

# TOWN OF PALM BEACH

Information for Town Council Meeting on: April 14, 2021

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To: Mayor and Town Council

From: Wayne Bergman, Director of PZB

Via: Kirk Blouin, Town Manager

Re: Arcom and LPC Architect Exemptions

Date: March 25, 2021

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## **BACKGROUND:**

An on-going issue with the Arcom and Landmarks Commissions involves the conflict of interest provisions that apply to architects and the limited number of conflicts of interest that they can file in a calendar year. The Town codes for both Commissions state that once five (5) conflicts of interest for any Commission member is reached in a calendar year, that Commissioner is automatically removed from the Commission. Several Commissioners and Town Council members have questioned whether that number of conflicts of interest, five, is the appropriate number for architects and for the landscape architects that are required by code to serve on the Commissions. The thought is that good design professionals, in most cases, are active in their profession and may work for Town residents. Many of them are quite busy with their practice. It seems unreasonable for a well-regarded design professional, with an active practice involving Town projects, to be automatically removed from the commission solely because they follow the ethics rules and disclose their conflicts of interest.

In consultation with Skip Randolph, we discussed the various options available, including the possibility of raising the number of conflicts beyond five. We also looked at removing the "automatic" provision in the codes. Skip later suggested that we revise the codes to follow the ruling of the Florida Commission on Ethics as it relates to Florida Statute 112.313. I will leave it to Mr. Randolph to provide his legal opinion on the details, but in layman's terms, the State Code of Ethics for Public Officers and Employees recognizes that the law does not prohibit said public officer or employee (Commissioners) from practicing in a particular profession or occupation (architecture) when such practice is required by local ordinance Chapter 18, Arcom and Chapter 54, Landmarks).

Based upon this State law exemption, staff drafted two ordinances to exempt the required architects, landscape architects, or master gardener, from the number of conflicts of interest per year that would result in automatic removal.

Ordinance 09-2021 amends Chapter 18, Building and Building Regulations, Article III, Architectural Review, as described above. Ordinance 10-2021 amends Chapter 54, Historical

Preservation, Article II, Landmarks Preservation Commission, as described above. Mr. Randolph has reviewed these two ordinances for both content and legal sufficiency. Both ordinances are ready for First Reading.

Attached:     Draft Ordinance 09-2021  
                 Draft Ordinance 10-2021  
                 State of Florida Commission on Ethics Opinion CEO-04-1

WRB

## ORDINANCE NO. 09-2021

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDINGS AND BUILDING REGULATIONS, ARTICLE III, ARCHITECTURAL REVIEW, DIVISION 1, GENERALLY, SECTION 18-170; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** Chapter 18, Buildings and Building Regulations, Article III, Architectural Review, Division 1, Generally, is hereby amended at Section 18-170, to read as follows:

*"Sec. 18-170. - Conflicts of interest.*

*(a) If excessive conflicts of interest arise during any one calendar year, the architectural commission member shall be automatically removed from the commission. Excessive conflicts of interest are defined as five or more conflicts of interest in any one calendar year. Continuing conflicts of interest on a single application, once declared, shall not be counted as additional conflicts of interest. This rule shall apply from the date of adoption to the end of the 2013 calendar year and shall be applicable, thereafter, on a calendar year basis. This provision shall not apply to the two registered architects and to the landscape architect or master gardener who are required to be appointed pursuant to Section 18-166 of this Division."*

**Section 2.** Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

**Section 3.** Repeal of Ordinances in Conflict. All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

**Section 4.** Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach, Florida.

**Section 5.** Effective Date. This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

**PASSED AND ADOPTED** in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this \_\_\_\_ day of \_\_\_\_\_, 2021, and for second and final reading on this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Danielle H. Moore, Mayor

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Margaret A. Zeidman, Town Council President

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Julie Araskog, Town Council Member

\_\_\_\_\_  
Edward Cooney, Town Council Member

ATTEST:

\_\_\_\_\_  
Lewis S.W. Crampton, Town Council Member

\_\_\_\_\_  
Queenester Nieves, CMC, Town Clerk

\_\_\_\_\_  
Bobbie Lindsay, Council President Pro Tem



## ORDINANCE NO. 10-2021

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 54, HISTORICAL PRESERVATION, ARTICLE II, LANDMARKS PRESERVATION COMMISSION, SECTION 54-38(b); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** Chapter 54, Historical Preservation, Article II, Landmarks Preservation Commission, is hereby amended at Section 54-38(b), to read as follows:

*“Sec. 54-38. - Removal provisions; absences; conflicts of interest.*

*(b) In the event of excessive conflicts of interest during any one calendar year, the commission member shall be automatically removed from the commission by the town council or, in the event of excessive conflicts of interest during any one term, a commission member may not be reappointed to a successive term. Excessive conflicts of interest are defined as five or more conflicts of interest in any one calendar year. Continuing conflicts of interest on a single application, once declared, shall not be counted as additional conflicts of interest. This rule shall apply from the date of adoption to the end of the 2013 calendar year and shall be applicable, thereafter, on a calendar year basis. This provision shall not apply to the two registered architects who are required to be appointed pursuant to Section 54-36 of this Chapter.”*

**Section 2.** Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

**Section 3.** Repeal of Ordinances in Conflict. All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

**Section 4.** Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach, Florida.

**Section 5.** Effective Date. This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

**PASSED AND ADOPTED** in a regular, adjourned session of the Town Council of the Town of Palm Beach, Florida, on the First Reading this \_\_\_\_ day of \_\_\_\_\_, 2021; and for the Second and Final Reading on this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Danielle H. Moore, Mayor

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Margaret Zeidman, Town Council President

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Bobbie Lindsay, President Pro Tem

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Julie Araskog, Town Council Member

ATTEST:

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Lewis S.W. Crampton, Town Council Member

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Queenester Nieves, CMC, Town Clerk

\_\_\_\_\_  
Edward Cooney, Town Council Member

CEO 04-1 -- January 27, 2004

**CONFLICT OF INTEREST; QUARTERLY CLIENT DISCLOSURE; VOTING  
CONFLICT**

**CITY ARCHITECTURAL REVIEW BOARD MEMBERS ARCHITECTS  
REPRESENTING CLIENTS WITH MATTERS BEFORE BOARD**

To: *Name withheld at person's request*

**SUMMARY:**

A prohibited conflict of interest would not be created under Section 112.313(7)(a), Florida Statutes, were members of a city architectural review board who hold their positions as designated architect members under a city ordinance personally to represent clients with matters before the board, due to the application of Section 112.313(7)(b), Florida Statutes. However, a prohibited conflict would be created were architect members not serving in designated architect positions on the board to represent clients with matters before the board, inasmuch as the members would hold employment or a contractual relationship with the clients (business entities subject to the regulation of the board) and inasmuch as Section 112.313(7)(b) would not apply to them. The designated architect members are subject to filing CE Form 2 (quarterly client disclosure) regarding clients they or their firms represent before the board or before other agencies of the city; and are subject to the voting conflicts law regarding measures which would inure to the special private gain or loss of clients of their firms. CEO's [79-2](#), [80-63](#), and [80-75](#) are referenced. <sup>[1]</sup>

**QUESTION 1:**

Would a prohibited conflict of interest be created under Section 112.313(7)(a), Florida Statutes, were members of a city's architectural review board privately to represent clients with matters before the board?

Your question is answered as set forth below.

By your letter of inquiry, accompanying materials, and subsequent written communications and additional materials sent from your staff to ours, we are advised that ..., ..., and ... (all registered architects) serve as members of the Architectural Review Board of the City of Pensacola, which is established and given duties by City ordinance. The Board's purpose, you advise, is the preservation and protection of buildings of historic and architectural value, and the maintenance and enhancement of two historic districts, two preservation districts, and a governmental center district, which combined comprise a large portion of the inner-city of Pensacola, including commercial, residential, governmental, and other institutional properties. Duties of the Board, you advise, include approval/disapproval of plans for buildings to be erected, renovated, or razed, and consideration of applications for variances from certain requirements of the City Code within the districts.



