



PALM BEACH COUNTY COMMISSION ON ETHICS
300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401
Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Please list all information where you would like to be contacted. Our preference is email.

Name: Joel Rutsky E-Mail: jrutsky@lakeworth.org
Address: 1900 2nd Ave N
City: Lake Worth, Florida Zip: 33461
Home #: 561-670-5635 Work #: 561-586-1725 Cell #: 561-714-0255

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Please provide as much information as possible.

Name: Michael Bornstein E-Mail: mbornstein@lakeworth.org
Address: 7 North Dixie Hwy
City: Lake Worth, Florida Zip: 33460
Home #: _____ Work #: 561-586-1630 Cell #: 561-293-5695
Title/Office Held or Sought: City Manager

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

Allegation is against person in
☒ County/Municipal Government

Allegation is about County:
☐ Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 23 day of March, 2015, by

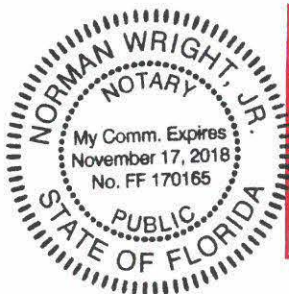
Joel Rutsky
(Name of Person Making Statement)

who is personally known to me _____ or produced identification ☒. Type of identification produced:

Driver's license

(Signature of Notary Public, State of Florida)

NORMAN WRIGHT JR
(Print, Type, or Stamp Commissioned Name of Notary Public)



RECEIVED

MAR 26 2015

Commission on Ethics
by: [Signature]

On 3/12/2014 @ 11:05am the Electric service was disconnected to 2417 North Federal Hwy Lake Worth, Florida 33460 due to non-payment of their Utility bill. This residence is believed to be owned by Pamela Triola who is the Mayor of The City of Lake Worth. Later that day a work order was generated to reconnect the electric service. The work order had the job order instructions of "Re-connect per City Manager". There was no payment made at the time the work order was generated. The account had an outstanding balance of \$430.56. This amount plus the appropriate re-connection fee should have been paid prior to us re-connecting their electric service. This is in writing per our City Resolution 18-2008 section 2: Refusal or Discontinuance of service by City, Paragraph (I) reads as follows:

For non-payment of bills or non-compliance with the City's rules and regulations. In the event a service is disconnected for non-payment of billing under Section 2. , paragraphs (F), (I), (J) or (K), full payment of the customer's total outstanding balance and re-connection fees will be required prior to re-connection of the service.

This resolution was clearly by passed by the Mayor and the City Manager so that the Mayor would have her electric service restored prior to making the required payment. The payment was received on the following day.

I believe these actions are a violation of the Code of Ethics Section 2-443. Prohibited Conduct. Paragraph (a) Misuse of public office or employment and / or Paragraph (b) Corrupt misuse of official position.



- WF0673894-001
 - Charge detail
 - Charge summary
 - Equipment transaction
 - Estimates
 - Inspections
 - Inventory transaction
 - Job order facilities
 - Job order instructions**
 - Labor transactions
 - Non-inventory transaction
 - Notifications
 - Other item transaction
 - Result comments
 - TV inspections


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1 Request number:      WF0673894
  J/O number:         001
  J/O description:     TURN BACK ON ELECTRIC SVC
  J/O status:         Closed
  Category:           CUSTOMER SVC WKR ELECTRIC
  Task:               TURN BACK ON ELECTRIC SVC
  Assigned department: CUSTOMER SERVICE WORKER

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Entry date: 03/12/2015
Entry time: 18:10:23
Entry user: DRYANRUIZ
Initiation date: 03/12/2015
Initiation user: DRYANRUIZ
Scheduled start: 03/12/2015
Scheduled completion: 03/12/2015
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1 Customer: 000065079
Customer name: CLAHANE, MICHAEL G
2 Location: 000027732
Location address: 2417 N FEDERAL HWY
Service: ELECTRIC
Service sequence: 000
Meter number: E25906
Completion method: Delinquency maintenance

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1 Request number:	WF0673894
Short description:	TURN BACK ON ELECTRIC
Category:	CUSTOMER SVC WKR ELEC
Request status:	Closed
General location:	North City
Assigned department:	CUSTOMER SERVICE WORK
Work type:	ROUTINE

General Ledger Defaults

Comments

RECONNECT PER CITY MANAGER

 Print

Cancel

 Exit Refresh

[Toggle code/d...](#)

Show/hide

CIS functions

Job order fun...

Please See Page 3

18-2008

RESOLUTION NO. 18-2008 OF THE CITY OF LAKE WORTH, FLORIDA, SUPERSEDING RESOLUTIONS 1-98, 56-98, 2-2001, AND 65-2007 OF THE CITY OF LAKE WORTH ESTABLISHING APPLICATION FOR SERVICE, ACCESS TO UTILITY EQUIPMENT, AND DEPOSIT REQUIREMENTS; PROVIDING FOR ABATEMENT OF VEGETATION INTERFERING WITH POWER LINES; PROVIDING FOR THE REFUND OF RESIDENTIAL SERVICE DEPOSITS FOR ONE ACTIVE RESIDENTIAL ACCOUNT ONLY; PROVIDING FOR THE RETENTION OF COMMERCIAL DEPOSITS; PROVIDING FOR CERTAIN CHANGES IN DEPOSIT AND APPLICATION REQUIREMENTS; AUTHORIZING TRANSFER OF DELINQUENT CHARGES TO ANY OF AN APPLICANT'S PRESENT ACCOUNTS AS A PREVIOUS BALANCE; PROVIDING FOR INTEREST PAYMENTS ON ALL DEPOSITS; ESTABLISHING CERTAIN FEES, CUSTOMER AUTOMATIC PAYMENT INCENTIVES AND CHARGES RELATING TO UTILITIES SERVICE AND BILLING; PROVIDING THAT CONFLICTING RESOLUTIONS ARE REPEALED; PROVIDING AN EFFECTIVE DATE.

Section 1. Application for Service.

