

ITEM #72₍₄₎

ADDITIONAL MATERIAL

Regular Meeting


MAY 7, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Board of County Commissioners

FROM: Andrew J. Meyers, County Attorney 

DATE: May 6, 2019

RE: **Item 72 on the May 7 County Commission Agenda; Amendments to Section 1-19(c)(5) of the Code of Ethics for Elected Officials**

On Friday, we issued a memorandum addressing various versions of the proposed ethics code amendments and certain comments and concerns expressed by the Inspector General. The memorandum mentioned that we would be distributing a side-by-side comparison of the various proposed amendments by midday today, to allow time for a fourth version (sponsored by Commissioner Ryan) to be finalized.

Please find attached the following documents:

1. The amendments sponsored by Commissioner Ryan; and
2. A chart summarizing the main provisions of each proposal.

This memorandum, including the attachments, will be distributed as additional material to Item 72.

Should you have any questions or concerns, please do not hesitate to contact Assistant County Attorney Rocio Blanco Garcia (ext. 8640) or me.

AJM/RBG/mm
Attachments

c: Bertha Henry, County Administrator
Bob Melton, County Auditor

PROPOSED

ORDINANCE NO. 2019-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE CODE OF ETHICS FOR ELECTED OFFICIALS; AMENDING SECTION 1-19 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO CLARIFY THE SCOPE OF, AND OTHERWISE MODIFY, SECTION 1-19(C)(5) OF THE CODE; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Tim Ryan)

WHEREAS, the Florida Code of Ethics sets standards of conduct for public officers and employees, including County Commissioners;

WHEREAS, Section 112.326, Florida Statutes, empowers county commissions to impose more stringent ethical standards than are provided under the Florida Code of Ethics;

WHEREAS, the County's Code of Ethics for Elected Officials ("County Ethics Code") imposes numerous more stringent ethical standards, including restrictions on and disclosure requirements in connection with the solicitation of charitable contributions; and

WHEREAS, the Board of County Commissioners ("Board") finds that these restrictions and disclosure requirements relating to solicitation of charitable contributions are unclear, and that modifying them as provided below would strengthen the County Ethics Code including by clearly alerting those charged with compliance therewith to the Code's requirements and proscriptions,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.

1 Section 1. Section 1-19 (c)(5)(a) of the Broward County Code of Ordinances is
2 hereby repealed and replaced in its entirety to read as follows:

3 **Sec. 1-19. Code of ethics for elected officials.**

4 ...

5 (c) *Standards of Conduct.* In addition to the provisions of Chapter 112, Part III,
6 Florida Statutes, Code of Ethics for Public Officers and Employees; Chapters 838 and
7 839, Florida Statutes; Title 18, Chapter 63 of the United States Code; and Chapter 26,
8 Article V of the Broward County Code of Ordinances, Section 26-67 et seq., the following
9 Standards of Conduct shall apply to each Elected Official.

10 (1) *Acceptance of Gifts.*

11 ...

12 (5) *Solicitation and Receipt of Contributions.*

13 [Underlining omitted]

14 a. Charitable Contribution Solicitation.

- 15 1. The solicitation of funds, goods, or services by an Elected
16 Official for a nonprofit charitable organization, as defined
17 under the Internal Revenue Code, or for residents in need (as
18 determined by the Elected Official) (collectively, "charitable
19 solicitation"), is permissible under this Code so long as there
20 is no quid pro quo or other special consideration, including
21 any direct or indirect exchange of benefits between the parties
22 to the solicitation. Social media postings, newsletters, or
23 statements made at a publicly noticed governmental meeting
24 that merely reference or promote a charitable cause or event

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1 are not considered charitable solicitation under this Code,
2 provided the Elected Official does not expressly request that
3 specific, identifiable individuals or entities donate to the cause
4 or event and further provided that, with regard to social media
5 postings and newsletters, the social media page or newsletter
6 does not have as its primary purpose the posting or
7 advertising of charitable causes or events.

8 2. An Elected Official may use staff directly assigned to the
9 Elected Official and may use his or her governmental entity's
10 e-mail and telephone systems and other resources that do not
11 require the affirmative expenditure of public funds
12 (collectively, "in-kind resources") when engaging in charitable
13 solicitation, provided the use of such resources does not
14 violate any other provision of applicable law. Approval by the
15 Elected Official's governmental entity is required only where
16 the charitable solicitation involves the affirmative expenditure
17 of public funds through the use of resources other than in-kind
18 resources; however, an Elected Official may choose to seek
19 formal approval of the charitable solicitation from his or her
20 governmental entity even where only direct staff and in-kind
21 resources are used in the charitable solicitation.

22 3. Except where the charitable solicitation is formally approved
23 by the Elected Official's governmental entity:
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- a. Neither the Elected Official nor his or her direct staff may represent to anyone that the charitable solicitation is on behalf of the governmental entity, or otherwise imply that the charitable solicitation has been approved or is endorsed by the Elected Official's governmental entity;
- b. An Elected Official may not use any County staff or resources to solicit funds, goods, or services from private individuals or for-profit entities unless the Elected Official has first obtained written confirmation from the governmental entity's legal counsel that the charitable solicitation comports to applicable law; and
- c. To promote full and complete transparency, the Elected Official must disclose, on a form created by the Office of the County Attorney, the name of the intended direct recipient(s) of the proceeds of the charitable solicitation, the cause or event for which the funds or donations were solicited, if any, and the name of any individual or entity that requested that the Elected Official engage in the charitable solicitation. The form must be filed for public inspection within fifteen (15) days after the Elected Official (or his or her staff, as applicable) engages in charitable solicitation.

