for the inspector general's office~~
353 ~~to fulfill its duties as set forth in this article. In order to ensure adequate funding for the prompt~~
354 ~~establishment of the inspector general pending implementation, the board of county~~
355 ~~commissioners hereby approves an amount equal to three hundred twenty thousand dollars~~
356 ~~(\$320,000.00) to The county and municipalities shall fund all inspector general operations for~~
357 ~~the remainder of the 2008-2010 fiscal year. The inspector general shall timely deliver to the~~
358 ~~board of county commissioners a budget request including a reasonable estimate of operating~~
359 ~~and capital expenditures, and shall include revenues, including, but not limited to, projected~~
360 ~~minimum funding percentage to be collected from the county and any other participating local~~
361 ~~governments and public agencies. The the inspector general's budget request general's office~~
362 ~~proportionately, based on the actual expenses of each governmental entity as recorded in the~~
363 ~~most recent audited year and reported in the Florida Department of Financial Services Local~~

364 Government Electronic Reporting system (LOGER), pursuant to section 218.32, Florida Statutes,
365 as may be amended.

366 (2) The county and each municipality's proportionate share shall be based on each
367 entity's actual expenses as defined in the then current Uniform Accounting System Manual,
368 published by the State of Florida, Department of Financial Services, Bureau of Local
369 Government, and shall include the following Object Categories: 30 - Operating
370 Expenditures/Expenses; 60 - Capital Outlay; and 80 - Grants and Aids. Notwithstanding the
371 above, however, law enforcement, pension funds, electric utility services, fire control, and
372 intergovernmental transfer costs shall not be implemented until approved by the board of county
373 commissioners included in the proportionate share calculation. Nothing contained herein shall
374 in any way limit the powers of the inspector general provided for in this Ordinance to perform
375 audits, inspections, reviews and investigations on all county and municipal contracts.

376 (3) The inspector general shall establish and maintain a fiscal year which coincides with
377 that of the county. ~~Nothing contained herein shall be construed to prohibit Beginning May 1,~~
378 2011, and every May 1 thereafter, the inspector general shall deliver to the board a budget
379 request including a reasonable estimate of operating and capital expenditures and shall also
380 include, but not be limited to, anticipated revenues from sources other than the county and
381 municipalities, and funds estimated to be received but not expended in the current fiscal year.
382 No later than April 1 of every year, the inspector general shall deliver a preliminary budget
383 request to the Palm Beach County League of Cities, Inc., and be available to discuss the budget
384 request with the League of Cities membership prior to May 1 of every year. The board shall meet
385 with a delegation selected by the Palm Beach County League of Cities, Inc., to discuss the
386 budget request for each fiscal year. The county shall endeavor to place the matter on a board
387 agenda prior to June 15 of each year, but in no event later than June 30. The parties attending
388 this meeting shall acknowledge the provisions of section 2-429.1(1).

389 (4) No later than the fifth business day in July of each year, the Office of the Clerk and
390 Comptroller shall prepare an allocation schedule based on the most current LOGER system data.
391 The proportionate share to be paid by the county and each municipality shall be reduced
392 proportionately by the anticipated revenues from sources other than the county and
393 municipalities and the amount of funds estimated to be received but not expended by the
394 inspector general in the current fiscal year.

395 (5) In the event the county or a municipality does not submit the most recent fiscal year
396 data in the LOGER system, the proportionate share for that municipality shall be based upon its
397 last LOGER system submittal, subject to an escalator for each year the submittal was not made.
398 The escalator shall be based on the Consumer Price Index for All Urban Consumers, U.S. City
399 Average, as set forth in section 193.155, Florida Statutes, as may be amended.

400 (6) The budget of the inspector general shall be subject to final approval of the board.
401 No later than September 30 of each year, the board shall set the inspector general budget for the
402 coming fiscal year and adjust the proportionate share of the county and each municipality
403 accordingly as described in this section.

404 (7) The Office of the Clerk and Comptroller shall invoice the county and each
405 municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April
406 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty
407 (30) days from the date of the invoice. Upon receipt, all funds shall be placed in the Office of
408 Inspector General, Palm Beach County, Florida Special Revenue Fund. In the event payment is

409 not timely received, the county or any municipality in compliance with this section may pursue
410 any available legal remedy.

411 (8) The county and each municipality's proportionate share for the period of June 1, 2011
412 through September 30, 2011 shall be as set forth in Exhibit A which is attached hereto and
413 incorporated herein by reference. The Office of the Clerk and Comptroller shall invoice the
414 County, upon adoption of this ordinance, \$946,764. This amount is based on the estimated
415 expenses through June 1, 2011 of \$483,333, plus the County's proportionate share as reflected
416 on Exhibit A. The Office of the Clerk and Comptroller shall invoice each municipality for their
417 proportionate share as set forth in subsection (7) beginning with the first invoice on October 10,
418 2011.

419
420 Sec. 2-429.1 Funding Base
421

422 (1) The funding base is a minimum level of funding, determined as a percentage of
423 contract activity of the governmental entities subject to the authority of the inspector general.
424 The purpose of establishing the funding base is to ensure the office is adequately funded. The
425 funding base is currently set at an amount equal to one quarter of one percent (0.25%) of the
426 contracts as described in section 2-429(2). Within ten (10) days following establishment of the
427 allocation schedule as described in 2-429(4), the county will determine whether the calculated
428 funding requirement meets the one quarter of one percent (0.25%) funding base. In the event the
429 calculated funding requirement is less than one quarter of one percent (0.25%), but the inspector
430 general's proposed budget is fully funded by the allocation schedule and revenues from sources
431 other than the county and municipalities, the inspector general shall request a reduction of the
432 funding base accordingly for that budget year. Nothing herein shall be construed to:

433 (a) Limit the calculated funding base to one quarter of one percent (0.25%), as may
434 be required to adequately fund the Office of the Inspector General;

435 (b) Limit the inspector general's authority to request a budget that results in a
436 calculated funding base that is less than one quarter of one percent (0.25%) at any time; or

437 (c) Prohibit the inspector general from transmitting to the county commission
438 supplemental budget requests which,

439 No adjustment to the calculated funding base shall occur if approved by the commission,
440 shall constitute amendments to the county budget such adjustment results in the Office of the
441 Inspector General not being adequately funded.

442 (Ord. No. 2009-049, § 2(4), 12-18-09)
443

444 (2) On an annual basis the board of county commissioners may adjust the funding base
445 percentage upon a showing of need which shall be based upon, but need not be limited to, the
446 following criteria:

447 (a) additional expenses in a particular year necessitated by an extraordinarily large
448 investigation or audit;

449 (b) the amount of increases or decreases in budget requests by the inspector general in
450 prior years;

451 (c) the amount and frequency of supplemental budget requests made by the inspector
452 general in prior years;

453 (d) the amount and frequency of surpluses and/or shortfalls in the inspector general's
454 budget in prior years;

455 (c) the ability of the county and each municipality to bear an increase of the funding base
456 percentage in a particular year.
457 The demonstration of need shall be subject to review and recommendation by the review
458 committee as established in the Charter of Palm Beach County, section 8.3. The review
459 committee's recommendation shall only be overruled by a supermajority vote of the board of
460 county commissioners. In no event shall the funding base be reduced below one quarter of one
461 percent unless such reduction is made by the inspector general.
462

