

ORDINANCE NO. 4023-07

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES BY ADDING ARTICLE VII ESTABLISHING A CODE OF ETHICS FOR THE CITY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND A CODIFICATION CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, public trust and confidence in the ethics of officers and employees of the City of West Palm Beach is of paramount concern to the City; and

WHEREAS, it is in the best interest of the City to establish a formal ethics program that includes a code of ethics; and

WHEREAS, the City shall adopt, from time to time, ethics policies which collectively shall comprise its ethics code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby establishes the City of West Palm Beach Ethics Code by amending Chapter 2 of the Code of Ordinances to add Article VII, as follows:

ARTICLE VII. CITY OF WEST PALM BEACH CODE OF ETHICS

Division 1. GENERALLY

Sec. 2-500. Title.

The provisions of this Article VII shall be collectively referred to as "The City of West Palm Beach Ethics Code" or "city ethics code."

Sec. 501. Purpose and legislative intent.

It is declared to be the policy of the City of West Palm Beach that all officers and employees of the city are public servants of the people and hold their positions for the benefit of the public. These public servants shall perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees shall strive to meet the highest standards of ethics consistent with this code, regardless of personal considerations, recognizing that maintaining the respect of the people must be their foremost concern. This code shall serve not only as a basis for discipline of public servants who violate these provisions, but also as an aspirational guide for conduct.

Various provisions from state and local law have been created and adapted to guide the ethical behavior of local public servants. This code coordinates existing laws, adds new provisions outlining guidelines for appropriate behavior, and includes new substantive provisions which impose higher standards and expectations on public servants.

Ethics is defined as the study of the general nature of morals and moral choices to be made by the individual in his or her relationships with others. Ethics is more than avoidance of criminal behavior. It is a commitment for public servants to take individual responsibility in creating a government that has the trust and respect of its citizens. There needs to be a proactive approach in strengthening the emphasis on ethics and in guiding city officers and employees in upholding them. To preserve and maintain the integrity of responsible government and its decision-making process, the City of West Palm Beach believes it is necessary that the identity, activities and expenditures of certain persons who engage in efforts to influence officers and employees of the city on

matters within their official cognizance, either by direct communication or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. The provisions and requirements of this Code shall apply to every person who attempts to influence government action, unless such person is clearly exempt herefrom by an express provision hereof. With the above in mind, the City of West Palm Beach hereby adopts the following goals for the city ethics program:

- Promulgate and implement a comprehensive approach to ethics and integrity in West Palm Beach City government;
- Promote public confidence in public officers and employees and the ethical operation of government;
- Promote and ensure compliance with local, state, and federal ethics law;
- Centralize laws and regulations on the ethical conduct of city officers and employees;
- Heighten knowledge and understanding of the laws and ethical principles which are the inherent obligations of city officers and employees;
- Establish a system to train city officers and employees to encourage compliance with these standards and to also provide for periodic review, education and certification on ethics;
- Enact a city ethics officer system that will continue to evolve and update our city's ethics program and to provide guidance and education to all city departments;

- Educate city officers and employees to avoid the appearance of impropriety and violations of the city ethics code.
- Through this comprehensive code and the above stated goals, the city will strive to elevate the level of ethics in local government, to provide honest and responsible service to the citizens of West Palm Beach, and to maintain the confidence and trust of the public that this government serves.

Sec. 502. Reserved.

Sec. 503. General provisions.

a) *Applicability of state statutes.* In addition to the provisions of this ethics code, all officers and employees of the city shall comply with all applicable provisions of state law, including but not limited to the following:

Chapter 99 (Candidates, Campaign Expenses, and Contesting Elections);

Section 100.361 (Municipal Recall);

Section 102.031 (Maintenance of good order at polls; authorities; persons allowed in polling rooms; unlawful solicitation of voters;

Section 104.071 (Remuneration by Candidate for services, support, etc.; penalty);

Section 104.271 (False or malicious charges against, or false statements about, opposing Candidates; penalty);

Section 104.31 (Political activities of state, county, and municipal officers and employees);

Chapter 106 (Campaign financing);