- (A) Application for utility service(s) shall be made on forms furnished by the City of Lake Worth and shall constitute an agreement by the customer with the City to abide by the rules of the City with regard to its services of electric energy, water and sanitary sewer. Application for service(s) requested by verifiable firms, partnerships, associations and/or corporations shall be tendered only by their duly authorized agents and/or local representative and the official title of such parties shall be signed to the application.
- (B) A duly authorized agent shall mean a person listed on the organization's current business charter and/or articles of incorporation.
- (C) A local representative shall mean a person authorized by the firm, partnership, association and/or corporation by formal action by the governing body or by a duly authorized agent of the organization.
- (D) The authorized agent and/or local representative shall provide copies of the incorporation certificate, minutes of the meeting of such organization that names those officers and agents that may act on behalf of the organization. In addition to the aforementioned requirements, the local representative shall provide an original letter from an official of the organization named in the minutes to bind the organization to the service contract.
- (E) The application form shall include the following statement concerning collection charges:

I/we agree to reimburse the City for reasonable attorney's and collection fees if this account is placed in the hands of an attorney for collection.

- (F) All applications shall include the name and social security number of the applicant. Applications made by co-holders of the account(s) shall include the names and social security numbers of all of the parties and the account established shall be joint.
- (G) Applications shall be denied by the City of Lake Worth if the application submitted fails to include all of the information requested, and/or the applicant(s) fail to sign it.
- (H) If after accepting an application, it is found to contain information that proves to be false, or has misleading representations, when investigated by the City of Lake Worth or its agent(s), utility services may be refused or discontinued until the correct information is provided.
- (I) The City of Lake Worth shall require of all applicants for utility services, proof of identification and proof of accuracy of identifying data including drivers license numbers, federal tax numbers, social security numbers, etc. requested on the application.
- (J) The City of Lake Worth may require proof of ownership, lease, or rental of any property for which utility service(s) is requested.
- (K) Subject to the exceptions set forth in Section 4, paragraph (C), of this Resolution, new residential customers requesting initial connection of utility service(s) must appear in person at the utility's customer service office to make application for service(s) and pay the appropriate deposit(s) prior to the physical connection of the utility service(s).

Existing customers or past customers wishing to re-establish utility service may do so via telephone call, provided they supply their social security number and any additional information reasonably requested by the City, and that they satisfy the requirement for deposit(s), subject to the exceptions set forth in Section 4, paragraph (C) of this Resolution.

Section 2. Refusal or Discontinuance of Service by City.

As applicable, the City may refuse or discontinue service under the following conditions:

- (A) For falsification of the customer's application for service.
- (B) For non-compliance with and/or violation of any State or City law or regulation governing electric service.
- (C) For failure or refusal of the customer to correct any deficiencies or defects in his wiring and/or equipment which are reported to him by the City.
- (D) For the use of energy for any other property or purpose than that described in the application.
- (E) For failure or refusal to provide adequate space for the meter and service equipment of the City.
- (F) For failure or refusal to provide the City with a deposit to insure payment of bills in accordance with the utility's regulation. (See Paragraph (I), below).
- (G) For neglect or refusal to provide safe and reasonable access 24 hours a day to the City for the purpose of reading meters or installation, inspection, maintenance and removal of equipment owned by the City.
- (H) For failure or refusal to grant or cause to be granted to the City, without cost to the City, all rights, easements, permits, privileges and rights-of-way which, in the opinion of the City, are necessary for the rendering of service to the customer.
- (I) For non-payment of bills or non-compliance with the City's rules and regulations. In the event a service is disconnected for non-payment of billing under Section 2., paragraphs (F), (I), (J) or (K), full payment of the customer's total outstanding balance and re-connection fees will be required prior to re-connection of the service.
- (J) For non-payment of prior bills incurred by the customer for service at any one or more locations. (See Paragraph (I), above).
- (K) For non-payment of prior bills incurred by a previous customer, provided, that the current applicant or customer occupied the premises at the time the prior bills were incurred and the previous customer continues to occupy the premises. (See Paragraph (I), above).
- (L) Without notice in the event of a condition believed by the City, or other governmental agency having jurisdiction within the service area, to be

MEMORANDUM OF INQUIRY

To: Steven Cullen, Executive Director
From: Anthony C. Bennett, Investigator
Re: C15-008 - Michael Bornstein, City Manager, City of Lake Worth (City)

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via a sworn complaint filed by Mr. Joel Rutsky (Complainant), on March 23, 2015. The Complaint was properly notarized and hand delivered to the Commission on Ethics (COE) office on March 26, 2015.

Attached to the sworn Complaint was a typed letter with no addressee listed. In addition, the letter contained no date or time stamp. A screenshot copy of a City of Lake Worth utility requisition and a copy of Resolution 18-2008 from the City's procedure manual also were included within the complaint support documentation.

In the letter, it was alleged on March 12, 2014 at 11:05am, electric service was disconnected at 2417 North Federal Highway, Lake Worth Florida 33460 due to nonpayment of the utility bill. That same day, a work order was generated to reconnect electric services at the same address. On the work order, within the Comments Section, there was an order of instruction to "Reconnect per City Manager". The letter alleged there was no payment made at the time the work order was generated, and the account still had a listed outstanding balance of \$430.56.

It was alleged the above outstanding balance, plus all associated reconnection fees, should have been paid prior the generation of the reconnection work order and prior to service workers actually reconnecting the utilities. This mandate is in accordance with City Resolution 18-2008 Section 2: Refusal or Discontinuance of service by City, Paragraph (I).

Complainant alleged the above property address is owned by Mayor Pamela Triolo. Complainant alleged Triolo may have circumvented the reconnection process by asking the City Manager to have the utilities restored prior to payment of the bill. By contacting Lake Worth Utilities directly, City Manager Michael Bornstein (Respondent) may have assisted Triolo in circumventing the required reconnection process, which would be a "violation of the Code of Ethics".

The following documents were provided with the Complaint and submitted to the investigative file:

- **Documents provided by Complainant**

1. Anonymous Letter outlining the allegation(s) made. (1 page)
2. Screenshot copy of a City of Lake Worth requisition. (1 page)
3. Copy of City of Lake Worth Resolution 18-2008. (3 pages)

- **Applicable Law**

The Following section of the PBC Commission on Ethics Ordinance establishes jurisdiction in this matter:

Sec. 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

The following portions of the PBC Code of Ethics ordinance are relevant to this matter:

Section 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "*employee*" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county... The term "official" shall mean members of the board of county commissioners, *a mayor*, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity. (Emphasis added)

As the City Manager for the City of Lake Worth, Michael Bornstein is under the jurisdiction of the Palm Beach County Code of Ethics and the COE.

