

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2024 | 2025 | 2026 | 2027 | 2028 |
|---|-------|-----------|-------|----------|---------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT* | _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |
| Is Item Included in Current Budget: | | Yes _____ | | No _____ | X _____ |
| Does this item include use of Federal funds? | | Yes _____ | | No _____ | X _____ |
| Does this item include the use of State funds? | | Yes _____ | | No _____ | X _____ |

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item carries no fiscal impact.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

| | |
|--|---|
| <p><i>Lisa Mante</i> 8/13/2024 OFMB <i>OB</i> 8/13 <i>JA</i> 8/13</p> | <p><i>Brenda Pacheco</i> 8/15/24 Contract Development and Control 7/14 8/14/24</p> |
|--|---|

B. Legal Sufficiency:

[Signature] 8/15/24
 Assistant County Attorney

C. Other Department Review:

 Department Director

ATTACHMENT 1

Proposed Revisions to the Living Wage Ordinance (redline to current Code)

34 **ARTICLE 1. Section 2-148 of the Palm Beach County Code is hereby amended**
35 **as follows:**

36 **Sec. 2-148 Definitions.**

37 For purposes of this division, the following definitions shall apply:

38 *Construction* means the actual process of building, altering, improving, demolishing,
39 or major repairing or renovating of any county road or county building. "Construction"
40 does not include routine road maintenance or routine building maintenance.

41 *Construction contract* means a deliberate verbal or written agreement between two
42 (2) or more competent parties to perform or not perform a specific act or acts or any type
43 of agreement, regardless of what it is called, for the procurement of construction that is
44 solicited and purchased by the county, that has a total contract value exceeding one
45 hundred thousand dollars (\$100,000.00), and that is not subject to the Davis-Bacon Act or
46 any related act or acts, as amended, that require the payment of Davis-Bacon Act wage
47 rates.

48 *Construction department* means the county department that solicits and procures
49 construction-related services from a non-county employer pursuant to a construction
50 contract.

51 *Construction-related services* means any service, other than a professional service as
52 defined by the county purchasing ordinance, consisting of work or labor performed
53 directly upon the site of work and directly related to construction.

54 *County* means the Board of County Commissioners of the county or any of its
55 authorized representatives pursuant to ordinance, resolution, or administrative code.

56 *County building* means any county-owned structure or building that encloses space
57 used for sheltering any occupancy, as determined by the director of the purchasing
58 department.

59 *County employee* means any person employed by the county as a regular full-time or
60 regular part-time employee, who is under the county pay plan and drawing a salary or
61 wages from the county.

62 *County road* means any street, road, highway, or other way dedicated to public use
63 and open to travel by the public generally, that is listed in the county road maintenance
64 inventory as compiled and updated by the right-of-way acquisition section of the county
65 engineering department.

66 *Covered services* are any services that are subject to the requirements of this
67 division. "Covered services" means:

- 68 (1) Construction-related services performed by non-county employees.
- 69 (2) Paratransit transportation services performed by non-county employees.
- 70 (3) Any services performed by county employees within the scope of their county
71 employment.

72 *General contractor* means any non-county employer that enters into a construction
73 contract directly with the county.

74 *Living wage* means, as of October 1, ~~2013~~2024, a minimum wage of ~~eleven~~fifteen
75 dollars and ~~sixty-four~~forty cents (~~\$11.64~~15.40) per hour. The living wage shall be
76 adjusted annually as provided for in this division.

77 *Non-county employee* means all persons employed by a non-county employer, either
78 full-time or part-time, in the performance of a paratransit contract or to provide
79 construction-related services to the county.

80 *Non-county employer* means any for-profit individual, business entity, corporation,
81 partnership, limited liability company, joint venture, or similar business, that:

- 82 (1) Provides paratransit transportation services or construction-related services
83 directly for the benefit of the county pursuant to a contract or subcontract
84 entered into through a competitive bid process, informal bids, requests for

85 proposals, some form of solicitation, negotiation, or agreement, or any other
86 decision to enter into a contract; and

87 (2) Is paid directly or indirectly, in whole or in part, from the county's general fund
88 or one (1) or more of the county's capital project funds, special revenue funds, or
89 any other funds.

90 *Paratransit contract* means a deliberate verbal or written agreement between two (2)
91 or more competent parties to perform or not perform a specific act or acts or any type of
92 agreement, regardless of what it is called, for the provision of paratransit transportation
93 services that is solicited and purchased by the county, that has a total contract value
94 exceeding one hundred fifty thousand dollars (\$1050,000.00), and that is not subject to
95 any Federal law that requires the payment of federally established wage rates.