Section 111.075 (Elected officials; prohibition concerning certain committees);

Section 112.042 (Discrimination in county and municipal employment; relief);

Section 112.043 (Age discrimination);

Section 112.044 (Public employers, employment agencies, labor organizations, discrimination based on age prohibited; exceptions; remedy);

Chapter 112, Part III (Code of Ethics for Public Officers and Employees);

Chapter 119 (Public Records);

Section 163.367 (Public officials, commissioners, and employees subject to code of ethics);

Section 286.011 (Public meetings and records; public inspection; criminal and civil penalties);

Section 286.0115 (Access to local officials);

Section 286.012 (Voting requirements at meeting of government bodies);

Chapter 838 (Bribery, Misuse of Public Office);

Chapter 839 (Offenses by Public Officers and Employees).

b) *applicability of federal statutes.* In addition to the provisions of this ethics code, all officers and employees of the city shall comply with all applicable provisions of federal law, including but not limited to the following:

18 U.S. C. § 1346 (fraudulent deprivation of honest services)

18 U.S.C. § 1951 (Hobbs Act – extortion)

18 U.S. C. § 4 (misprison of felony)

Secs. 2-504—2-509. Reserved.

DIVISION 2. CONFLICTS OF INTEREST.

Sec. 2-510—2-512. Reserved.

Sec. 2-513. Parties contracting with city; prohibition of employment of certain officials and employees.

(a) The mayor, members of the city commission, and all department heads or directors of the city shall not solicit, accept, nor be employed, directly or indirectly, by any person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof.

[F.S. 112.313(7)(a)]

(b) No person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof, shall employ, directly or indirectly, the mayor, any member of the city commission, or any department head or director of the city. No persons, firm or corporation which has the mayor, member of the city commission, or department head or director as an employee, shall be eligible to be considered to have a contractual relation with or to render for any consideration, services to the city.

(c) No employee of the city (other than those employees identified in subsection (a) above) or member of any board, commission or agency of the city, shall be directly or indirectly employed by any person, firm or corporation having, or proposing to have, any contractual relation with or rendering, or proposing to render for any consideration, services to the city or any department, board or agency thereof, if the approval, concurrence, decision, recommendation or advice of the official or employee shall be sought, obtained or required in any connection with such contract or service.

[F.S. 112.313(7)(a)]

(d) No person, firm or corporation having, or proposing to have any contractual relationship with, or rendering or proposing to render for any consideration services to the city, or any department, board or agency of the city, shall employ, directly or indirectly, any employee or member of any board, commission or agency of the city, if the approval, concurrence, decision, recommendation or service of such official or employee shall be sought, obtained, or required in connection with such contract or service.

(e) For purposes of this section, a person, firm or corporation shall be deemed to be "proposing to have a contractual relation with the city" or to be "proposing to render services to the city" if such person, firm, or corporation has submitted a bid or proposal to the city for a city contract, has made a contractual offer to the city or has requested the city to negotiate or reconsider entering a contractual relation with the person, firm or corporation.

Sec. 2-511. Reserved.

DIVISIONS 3 AND 4 RESERVED.

DIVISION 5. DISCLOSURE FOR DOING BUSINESS WITH CITY.

Sec. 2-580. Disclosure required.

(a) Any person who testifies or makes public comment in connection with the award of any contract, any procurement or any approvals being sought from the city shall disclose the promise of or receipt of any gift, contribution or donation in connection with any such person's support or opposition to such matter.

(b) Any person or entity doing business with the City shall disclose the promise of or giving of any gift, contribution or donation to any person or organization in connection with support or opposition of a matter.

DIVISION 6. CAMPAIGN ETHICS.

Sec. 2-600. Campaign contributions open to public.

All candidates shall provide a statement of campaign contributions to the city clerk in an electronic format able to be provided to the public on the city's website. Such statements shall be provided on the same dates on which such statements are required to be provided pursuant to Sec. 106.07 Fla. Stat.

DIVISION 7. ADMINISTRATION, TRAINING, PENALTIES AND ENFORCEMENT.

Sec. 2-620. City ethics officer.