463 **Sec. 2-430. Removal.**

464 _____ The inspector general may be removed only for cause based upon specified charges of the
465 following: neglect of duty, abuse of power or authority, discrimination, or ethical misconduct.
466 The removal process shall be initiated at a duly noticed public hearing of either the board, the
467 ~~selection~~inspector general committee, or a funding entity as described in section 2-423(402). An
468 affirmative vote of five (5) members of the board, an affirmative vote of five (5) members of the
469 ~~selection~~inspector general committee, or an affirmative supermajority vote of a funding entity
470 shall be required to present the inspector general with the charges and to proceed to final public
471 hearings. The board, ~~selection~~inspector general committee, or the initiating funding entity, as
472 appropriate, shall transmit a copy of the charges to the inspector general at least sixty (60) days
473 prior to all final public hearings which shall be convened by the board, all funding entities, and
474 the ~~selection~~inspector general committee. The inspector general shall have an opportunity to be
475 heard in person and by counsel at the final public hearings prior to the votes being taken on his
476 or her removal. The inspector general may only be removed upon the affirmative vote of five (5)
477 members of the board, five (5) members of the ~~selection~~inspector general committee, and a
478 supermajority of all funding entities. A record of the proceedings, together with the charges and
479 findings thereon, shall be filed with the clerk to the board. The inspector general shall be
480 removed without a public hearing in the event the inspector general is convicted of or enters a
481 guilty plea or *nolo contendere* plea to a state or federal felony. Based upon specified charges of
482 neglect of duty, abuse of power or authority, discrimination, or ethical misconduct, one or more
483 municipalities may file a petition for removal with the general counsel for the Office of Inspector
484 General. A petition for removal must be duly authorized as a resolution outlining the specific
485 charges and passed by a majority plus one of the governing body. The general counsel shall
486 promptly forward the petition to the inspector general committee. The inspector general
487 committee shall decide whether to initiate the removal process or dismiss based on the petition.
488 The inspector general committee may investigate the allegations contained in the petition before
489 deciding whether to initiate the removal process. If the inspector general committee initiates the
490 removal process, the municipality or municipalities making the petition for removal shall have
491 the opportunity to be heard at the final public hearings prior to the votes being taken.
492 (Ord. No. 2009-049, § 2(1), 12-15-09)

493 See

494 Sec. 2-431-2-440. Reserved.

495
496
497
498 Ordinance 2009-04, sections 6 & 7 below, are substantive provisions of the
499 Inspector General Ordinance which were inadvertently omitted by the Municipal
500 Code Corporation in the codification process.
501

502 **Section 6. ENFORCEMENT. Enforcement.**

503 This Ordinance is enforceable by all means provided by law, including seeking injunctive
504 relief in the Fifteenth Judicial Circuit Court in and for Palm Beach County.
505

506 **Section 7. PENALTY. Sec. 2-132. Penalty.**

507 Any person who:

508 A-(1) retaliates against, punishes, threatens, harasses, or penalizes, or attempts to retaliate
509 against, punish, threaten, harass, or penalize any person for assisting, communicating or
510 cooperating with the Inspector General, or

511 B-(2) who knowingly interferes, obstructs, impedes or attempts to interfere, obstruct or
512 impede in any investigation conducted by the Inspector General:

513 shall be guilty of a violation of this Ordinance and punished, pursuant to section 125.69, Florida
514 Statutes, in the same manner as a second degree misdemeanor. Any potential violation of this
515 section shall be referred to the State Attorney for possible investigation and prosecution.
516

Brief description of substantive changes

- Added Municipalities to the County Code
- Added Audit and Investigative Standards
- Changed the reporting section to require the county administrator and each municipal manager, or administrator, or mayor, where the mayor serves as chief executive officer, to promptly notify the inspector general of possible mismanagement of a contract (misuse or loss exceeding \$5,000 in public funds), fraud, theft, bribery, or other violation of law which appears to fall within the jurisdiction of the inspector general.
- Clarified jurisdiction to include subcontractors and lower tier subcontractors
- Added Outreach section which includes, in part, public awareness, inclusion of the inspector general's website to each government's web page, posting information about the office of inspector general in common areas, and illustrative examples of fraud, waste, mismanagement, misconduct and abuse on the inspector general website.
- Re-named the inspector general selection committee to the inspector general committee.
- Changed the written explanation/response for investigations from subject(s) of a finding or recommendation to from working 15 days to 10 calendar days and audit to 20 calendar days; with reasonable extensions granted.
- Added the requirement for the inspector general to furnish the annual report to the Palm Beach County League of Cities, Inc.
- Outlined the annual report date to be not later than December 31 of each year and required the inspector general to meet with the inspector general committee on an annual basis to review previous year's activities and plans and objectives for the upcoming year.
- Outlined the funding mechanism for payment of the fee from the county and municipalities.
- Added the requirement of no later than April 1 of every year, the inspector general shall deliver a preliminary budget to the Palm Beach County League of Cities, Inc., and be available to discuss the budget request prior to May 1 of every year.
- Added that the Board of County Commission shall meet with a delegation selected by the Palm Beach County League of Cities, Inc., to discuss the budget request for each fiscal year and that the county shall endeavor to place the matter on a board agenda prior to June 15 of each year, but in no event later than June 30.
- Added the ability of a municipality to file a petition for removal with the general counsel for the Office of Inspector General, based upon specified charges of neglect of duty, abuse of power or authority, discrimination, or ethical misconduct. The general counsel shall promptly forward the petition to the inspector general committee.

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502011CA017953XXXXMB
DIVISION: AO

TOWN OF GULF STREAM, VILLAGE OF
TEQUESTA, CITY OF RIVIERA BEACH, TOWN
OF JUPITER, CITY OF DELRAY BEACH,
TOWN OF PALM BEACH SHORES, TOWN OF
MANALAPAN, TOWN OF MANGONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF
OCEAN RIDGE, and CITY OF BOCA RATON,
municipal corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official Capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

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RECEIVED FOR FILING

AUG 30 2012

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs, TOWN OF GULF STREAM, et al. (the "Municipalities"), by and through their undersigned counsel and pursuant to Fla. R. Civ. P. 1.510, hereby move this Court for partial summary judgment on Counts I and IV of their Complaint for Declaratory Relief. In support thereof, the Municipalities state as follows:

INTRODUCTION

In November of 2010, the voters of Palm Beach County (the "County") approved a referendum amending the County Charter to create a countywide Office of Inspector General (the "IG Program"). The IG Program was designed to provide oversight for publicly funded transactions, projects, and other governmental operations in both the County and the 38 municipalities within the County. The referendum stated that the IG Program would be funded by the County and "all other governmental entities subject to the authority of the Inspector General." After the referendum passed, the County sent invoices to all 38 municipalities demanding payment for a portion of the IG Program's funding. The County's demand for payment is unlawful. The County's charges to the municipalities for the IG Program constitute unauthorized taxes, no matter how the County wishes to characterize them. A referendum vote does not change this result. The referendum only allowed the County to extend the IG Program into the municipalities. It did not legally authorize the County to impose a fee on the municipalities. Fourteen of the Municipalities have sued seeking declaratory relief on these grounds.

The Municipalities are not requesting this Court overturn the creation and establishment of the IG Program. Instead, they bring this action solely to contest the County's demand for payment. The IG Program will continue as it exists even if the Municipalities prevail. The IG Program will be funded by the County just like the County's other countywide programs. Municipal taxpayers pay county taxes in the same amount as taxpayers residing in the unincorporated areas of the county. Thus, municipal residents and unincorporated county residents will continue to pay for the IG Program with their county taxes as they have always done. The only change will be that the County can no longer require municipal residents to pay extra for the IG Program.