96 *Paratransit transportation services* means shared ride, door-to-door transportation
97 services provided to individuals with disabilities who are unable, as the result of their
98 disability, to access the county's fixed route public transit system and who are qualified to
99 receive paratransit services under the county's American with Disabilities Act (ADA)
100 Program. The term also includes, for the purposes of the county's provision of paratransit
101 services, shared ride, door to door transportation services provided to eligible individuals
102 under the county's Division of Senior Services (DOSS) Program and shared ride, door to
103 door transportation services provided by the county, as the designated community
104 transportation coordinator, to individuals eligible for services under the Transportation
105 Disadvantaged Program.

106 *Prime contractor* means the legal entity, be it a general contractor or contractor
107 providing paratransit transportation services, which enters into a direct contract with the
108 county for paratransit transportation services or construction-related services.

109 *Purchasing department* means the Palm Beach County Purchasing Department.

110 *Routine building maintenance* means minor tasks and associated repairs to county
111 buildings necessary to maintain safe and efficient structures. "Routine building
112 maintenance" includes but is not limited to: custodial services; cleaning and minor repairs

113 of any interior or exterior component; and other similar activities as determined by the
114 director of the purchasing department.

115 *Routine road maintenance* means minor tasks and associated repairs to county roads
116 necessary to maintain a safe and efficient transportation system. "Routine road
117 maintenance" includes but is not limited to: pavement patching; shoulder repair; cleaning
118 and repair of drainage ditches, traffic signs and traffic signals; mowing; pavement
119 striping; litter cleanup; and other similar activities as determined by the director of the
120 purchasing department.

121 *Subcontractor* means any non-county employer that enters into a paratransit contract
122 or construction contract with an entity other than the county.

123 **ARTICLE 2. Section 2-149 of the Palm Beach County Code is hereby amended**
124 **as follows:**

125 **Sec. 2-149. Living wage.**

126 (a) *Living wage paid.* The county shall pay the living wage to all county employees
127 providing any services within the scope of their county employment. Non-county
128 employers shall pay the living wage to all non-county employees.

129 (b) *Annual living wage adjustment.* The county shall adjust the living wage annually as
130 follows:

131 (1) The county shall adjust the living wage for county employees by using the same
132 procedure used for the county's annual across-the-board wage adjustment. If a
133 collective bargaining agreement with the county specifies an annual across-the-
134 board wage adjustment procedure, the county shall use that procedure to adjust
135 the living wage for those county employees covered by the collective bargaining
136 agreement.

137 (2) The county shall adjust the living wage for non-county employees by using the
138 U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical
139 Workers (CPI-W) which is calculated and published monthly by the Bureau of

140 Labor Statistics of the U.S. Department of Labor. Each annual living wage
141 adjustment shall take effect on the first day of October. Inflation shall be
142 calculated as the difference, expressed as a percentage, between the average
143 monthly CPI-W for the current period, defined as the previous twelve-month
144 calendar year ending December 31, and the average monthly CPI-W for the
145 prior period, defined as the twelve-month calendar year preceding the current
146 period. The difference shall be converted to a percentage of the average monthly
147 CPI-W for the prior period, and this percentage shall be applied to the living
148 wage to arrive at the living wage adjustment.

149 (c) *Certification required* Before entering into any paratransit contract or construction
150 contract, the prospective non-county employer must provide a certificate to the
151 purchasing department, if the contractor is providing paratransit transportation
152 services, or to the construction department if the non-county employer is a general
153 contractor, or to the prime contractor if the non-county employer is a subcontractor,
154 stating that if the prospective non-county employer is awarded the contract it will
155 pay each non-county employee no less than the living wage. A copy of the certificate
156 must be made available to the public upon request. The certificate must include the
157 following:

- 158 (1) The name, address, and phone number of the prospective non-county employer,
159 a local contact person, and the specific project for which the paratransit contract
160 or construction contract is sought;
- 161 (2) The amount of the paratransit contract or construction contract;
- 162 (3) A brief description of the project or service provided under the paratransit
163 contract or construction contract;
- 164 (4) A statement of the wage levels for prospective non-county employees; and
- 165 (5) A commitment to pay each non-county employee a living wage if the
166 prospective non-county employer is awarded the contract.