The position of city ethics officer is established. The city ethics officer shall serve as a consultant to the city.

Sec. 2-621. Mission and duties of the city ethics officer.

The mission of the city ethics officer is to encourage each of the officers and employees of the city to act ethically in all actions. This mission requires that the city ethics officer not only encourage, assist and support compliance with various laws, but more importantly, encourage each employee and officer to adhere to the highest standards of ethical behavior as set forth in the aspirational goals of this code. In pursuing that broad mission, the duties of the city ethics officer include, but are not limited to the following:

- Assist departments in training and education;
- Encourage compliance with the spirit and letter of ethics laws;
- Review periodically this Code and other applicable laws and regulations and recommend to the mayor and city commission appropriate changes to this Code;
- Accomplish other duties as requested by the city.

Sec. 2-622. Reserved.

Sec. 2-623. General penalties.

(a) *Elected officials.* Violations of this code by elected officials shall be subject to the same penalties contained in state law for such violations, penalties contained in the city charter and any other applicable civil or criminal penalties.

(b) *Appointed officers.* Violations of this code by appointed officers shall be subject to the same penalties contained in state law for such violations, penalties contained in the city charter and any other applicable civil or criminal penalties.

(c) *Employees.* A determination or finding of a violation of any provision set forth in this Code by an employee may be grounds for employment sanctions, including but not limited to reprimand, suspension, or discharge pursuant to the policies and procedures under which the employee is governed.

(d) *Other persons.* A determination or finding of a violation of any provision set forth in this Code by any person (other than an officer or employee) may be punished as provided herein or in accordance with the provisions of City of West Palm Beach Code section 1-13. [F.S. § 112.317]

Sec. 2-624. Additional penalties.

(a) *Liability for breach of public trust-restitution.* Article II, Section 8(c) of the Constitution of the State of Florida applies to all officers and employees of the city. Section 8(c) states the following:

Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

Any officer or employee of the city who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the city for all financial benefits obtained by such actions.

(b) *Penalties for bidders or proposers.* In addition to any other penalties provided herein, violation of this Code by a particular bidder or proposer may render any contract, request for proposal (RFP) award, request for qualification (RFQ) award, bid award or any other procurement proposal award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a City of West Palm Beach competitive selection committee.

(c) *Voiding transactions in violation of chapter; recovery by city.* The mayor may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, certificate, ruling, decision, opinion or other benefit that has been awarded, granted, paid, furnished or published, in relation to which there has been a final determination of any violation of this chapter. The city shall be entitled to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or the thing being transferred or delivered on its behalf, or the reasonable value thereof.

(d) *Prohibition against misuse and frivolous claims.* Individuals covered by this Code shall not use its provisions to further frivolous claims against another. Frivolous claims shall be those forwarded with knowledge that the claim contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this Code.

(e) *Forfeiture of pension rights.* F.S. § 112.3173, applies to all officers and employees of the city and independent agencies. Section 112.3173(3) states the following:

FORFEITURE.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

F.S. §112.3173(2)(e) defines specified offense as follows:

The committing, aiding or abetting of an embezzlement of public funds; the committing, aiding or abetting of any theft by a public officer or employee from his or her employer; bribery in connection with the employment of a public officer or employee; any felony specified in Ch. 838, except section 838.15 and section 838.16; the committing of an impeachable offense; or the committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains a profit, gain, or advance for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

Said forfeiture shall be determined as specified in section 112.3173(5).

SECTION 2: Should any section or provision of this Ordinance or any portion hereof, any paragraph, sentence or word, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof.

SECTION 3: All ordinances or parts of all other ordinances in conflict herewith are hereby repealed.

SECTION 4: The provisions of this Ordinance may be codified.


SECTION 5: This Ordinance shall become effective in accordance with law.

FIRST READING THIS 30th DAY OF July, 2007.

SECOND READING THIS 27th DAY OF August, 2007.


(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION

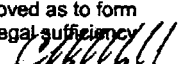


PRESIDING OFFICER

ATTEST:



CITY CLERK

CITY ATTORNEY'S OFFICE
Approved as to form
and legal sufficiency
By: 
Date: 7/30/07