Sec. 2-443. Prohibited conduct.

- (b) ***Corrupt misuse of official position.*** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

- **Inquiry:**

Respondent is the current City Manager for the City. As City Manager he oversees the City's various departments and reports directly to the City Commission and Mayor. While reviewing documentation from a related case, it was discovered that Respondent, along with Mayor Pamela Triolo, may have given a directive that was in opposition of a City Resolution, and may be in violation of the PBC Code of Ethics.

On Tuesday, May 20, 2015, at 10:05am, I took a taped statement from Mr. Joel Rutsky (Complainant). Complainant was sworn in and gave permission to be recorded. Below are the details of that interview:

Complainant stated his full name and advised that his occupation as the Revenue Protection Supervisor for the City of Lake Worth Utilities. He stated his work address is 1900 2nd Avenue North, Lake Worth FL, 33461. He said he supervises the meter shop for Lake Worth Utilities. He oversees twelve (12) employees that conduct day to day work for Lake Worth Utilities that range from reading meters, turning electric and water meters on and off, disconnection of power and water for non-payment, reconnection of power and water after payments are made, keeping track of work orders generated for those types of service calls and connection of electric and water services for new customers.

Complainant stated the City has its own in-house utilities department that supplies power and water. He advised the current chain of command for the utilities department is as follows: Interim Utilities Director, Walter Gill, is currently in charge of the department and reports to City Manager, Michael Bornstein, who reports directly to the Lake Worth City Commission and Mayor.

Complainant advised he knew Pamela Triolo as the Mayor for the City and said she was elected into that position approximately two (2) years ago. He said she was a resident of Lake Worth and provided her home address. When Complainant was asked if he knew Michael Bornstein, he said he knew him to be the City Manager of Lake Worth and a City resident.

Complainant advised he filed the complaint because on March 12, 2015, a work order was generated to disconnect electric services at the address previously provided for nonpayment of the utility bill. He stated the address was the residence of Mayor Pamela Triolo and that a service technician went to the address to disconnect the power on March 12th at 11:05am in accordance with the work order. Complainant explained that when a disconnection occurs, the meter is pulled out of the housing, a device is placed on the back of the meter to stop the flow of electric and the meter is placed back in the housing so that it always stays at the original location.

When he saw the technician the next morning, the technician said he was unable to put the meter back in place after disconnection because the house had a standby generator attached, which kept turning on and supplying an alternate flow of electricity through the meter housing and ultimately to the residence. Complainant said that service technicians are trained to avoid houses with standby generators because the added electricity could cause a back flow and possible explosion. He said that it is a safety issue for the service technician, and another type of technician disconnects the power if a house is identified as having a standby generator.

Complainant advised he checked the computer system after speaking with the technician for a telephone number to call the resident and explain why there was no electric meter and the steps they would need to take to have it returned. At that time, he noticed that the same day the power was disconnected (March 12, 2015), another work order was generated to reconnect the service. Under the "Comments" section of the second work order, it said "Reconnect per City Manager." He then checked to see if the bill had been paid, and said as per a City Resolution, there is a requirement that an unpaid utility bill be paid prior to reconnection of services. He found the electric bill had not been paid, but electric services had been restored. He said at the time he checked, there was still an outstanding balance of \$430.56. He reiterated he checked the system on March 13, 2015, the day after service was initially disconnected and then restored, and the balance had not been paid. Upon further investigation, Complainant advised he found that the night crew had gone back after normal business hours to reconnect the electric service based on the second work order generated. He advised that service technicians do not have access to the billing system and conduct all their business based on work orders they receive.

Complainant said he then went to the house because the first technician advised there was no signage posting a warning about a backup generator, and according to City code, there should be signs warning service technicians about a backup generator in case they have to work with the electric meter for any reason. He said when he went to check for the warning signs himself and to advise the homeowner that the signs needed to be posted per City code, he walked into the yard and realized whose house it was.

Complainant said there were numerous "Pamela Triolo for Mayor" signs on the front lawn, and put "two and two together" and realized it was her house. This was confirmed by another city employee who knew where the Mayor lived. Complainant said he had no idea it was her house prior to going to check for the generator warning signs. He said he knocked on the door but there was no answer, then followed up with the electrical

inspector in the City Building Department to let them know about the generator. He did so because they are usually the ones that notify the owner that they are not in compliance and needed to post signs and do whatever else needs to be done to comply with city code. In this case, Respondent's current generator issue would be considered a code violation.

Ultimately, he said he believed the Mayor had come home, realized the power was off and called the City Manager to get it turned back on. Then the City Manager called utilities and had a work order generated for reconnection, which is why the second work order says "reconnect per City Manager" in the Comments section. The electric was disconnected the morning of March 12, 2015, reconnected the evening of March 12, 2015 and the payment was finally made the next day March 13, 2015, which is against the City Resolution. Complainant quoted Lake Worth City Resolution 18-2008, stating once the power is disconnected, it cannot be reconnected unless the past due bill and reconnection fees are paid.

Complainant advised normal practice is if power is disconnected in the morning and the payment is made along with the \$35 reconnection fee, a work order would be generated that same morning to reconnect services. They try their best to get the power restored that day. If the payment is made after regular business hours (6pm), there is a \$10 night fee added to the regular reconnection fee for a total of \$45. All past due amounts, plus the reconnection fee, and the night fee would normally have to be paid for the service to be reconnected after hours. He said the second work order was generated for reconnection at 6:10pm on March 12, 2015 and would have been considered an after hour's call.

Complainant said Service Technician Gonzalo Aguilar disconnected the power to Respondent's house on March 12, 2015 and said Service Technician Lee Walker restored power the same day.