167 (d) *Observance of other laws.* County and non-county employees shall be paid at least
168 every two (2) weeks, and without subsequent deduction or rebate on any account
169 (except as such payroll deductions as are directed or permitted by law or by a
170 collective bargaining agreement).

171 (e) *Notice and posting.* Non-county employers shall post a copy of the following
172 statement at the work site in a prominent place where it can easily be seen by the
173 employees:

174 "NOTICE TO EMPLOYEES: If you are employed to provide certain services to
175 Palm Beach County, your employer may be required by Palm Beach County law to
176 pay you at least [insert the living wage hourly pay rate, as adjusted] per hour. If you
177 are not paid this hourly rate, contact your supervisor or Palm Beach County."

178 The preceding statement shall be printed in English, Spanish, and Creole, and shall
179 be printed with black lettering on letter-size, white paper using a Times New Roman
180 fourteen-point font, Courier New fourteen-point font, or Arial fourteen-point font.
181 Posting requirements will not be required if the non-county employer attaches a copy of
182 the preceding statement to the employee's first paycheck, and to subsequent paychecks at
183 least every six (6) months thereafter. Non-county employers shall supply a copy of the
184 preceding statement to any employee upon request within a reasonable time. Non-county
185 employers shall forward a copy of the requirements of this division to any person or
186 business submitting a bid for a subcontract on any contract covered by this division.

187 (f) *Collective bargaining.* Nothing in this division shall be read to require or authorize
188 any employer to reduce wages set by a collective bargaining agreement or as
189 required under any prevailing wage law.

190 (g) *Construction contracts entered into on or after July 1, 2024.* The provisions of the
191 Palm Beach County Living Wage Ordinance shall not apply to any construction contracts
192 entered into on or after July 1, 2024.

193 (h) Paratransit contracts or other contracts entered into on or after September 30, 2026.
194 The provisions of the Palm Beach County Living Wage Ordinance shall not apply to any
195 paratransit contracts or other contracts entered into on or after September 30, 2026.

196 **ARTICLE 3. REPEAL OF LAWS AND ORDINANCES IN**
197 **CONFLICT:**

198 All local laws and ordinances in conflict with any provision of this Living
199 Wage Ordinance are hereby repealed to the extent of any such conflict.

200 **ARTICLE 4. SEVERABILITY:**

201 If any provision, article, paragraph, sentence, clause, phrase, or word of this
202 Living Wage Ordinance is for any reason held by a court to be unconstitutional,
203 inoperative, or void, such holding shall not affect the remainder of this Living Wage
204 Ordinance.

205 **ARTICLE 5. CAPTIONS:**

206 The captions, section headings, and section designations used in this Living
207 Wage Ordinance are for convenience only and shall have no effect on the
208 interpretation of the provisions of this Living Wage Ordinance.

209 **ARTICLE 6. SAVINGS CLAUSE:**

210 Notwithstanding anything to the contrary, all provisions of Ordinance No. 03-004,
211 Living Wage Ordinance, as amended by Ordinance No.s 04-002, 2011-004, and 2014-
212 018, which are codified in Sections 2-147 through 2-150.1 of the Palm Beach County
213 Code, are specifically preserved and remain in full force and effect for the limited
214 purpose of enforcing any alleged violations of said Code which occurred prior to its
215 amendment.

216 **ARTICLE 7. INCLUSION IN THE CODE OF LAWS AND**
217 **ORDINANCES:**

218 The provisions of this Living Wage Ordinance shall become and be made a
219 part of the Code of Laws and Ordinances of Palm Beach County, Florida. The
220 articles and sections of this Living Wage Ordinance may be renumbered or

221 relettered to accomplish such, and the word "Ordinance" may be changed to
222 "Section", "Article", or other appropriate word.

223 **ARTICLE 8. EFFECTIVE DATE:**

224 The provisions of this Living Wage Ordinance shall become effective
225 upon filing with the Department of State.

226 APPROVED and ADOPTED by the Board of County Commissioners of
227 Palm Beach County, Florida, on this the ____ day of _____, 2024.

228

229 JOSEPH ABRUZZO

PALM BEACH COUNTY, FLORIDA, BY ITS

230 CLERK & COMPTROLLER

BOARD OF COUNTY COMMISSIONERS

231

232 By: _____
233 Deputy Clerk

By: _____
, Mayor

234

235 APPROVED AS TO

236 LEGAL SUFFICIENCY

237

238 By: _____
239 Assistant County Attorney

240

241 EFFECTIVE DATE: Filed with the Department of State on the ____ day of
242

243 _____, 2024.

