

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

NOV 20 2011 CA 01 7953 XXVZ  
CASE NO:

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.

COPY  
RECEIVED FOR FILING  
NOV 14 2011  
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)(I);
- 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 14<sup>th</sup> day of November, 2011.

Respectfully submitted,

Claudia M. McKenna, City Attorney  
CITY OF WEST PALM BEACH  
P.O. Box 3366  
West Palm Beach, FL 33402  
(561) 822-1350  
(561) 822-1373 (facsimile)

By: *Claudia M. McKenna*  
*Joe* Douglas N. Yeargin, Assistant City Attorney x 1355  
Florida Bar No. 777560  
Kimberly L. Rothenburg, Assistant City Attorney  
Florida Bar No. 0938971  
[dyeargin@wpb.org](mailto:dyeargin@wpb.org)  
Attorney for Plaintiff City of West Palm Beach

And

/s/  
John C. Randolph, Esquire  
Florida Bar No. 12900  
Jones, Foster, Johnson & Stubbs, P.A.  
P.O. Box 3475  
West Palm Beach, FL 33402-3475  
Phone (561)659-3000/fax (561)832-1454  
[jrandolph@jones-foster.com](mailto:jrandolph@jones-foster.com)  
Attorney for Plaintiff Town of Gulf Stream

000051

And

/s/  
\_\_\_\_\_  
Keith W. Davis, Esquire  
Florida Bar No. 957577  
Corbett and White, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone (561)586-7116/ fax (561)586-9611  
[keith@corbettandwhite.com](mailto:keith@corbettandwhite.com)  
Attorney for Plaintiffs Village of Tequesta,  
Town of Palm Beach Shores, and  
Town of Mangonia Park

And

/s/  
\_\_\_\_\_  
Pamala Hanna Ryan , City Attorney  
Florida Bar No. 996432  
City of Riviera Beach Attorney's Office  
600 W. Blue Heron Boulevard  
Riviera Beach, Florida 33404-4311  
Phone (561)845-4069/fax (561)845-4017  
[cityattorney@rivierabch.com](mailto:cityattorney@rivierabch.com)  
Attorney for Plaintiff City of Riviera Beach

And

/s/  
\_\_\_\_\_  
Thomas Jay Baird, Esquire  
Florida Bar No. 475114  
Jones, Foster, Johnson & Stubbs, P.A.  
801 Maplewood Drive, Suite 22A  
Jupiter, Florida 33458-8821  
Phone (561)650-8233/fax (561)746-6933  
[tbaird@jones-foster.com](mailto:tbaird@jones-foster.com)  
Attorney for Plaintiffs Town of Jupiter  
and Town of Lake Park

000052

And

/s/  
R. Brian Shutt, City Attorney  
Florida Bar No. 0009611  
City of Delray Beach  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444-2768  
Phone (561)243-7091/fax (561)278-4755  
[shutt@mydelraybeach.com](mailto:shutt@mydelraybeach.com)  
Attorney for Plaintiff City of Delray Beach

And

/s/  
Trela J. White, Esquire  
Florida Bar No. 0323764  
Corbett and White, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone(561) 586-7116/ fax (561)586-9611  
[trela@corbettandwhite.com](mailto:trela@corbettandwhite.com)  
Attorney for Plaintiff Town of Manalapan

And

/s/  
Jeffrey S. Kurtz, Esquire  
Florida Bar No. 494178  
The Law Offices of Glen J. Torcivia and Associates  
701 Northpoint Parkway, Suite 209  
West Palm Beach, Florida 33407-1956  
Phone (561)686-8700/ fax (561)686-8764  
[jeff@torcivialaw.com](mailto:jeff@torcivialaw.com)  
Attorney for Plaintiff Village of Wellington

And

/s/  
R. Max Lohman, Esquire  
Florida Bar No. 0715451  
Corbett and White, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone (561)586-7116/ fax (561)586-9611  
[max@corbettandwhite.com](mailto:max@corbettandwhite.com)  
Attorney for Plaintiff City of Palm Beach Gardens



And

/s/

Thomas Edward Sliney, Esquire  
Florida Bar No. 134723  
Buckingham, Doolittle & Burroughs LLP  
5355 Town Center Road, Suite 900  
Boca Raton, Florida 33486-1069  
Phone (561)241-0414/ fax (561)241-9766  
[tsliney@bdlaw.com](mailto:tsliney@bdlaw.com)  
Attorney for Plaintiff Town of Highland Beach

And

/s/

Kenneth G. Spillias, Esquire  
Florida Bar No. 253480  
Lewis Longman & Walker  
515 N. Flagler Drive, Suite 1500  
West Palm Beach, Florida 33401-4327  
Phone (561)640-0820/ fax (561)640-8202  
[kspillias@llw-law.com](mailto:kspillias@llw-law.com)  
Attorney for Plaintiff Town of Ocean Ridge

And

/s/

Diana Grub Frieser, City Attorney  
Florida Bar No. 837921  
City of Boca Raton  
201 W. Palmetto Park Road  
Boca Raton, Florida 33432-3730  
Phone 561-393-7700 Fax 561-393-7780  
[dgfrieser@ci.boca-raton.fl.us](mailto:dgfrieser@ci.boca-raton.fl.us)  
Attorney for Plaintiff City of Boca Raton