

PROPOSED

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO LOBBYING; AMENDING VARIOUS SECTIONS OF CHAPTERS 1 AND 26 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, under both the United States Constitution and the Florida Constitution, people have a fundamental right to petition their government, which includes a right to lobby their government;

WHEREAS, Broward County (the "County") also has a compelling interest in protecting against both the appearance of and actual government corruption, and may regulate lobbying to accomplish this compelling interest;

WHEREAS, when regulating lobbying, the County must balance fundamental First Amendment freedoms against its compelling interests, including its interests in preserving and maintaining the integrity of, and public confidence in, the governmental decision-making process, while also ensuring that its regulation is closely tailored to this end so that the County does not burden more speech than necessary;

WHEREAS, in 2010, the Board enacted the County's current ethics code for elected officials, which code was developed by an Ethics Commission created as a result of an amendment to the Broward County Charter proposed by the Charter Review

Commission. The enacted code established extraordinarily broad lobbying regulations, far surpassing what then existed under state law;

WHEREAS, in 2018, voters approved an amendment to the Florida Constitution (“Amendment 12”) that prohibits local officials, including county commissioners, from lobbying local, state, or federal legislative bodies and administrative agencies on issues of policy, appropriation, or procurement while in office;

WHEREAS, in 2022, the Legislature enacted Sections 112.3121 and 112.3122, Florida Statutes, which implement Amendment 12;

WHEREAS, once Amendment 12 and the implementing legislation go into effect on December 31, 2022, Florida will have some of the most expansive lobbying restrictions in the country, making the County’s current lobbying restrictions largely redundant;

WHEREAS, in some instances, where the County’s code is more or less stringent than Amendment 12 and its enabling legislation, inconsistencies in the definitions and the layering of inconsistent restrictions create legal risk and make it more difficult for elected officials to ensure compliance with both standards; and

WHEREAS, the County, through this amendment, seeks to refine its lobbying regulations to better protect government integrity, ensure the ability to exercise core political rights, and facilitate compliance by providing clear and consistent regulations,

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

Section 1. Section 1-19 of the Broward County Code of Ordinances is hereby amended to read as follows:

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

...

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

...

(2) *Outside/Concurrent ~~e~~Employment.*

- a. ~~Elected Officials shall not lobby any covered individual. Such lobbying is deemed to be in substantial conflict with the proper discharge of an Elected Official's duties in the public interest~~ Notwithstanding anything to the contrary in this Section 1-19, the lobbying prohibitions applicable to Elected Officials shall be the same as under Article II, Section 8 of the Florida Constitution and Sections 112.3121 and 112.3122, Florida Statutes, inclusive of all applicable definitions set forth therein, as amended.

...

- c. Except as expressly permitted in this subsection, ~~No~~ immediate family member or County or municipal office staff of an Elected Official shall lobby any covered individual or, ~~except as permitted in the sentence immediately below,~~ conduct business as a vendor or contractor with the local governmental entity served by the Elected Official. An immediate family member of an Elected Official may

69 lobby covered individuals or conduct business as a vendor or
70 contractor with the local governmental entity served by the Elected
71 Official where such activity is permissible under state law, provided
72 that, if the Elected Official has actual knowledge of the lobbying or
73 business activity, the Elected Official attests in writing, on a form filed
74 for public inspection within fifteen (15) days after such attestation,
75 that such immediate family member and the Elected Official do not
76 share a primary residence, the immediate family member is not listed
77 as a dependent on the Elected Official's most recently filed federal
78 tax return, and that the Elected Official is not listed as a dependent
79 on the immediate family member's most recently filed federal tax
80 return. Any conduct of business as a vendor or contractor in violation
81 of this paragraph shall be deemed to provide a prohibited financial
82 benefit to the Elected Official.

83 . . .

84 Section 2. Section 1-261 of the Broward County Code of Ordinances is hereby
85 amended to read as follows:

86 **Sec. 1-261. Definitions.**

87 ~~As used in this article, unless the context otherwise indicates~~ Unless the term is
88 defined differently below, the terms used in this article shall have the same meanings as
89 defined in Section 1-19(b) of the Broward County Code of Ordinances:

90 (a) *Board* means the Board of County Commissioners of Broward County, Florida.