I read through Lake Worth Resolution 18-2008 with Complainant. He said that the resolution is currently what the City uses when dealing with utilities disconnection and reconnection. He advised he is aware that deviations to the policy have been made in the past where a Commissioner or the City Manager would call Customer Service to have utilities restored, but he was not sure about the details of why it had happened. He also advised that this is the first time he has been aware of any deviations from the policy in the past few years. Even in those cases, he advised he has never seen power restored without at least some of the balance paid on an outstanding bill. He went on to say that he was unaware if there was a medical issue or a childcare issue that may have been present in this instance where there would have been a need to reconnect the utilities.

Complainant said Ms. Donna Ryan-Ruiz is the Customer Service Manager and would know who placed the City Manager comment on the reconnection work order. He said usually the Customer Service Reps would input information into the comments section as a means of documentation on work orders if there is an extenuating circumstance or if they were bypassing a protocol such as who authorized what and why. Complainant advised even if he was a city employee who lived in Lake Worth, he could not just call customer service and have his utilities restored without paying. Complainant advised a service technician would not automatically restore power without some kind authorization from a supervisor. The only other instance where power would be restored is with a letter of commitment from an assistance agency promising the City to pay the bill, but that he was not aware of any letter of commitment for this issue.

When Complainant was asked if the utility account was in the Mayor's name, he advised that the account is listed as Michael Clahane, who is the Mayor's husband. He also noted the Mayor ran for office using her maiden name not her married name. He advised the calls into the Customer Service employees are not recorded to his knowledge. Complainant advised he would send me the payment information for Respondent's account to verify the fees were paid the next day. He also provided the original disconnection and reconnection work orders for the file. He had nothing else to add to this inquiry.

The interview was ended at 10:33am the same day.

On Thursday, May 28, 2015, at 10:55am, I took a taped statement from Ms. Donna Ryan-Ruiz (Witness) at Lake Worth City Hall. Witness was sworn in and gave permission to be recorded. Below are the details of that interview:

Ms. Ryan-Ruiz identified her position as the Customer Service Manager for the City of Lake Worth Utilities. She advised her daily duties include overseeing the customer service department, customer billing, resident disconnection and reconnection payments, setting up and disconnection of new utility services, and supervising a staff of thirteen (13) individuals. Of the thirteen staff members, she stated eleven (11) actually handle customer and resident phone calls. She stated that she also handles customer and resident phone calls on occasion.

She explained the process for disconnection and reconnection of utility services as follows:

1. The customer is required to pay the delinquent account in full, per policy, prior to reconnection.
2. This amount includes any previous balance, current balance, and a reconnection fee.
3. The reconnection fee is \$35 for the first time. If the utility is disconnected again within a year, the fee increases to \$90.
4. There is also an after hour reconnection charge of \$45 for any calls made to the 24-hour customer service call-in system after 5pm. The customer must agree to immediately pay the after-hours charge and all delinquent amounts prior to the utility being restored.
5. Payments can be made over the phone through use of credit cards during normal business hours.
6. For payments made after hours, the caller is directed to go to the City website, log into their electronic account and make the payment electronically.
7. Once payment is received by the City, a reconnection work order is generated. During business hours the Customer Service Representative issues the work order, and after business hours the work order is generated by the computer system.
8. All generated work orders are dispatched to the Field Service Workers, who reconnect the utility services. She noted that she is not in charge of the service workers who actually reconnect the utility.

When Ms. Ryan-Ruiz was asked if there were any circumstances where a utility would be reconnected absent a payment, she said "No", and added the only instance where this would be possible is if there was an exception agreement between the City and the customer to repay the past due amount and the reconnection fee. She also advised there are assistance agencies the City deals with that work with customers who may not have the financial means to restore utility services. In that case, the assistance agency would issue a note to pay on behalf of the customer. With the note from the assistance agency, a reconnection work order is generated and the utility service is restored. She advised the customer is responsible for the reconnection fee, while the agency covers the amount needed for reconnection.

Ms. Ryan-Ruiz advised if the customer relays that there is an extenuating circumstance, such as a sick child or medical issue, they are referred to an assistance agency. She noted the main agency the City deals with is Community Action, which is an assistance agency through Palm Beach County. If a customer is referred as being in need of utility restoration and they are dealing with a child or medical issue, that customer becomes a priority and the process to restore the utility beings immediately.

Ms. Ryan-Ruiz noted the policy is primarily followed in all disconnection and reconnection instances. She did state there may have been a few variations in the past, but they were all either based on an extenuating circumstance or reviewed on a case by case basis. In those cases, outside of collecting all monies in full, they may have just made an exception to collect previous balances.

When Ms. Ryan-Ruiz was shown a copy of City of Worth Resolution 18-2008, she advised she was familiar with it and understood its contents. She acknowledged she and her employees follow it when handling disconnection and reconnection of utilities.

When Ms. Ryan-Ruiz was asked about Mr. Michael Bornstein, she identified him as the City Manager. She was then shown a screenshot copy of a work order, and identified it as a reconnection of service work order. She acknowledged that with that document, the City authorized the utility service to be reconnected. She acknowledged she generated this particular document, Work Order #673894, and authorized electric service restoration at the address listed (2417 North Federal Highway, Lake Worth, FL). She advised she did not know whose address it was at the time she generated the work order, but is now aware that the Mayor lives there.

Ms. Ryan-Ruiz was asked about the information in the comments section of the reconnect order. She stated the phrase "Reconnect per the City Manager" was typed in that section. She said she entered that phrase in the comment section because the Respondent called her office telephone and told her to have the power restored to that address. She stated the City phone system does not record phone calls or document calls coming into or out of the Department, so there would be no documentation of the call that she received from Respondent. She said the call was received around 6pm, which would be considered after hours. She also believes he told her there was a problem paying on line, but could not be sure of that statement.

Ms. Ryan-Ruiz advised she reports directly to the Utility Director. She did not know if Respondent called the Utility Director prior to calling her, and said she did not question Respondent as to why she was being told to generate a reconnection work order. She stated she did check to see if the bill had been paid prior to generating the work order and found that it was not paid at that time. She stated Respondent gave no indication when the bill would be paid. She then said she did not call Respondent back to advise him that the bill had not been paid.

She advised when Respondent initially called after asking the power be restored at the provided address, he told her there was no meter attached and asked her if it was common practice for the service worker to remove the meter. She told him that she did not know if it was common practice for the workers to remove meters and said there was no note from the service worker so she told him she could not provide information as to why the meter was missing or where it was.