ATTACHMENT 2
Current Ordinance

DIVISION 3. COUNTY LIVING WAGE ORDINANCE

Sec. 2-147. Short title.

The provisions of this division shall be known and cited as the Palm Beach County Living Wage Ordinance.
(Ord. No. 03-004, § 1, 2-25-03)

Sec. 2-148. Definitions.

For purposes of this division, the following definitions shall apply:

Construction means the actual process of building, altering, improving, demolishing, or major repairing or renovating of any county road or county building. "Construction" does not include routine road maintenance or routine building maintenance.

Construction contract means a deliberate verbal or written agreement between two (2) or more competent parties to perform or not perform a specific act or acts or any type of agreement, regardless of what it is called, for the procurement of construction that is solicited and purchased by the county, that has a total contract value exceeding one hundred thousand dollars (\$100,000.00), and that is not subject to the Davis-Bacon Act or any related act or acts, as amended, that require the payment of Davis-Bacon Act wage rates.

Construction department means the county department that solicits and procures construction-related services from a non-county employer pursuant to a construction contract.

Construction-related services means any service, other than a professional service as defined by the county purchasing ordinance, consisting of work or labor performed directly upon the site of work and directly related to construction.

County means the Board of County Commissioners of the county or any of its authorized representatives pursuant to ordinance, resolution, or administrative code.

County building means any county-owned structure or building that encloses space used for sheltering any occupancy, as determined by the director of the purchasing department.

County employee means any person employed by the county as a regular full-time or regular part-time employee, who is under the county pay plan and drawing a salary or wages from the county.

County road means any street, road, highway, or other way dedicated to public use and open to travel by the public generally, that is listed in the county road maintenance inventory as compiled and updated by the right-of-way acquisition section of the county engineering department.

Covered services are any services that are subject to the requirements of this division. "Covered services" means:

- (1) Construction-related services performed by non-county employees.
- (2) Paratransit transportation services performed by non-county employees.
- (3) Any services performed by county employees within the scope of their county employment.

General contractor means any non-county employer that enters into a construction contract directly with the county.

Living wage means, as of October 1, 2013, a minimum wage of eleven dollars and sixty-four cents (\$11.64) per hour. The living wage shall be adjusted annually as provided for in this division.

Non-county employee means all persons employed by a non-county employer, either full-time or part-time, in the performance of a paratransit contract or to provide construction-related services to the county.

Non-county employer means any for-profit individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business, that:

- (1) Provides paratransit transportation services or construction-related services directly for the benefit of the county pursuant to a contract or subcontract entered into through a competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; and
- (2) Is paid directly or indirectly, in whole or in part, from the county's general fund or one (1) or more of the county's capital project funds, special revenue funds, or any other funds.

Paratransit contract means a deliberate verbal or written agreement between two (2) or more competent parties to perform or not perform a specific act or acts or any type of agreement, regardless of what it is called, for the provision of paratransit transportation services that is solicited and purchased by the county, that has a total contract value exceeding one hundred thousand dollars (\$100,000.00), and that is not subject to any Federal law that requires the payment of federally established wage rates.

Paratransit transportation services means shared ride, door-to-door transportation services provided to individuals with disabilities who are unable, as the result of their disability, to access the county's fixed route public transit system and who are qualified to receive paratransit services under the county's American with Disabilities Act (ADA) Program. The term also includes, for the purposes of the county's provision of paratransit services, shared ride, door to door transportation services provided to eligible individuals under the county's Division of Senior Services (DOSS) Program and shared ride, door to door transportation services provided by the county, as the designated community transportation coordinator, to individuals eligible for services under the Transportation Disadvantaged Program.

Prime contractor means the legal entity, be it a general contractor or contractor providing paratransit transportation services, which enters into a direct contract with the county for paratransit transportation services or construction-related services.

Purchasing department means the Palm Beach County Purchasing Department.

Routine building maintenance means minor tasks and associated repairs to county buildings necessary to maintain safe and efficient structures. "Routine building maintenance" includes but is not limited to: custodial services; cleaning and minor repairs of any interior or exterior component; and other similar activities as determined by the director of the purchasing department.