STATEMENT OF UNDISPUTED FACTS

History of Countywide Programs in Palm Beach County

Palm Beach County adopted a "home rule" Charter in 1985 ("the Charter"). See County's Amended Answer to Complaint ("Ans.") at ¶ 8. Article I, Section 1.3 of the Charter sets forth the relationship between County ordinances and Municipal ordinances which conflict with one another. Ans. at ¶ 8. This Charter section provides that municipal ordinances prevail over County ordinances to the extent of any conflict, except in instances where the voters of both the County and the municipalities have voted in a referendum to amend the County Charter to create a "countywide" program on a particular subject matter. Ans. at ¶ 8. The approval of a "countywide" program by referendum vote makes that program applicable in both the County and the municipalities within the County. Ans. at ¶ 9. The referendum process is initiated by a "Charter Ordinance," which has been adopted by the Board of County Commissioners ("BCC") and which describes the proposed "countywide" program to be voted on. Ans. at ¶ 9. After a referendum is approved by the voters, the municipalities cannot pass an ordinance in conflict with the Charter Ordinance. Ans. at ¶¶ 8-9.

Prior to 2010, five amendments to the County Charter occurred. Ans. at ¶ 10. These amendments included: (a) the protection of wells and wellfields; (b) the creation of countywide impact fees; (c) the creation of a countywide Planning Council and Land Use Element; (d) the creation of a countywide level of service for certain roads; and (e) the creation of uniform procedures for voluntary annexation. Ans. at ¶ 11. All of these amendments were initiated by the BCC, and were the subject of a Charter Ordinance. Ans. at ¶ 10. All of these amendments were approved by the voters in both the municipalities and the unincorporated portions of the County after a referendum vote. Ans. at ¶ 11. None of these amendments forced the Municipalities to pay for costs

associated with the countywide programs. Ans. at ¶ 13. Instead, the programs were funded by the County through county ad valorem taxes.¹ Ans. at ¶ 12.

Municipal taxpayers pay county ad valorem taxes in the same amount as taxpayers residing in the unincorporated areas of the County. Ans. at ¶ 75. Thus, a countywide program, when “funded” by the County, means that the program is being paid for by both municipal and county taxpayers through their county ad valorem taxes. Ans. at ¶ 76; see also Fla. Const. Art. VIII, Section 1(h) (county levies ad valorem taxes on municipal residents to pay for countywide programs). Under this system, the County does not require that municipal taxpayers pay extra for the countywide program by separately invoicing their respective Municipalities.

Municipal taxpayers also pay ad valorem taxes to their respective Municipalities. Ans. at ¶ 78. Thus, a countywide program, if required to be “funded” by the County and by invoicing each Municipality, means that municipal taxpayers would be paying for the program through their county ad valorem taxes and again through their municipal ad valorem taxes. See Fla. Const. Art. VII, Section 9(a) (counties and municipalities both levy ad valorem taxes to pay for programs and services); Fla. Stat. § 125.016 (county ad valorem taxes); Fla. Stat. § 166.211 (municipal ad valorem taxes).

**New Ethics Ordinances in Palm Beach County and
the Creation of the Office of Inspector General**

In 2009, the BCC adopted ordinances that created a new Code of Ethics, a Commission on Ethics to enforce the Code of Ethics, and an Office of Inspector General (collectively the “Ethics Ordinances”). Ans. at ¶¶ 16-17. At the time of their passage, these new Ethics Ordinances were applicable only in the unincorporated portions of Palm Beach County. Ans. at ¶ 17.

¹ The County has offset the costs for some of its countywide programs by charging fees to the persons or businesses seeking to develop properties within the County. For example, the County has imposed impact fees and wellfield protection fees on developers in order to offset the costs of the County’s review of their projects. Ans. at ¶ 12.

On July 20, 2010, the BCC adopted Ordinance No. 2010-019 (the "Ballot Ordinance"), which was designed to extend the Ethics Ordinances to all municipalities within the County. Ans. at ¶¶ 27-28; see also a copy of the Ballot Ordinance attached hereto as Ex. 1. The Ballot Ordinance called for a referendum to be held at the next election to ask the voters whether to amend the County Charter and create a countywide Code of Ethics, a countywide Commission on Ethics and a countywide Office of Inspector General (the proposed "Charter Amendment"). Ans. at ¶ 28. Once approved, these countywide programs would be applicable in all municipalities in addition to the unincorporated areas of the County where they were already in effect. Ans. at ¶ 28.

With respect to the proposed countywide Commission on Ethics and its funding, Section 8.2 of the Ballot Ordinance provided: "The Commission on Ethics shall be *adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.*" (emphasis added.) Ans. at ¶ 29; Ex. 1. The Ballot Ordinance did not require the Municipalities to pay a portion of the funding for the operation of the Commission on Ethics if the referendum was passed. Ans. at ¶ 30. Rather, the Ballot Ordinance only contemplated that the County and any governmental entities who *elected* to enter into interlocal agreements with the County to voluntarily come under the jurisdiction of the Commission on Ethics would provide the funding for this Office. Ans. at ¶ 31; Ex. 1. The use of the language "that elect to" was intended to apply to the Constitutional Offices, the School District of Palm Beach County, the Health Care District or other governmental entities should those entities elect to enter into interlocal agreements with the County to share in the funding of the Commission on Ethics. Ans. at ¶ 32; Ex. 1. The Ballot Ordinance's funding for the Commission on Ethics, to the extent it did not require the

Municipalities to pay money toward the program, was consistent with the previously adopted countywide programs mentioned above. Ans. at ¶ 33.

With respect to the funding for the countywide Inspector General Program, the Ballot Ordinance proposed a funding system that was materially different than the one used for the Commission on Ethics. Ans. at ¶ 34; Ex. 1. Section 8.3 of the Ballot Ordinance, entitled "Inspector General," contained the following statement at line 10:

The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance.

Ans. at ¶ 34; Ex. 1. The County argues that Section 8.3 requires the Municipalities to directly pay for funding associated with the countywide IG Program. See Ans. at Affirm Def. # 2. The Ballot Ordinance, however, did not give the Municipalities an ability to decline the IG service after the referendum passed and thereby avoid this mandatory cost sharing. See Ex. 1.

Sections 8.3 and 8.4(a) of the Ballot Ordinance also contained provisions demonstrating that the County, and not the Municipalities, retained the exclusive authority to determine the budget and increases to the funding base for the IG Program. The Municipalities are not given any authority under the Ballot Ordinance to make these determinations even though the County demands they pay money toward the funding of the IG Program. Section 8.3 provides:

The Board of County Commissioners may increase or decrease the Funding Base upon a showing of need for such adjustment based upon criteria contained in the Implementing Ordinance but in no event shall the Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General.

Section 8.4 further provides:

The Board of County Commissioners has adopted ordinances establishing and providing for the funding, authority and powers of

the Palm Beach County Commission on Ethics and the Office of Inspector General (the "Existing Ordinances").

See Ex. 1.

With respect to the actual ballot language to be presented to the voters, Part 2 of the Ballot Ordinance, entitled "Referendum and Ballot Language," stated:

On November 2, 2010, a general election is to be held, and in accordance with the requirements of the Constitution and Laws of Florida, the following question shall be placed on the ballot by the Supervisor of Elections:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS COMMISSION AND INDEPENDENT INSPECTOR GENERAL

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?