When Ms. Ryan-Ruiz was asked if she knew who Pamela Triolo was, she identified Triolo as the Mayor of Lake Worth. She was then asked to read the name on the work order. She read the name Michael Clahane. She stated she did not know who Michael Clahane was. When asked if Triolo ever called her directly to have the power reconnected, Ryan-Ruiz said "No", and also said she could not recall if the power was ever disconnected at that address previously. She later advised that Respondent came to her the following day and told her this was the Mayor's account. She told Respondent that she was not aware that the account belonged to the Mayor and said there was no further discussion regarding the matter.

Ms. Ryan-Ruiz was asked if anything was abnormal or stood out regarding the request by Respondent to have the power restored at this address. She said "No," during the entire process, there was nothing that really stood out. She said Respondent dealt directly with her regarding this issue and never involved any of her employees.

Ms. Ryan-Ruiz advised after the second conversation with Respondent, she went back to check the account to see if had been paid. She said it was paid "sometime in the morning" by way of over the counter payment.

I would note during the interview, Ms. Ryan-Ruiz checked her database and advised the power was never disconnected at this address in the past.

Ms. Ryan-Ruiz advised she had no other information to offer and the interview ended at 11:13am the same day.

I reviewed the Palm Beach County Property Appraisers website to see if Michael Clahane was listed as a property owner for the provided address. Under the last name Clahane, I saw the first name "Pamela" listed as the sole property owner for the provided address. I did not see the first name Michael listed. In comparing the listing from the website to the address listed on the reconnection work order, I found that Michael and Pamela Clahane both reside at the address.

- **Documents provided by Investigator**

1. Property Appraiser Address/Name Search for Pamela Triolo. (2 pages)
2. Palm Beach County Property Address/Name Search for Michael Clahane. (3 pages)
3. Email from Joel Rutsky (Complainant). (1 page)

- **Recommendation**

After reviewing the background information, the documents submitted by Complainant, witness statements obtained during the inquiry, and the applicable law, I believe that if the allegations as stated are true, they would result in a violation of the PBC Code of Ethics §2-443(b), *Corrupt Misuse of official position* by Respondent. Therefore, it is my recommendation that this matter be found to be **LEGALLY SUFFICIENT** under Section 2-260(a)(2), ***Procedure on Complaints Filed, Legal sufficiency of complaints***, of the PBC Commission on Ethics Ordinance and request that a formal investigation begin into this sworn Complaint.

Legal sufficiency is defined as:

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

Submitted by:



Anthony C. Bennett, Investigator
PB County Commission on Ethics

7/30/2015
Date

Reviewed by:

MEB
(Initials)

7/31/2015
Date

PALM BEACH COUNTY COMMISSION ON ETHICS
LEGAL SUFFICIENCY DETERMINATION

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C15-008 – Michael Bornstein, City Manager, City of Lake Worth

The background and applicable law sections documented in the Memorandum of Inquiry are incorporated by reference into this Legal Sufficiency Determination.

- **Analysis**

In order to find a violation of §2-443(b) *Corrupt Misuse of official position*, it would have to be alleged and established that a person under the jurisdiction of the Code of Ethics used his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Respondent is in fact the City Manager for the City. According to statements obtained from Complainant and Witness Donna Ryan-Ruiz, it is reasonable to believe Respondent was contacted by Mayor Pamela Triolo regarding her power being disconnected at her place of residence. In turn, Respondent contacted Lake Worth Customer Service Manager Donna Ryan-Ruiz directly in an effort to have the power restored at the Mayor's place of residence, while bypassing City Resolution 18-2008. Based on statements obtained, the payment for all past due amounts on the account had not been received by the City prior to the Respondent's call and ultimate order for reconnection of service. The resolution specifically outlines the steps a customer of Lake Worth Utilities would need to take in order to restore utility services due to nonpayment of their utility bill. The resolution reads as follows:

RESOLUTION NO. 18-2008 OF THE CITY OF LAKE WORTH, FLORIDA

Section 2. Refusal or Discontinuance of Service by City.

As applicable, the City may refuse or discontinue service under the following conditions:

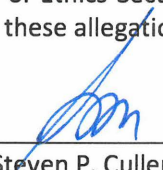
- (I) For non-payment of bills or non-compliance with the City's rules and regulations. In the event a service is disconnected for non-payment of billing under Section 2., paragraphs (F), (1), (J) or (K), full payment of the customer's total outstanding balance and re-connection fees will be required prior to re-connection of the service.

Respondent may have violated the Palm Beach County Code of Ethics and used his position and influence as City Manager to circumvent the City's reconnection process by contacting the Customer Service Manager Donna Ryan-Ruiz to request the reconnection of electric to the Mayor's residence prior to payment of her overdue electric utilities account.

- **Conclusion**

Based on staff recommendation, information presented by Complainant and sworn testimony from witnesses, there is **LEGAL SUFFICIENCY** to believe that, if true, Respondent, Michael Bornstein, the City Manager of the City of Lake Worth, may have violated the Palm Beach County Code of Ethics by using his official position or office or resource which was within his trust, to corruptly secure a special privilege, benefit, or exemption for another and not available to similarly situated members of the general public in violation of Code of Ethics Section 2-443(b), *Corrupt misuse of public office of employment*. Thus a formal investigation into these allegations is warranted.

BY:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
PBC Commission on Ethics



Date

PALM BEACH COUNTY COMMISSION ON ETHICS
REPORT OF INVESTIGATION

To: Steven P. Cullen, Executive Director
From: Anthony C. Bennett, Investigator
Re: C15-008 – Michael Bornstein, City Manager, City of Lake Worth

The documents and information provided in the Memorandum of Inquiry in this case is incorporated by reference into this Report of Investigation.

- **Investigation**

On Wednesday, July 8, 2015, at 08:03am, I took a taped statement from Mr. Michael Bornstein (Respondent).