Routine road maintenance means minor tasks and associated repairs to county roads necessary to maintain a safe and efficient transportation system. "Routine road maintenance" includes but is not limited to: pavement patching; shoulder repair; cleaning and repair of drainage ditches, traffic signs and traffic signals; mowing; pavement striping; litter cleanup; and other similar activities as determined by the director of the purchasing department.

Subcontractor means any non-county employer that enters into a paratransit contract or construction contract with an entity other than the county.

(Ord. No. 03-004, § 2, 2-25-03; Ord. No. 04-002, pt. 1, 1-13-04; Ord. No. 2014-018, § 1, 5-20-14)

Sec. 2-149. Living wage.

- (a) *Living wage paid.* The county shall pay the living wage to all county employees providing any services within the scope of their county employment. Non-county employers shall pay the living wage to all non-county employees.
- (b) *Annual living wage adjustment.* The county shall adjust the living wage annually as follows:
 - (1) The county shall adjust the living wage for county employees by using the same procedure used for the county's annual across-the-board wage adjustment. If a collective bargaining agreement with the county specifies an annual across-the-board wage adjustment procedure, the county shall use that procedure to adjust the living wage for those county employees covered by the collective bargaining agreement.
 - (2) The county shall adjust the living wage for non-county employees by using the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) which is calculated and published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. Each annual living wage adjustment shall take effect on the first day of October. Inflation shall be calculated as the difference, expressed as a percentage, between the average monthly CPI-W for the current period, defined as the previous twelve-month calendar year ending December 31, and the average monthly CPI-W for the prior period, defined as the twelve-month calendar year preceding the current period. The difference shall be converted to a percentage of the average monthly CPI-W for the prior period, and this percentage shall be applied to the living wage to arrive at the living wage adjustment.
- (c) *Certification required* Before entering into any paratransit contract or construction contract, the prospective non-county employer must provide a certificate to the purchasing department, if the contractor is providing paratransit transportation services, or to the construction department if the non-county employer is a general contractor, or to the prime contractor if the non-county employer is a subcontractor, stating that if the prospective non-county employer is awarded the contract it will pay each non-county employee no less than the living wage. A copy of the certificate must be made available to the public upon request. The certificate must include the following:
 - (1) The name, address, and phone number of the prospective non-county employer, a local contact person, and the specific project for which the paratransit contract or construction contract is sought;
 - (2) The amount of the paratransit contract or construction contract;
 - (3) A brief description of the project or service provided under the paratransit contract or construction contract;
 - (4) A statement of the wage levels for prospective non-county employees; and
 - (5) A commitment to pay each non-county employee a living wage if the prospective non-county employer is awarded the contract.
- (d) *Observance of other laws.* County and non-county employees shall be paid at least every two (2) weeks, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement).
- (e) *Notice and posting.* Non-county employers shall post a copy of the following statement at the work site in a prominent place where it can easily be seen by the employees:

"NOTICE TO EMPLOYEES: If you are employed to provide certain services to Palm Beach County, your employer may be required by Palm Beach County law to pay you at least [insert the living wage hourly pay rate, as adjusted] per hour. If you are not paid this hourly rate, contact your supervisor or Palm Beach County."

The preceding statement shall be printed in English, Spanish, and Creole, and shall be printed with black lettering on letter-size, white paper using a Times New Roman fourteen-point font, Courier New fourteen-point font, or Arial fourteen-point font. Posting requirements will not be required if the non-county employer attaches a copy of the preceding statement to the employee's first paycheck, and to subsequent paychecks at least every six (6) months thereafter. Non-county employers shall supply a copy of the preceding statement to any employee upon request within a reasonable time. Non-county employers shall forward a copy of the requirements of this division to any person or business submitting a bid for a subcontract on any contract covered by this division.

- (f) *Collective bargaining.* Nothing in this division shall be read to require or authorize any employer to reduce wages set by a collective bargaining agreement or as required under any prevailing wage law.

(Ord. No. 03-004, § 3, 2-25-03; Ord. No. 04-002, pt. 2, 1-13-04; Ord. No. 2011-004, § 1, 3-15-11; Ord. No. 2014-018, § 1, 5-20-14)

Sec. 2-150. Implementation.