YES
NO

Ans. at ¶ 37; Ex. 1. The actual ballot language was silent as to the specific method to be used in funding the Inspector General Program. See Ex. 1. Both the Ballot Ordinance and actual ballot language were silent as to the anticipated budget for, or the estimated annual costs to fund the IG Program. See Ex. 1.

On November 2, 2010, the referendum vote was held on the proposed countywide Ethics Ordinances. Ans. at ¶ 42. A majority of the voters in each of the 38 Municipalities and in the unincorporated areas of Palm Beach County approved the ballot language as presented above.

Ans. at ¶ 42.

On May 17, 2011, the BCC adopted Ordinance No. 2011-009, which implemented the newly approved countywide IG Program and outlined the funding mechanism for said Program (the "Implementing Ordinance"). Ans. at ¶ 43; see also a copy of the Implementing Ordinance attached hereto as Ex. 2. The BCC implemented the newly approved countywide Commission on Ethics and Code of Ethics through separate ordinances. See Palm Beach County Ordinance Nos. 2011-010 (Commission on Ethics) and 2011-011 (Code of Ethics). The Implementing Ordinance for the IG Program requires that the Municipalities pay a portion of the funding for the Program. See Ex. 2 at Section 2-429(1). The Implementing Ordinance further gives the BCC, and not the Municipalities, the authority to adjust the funding base percentage on an annual basis. See Ex. 2 at Section 2-429.1(2). The Implementing Ordinance further gives the BCC, and not the Municipalities, the exclusive authority to approve the Inspector General budget for the coming fiscal year. See Ex. 2 at Section 2-429(6). Finally, the Implementing Ordinance gives the BCC, and not the Municipalities, the exclusive authority to approve supplemental budget requests from the Inspector General during the course of a fiscal year. See Ex. 2 at Section 2-429.1(1)(c).

The County, through its Clerk & Comptroller, issued the first invoices to the Municipalities for the IG Program in October of 2011.² See e.g., Invoices to West Palm Beach, copies of which are attached hereto as Composite Ex. 3; Amended Complaint for Intervention by Clerk & Comptroller of Palm Beach County at ¶ 22.

² The County sought to charge all municipalities within Palm Beach County approximately \$327,898.00 for the IG Program from June 1, 2011 through September 30, 2011, and an additional \$1,263,509.00 for the Program from October 1, 2011 through September 30, 2012. See Composite Ex. 3. These total amounts were divided into shares and the shares were assigned to each municipality. Id. For example, the City of West Palm Beach's share for June 1, 2011 through September 30, 2011, was approximately \$77,929.00 and its share for October 1, 2011 through September 30, 2012, was approximately \$303,309.00. Id. Each municipality's share was divided into quarterly payments. See Ex. 2 at Section 2-429(7) and (8). The first invoice to the Municipalities for Fiscal Year 2012 represented the first quarterly payment. Id.

On November 14, 2011, the Municipalities filed their Complaint for Declaratory Relief, which commenced the current litigation. Count I of the Complaint, which is the subject of this motion for partial summary judgment, alleges that the County's charges to the Municipalities for the IG Program constitute an illegal tax. Count IV of the Complaint, which also is the subject of this motion for partial summary judgment, alleges that the County's charges to the Municipalities for the IG Program invade the Municipalities' constitutional and statutory right to maintain control over their own budgets.

SUMMARY OF ARGUMENT

The County contends that the Municipalities are required to directly pay a portion of the IG Program's funding because that is what the voters approved by referendum. According to the County, this is where the Court's inquiry should end. However, just because the voters voted for an item does not make it legal. Florida law is clear that the County cannot do something by referendum vote that it cannot do on its own.

On its own, the County cannot impose mandatory charges on the Municipalities to fund the countywide IG Program. To be lawful, the charges to the Municipalities for the IG Program must qualify as one of the following: (1) user fees; (2) special assessments; (3) regulatory fees; or (4) taxes. The charges for the IG Program are none of these. User fees must be voluntary with the option to decline the service at any time and thereby avoid the charge. The Municipalities have no ability to opt out of the IG Program at any time and thereby avoid the charge. Special assessments must provide benefits to real property. There is no dispute here that the charges for the IG Program do not benefit real property. Regulatory fees may be imposed pursuant to Fla. Stat. § 166.221 on "businesses, professions, and occupations" so long as the fee is commensurate with the cost of the regulatory activity. Despite the County's reliance on Section 166.221 to justify charging the Municipalities for the IG Program, the plain language of

this statute does not permit a county to levy a regulatory fee on municipalities. In addition, regulatory fees can only be imposed where there is a true regulatory scheme in place. The IG Program is not a regulatory program, but an advisory program. Finally, a lawful tax must be authorized by general law or the Florida Constitution. There is no general law or Florida Constitutional provision allowing the County to impose an Inspector General tax on the Municipalities. Since the County's charges do not qualify as valid user fees, special assessments, regulatory fees or taxes, those charges are illegal taxes.

On its own, the County also cannot invade a municipality's "home rule" power and essentially mandate that a municipality appropriate specific funding for a countywide program. A municipality controls its own budget and financial affairs. This power is granted to a municipality by the Florida Constitution and Chapter 166 of the Florida Statutes. Here, the County has invaded municipal home rule power by requiring the Municipalities to appropriate and subsequently pay set costs toward the countywide IG Program. The County, and not the Municipalities, dictate how much these costs are and when they are paid. These funding mandates are unconstitutional.

Given that on its own, the County has no legal authority to demand payment from the Municipalities for the IG Program, the County cannot use the referendum vote to give itself that authority. A referendum does not transform unlawful actions into lawful ones. For these reasons, the Municipalities are entitled to partial summary judgment in their favor.

ARGUMENT

A. Legal Standard Applicable to Motions for Summary Judgment.

Rule 1.510(c) of the Florida Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." Once the party moving for summary judgment has established its claim with competent record evidence, "the opposing party must come forward with counter-evidence sufficient to reveal a genuine issue." Walter T. Embry, Inc. v. LaSalle, Nat'l Bank, 792 So. 2d 567, 569 (Fla. 4th DCA 2001). It is not enough for the opposing party to merely assert that an issue exists. See Williams v. Garden City Claims, Inc., of New York, Totura & Co., Inc., 796 So. 2d 586, 588 (Fla. 3d DCA 2001). When the material facts are undisputed and the moving party is entitled to judgment as a matter of law, it is the court's duty to enter summary judgment. See Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000); Castellano v. Raynor, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999).

B. The Municipalities Are Entitled to Partial Summary Judgment as a Matter of Law on Counts I and IV of Their Complaint for Declaratory Relief.

1. The County Cannot Do By Referendum Vote What It Cannot Do On Its Own.

The County argues that the Municipalities must directly pay for a portion of the IG Program's funding because that was the system approved by the voters. However, just because the voters voted for an item does not make it legal. See Ans. at ¶ 60; Gaines v. City of Orlando, 450 So. 2d 1174 (Fla. 5th DCA 1984) (a charter provision that conflicts with the state constitution or state law is not any more lawful simply because the charter provision was adopted by the electorate). The Gaines case is clear that the County cannot do something by referendum vote that it cannot do on its own. Id. at 1179 and 1182 (since state law prohibited the city from utilizing an ordinance or charter amendment to command a utilities commission not to build an electrical plant, court held that the voters acting through the initiative or referendum process could not do so either). Therefore, the inquiry for this Court is not whether the voters voted for the Municipalities to pay the County's invoices for a portion of the IG Program's funding. The inquiry is whether the County has the legal authority, on its own and without the assistance of a

referendum, to charge the Municipalities for these countywide costs in the first place. State law unequivocally provides that the County does not have such authority.