The interview with Mr. Bornstein was conducted at Lake Worth City Hall, located at 7 North Dixie Highway, Lake Worth, FL 33460. Respondent elected to give this interview voluntarily, was aware that the interview was being audio recorded, and agreed to do so under oath. Prior to the interview, I obtained Respondent's name, address telephone number and public email address for identification and contact purposes

Respondent was sworn in and gave permission to be recorded. Below are the details of the interview:

Respondent stated he is the current City Manager for the City of Lake Worth, and has known Mayor Pam Triolo for just over three years, or the length of his employment as City Manager. He stated all employees working for the City either directly or indirectly report to him as the "CEO" of the organization or city, which also encompasses Lake Worth Utilities. Respondent advised he reports to the five (5) elected city officials, the Mayor and the City Commission.

Respondent advised he was "somewhat" familiar with the Lake Worth Utilities disconnection and reconnection of service process. He advised he unsure of the detailed parts, but knew there was a process. Respondent was asked if he was familiar with the Lake Worth Utilities policy and procedures and said he primarily "relies on staff" to know and comply with policies, but stated he knew where the policies were and how to access them if needed. He advised he could not recall directly reading any policies as it relates to disconnection and reconnection of services. He stated given the complexities of the wide varieties of laws and, etc., it was not something he was well versed in.

I showed Respondent a copy of City of Lake Worth Resolution 18-2008, Procedures Regarding Electric Services. Respondent read aloud the section regarding disconnection of services for non-payment of bill. He read, "Full payment of the customer's total remaining outstanding balance and reconnection fees are due prior to reconnection of the service." He stated he was not one-hundred percent sure that's what was required, but understood it as read. Respondent advised he lives in the City. It was part of his employment contract to live within the City limits. He stated he has never had his utilities disconnected, so he was not personally familiar with the reconnection process.

When Respondent was asked about the event that happened on March 15, 2015, he said he roughly remembered, and went on to say that he had gone to Tallahassee with Mayor Triolo to attend the State Legislative Session. He said they drove up together a few days prior, and drove back together on March 15, 2015. He said he remembered conversations he had with Respondent during the drive where Mayor Triolo was complaining about the utilities payment process in relation to her debit card. He said Triolo told him there was a few times in which she attempted to make a payment using her debit card, where the payment (monies) had come out of her bank account, but there were issues with the City's acceptance of the payment. Respondent stated Triolo advised she had made a payment before the trip to Tallahassee, and she was not sure if it had gone through properly, even though the monies were deducted from her bank account. Triolo told him she had numerous problems with the service in the past and had hoped everything would be alright upon their return.

Respondent stated he was not familiar with that process because he does not pay with a debt card. His payment is made directly to Lake Worth Utilities through the automatic bill pay process through his bank. He schedules the payment to be made and it is deducted directly from his bank account without the use of a debit card. He stated the way Mayor Triolo pays, he would think the debit would be like a check and if the monies are deducted, he would think everything would have gone through with no problem. Respondent stated this conversation between him and Mayor Triolo was on the way up to Tallahassee.

When they got back to the City, Respondent dropped off Mayor Triolo at her home. A few minutes later, he received a telephone call from her in which she stated her power had been cut off despite her making the payment. He stated he felt he needed to straighten this issue out due to extenuating circumstances. He advised the City's utilities process had been in transition since his tenure at Lake Worth, including the payment process. He said while the rules and regulations are clear, the actual process has produced some gray areas that needed to be addressed.

Respondent stated that he figured they had just gotten back from Tallahassee, the offices were closed, and this is something that could be dealt with in the morning. He was confident Mayor Triolo was not going to leave town and not make good on the bill if it wasn't actually already paid. He said he either called or sent an email (he could not recall which one) to Donna Ryan-Ruiz, the Lake Worth Utilities Customer Service Manager regarding the situation and provided the Mayor's address. He figured Mayor Triolo would ensure everything was taken care of after the issue was resolved. Respondent advised he later learned there was some form of "glitch" in the process which is why her payment was rejected.

Respondent reiterated at the time of the issue, he felt confident the information provided by Mayor Triolo was trustworthy enough to make this judgment call. He again felt the debit card was like a check and if you see money come out of your account, you assume the actual payment was made. He advised there was nothing in their policy that describes what procedures needed to be taken when dealing with a specific "glitch" in the system, so he felt comfortable making this call as he had done with other accounts. His aim was to be more customer friendly when dealing with these types of issues.

Respondent referenced a previous incident that was somewhat similar. He stated there was an apartment complex near City Hall on Dixie Highway where the owner of the complex had not paid the utility bill. The tenants of the apartment complex had been paying their portion of the bill to the owner, who was then supposed to forward the payment to Lake Worth Utilities. Due to the owner not paying, the tenants were faced with disconnection of service. He stated some of the tenants were handicapped and others were veterans. Even in this case, he understood the policy states that if you do not pay the bill, your services will be disconnected. He felt the situation was unclear enough to where he could step in and make the call to continue service despite the non-payment of the bill, at least until they could find other means to resolve the issue.

Respondent advised he has gotten calls regarding issues such as this during the time he has been City Manager. He stated he has tried to stay on the side of good customer service while they were in the process of fighting the many issues they were having within the Utilities Department. When he started as City Manager, customer service was the biggest source of complaints and problems for the City. He needed to spend a lot of time and effort to improve customer service; situations like the apartment complex and even Mayor Triolo's case, fell along the lines of good customer service representation. He stated the process still is not at the level where he feels comfortable, but he will do what he can to continue to improve it, even if it means making judgment calls like the one he made for Mayor Triolo. He reiterated that he would have made the same call for any resident facing a similar circumstance. He stated while he understood the policy as written, he felt the extenuating circumstances in Mayor Triolo's case was more or less a gray area within the policy and procedures of Lake Worth Utilities that needed to be directly addressed.

When Respondent was asked if he remembered if it was an email or a call that was placed to Ms. Donna Ryan-Ruiz, he said he believed it was an email because he was trying to figure out the whole debit card issue. Why the process would show the payment made, the money be removed from the account, and still display that the payment had not been made. He advised he was trying to get a better understanding of the process. He said he would look for the email and forward it to me.