- (a) *Procurement specifications.* The living wage requirement shall be included in the procurement specifications for all county construction contracts issued on or after October 1, 2003 and for all paratransit contracts to be awarded after June 1, 2014. The procurement specifications shall require the prospective non-county employer to agree to produce upon the request of the purchasing or construction department, or as otherwise provided by the county administrator through countywide policy, all documents and payroll records required under this division.
- (b) *Information distributed.* All requests for bids or requests for proposals for paratransit contracts or construction contracts, whether advertised or informally solicited, shall include appropriate information about the requirements of this division.
- (c) *Maintenance of payroll records.* Each non-county employer shall maintain payroll records and basic records relating thereto for each employee, and shall preserve them for a period of no less than three (3) years. The records shall contain:
- (1) Each employee's name and address;
 - (2) Each employee's job title and classification;
 - (3) The number of hours worked each day by each employee;
 - (4) The gross wages and deductions made for each employee; and
 - (5) Annual wages paid to each employee.
- (d) *Reporting payroll.* Every six (6) months the non-county employer shall certify and file with the purchasing department, if the contractor is a prime contractor providing paratransit transportation services; or with the construction department if the non-county employer is a general contractor; or with the prime contractor if the non-county employer is a subcontractor, certification that all non-county employees who worked on each paratransit contract or construction contract during the preceding six-month period were paid the living wage in compliance with this division. Upon the county's request, the non-county employer shall produce for inspection and copying the payroll records for any or all of its employees for the prior three-year period.

(Ord. No. 03-004, § 4, 2-25-03; Ord. No. 04-002, pt. 3, 1-13-04; Ord. No. 2014-018, § 1, 5-20-14)

Sec. 2-150.1. Compliance and enforcement.

- (a) *Complaint procedures for county employees.* A county employee who believes that this division applies to him or her and the county is not complying with the division has a right to file a grievance pursuant to the

grievance procedures set forth in the county's merit system rules and regulations, or the grievance procedures set forth in a collective bargaining agreement with the county if the employee is covered by such an agreement. Other than the foregoing, nothing set forth herein shall be construed to amend the merit system rules or extend the protections of the merit system to nonmerit county employees.

- (b) *Complaint procedures for employees and former employees of non-county employers.* An employee or former employee of a non-county employer who believes that this division applies or applied to him or her, and the non-county employer is or was not complying with the requirements of this division, has a right to complain by filing a written complaint with the purchasing department or construction department, as appropriate.
- (1) The complaint shall be submitted within two (2) years of the alleged violation. The complaint must be in writing and must identify the employee and the non-county employer, and shall include a factual summary of the basis of the complaint. The complaint is considered filed when it is received by the construction department.
 - (2) Within ten (10) days of receiving the complaint, the appropriate county department must send written notice of the complaint, along with a copy of the complaint, to the non-county employer and the prime contractor if the non-county employer is a subcontractor, requesting that the non-county employer and, if applicable, the prime contractor, file a written response to the allegations within thirty (30) days of the dated notice. The response is considered filed when it is received by the department.
 - (3) Complaints will be resolved as follows:
 - a. The director of the appropriate county department shall have the authority to review and attempt to resolve the complaint informally. If the director of the appropriate county department is unable to resolve the complaint informally, then the complaint shall be referred for hearing before a special master.
 - b. Hearings shall be conducted by designated special masters who shall have the jurisdiction and authority to hear and decide complaints and to impose enforcement actions consistent with this division.
 1. *Conduct of hearing.*
 - A. All hearings shall be open to the public and a record shall be kept of all hearings.
 - B. County staff, the complaining employee, the non-county employer, and, if applicable, the prime contractor, shall be entitled to appear as parties at a hearing, submit evidence, and present testimony of witnesses.
 - C. Notice of hearing. The purchasing department shall notify the parties by regular mail of the time, date, and location of the scheduled hearing at least fifteen (15) business days before the hearing date.
 - D. A party may request a postponement or continuance of a scheduled hearing by filing a written request with the purchasing department at least five (5) business days before the scheduled hearing. The request must contain the party's reasons for making the request. The director of the purchasing department has the sole discretion to grant or deny the party's request.
 - E. If a party is absent from a hearing thirty (30) minutes after the scheduled start time, and proper notice has been sent to the absent party, the hearing may proceed in the party's absence.
 - F. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial or unduly

repetitious evidence as determined by the special master may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state. Any part of the evidence may be received in written form.