2. On Its Own, the County Has No Legal Authority to Charge the Municipalities for the IG Program (Count I of the Complaint).

Under Florida law, local governments³ have a limited number of ways they can generate revenue to pay for their services and programs. The primary methods for generating revenue include the levying of fees, assessments and/or taxes. Here, the County's charges to the Municipalities for the IG Program must qualify as one of the following legally available methods to generate revenue in order to be valid: (1) user fees; (2) special assessments; (3) regulatory fees; or (4) taxes. See e.g., State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994) (user fees versus taxes); City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992) (special assessments versus taxes); Broward County v. Janis Development Corp., 311 So. 2d 371 (Fla. 4th DCA 1975) (regulatory fees versus taxes). The County's charges fail to qualify as any one of these revenue generators. The County even admits in its Answer and Affirmative Defenses that the charges do not qualify as user fees or special assessments. See Ans. at ¶¶ 55 and 57; Affirm. Def. # 1, 3 and 5.⁴ Therefore, the County has no legal authority to charge the Municipalities for the IG Program.

a. The County's Charges to the Municipalities Do Not Constitute User Fees.

The County is correct that its charges to the Municipalities for the IG Program do not constitute user fees. A user fee is paid by someone in order to "use" a governmental service or facility. City of Port Orange, 650 So. 2d at 3; St. Lucie County v. City of Fort Pierce, 676 So. 2d

³ Under Florida law, there are two types of general purpose local governments: counties and municipalities. Counties are governed by Article VIII, § 1 of the Florida Constitution, and Chapter 125 of the Florida Statutes. Municipalities are separate and distinct legal entities from counties and are governed by Article VIII, § 2 of the Florida Constitution, and Chapter 166 of the Florida Statutes.

⁴ The County argues that the charges for the IG Program are regulatory fees, which are discussed in more detail below. See Ans. at Affirm. Def. # 1, 3 and 5.

35 (Fla. 4th DCA 1996). To be legal, user fees must be paid voluntarily. City of Port Orange, 650 So. 2d at 3. Voluntariness has a unique meaning under user fee law. The voluntariness requirement is not met just because the electorate voted to have the Municipalities take part in the IG Program. Voluntariness means the party paying the fee (i.e. the Municipality paying the County's invoice) has the option of not utilizing the governmental service and thereby avoiding the charge. Id. In other words, the party subject to the fee has the ability to "opt out" at any time and avoid the fee. The fee cannot be mandatory. Id. at 4. A mandatory charge is indicative of a tax. See State ex rel. Gulfstream Park Racing Ass'n v. Florida State Racing Comm'n, 70 So. 2d 375, 379 (Fla. 1953) (Terrell, J., concurring) (A tax "is a forced charge or imposition, it operates whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed.").

In City of Port Orange, the Florida Supreme Court held that the city's imposition of a fee related to the use of city roads in order to defray the costs of maintaining and improving those roads was an invalid tax rather than a user fee because the fee did not satisfy the voluntariness requirement. 650 So. 2d at 3-4. The Court held that the fee was "mandatory" given that the property owner subject to the fee did not have a choice to opt out of using city roads. Id. at 4. In St. Lucie County, the Fourth District Court of Appeal held that a city's payment of a fee to the county pursuant to an interlocal agreement in order to use the county's landfill was a valid user fee. 676 So. 2d at 36-37. The fees were voluntarily paid and voluntarily renewed by contract for several years. Id. at 37. When the fees became too high, the city opted out of using the county's landfill and chose to dump its garbage elsewhere. Id.

In the instant case, the Implementing Ordinance requires that the Municipalities pay a portion of the IG Program's funding by invoice. The County's charges are mandatory. The Municipalities have no ability to opt out of the IG Program at any time and thereby avoid the

charge. This does not satisfy the voluntary requirement under user fee law. Therefore, the County's charges for the IG Program do not qualify as valid user fees.

b. The County's Charges to the Municipalities Do Not Constitute Special Assessments.

The County is correct that its charges to the Municipalities for the IG Program do not constitute special assessments. A special assessment is a specific charge designed to recover the costs of improvements (i.e. water, sewer) that benefit real property. See City of Gainesville v. State, Dep't of Transp., 778 So. 2d 519, 526 (Fla. 1st DCA 2001). Under Florida law, a special assessment must meet two requirements in order to be legal: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. City of Boca Raton, 595 So. 2d at 29.

As stated above, special assessments must provide benefits to real property. The County does not dispute that the charges for the IG Program are not designed to recover the costs of improvements that benefit real property. See Ans. at ¶ 57. Therefore, the County's charges for the IG Program do not qualify as special assessments.

c. The County's Charges to the Municipalities Do Not Constitute Regulatory Fees.

In the instant case, the County claims its charges to the Municipalities for the IG Program are regulatory fees. See Ans. at Affirm. Def. # 1, 3 and 5. The label the County places on the charges, however, is not controlling. The County's limited authority to tax may not be expanded simply by calling the charge a fee rather than a tax. See City of Port Orange, 650 So. 2d at 3. The County must actually meet the requirements for regulatory fees in order for them to be valid. The County cannot satisfy these criteria.

First, the County's ability to impose regulatory fees in a municipal jurisdiction is governed by Fla. Stat. § 166.221.⁵ This statute reads as follows:

A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

(emphasis added). Here, the County is not charging fees to the "businesses, professions, and occupations" that may be subject to the IG Program. Instead, the County is charging municipal governments. A municipality is not a "business, profession, or occupation" within the meaning of this statute. To hold otherwise would mean that a municipality could charge a fee on itself. That does not make sense. Moreover, to hold that a municipality is a "business, profession or occupation" under § 166.221 goes against the statute's plain and unambiguous language. See Daniels v. Florida Dep't of Health, 898 So. 2d 61, 64-65 (Fla, 2005) (when a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent; the statute's plain and ordinary meaning must control); Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (when the language of a statute is clear and unambiguous and conveys clear and definite meaning, there is no reason to resort to rules of statutory construction; statute must be given its plain and obvious meaning).

A plain reading of the statute makes it clear that the phrase "businesses, professions, and occupations" does not include municipalities. The statute does not provide that a regulatory fee

⁵ Section 166.221 is found in the "Municipal Home Rule Powers Act" under the heading of "Municipal Finance and Taxation." This section refers only to a "municipality's" ability to levy regulatory fees. A charter county is "akin" to a municipality for purposes of levying fees so long as all legal requirements for imposing the fees are met. See Palm Beach County v. Bellsouth Telecommunications, Inc., 819 So. 2d 876, 877 (Fla. 4th DCA 2002). Thus, while a charter county is authorized to act like a municipality and levy a regulatory fee pursuant to section 166.221, Fla. Stat., the regulatory fee may only be imposed upon the specific classes set forth in the statute.

can be charged to a municipality. Instead, the statute only provides that a regulatory fee can be charged by a municipality. The statute expressly differentiates between the municipalities imposing the fee and the "businesses, professions, and occupations" paying the fee. This distinction indicates that the Legislature intended to treat these two groups differently.