Respondent said he never checked to see if the payment was made. He just assumed based on the conversation he had with Mayor Triolo that the issue was being resolved, which included dealing with owed monies. His biggest issue was figuring out where the breakdown was in the process. He said he was trying to find out if the "glitch" was at PNC (the bank) or with them (Lake Worth Utilities). He noted that some form of "ping" occurs where the bank account is contacted, the money is withdrawn and it will sit in limbo for about three to four days then be credited to the utility account. For whatever reason, the money will not be released and the funds are held until the issue is resolved. He said they were checking to see if the information was incorrectly entered, or a zip code issue, or maybe even a debit card security code issue. Whichever it was, the information was not lining up with the information in the system, and the transaction was being denied. Once denied, the "Invalid Transaction" message shows and the money is then released back into the (Mayor's) account. He stated they are struggling with how to resolve this issue, other than to not use a debit card, or pay by check. He advised he just was not sure.

Respondent again stated, as far as he remembered, he and Mayor Triolo had the conversation on Monday of that week as they were driving up to Tallahassee and returned on Wednesday to her power being disconnected. Based on their conversation, he understood that the payment had been made and the power was disconnected anyway. Therefore, he acted on that knowledge of the situation. The fact that she is his "boss" did not factor into the decision that he made to have the power restored and she did not "order" him to have her utilities resorted.

Respondent stated of course he could not do this for everyone, but if there were cases such as this that he knew about, he would make every attempt to keep utilities on until the issue was resolved. He advised he will attempt to give the customer the benefit of the doubt. He stated the payment process is still a work in process and there are some things that are required, but the city does not have the necessary funds to make the purchase. However, it is still much better now than what it was when he started.

Respondent had no other information to add to this investigation.

The interview was concluded at approximately 08:25 A.M.

On Thursday, July 16, 2015, at 01:00 P.M., I took a taped statement from Mayor Pam Triolo (Witness).

The interview with Mayor Triolo was conducted at First Impressions Creative Services, located at 120 North Federal Highway Suite 201, Lake Worth, FL 33460. She elected to give this interview voluntarily, was aware that the interview was being audio recorded, and agreed to do so under oath. Prior to the interview, I obtained her name, address telephone number and public email address for identification and contact purposes

Mayor Triolo was sworn in and gave permission to be recorded. Below are the details of that interview:

Mayor Triolo advised she is the current Mayor of the City of Lake Worth. She was elected to this position approximately three (3) years ago. She stated she is also a current resident of the City and provided her home address which has been added to the file). She advised her "place of residence" is currently titled in her married name of "Clahane".

When Mayor Triolo was asked if she was familiar with an "incident" that occurred on Marcy 15, 2015, in which her electric power/utilities were disconnected at her residence, she said "yes, I am familiar." She said she had been having an issue with her electric bill for approximately six (6) months prior to the incident. According to her, this particular issue was brought up publicly in City commission meetings. She advised there is/was a problem with the City's on-line pay module, which is what is used to pay the bill for Lake Worth Utilities.

Mayor Triolo stated when she pays her bill using the module she enters all of the requested data in the available fields, and sees that the payment goes through because monies are deducted from her personal account. Then, she would get a message saying the payment has been declined, despite the fact the money has been deducted from the account. In order to verify, she went to log into her personal bank account and saw the transaction was made, but was being held in a "pending" status. The money was then tied up in the pending status and unavailable to her for five (5) to seven (7) business days. She advised she confirmed that there was money available for the payment; she just was not sure as to why the payment kept being declined.

Mayor Triolo stated she brought it up in previous commission meetings because it had been happening to her on a frequent basis. She said that if it had been happening to her, she was sure that it had affected other members of the community and wanted the problem fixed. She stated the billing problem was not just with electric utilities, but water and sewage as well. She gave an example of the bill being \$500. If this money sat in a pending status for up to seven (7) days, a resident would have to come up with another \$500 to have their utilities restored. She stated this was "unacceptable and needed to be fixed." She stated other residents complained the portal was an "abomination" and it kept "messing up or screwing up," but she had no information about anyone specific that had the same issue.

Mayor Triolo stated she called PNC Bank (her personal bank) regarding her issue, and was told that the issue was with the City. She said she then contacted the City, who in turn told her it was a problem with the bank. Unsure of where the issue was, Mayor Triolo brought up the problem at multiple meetings asking the City Manager to look into it and have it rectified. She stated she took other steps as well. She advised she called the Utilities Department and had them walk her through the entire payment process, which included each step, password changes, inputting of debit card information, and in the end the problem was still occurring. She stated they were physically on the phone with her and the information still came back as declined. She stated Lake Worth Utilities told her she would have to wait and do the process again in a "couple of days."

Mayor Triolo stated she and the City Manager had to go to Tallahassee for a legislative session and rode together. Mayor Triolo went on to say that during the return trip, her husband called and advised that the power was off at the house. She said she told him that she had paid the bill a few days prior, and it was still saying pending in her bank account. She said she was relying on the information she received from Lake Worth Utilities telling her she could rectify the issue at the end of the week, or when she returned from Tallahassee.

When Mayor Triolo returned home she realized the power was off and the actual meter was pulled for some reason. She said that was not the proper protocol to be followed per City Ordinance. She advised the meter is only pulled if someone is found to be tampering with it or if it is an older meter that is being replaced. She advised when the worker came to restore the power, he asked why the meter was pulled. The worker had to leave again to get another meter to finally restore the power. Mayor Triolo emphasized that the payment still said pending in her bank account during that time.

Mayor Triolo was asked if she had a generator attached to the house, and said yes, but was not sure if it would have worked properly because it had not been serviced in some time. She stated they have a generator attached to their home to keep medicine refrigerated due to her husband's medical condition.

Mayor Triolo stated she did call the City Manager to inform him of what was happening because she was concerned about the power being cut off. She advised they spoke on this very issue during the drive to Tallahassee where she stated to the City Manager, "I hope everything is ok with my power." She stated they returned from Tallahassee after business hours, so she could not go into the customer service and pay. She also stated due to the pending payment status, online was not an option either. According to her, the City Manager did call the Lake Worth Utilities Customer Service Department to inquire about her power. She advised she was not sure what he told them but he was aware that she had made her payment. She stated the power was ultimately turned on a few hours later that same night.