By ordinance, you advise, the Board is appointed by the City Council and is to be composed of seven members drawn from certain professions or affiliations, rather than from the citizenry in general.<sup>[2]</sup> Two of the architects on the Board occupy the two positions required to be held by registered architects, one of the other architects on the Board occupies the position required to be held by a property owner or business owner in a particular district, and the fourth architect on the Board occupies the position required to be held by a person connected to the preservation organization, you advise. Further, you advise, depending upon the nature of a particular architect's professional practice, the scope of the Board's jurisdiction is such that the inability of an architect member of the Board to represent clients before the Board could render it impossible for an architect to viably practice his chosen profession in the City while remaining a member of the Board. For instance, you advise, one architect member specializes in historic preservation architecture, although the specialty does not constitute the entirety of his practice.<sup>[3]</sup> Additionally, you advise, given the large number of architects relative to the size of the City, competition among architects for a limited universe of clients may result in architects being unwilling to serve on the Board if Section 112.313(7)(a) precludes representation of clients with matters before the Board by Board members who are partners, associates, or other members of architectural firms.

Section 112.313(7)(a), Florida Statutes, the prohibition of the Code of Ethics for Public Officers and Employees that is at issue regarding your inquiry, provides:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

Were we to apply Section 112.313(7)(a) in isolation, we would find that a prohibited conflict of interest would be created for all of the architect members of the Board were they to have clients with matters before the Board, inasmuch as they would hold employment or a contractual relationship with the clients (business entities) subject to the regulation<sup>[4]</sup> of the Board (the members' public agency). However, inquiries such as yours necessarily involve consideration of Section 112.313(7)(b), Florida Statutes, which modifies the prohibitions of Section 112.313(7)(a), and which provides:

This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.



Consequently, we have found Section 112.313(7)(b) to operate to negate conflicts grounded in Section 112.313(7)(a) when, essentially, a law or ordinance has worked a "waiver" of conflict by recognizing that certain credentials are so vital to the expertise and operation of a public board that the otherwise conflicting business/client connections of certain members must yield to the public purpose of a portion of the board's membership possessing such professional training and practice. Brevard County v. State Commission on Ethics, 678 So. 2d 906 (Fla. 1<sup>st</sup> DCA 1996). See CEO [79-2](#) (community appearance board member representing clients as an architect before board where two members of board required to be registered architects); and see our recent Public Report (rendered March 19, 2002) in *In re JEFFREY SMITH*, Commission Complaint No. 00-071, finding no probable cause regarding an architect member of the Palm Beach Landmark Preservation Commission.

Thus, regarding the two architect members of the Board who occupy the two positions designated for registered architects, we find Section 112.313(7)(b) to be applicable, and thus find that no prohibited conflict of interest exists under Section 112.313(7)(a) regarding these two members.

However, regarding the two architect members who hold Board positions via affiliations other than that of being a registered architect, we find that Section 112.313(7)(b) affords them no relief from conflicts occasioned by their professional practice and thus find that a prohibited conflict of interest would be created were they to represent a client with a matter before the Board. Notwithstanding that their positions have been designated under the ordinance to be filled by persons with certain affiliations, the designated affiliations under which they sit are other than the practice of architecture. In other words, while it appears that there has been a conscious decision via the ordinance to ensure the input of two architects into the seven-member Board's functions, irrespective of the potential ethical implications of their work for their private clientele, the ordinance has not effected a waiver as to an additional two. [\[5\]](#)

This question is answered accordingly.

## QUESTION 2:

Are Board members required to file quarterly client disclosure (CE Form 2) regarding clients who were represented before the Board or before any agency of the City?

This question is answered in the affirmative.

Board members are required by Section 112.3145(4), Florida Statutes, to disclose the names of all clients who were represented for a fee or commission before any agency within the political subdivision they serve (the City of Pensacola), by themselves personally (or by partners or associates of their professional firms if they have actual knowledge of the representation), by the last day of the calendar quarter following the calendar quarter in which the representation occurred. [\[6\]](#)

This question is answered accordingly.

**QUESTION 3:**

Are Board members subject to the voting conflicts law, Section 112.3143(3)(a), Florida Statutes, and the participation requirements/restrictions of Section 112.3143(4), Florida Statutes, regarding measures or matters inuring to the special private gain or loss of clients of their firms?