A review of Florida case law interpreting Section 166.221 confirms that the phrase "businesses, professions, and occupations" was not intended to include municipalities. The only cases that interpret this statute involve factual scenarios where a municipality has tried to impose regulatory fees on non-governmental entities such as street vendors and fortune tellers. See e.g., City of Key West v. Marrone, 555 So. 2d 439 (Fla. 3d DCA 1990) (mobile vendors); City of North Miami v. Williams, 555 So. 2d 399 (Fla. 3d DCA 1990) (fortune tellers). There is no case in Florida where a charter county or a municipality has been allowed to impose a regulatory fee on a municipality pursuant to Section 166.221.

Second and assuming *arguendo* that Section 166.221 authorizes the County to impose regulatory fees on the Municipalities in this case, the fees must still be imposed pursuant to some form of regulatory scheme. See Fla. Stat. § 166.221. For example, in City of Key West, the Third District Court of Appeal addressed whether a city ordinance that purportedly regulated mobile vendors imposed a regulatory fee or a tax. 555 So. 2d at 440. The court held that the fees imposed by the ordinance were proper regulatory fees because the city had established an extensive regulatory scheme for mobile vendors through its ordinance. Id. In addition to mandatory fees for licensing, processing and solid waste collection, the regulatory scheme restricted the business hours of mobile vendors, the location of mobile vendor carts and the transferability of mobile vendor licenses. Id. The ordinance also required that owners possess liability insurance and personally accompany their carts. Id.

In City of North Miami, the Third District Court of Appeal reviewed whether a city ordinance imposed a proper regulatory fee on fortune tellers. 555 So. 2d at 400. The court held that the city's regulatory fee was invalid because the city made no provision, by ordinance or otherwise, for the regulation of fortune tellers. Id. Similarly, in Tamiami Trail Tours, Inc. v. City of Orlando, 120 So. 2d 170 (Fla. 1960), the Florida Supreme Court held that a city ordinance that purportedly regulated truck freight zones within the city impermissibly imposed a tax because its sole purpose was to generate revenue for the city. Id. at 172-173.

Based on the case law cited above, a "regulation" must be mandatory or of a binding nature. A "regulation" also must contain detailed standards, rules, guidelines and requirements relating to the conduct being regulated. The County's Charter Amendment and the County's Implementing Ordinance do not meet these requirements and therefore, fail to create a regulatory scheme over the Municipalities. While these documents clearly outline the duties and obligations of the Inspector General, they fail to provide identifiable standards of conduct or procedures that must be followed by the Municipalities. The Implementing Ordinance outlines: the establishment of the Inspector General's Office (Section 2-422); the Inspector General's duties (Section 2-423); the Inspector General's qualifications (Section 2-424); the Inspector General's contract (Section 2-425); the Inspector General's facilities and staff (Section 2-426); the Inspector General's reports and recommendations (Section 2-427); the Inspector General's annual reports and job performance reviews (Section 2-428); and the Inspector General's funding (Sections 2-429 and 2-429.1). The Implementing Ordinance also provides that the Inspector General "shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by" county and municipal officials and employees and those persons doing business with the County or Municipalities. Ex. 2 at Section 2-422. The Ordinance, however, does not provide procedures which restrict a municipality or regulate its

activities; nor does it define the specific type of conduct sought to be prevented; nor does it proscribe mandatory standards of conduct for the Municipalities to follow.⁶ This is not sufficient to create a regulatory scheme.

The Charter Amendment and Implementing Ordinance also are clear that the Inspector General only reviews county and municipal functions in an *advisory* capacity and does not regulate a municipality's conduct. Ex. 1 at Section 8.3; Ex. 2 at Sections 2-423(1)(c) and (12); 2-427. The Implementing Ordinance expressly states in fact that the Inspector General *can only make recommendations* to the Municipalities. *Id.* The Inspector General cannot force the Municipalities to comply with its recommendations. *Id.* The Inspector General's only avenue of action is to "notify" the appropriate law enforcement agencies if the inspector general suspects criminal activity. Ex. 2 at Section 2-423(4).

Local governments may charge regulatory fees to cover the costs of regulating certain activities.⁷ See Broward County, 311 So. 2d at 375. Local governments may not charge regulatory fees for general revenue purposes. *Id.* at 374. If a charge is not in any sense regulatory, but is imposed for general revenue purposes, then it is a tax and not a fee. *Id.* In Broward County, the Fourth District Court of Appeal held that a land use fee imposed as a condition to the issuance of building permits was an invalid tax rather than a regulatory fee given

⁶ The countywide wellfield protection ordinance is an example of a regulatory scheme. See Sections 1.3(1) and 3.3 of the County Charter; County Unified Land Development Code, Art. 14, Chapter B. This ordinance regulates and prohibits "the use, handling, production and storage of certain deleterious substances which may impair present and future public potable water supply wells and wellfields." This ordinance provides specific criteria, rules and guidelines that developers must follow to protect nearby wellfields.

⁷ For example, the County regulates development and construction near wellfields on a countywide basis. See Sections 1.3(1) and 3.3 of the County Charter; County Unified Land Development Code, Art. 14, Chapter B. The County charges certain fees to developers to cover the cost of reviewing their development applications for compliance with the County's wellfield protection standards. *Id.*

that the fee was not used to offset the "necessary expense of regulation," but instead was designed to be a revenue generator. Id. at 374-375. Specifically, the court held:

It is undisputed that the city expected some Six Million Dollars in anticipated revenue from the first year the ordinance was in effect, and it is impossible that such revenue could approximate any cost of regulation. In Batemen v. City of Winter Park, 160 Fla. 906, 37 So. 2d 362 (1948), the Florida Supreme Court spoke to the difference between a tax and a fee:

'The difference between a liquor license fee and a tax may be thus stated: Where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power; But where the fee is exacted solely for revenue purposes, and payment of such fee gives the right to carry on the business without the performance of any other conditions, it is a tax.' (Emphasis added.) Id. 37 So. 2d at 363.

The fee here is simply an exaction of money to be put in trust for roads, which must be paid before developers may build. There are no other requirements. There are no specifics provided in the ordinance as to where and when these monies are to be expended for roads, apparently this was to be left for future commission determination. This fee, therefore, is an exercise of the taxing power

Id. at 375.

Given the above, the County's charges to the Municipalities for the IG Program do not constitute valid regulatory fees. Instead, they are an exaction of money for revenue generating purposes. As stated previously, a charge that is not in any sense regulatory, but is imposed for general revenue purposes, is a tax. Broward County, 311 So. 2d at 374.

The true tax nature of the County's charges is further evidenced by the fact that the County only has sent bills to the Municipalities for the IG Program, and not to the municipal

contractors, subcontractors and other parties doing business with the Municipalities that are also under the Inspector General's jurisdiction. See e.g., Ex. 2 at Section 2-422. Assuming *arguendo* that the charges for the IG Program were true regulatory fees, then the County would impose them on everyone that is allegedly being regulated. The County has not done so. Instead, the County has chosen to selectively charge the Municipalities to generate revenue for the Program. This is plainly and simply a tax on municipal governments.

d. The County's Charges to the Municipalities Do Not Constitute a Valid Imposition of Taxes.