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1 4. Salary received by an Elected Official from a nonprofit
2 charitable organization employing the Elected Official is not
3 considered a quid pro quo or other special consideration for
4 purposes of paragraph 1 above. Additionally, the disclosure
5 requirement contained in paragraph 3 above does not apply
6 to Officials who are employed by a nonprofit charitable
7 organization when soliciting charitable contributions on behalf
8 of that organization.

9
10 Section 2. Severability.

11 If any portion of this Ordinance is determined by any court to be invalid, the invalid
12 portion will be stricken, and such striking will not affect the validity of the remainder of this
13 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
14 legally applied to any individual, group, entity, property, or circumstance, such
15 determination will not affect the applicability of this Ordinance to any other individual,
16 group, entity, property, or circumstance.

17
18 Section 3. Inclusion in the Broward County Code of Ordinances.

19 It is the intention of the Board of County Commissioners that the provisions of this
20 Ordinance become part of the Broward County Code of Ordinances as of the effective
21 date. The sections of this Ordinance may be renumbered or relettered and the word
22 "ordinance" may be changed to "section," "article," or such other appropriate word or
23 phrase to the extent necessary in order to accomplish such intention.

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Section 4. Effective Date.

This Ordinance is effective as of the date provided by law.

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

PROPOSED

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Rocio Blanco Garcia 05/06/19
Rocio Blanco Garcia (date)
Assistant County Attorney

RBG/mm
Code of Ethics for Elected Officials Ordinance
05/06/19
#99260-0010

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| | CURRENT PROVISION | BOARD AMENDMENT | C. UDINE AMENDMENT | VM HOLNESS AMENDMENT | C. RYAN AMENDMENT |
|---|---|---|--|--|---|
| What is Charitable Solicitation? | <p>Solicitation of funds on behalf of charitable organizations as defined by the IRS.</p> <p>Other types of solicitation are not expressly covered by this provision.</p> | <p>Solicitation of funds, goods, or services on behalf of a charitable organization, nonprofit entities, and individuals in need.</p> | <p>The act of calling, e-mailing, sending other written correspondence, or directly contacting individuals or entities to request contributions toward charitable causes or events.</p> <p>Social media posts and statements at publicly noticed meetings that merely reference charitable causes or events are excluded from the definition and not subject to the Code (but they must not request that specific, identifiable individuals make donations, and the main purpose of the social media page cannot be to</p> | <p>Same definition as Board Amendment <u>but</u>, similar to Udine Amendment, adds that social media posts, newsletters (newsletters are not addressed in the Udine Amendment), and statements at publicly noticed meetings that merely reference charitable causes or events are not considered charitable solicitation subject to the Code, provided they do not request that specific, identifiable individuals make donations.</p> <p>This definition does not (unlike the Udine Amendment) require that the</p> | <p>Hybrid of the current provision and the Board, Udine, and Holness Amendments.</p> <p>Solicitation of funds, goods, or services for residents in need (as determined by the Elected Official) and charitable organizations as defined by the Internal Revenue Code (unlike the Board Amendment, does not address nonprofit entities).</p> <p>Social media posts, newsletters, and statements at publicly noticed meetings that merely reference charitable causes or events are expressly excluded from the definition and not subject to the Code (but they must not</p> |

| | CURRENT PROVISION | BOARD AMENDMENT | C. UDINE AMENDMENT | VM HOLNESS AMENDMENT | C. RYAN AMENDMENT |
|---|--|---|---|---|--|
| | | | promote charitable causes or events). | social media page or newsletter <u>not</u> have as a primary purpose the promotion or advertising of charitable causes or events. | request that specific, identifiable individuals make donations, and the main purpose of the social media page or newsletter cannot be to promote charitable causes or events). |
| May the Elected Official Use County Staff and Resources? | Elected Official may use staff and resources only if the charitable solicitation is formally approved by the Elected Official's governmental entity. | Elected Official may use staff directly assigned to him or her and in-kind resources (telephone and e-mail systems) without the need for approval by the Elected Official's governmental entity. Approval by the governmental entity required only where charitable solicitation involves the affirmative expenditure of public funds. | Retains current requirement that Elected Official not use staff and resources except where the charitable solicitation has been approved by the Elected Official's governmental entity. | Same requirements as the Board Amendment. | Same requirements as Board Amendment with one added element: Direct staff and in-kind resources cannot be used to solicit donations from <u>for-profit entities or individuals</u> unless the Elected Official first obtains written confirmation from legal counsel that the charitable solicitation comports with applicable law. Written confirmation by counsel not required |

| | CURRENT PROVISION | BOARD AMENDMENT | C. UDINE AMENDMENT | VM HOLNESS AMENDMENT | C. RYAN AMENDMENT |
|--|---|--|---|---|--|
| | | | | | where the charitable solicitation has been approved by the governmental entity. |
| Does the Charitable Solicitation Require Disclosure? | Elected Official must disclose except where the charitable solicitation approved by the governmental entity. | Elected Official must always disclose. | Same requirements as current provision. | Same requirements as current provision. | Same requirements as current provision. |
| May the Elected Official Represent that the Solicitation is Done on Behalf of the County? | Not specifically addressed, but implied that unless officially sponsored by the governmental entity, charitable solicitation would be only on behalf of the Elected Official. | Same as current provision. | Same as current provision. | Same as current provision. | Absent approval by the governmental entity, may not represent that the charitable solicitation has been approved by or is otherwise endorsed by the governmental entity. |