This question is answered in the affirmative.

In our view, the clients are principals by whom the members are retained. CEO [79-2](#) and CEO [80-75](#).<sup>[7]</sup> Also, note that the firms need not be retained on the issues or matters that are before the Board; any retention of the firm by the client will trigger application of the statutes, provided the measure or matter before the Board would inure to the special private gain or loss of the firm's client.<sup>[8]</sup>

This question is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on January 22, 2004 and **RENDERED** this 27<sup>th</sup> day of January, 2004.

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Richard L. Spears, *Chairman*



[1] Prior opinions of the Commission on Ethics are viewable on the Commission's website:  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us)

[2] You advise that the ordinance requires Board membership as follows:

Two members from West Florida Preservation, Inc., each of whom shall be a resident of the City.

One member from the City planning board, who shall be a resident of the city.

Two registered architects, each of whom shall be a resident of the City.

One member who is a resident of the Pensacola Historic District, North Hill Preservation District, or Old East Hill Preservation District.

One member who is a property or business owner in the Palafox Historic Business District or the Governmental Center District.

[3] Regarding the two Board members who do not occupy positions on the Board designated or set aside for architects, ... and ..., we are advised that their architectural firms are organized as corporations, that ... is president, a director, and an owner of his firm, and that ... is vice-president, a director, and an owner of his firm. Further, we are advised that each of the senior architects in ... firm works with owners of properties (clients) to deliver architectural services, but that all firm contract documents are signed and sealed by .... Also, we are advised that in ... firm, various licensed architects in the firm may seal individual projects, but that, generally, all members of the firm are involved to some extent in every client's project. Additionally, we are advised that for both firms written contracts with clients are made in the name of the firm.

[4] Regarding "regulation" by the Board, see, inter alia, the City's land development code, including the provisions set forth below:

**Sec. 12-2-22. Governmental center district.**

(B)(2) *Review and approval by the architectural review board.* All such plans shall be subject to review and approval by the architectural review board as established in section 12-13-3 and in accordance with the provisions of section 12-2-10(A)(4)(a) through (c), applicable to historic zoning districts. The board shall adopt written rules and procedures for abbreviated review for paint colors, minor repairs, emergency repairs and minor deviations in projects already approved by the board.

**Sec. 12-2-21. Palafox historic business district.**

- (F) *Architectural review of proposed exterior development.*
- (1) *General considerations.* The board shall consider plans for existing buildings based on their classification as significant, supportive, compatible or nonconforming as defined and documented in files located at the office of the downtown improvement board. In reviewing the plans, the board shall consider exterior design and appearance of the building, including the front, sides, rear, and roof, materials, textures and colors . . . .

**Sec. 12-2-22. Governmental center district.**

- (C) *Decisions.*
- (c) 1. The board may adopt and promulgate rules and regulations controlling the number and size of signs, their heights and materials . . . .

**Sec. 12-2-10. Historic and preservation land use district.**

- (5) *Regulations and guidelines for any development within the preservation district.*



These regulations and guidelines are intended to address the design and construction of elements common to any development within the North Hill preservation district which requires review and approval by the architectural review board . . . .

[5] In view of our decision under Question 1, a decision grounded in the first part of Section 112.313(7)(a) and Section 112.313(7)(b), it is not necessary for us to consider the issues of whether a conflict would be created under the second part of Section 112.313(7)(a) were certain architects within or without the architectural firms of the members to personally appear before the Board in behalf of clients of the firms. In other words, our response to Question 1 renders these issues "moot."

[6] Board members are not required, based on their holding of a Board position, to file regarding representation of clients before political subdivisions other than the City (e.g., representation before another city or before Escambia County). See CEO [80-63](#).

[7] These opinions are still "good law" on the principal/retention issue; however, since their issuance, the voting conflicts law has changed to include abstention from voting. Section 112.3143(3)(a), Florida Statutes.

[8] Sections 112.3143(3)(a) and 112.3143(4) provide, respectively:

VOTING CONFLICTS.—No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term 'participate' means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.