A tax is a forced charge or imposition. State ex rel. Gulfstream Park Racing Ass'n, 70 So. 2d at 379. No tax may be levied in the State of Florida except according to law, and all forms of taxation, except ad valorem taxes, are preempted to the state. See Article VII, Section 1(a), Fla. Const. Counties may be authorized by general law as set forth in the Florida Statutes to levy other forms of taxes. See Article VII, Section 9(a), Fla. Const. In other words, taxation by a county must be expressly authorized by the Florida Constitution or by a general law passed by the Florida Legislature. See City of Port Orange, 650 So. 2d at 3; Article VII, Section 1(a), Florida Const. (1968). Local ordinances that impose taxes that are unauthorized by general law are unconstitutional. Collier County v. State, 733 So. 2d 1012, 1019 (Fla. 1999). Statutes authorizing local governments to tax also are to be strictly construed. City of Tampa v. Birdsong Motors, 261 So. 2d 1, 3 (Fla. 1972). Any doubts about a taxing power the government is attempting to exercise must be construed against that government. Id.

Here, the County's charges to the Municipalities for the IG Program do not constitute an imposition of ad valorem taxes. There is no general law provision or Florida Constitutional provision allowing the County to impose an Inspector General tax on the Municipalities. Therefore, the County's charges are not valid taxes.

e. The County's Charter Amendment and Implementing Ordinance Impose an Illegal Tax on the Municipalities.

Since the County's charges imposed on the Municipalities pursuant to the Charter Amendment and Implementing Ordinance do not qualify as valid user fees, special assessments, regulatory fees or taxes, those charges are illegal and unauthorized taxes. See City of Port Orange, 650 So. 2d at 3 (city's imposition of a fee related to the use of city roads was not user fee or valid tax authorized by general law; court concluded that fee was unauthorized tax); Collier County, 733 So. 2d at 1014 (county's governmental services fee was not valid special assessment, user fee or impact fee, but was unauthorized tax). A referendum vote does not transform an illegal tax into a legal one. See Gaines, 450 So. 2d at 1179 and 1182. For these reasons, the Municipalities are entitled to summary judgment on Count I of their Complaint as a matter of law.

f. The Municipalities Are Prohibited Under State Law from "Passing On" Regulatory Fees to Their Municipal Vendors In Order to Pay for the IG Program's Funding.

The County contends that the Municipalities are not being taxed at all because they can pass the County's charges for the IG Program onto their municipal vendors by imposing regulatory fees on those vendors pursuant to Fla. Stat. § 166.221. See Ans. at ¶¶ 110 and 113 and Affirm. Def. # 5. This argument has no merit. First and foremost, the County is taxing the Municipalities by directly invoicing them, and these taxes are illegal. The Municipalities cannot pass illegal taxes onto their vendors. Second, the Municipalities dispute that the IG actually provides regulation. See supra at pp. 17-19. Without actual regulation, there can be no regulatory fee passed onto vendors. Third, and assuming *arguendo* that the IG Program is a regulatory scheme, the Municipalities still cannot charge the fee to their vendors. If regulation is being provided at all, which the Municipalities dispute, then the County is providing the regulation, not the

Municipalities. Section 166.211 clearly states that only the governmental entity providing the regulation can impose the regulatory fee. Fourth, and assuming *arguendo* that the IG Program is a regulatory scheme, Section 166.211 states that a municipality may not impose a regulatory fee if the regulation has been preempted by a county charter. The County claims it has preempted the field of IG oversight based on its Charter Amendment. Therefore, the plain language of the statute itself prohibits the Municipalities from imposing a regulatory fee for such oversight.

3. On Its Own, the County Has No Legal Authority to Interfere with a Municipality's Home Rule Power to Decide Its Own Budget (Count IV of the Complaint).

The Florida Constitution makes clear that counties and municipalities are separate and distinct general purpose local governmental entities. See Art. VIII, §§ 1 and 2, Fla. Const. The Florida Constitution establishes that counties control their own county affairs and municipalities control their own municipal affairs. Id.; see also Chapters 125 and 166, Fla. Stat. This control is commonly referred to as home rule power. With respect to municipal home rule power, Article VIII, section 2(b), Fla. Const., provides:

(b) POWERS. Municipalities shall have governmental corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law...

In recognition of this broad constitutional grant of power, the Florida Legislature adopted Chapter 166, Florida Statutes, which is otherwise known as the Municipal Home Rule Powers Act. The Florida Supreme Court has interpreted this Act as:

a broad grant of power to municipalities in recognition and implementation of the provisions of Art. VIII, § 2(b), Fla. Const. It should be construed as to effectuate that purpose where possible. It provides, in new F.S. § 166.021(1), that municipalities shall have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services; it further enables them to exercise

any power for municipal purposes, except when expressly prohibited by law.

City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764, 766 (Fla. 1974) (Dekle, J., concurring).

The budgeting and appropriation of taxes collected by municipalities are activities or powers which may only be exercised by municipal corporations under Chapter 166 of the Florida Statutes. Ans. at ¶ 101. Likewise, the budgeting and appropriation of taxes collected by counties are activities or powers which may only be exercised by counties under Chapter 125 of the Florida Statutes. Section 166.241 and Chapter 200, Fla. Stat., outline the specific framework that municipalities must follow in adopting and amending their budgets. Ans. at ¶ 102. Chapters 125 and 200, Fla. Stat., outline the specific framework that counties must follow in adopting and amending their budgets. There is no provision in Section 166.241, Chapter 125, Chapter 200, or in the remainder of the Florida Statutes that permits a county to interfere in a municipality's budgeting or appropriation process. Therefore, the Municipalities, and not the County, decide when to spend municipal monies, what programs to spend monies on, how much to spend, and how to allocate money in periods of limited resources. This is a logical and established principle. The law does not allow a county to dictate municipal budgetary or spending authority. If counties were permitted to do this, then there would be no need for municipalities to exist.

Despite this well-established principle, the County has implemented a system that requires the Municipalities to appropriate specific amounts of money into their respective budgets each year for the IG Program and then pay those amounts to the County. The Municipalities do not decide what these amounts will be. The Municipalities also do not decide what the IG's budget will be or whether that budget will be amended. Those decisions are made by the County. See Ex. 2 at Section 2-429(6) ("The budget of the inspector general shall be

subject to final approval of the board.”). The County has mandated that the Municipalities simply appropriate a direct payment for the countywide IG Program regardless of how the mandate affects municipal budgets or whether the mandate will take funding away from municipal programs. *Id.* at Section 2-429(7) (“Payment shall be submitted to the board and due no later than thirty (30) days from the date of the invoice.”). This system has resulted in the County usurping an exclusive budgetary function of the Municipalities.

The Municipalities’ loss of budgetary control is compounded by the fact that Section 8.3 of the County’s Charter and Section 2-429.1(2) of the Implementing Ordinance allow the BCC to increase the funding base for the IG Program upon a demonstration of need. Ex. 1 and 2. Neither the County’s Charter or the Implementing Ordinance permit the Municipalities to make this decision even though they are bound to pay for any increase. Instead, the Implementing Ordinance provides that the Municipalities must comply with whatever the BCC decides in this regard. Ex. 2. Section 2-429.1(1)(c) of the Implementing Ordinance also permits the Inspector General to submit supplemental budget requests to the BCC for approval during the course of a fiscal year. *Id.* The Implementing Ordinance does not permit the Municipalities to decide whether these supplemental budget requests should be approved even though the Municipalities will already have approved their budgets for that fiscal year. *Id.* The Implementing Ordinance provides that the Municipalities are bound by the decision of the BCC and must appropriate funds accordingly if the supplemental budget requests are approved. *See* Ex. 2 at Section 2-429(6).