91 ~~(b) Lobby, Lobbying, or Lobbying Activities means a communication, by any means,~~
92 ~~from a lobbyist to a covered individual regarding any item that will foreseeably be decided~~
93 ~~by a final decision-making authority, which communication seeks to influence, convince,~~
94 ~~or persuade the covered individual to support or oppose the item. Lobbying does not~~
95 ~~include communications:~~

96 (1) ~~Made on the record at a duly-noticed public meeting or hearing; or~~

97 (2) ~~From an attorney to an attorney representing Broward County regarding a~~
98 ~~pending or imminent judicial or adversarial administrative proceeding~~
99 ~~against Broward County.~~

100 ~~(c) Person~~ means any individual, business, corporation, association, firm, partnership,
101 organization, group, or other entity, whether operated for profit or not for profit.

102 ~~(d) Lobbyist means a person who is retained, with or without compensation, for the~~
103 ~~purpose of lobbying; or a person who is employed by another person or entity, on a full-~~
104 ~~time or part time basis, principally to lobby on behalf of that other person or entity.~~
105 ~~"Lobbyist" does not include a person who is:~~

106 (1) ~~An Elected Official, employee, or appointee of Broward County or of any~~
107 ~~municipality within Broward County communicating in his or her official~~
108 ~~capacity;~~

109 (2) ~~An individual who communicates on his or her own behalf, or on behalf of a~~
110 ~~person or entity employing the individual on a full-time or part-time basis,~~
111 ~~unless the individual is principally employed by that person or entity to~~
112 ~~lobby;~~

(3) ~~An employee, officer, or board member of a homeowners' association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members; or~~

(4) ~~An employee, officer, or board member of a nonprofit public interest entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue impacting a constituent of that entity.~~

~~(e)~~ *Employer* means the ~~business~~ entity, if any, employing the lobbyist on a full-time or part-time basis.

~~(f)~~ *Compensation* means paying or agreeing to pay or give, directly or indirectly, any money, anything of value, or reimbursement of expenses (in whole or in part), in consideration for the performance of lobbying activities.

~~(g)~~ *Covered Individual* means (i) any member of the Board of ~~County Commissioners~~; (ii) any member of a final decision-making body under the jurisdiction of the Board of ~~County Commissioners~~; (iii) any County employee who is a member of a selection, evaluation, or procurement committee that ranks or makes recommendations to any final decision-making authority regarding a County procurement, when the communication involves any such procurement; (iv) any County employee who has authority to make a final decision regarding a public procurement, when the communication involves any such procurement; (v) the head of any department, division, or office of Broward County who makes final recommendations to a final decision-making authority regarding items that will be decided by the final decision-making authority; and (vi) any County employee

reporting directly to and working in for the official governmental office of a County Commissioner.

~~(h)~~ *Final Decision-Making Authority* means (i) the Board of ~~County Commissioners~~; (ii) final decision-making bodies under the jurisdiction of the Board of ~~County Commissioners~~; and (iii) any employee of Broward County that has authority to make a final decision to select a vendor or provider in connection with a public procurement.

~~(i)~~ *Principal* means the person or entity, as applicable, on whose behalf the lobbyist engages in the lobbying activity. This person or entity is sometimes referred to as the lobbyist's "client."

Section 3. Section 26-70 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 26-70. Prohibition on lobbying by appointed board members.

...

(b) No member of an appointed board shall, during ~~his or her~~ the member's term of appointment and for a period of two (2) years after such term of appointment, lobby for compensation any employee of the County division(s) or department(s) that provide(s) support services to the appointed board.

...

(e) For purposes of this section:

...