- G. At the conclusion of the hearing, after the parties in attendance have had an opportunity to present their case, the special master shall make a decision based on competent substantial evidence. This decision is final and appealable by writ of certiorari pursuant to the Florida Rules of Appellate Procedure.
- 2. *Applications for special master.* The director of the purchasing department shall select, assign and remove special masters using the same policy and procedure used to select, assign and remove special masters under the county purchasing ordinance. The director of the purchasing department may use special masters under contract to preside over hearings under the county purchasing ordinance to also preside over hearings under this ordinance.
 - 3. *Conflicts of interest.* Special masters shall be subject to countywide policy relating to outside counsel conflicts of interest (PPM No. CW-O-52). Special masters shall comply with the State and county ethics codes and the ethics rules of The Florida Bar regarding conflicts of interest. If a special master is unable to give a fair hearing for any reason, that special master should request the director of the purchasing department to reassign the case to another special master.
 - 4. *Complaint hearings.*
 - A. *Scheduling.* The director of the purchasing department shall be responsible for scheduling hearings before the special masters.
 - B. *Contacting the special master.* Other than county staff contacting the special master for scheduling or other ministerial purposes, parties shall not contact the special master at any time regarding the complaint.
 - C. *Location.* The location of the hearings shall be in the county.
 - 5. *Compensation.* The county administrator may promulgate rules by separate policy and procedure memoranda regarding the compensation of special masters.
 - 6. *Rules of procedure.* The county administrator shall have the authority to prescribe rules and regulations by separate policy and procedure memoranda for selection of special masters, the complaint process, and the conduct of hearings before the special masters.
- (c) *Enforcement actions against non-county employers.*
- (1) The non-county employer, and the prime contractor if the non-county employer is a subcontractor, shall be jointly and severally liable for any monetary liability imposed pursuant to any enforcement action set forth herein.
 - (2) Upon a finding of violation of this division, the special master shall impose the following enforcement actions:
 - a. Require the non-county employer and the prime contractor, if applicable, to pay wage restitution to the affected employee; and
 - b. Impose fines upon the non-county employer and the prime contractor, if applicable, payable to the county in the sum of up to five hundred dollars (\$500.00) for each week for each non-county employee found to have not been paid in accordance with this division.

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- (3) Upon a finding of violation of this division, the special master also may recommend one (1) or more of the following enforcement actions; unless, if the finding of violation is the third such finding against the non-county employer within any twelve-month period, the special master may recommend all of the following enforcement actions:
- a. That the county suspend payment under the paratransit contract or construction contract;
 - b. That the county terminate the paratransit contract or construction contract; and
 - c. That the county declare the non-county employer ineligible for future county contracts for two (2) years or until all penalties and restitution have been paid in full, whichever is longer. Any other employer who has a principal officer who is, or was, a principal officer of a violating non-county employer declared ineligible under this division, also shall be ineligible during the violating non-county employer's period of ineligibility.
- (d) *Private right of action against non-county employers.* Any employee or former employee of a non-county employer may, instead of the procedure set forth in this division but not in addition to such procedure, bring an action in any court of competent jurisdiction by filing suit against the non-county employer, and the prime contractor if the non-county employer is a subcontractor, to enforce the provisions of this division, and may be awarded wage restitution and benefits, and attorney's fees and costs as provided by state law. The applicable statute of limitations for such a claim is two (2) years as provided in F.S. § 95.11(4)(c), in an action for payment of wages. The court may also impose sanctions on the non-county employer and the prime contractor, if applicable, including damages payable to the affected employee in the sum of up to five hundred dollars (\$500.00) for each week the non-county employer is found to have violated this division. The non-county employer and the prime contractor, if applicable, shall be jointly and severally liable for any monetary liability.
- (e) *Retaliation and discrimination barred.* A non-county employer shall not discharge, reduce the compensation of, or otherwise discriminate against any employee for making a complaint to the construction department, the county, or otherwise asserting his or her rights under this division, participating in any of its proceedings or using any civil remedies to enforce his or her rights under this division.
- (f) *Remedies non-exclusive.* No remedy set forth in this division is intended to be exclusive or a prerequisite for asserting a claim for relief or to enforce a right under this division in a court of law. Violations of this division may be prosecuted as set forth in F.S. § 125.69.
- (4) A recommendation of the special master under paragraph (3) above shall not be binding on the county but shall constitute cause for the exercise of the purchasing director's authority under Section 2-56 of the Palm Beach County Code, as it may be amended from time to time, or for the termination of the paratransit contract or construction contract.

(Ord. No. 03-004, § 5, 2-25-03; Ord. No. 04-002, pt. 4, 1-13-04; Ord. No. 2014-018, § 1, 5-20-14)