The Florida Constitution and Florida Statutes are clear. The County cannot usurp municipal budget or appropriation authority for itself. To hold otherwise would make municipal government superfluous. A referendum vote does not change this result. A charter amendment, even if approved by referendum, is unconstitutional if it interferes with a government’s budgeting authority. *See e.g., Charlotte County Bd. of County Commissioners v. Taylor*, 650 So. 2d 146, 147-149 (Fla. 2d DCA

1995) (amendment to home rule county charter invalid on grounds that it was inconsistent with general law requirements that the county commission, not the electors, establish a budget and levy ad valorem taxes based upon certain statutory requirements); State ex rel. Keefe v. City of St. Petersburg, 145 So. 175, 175-176 (1933) (court held that initiative and referendum provisions of city's charter were not applicable to appropriations ordinances because such provisions would "materially obstruct, if not entirely defeat, the purpose of having a budget system").

4. The County Cannot Force the Municipalities to Make a Direct Payment for the IG Program's Funding Under a Contract Implied in Law or Quasi-Contract Theory.

Because the preceding arguments establish that the fee charged by the County is an unlawful tax, the Court need not consider the County's affirmative defense that the Municipalities must pay for the IG Program in perpetuity under a contract implied in law or quasi-contract theory. See Ans. at Affirm. Def. # 6. Even if the Court were to consider it, however, this argument fails as a matter of law. First, as stated previously, the County's charges for the IG Program constitute unlawful taxes. There is no constitutional provision, statute or case in Florida that allows the County to impose unlawful taxes in equity under a contract implied in law or quasi-contract theory. An illegal tax is still an illegal tax.⁸

Second, it is unlawful for the County to force the Municipalities to commit unspecified amounts of taxpayer dollars to the IG Program in perpetuity. As stated above, Florida law requires

⁸ If illegal fees, assessments and taxes could be imposed simply by charging them under an implied contract or quasi-contract theory, then every governmental entity seeking to have its illegal charges upheld would make this argument. A review of Florida case law, however, demonstrates that governmental entities cannot justify illegal charges based on such theory, nor are illegal charges upheld on such theory. See e.g., City of North Miami, 555 So. 2d at 399 (city's regulatory fee imposed on fortune tellers invalid; no mention of unjust enrichment argument to justify fee); Collier County, 733 So. 2d at 1012 (county's governmental services fee was unauthorized tax; no mention of unjust enrichment argument to justify charge); City of Port Orange, 650 So. 2d at 1 (city's imposition of road usage fee was invalid tax; no mention of unjust enrichment argument to justify charge).

that Municipalities maintain control over their own budgets and appropriations. See Art. VIII, § 2, Fla. Const.; and Chapters 166 and 200, Fla. Stat. The County, however, has implemented a system to fund the IG Program that invades this control. Since the County's funding system violates the Florida Constitution and Florida Statutes, it cannot be enforced in equity under a contract implied in law or quasi-contract theory.

Third, the County's attempts to force payment under a contract implied in law or quasi-contract theory is barred by the doctrine of sovereign immunity. The Florida Supreme Court has held that sovereign immunity from contractual suits has been waived by the Florida Legislature only for suits based on express written contracts. Pan-Am Tobacco Corp. v. Department of Corrections, 471 So. 2d 4, 6 (Fla. 1984). In Pan-Am, the Florida Supreme Court specifically limited the waiver to written contracts stating, "[w]e would also emphasize that our holding here is applicable only to suits on express, written contracts which the state agency has statutory authority to enter."⁹ Id. The waiver of sovereign immunity recognized in Pan-Am is inapplicable to actions brought for oral or implied contracts. County of Brevard v. Miorelli Engineering, 703 So. 2d 1049, 1051 (Fla. 1997) (finding the doctrine of sovereign immunity precluded recovery for cost of extra work performed without a written change order); City of Key West v. Florida Keys Community College, 81 So. 3d 494, 497 (Fla. 3d DCA 2012) (finding college protected by sovereign immunity against an action by city to collect stormwater utility fees where no written agreement existed between college and city obligating college to pay city's stormwater utility fees).

In Key West, the city enacted an ordinance creating a stormwater utility system and establishing stormwater utility fees to fund the system. Id. at 496. There was no written

⁹ The sovereign immunity granted to the State has been interpreted to extend to municipalities. Commercial Carrier Corp. v. Indian River County, 371 So. 2d 1010, 1016 (Fla. 1979).

agreement between the city and the college obligating the college to pay the city's stormwater fees. Id. at 496. Nevertheless, the city billed the college for stormwater services. Id. The college sued seeking a declaration that it enjoyed sovereign immunity with respect to the fees. The trial court agreed and granted summary judgment for the College. Id. The Third District Court of Appeal affirmed. Id. at 496-97.

In this case, the County seeks to recover costs for its IG Program under a contract implied in law or quasi-contract theory. The County, however, cannot demonstrate that the Municipalities' sovereign immunity with respect to payment of County charges has been waived by the Florida Legislature. The County and the Municipalities do not have an express written agreement for the payment of the IG Program's funding. Therefore, the waiver addressed in Pan-Am is not applicable. Without an express waiver by the Florida Legislature, the County's recovery under a contract implied in law or quasi-contract theory is barred. American Home Assurance Co. v. Nat'l Railroad Passenger Corporation, 908 So. 2d 459, 472 (Fla. 2005) (waiver by Florida Legislature of sovereign immunity must be clear and unequivocal).

CONCLUSION

The County's attempts to collect money from the Municipalities under the County Charter Amendment and Implementing Ordinance are attempts to collect illegal taxes. Moreover, the County's actions interfere with the Municipalities' home rule authority to control their budgets and financial affairs. For these reasons, the County Charter Amendment and Implementing Ordinance are invalid to the extent they demand a direct payment from the Municipalities for the IG Program.

The IG Program is a county program created by an amendment to the County's Charter. County programs should be funded by the County. This is the legal method and is consistent with the County's funding of its other countywide programs, capital projects and services. Requiring the County to pay for the IG Program just means that the Program will be funded with

county ad valorem tax dollars instead of with both county and municipal ad valorem tax dollars. County ad valorem taxes are paid at the same rates by both municipal and county taxpayers. Thus, municipal taxpayers will continue to pay for the IG Program through their county taxes just as they have always done. The difference is that municipal taxpayers will no longer be required to also pay a portion of their municipal tax dollars over to the IG Program given that the County's efforts to directly charge the Municipalities are unlawful.

It should further be noted that there is nothing prohibiting the County from utilizing Fla. Stat. § 125.0101 to obtain funding for the IG Program. This statute authorizes the County to enter into written agreements with the Municipalities for the provision of IG services to those Municipalities over and above the countywide level of service. Under a negotiated agreement, the Municipalities may contribute to the IG Program's funding, but do so in a manner that is legal and preserves municipal budget authority.

WHEREFORE, the Municipalities respectfully request that this Court grant their Motion for Partial Summary Judgment on Counts I and IV of their Complaint for Declaratory Relief, and grant such other and further relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: Andrew J. McMahon, Esq., Chief Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402, Martin Alexander, Esq., Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, Florida 33401, and Nathan A. Adams, IV, Esq., Post Office Drawer 810, Tallahassee, Florida 32302, this 30th day of August, 2012.

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