(3) The following terms shall have the meanings stated in the referenced sections:

a. “Compensation” shall have the meaning stated in Section 1-261 of the Broward County Code of Ordinances (“Code”);

b. ~~“Lobby,” “Lobbies,” or “Lobbying” means a communication, by any means, between a lobbyist and a Division or Department employee regarding any item that will foreseeably be decided by a final decision-making authority, which communication seeks to influence, convince, or persuade the employee to support or oppose the item. Lobbying does not include communications:~~

a. ~~Made on the record at a duly noticed public meeting or hearing; or~~

b. ~~From an attorney to an attorney representing Broward County regarding a pending or imminent judicial or adversarial administrative proceeding against Broward County.~~

(4) “Final Decision-Making Authority” and ~~“Lobbyist”~~ shall have the meanings stated in Sections 26-72.5(d) and (g), respectively, of the Broward County Code of Ordinances.

c. “Lobby,” “Lobbies,” “Lobbying,” and “Lobbyist” shall have the meanings stated in Section 1-19(b) of the Code.

Section 4. Section 26-72.5 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 26-72.5. Definitions.

~~Except as stated in (a) through (g)~~ Unless the term is defined differently below, the definitions contained or referenced in Section 1-19, Broward County Code of Ordinances, apply to the same words or terms appearing in this Act.

...

(e) ~~“Immediate family member” means a parent, spouse, child, sibling, or registered domestic partner of a County employee.~~

(f) ~~“Lobby, Lobbying, or Lobbying Activities” means a communication, by any means, from a lobbyist to a covered individual regarding any item that will foreseeably be decided by a final decision-making authority, which communication seeks to influence, convince, or persuade the covered individual to support or oppose the item. Lobbying does not include communications:~~

(1) ~~Made on the record at a duly noticed public meeting or hearing; or~~

(2) ~~From an attorney to an attorney representing Broward County regarding a pending or imminent judicial or adversarial administrative proceeding against Broward County.~~

(g) ~~“Lobbyist” means a person who is retained, with or without compensation, for the purpose of lobbying; or a person who is employed by another person or entity, on a full-time or part-time basis, principally to lobby on behalf of that other person or entity. “Lobbyist” does not include a person who is:~~

(1) ~~An Elected Official, employee, or appointee of Broward County or of any municipality within Broward County communicating in his or her official capacity;~~

(2) ~~An individual who communicates on his or her own behalf, or on behalf of a person or entity employing the individual on a full-time or part-time basis, unless the individual is principally employed by that person or entity to lobby;~~

- 203 ~~(3) Any employee, officer, or board member of a homeowners' association,~~
204 ~~condominium association, or neighborhood association when addressing,~~
205 ~~in his or her capacity as an employee, officer, or board member of such~~
206 ~~association, an issue impacting the association or its members; or~~
- 207 ~~(4) Any employee, an officer, or a board member of a nonprofit public interest~~
208 ~~entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue~~
209 ~~impacting a constituent of that entity.~~

210 Section 5. Severability.

211 If any portion of this Ordinance is determined by any court to be invalid, the invalid
212 portion will be stricken, and such striking will not affect the validity of the remainder of this
213 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
214 legally applied to any individual, group, entity, property, or circumstance, such
215 determination will not affect the applicability of this Ordinance to any other individual,
216 group, entity, property, or circumstance.

217 Section 6. Inclusion in the Broward County Code of Ordinances.

218 It is the intention of the Board of County Commissioners that the provisions of this
219 Ordinance become part of the Broward County Code of Ordinances as of the effective
220 date. The sections of this Ordinance may be renumbered or relettered and the word
221 “ordinance” may be changed to “section,” “article,” or such other appropriate word or
222 phrase to the extent necessary in order to accomplish such intention.

223 Section 7. Effective Date.

224 This Ordinance is effective December 31, 2022.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

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

By: /s/ Joseph K. Jarone 10/12/2022
 Joseph K. Jarone (date)
 Assistant County Attorney

By: /s/ René D. Harrod 10/12/2022
 René D. Harrod (date)
 Chief Deputy County Attorney

JKJ/mb
Lobbying Revisions Ordinance
10/12/2022

Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.