Mayor Triolo advised her husband went to Lake Worth Utilities to physically make the payment first thing the next morning. She stated she believed there was a disconnection fee that was charged to the account. She stated that her husband just paid whatever amount Lake Worth Utilities asked him to pay without question. She stated they just paid it to make sure the issue was handled, and never sought to get reimbursed for the reconnection fee.

Mayor Triolo said she continues to deal with payment problems while using the portal, and that she and Donna Ryan-Ruiz, Lake Worth Utilities Customer Service Manager, are supposed to meet in her personal office (after hours) to try and determine the cause of the problem. Mayor Triolo stated Ryan-Ruiz advised the problem could be an Apple/Mac issue where information is not being either sent or received properly, since that is the type system she uses to complete the process. She also said there are network updates that need to be done, which may also be part of the problem.

When I asked Mayor Triolo if she could recall any instances where power was reconnected for a customer prior to payment being made, she said "yes", there was a motel on Dixie Highway where the residents had been paying the utility bill to the landlord, but the landlord was not paying the bill to Lake Worth Utilities. Instead of cutting the power to residents, which included children and veterans, they kept it on until the issue could be rectified. She also recalled individuals who had health related issues and restaurants in the area that were behind, but their power was left on or reconnected until a deal could be worked out. She stated she could not recall where the documentation of these incidents was located, but she would try and find it.

Mayor Triolo advised she would try to get copies of her payment transaction and her bank account which showed the payment as pending. She also stated she would locate and provide copies of documents showing she brought up the issue in previous Lake Worth Commission meetings. Mayor Triolo added she has requested the City Manager and Lake Worth Utilities to come up with a plan to fix the issue and ones similar in nature. She stated she is not sure what they are working out, but knows a plan is in the works.

The interview was concluded at approximately 01:31 P.M.

As a follow-up to her interview, Mayor Triolo forwarded a copy of a transcript from an open Lake Worth Budget Work Session which according to the date occurred on August 25, 2014. The session was called to discuss the upcoming Fiscal Year 2015 proposed budget. The excerpt forwarded by Mayor Triolo was regarding the Lake Worth Utilities electric rate and budget discussion. In a conversation between Commissioner Andy Amoroso, Mayor Pam Triolo and Commissioner Christopher McVoy, the number of people paying their utility bill on line was discussed.

Amoroso stated they needed to make sure the online bill pay process is updated and added into the business plan. Mayor Triolo followed up by stating the system needed to be "fine-tuned". She advised she continuously gets "knocked off" the system, her passwords are lost and she is forced to re-enter all of her information. Commissioner McVoy stated the same thing has happened to him as well. Mayor Triolo next advised that she has made payments, monies had been deducted, but realized days later that the payment had not gone through. She advised she reached out to Utilities to see what happened, and was told they did not receive the payment and she was then forced to make another payment ultimately tying up approximately \$800 due to having to make a double payment until her pending money was released or finally goes through.

I reviewed the 2014 Lake Worth City Commission archives and located the August 25, 2014 Budget Work Session which was located on the City of Lake Worth website. All of the information presented by Mayor Triolo regarding that meeting was verified. In addition, based on the "Roll Call" at this Commission meeting, Respondent was there during this exchange between the Mayor and several Commissioners.

As a follow-up to Respondent's interview, I exchanged several emails and phone calls with Respondent because he said he would be forwarding information that would corroborate some his statements about dealing with "several similar issues" in the past. As of this date, Respondent has not forwarded any of the information (emails, news articles, etc.) he referenced during his interview that he said would show him assisting other residents with similar utility issues.

However, I was able to locate a news article on the WPTV (Channel 5 News) website, published on August 13, 2014 by author Brian Entin, which outlined an example given by Respondent surrounding the Breezeway Inn located in Lake Worth. The article highlighted "Handicapped residents living in a Lake Worth Inn," that were "left with no electricity." It stated the residents paid Mr. Mike Diaz, one thousand dollars monthly in rent, which included utilities (electric bill). Mr. Diaz accepted the residents' money but failed to pay the Lake Worth Utilities bill.

The power was subsequently disconnected due to non-payment. Respondent stepped in and told city crews to restore the power because it was, "not fair to the people living there." Respondent advised the power had been disconnected four (4) times previously at the property. Due to the City having access to their own utilities department, Respondent advised he was able to step in and help because it was not right for them to suffer. He also stated in the article city officials would be working with the group to help them out.

- **Documents obtained during investigation**

In conducting the investigation into allegations made by Complainant, I obtained documents from other sources that are relevant. These included the following:

1. News article WPTV dated August 12, 2014. (2 pages)
2. Various email correspondence between this investigator and Respondent. (2 pages)

- **Analysis**

In order to ascertain if Respondent violated §2-443(b), *Corrupt misuse of official position*, it would have to be determined that Respondent used his official position or office, or any property or resource within his trust to corruptly secure or attempt to secure a special privilege, benefit or exemption for himself or others.

Based on a sworn statement given by Respondent and verified by Witness Pam Triolo, a conversation had taken place between the two during a business trip to Tallahassee. That conversation surrounded an on-going problem Mayor Triolo was having while attempting to make payments for her utilities through the online service. According to Mayor Triolo, she made the payment prior to the trip to Tallahassee and said "I hope they don't cut off my power" to Respondent. Upon their return, Mayor Triolo found out the utilities had been turned off. She admitted to calling Respondent directly to relay the issue. Respondent then made a telephone call to the Lake Worth Utilities Customer Service Manager, Ms. Donna Ryan-Ruiz.

Ms. Ryan-Ruiz, subsequently (based on her sworn statement) submitted a work order to have the power restored at Mayor Triolo's residence. On the work order she put in the comments section, "Reconnect per City Manager." Ms. Ryan-Ruiz stated it is common to place information in the comments section. The reconnection was completed later that evening after normal business hours.

During Respondent's interview, he stated he honestly believed the payment had been submitted based on his conversation with the Mayor. He also stated he was not sure what the issue was with the system had confidence the Mayor would rectify it. Mayor Triolo stated during her interview, the bill was paid immediately the next morning at the walk-in counter. Mayor Triolo advised she did not want the same thing to happen again and more monies be tied up while the payment was possibly not going through.

Respondent admitted to making the call to Customer Service, but stated he would have made the call for any resident based on what he knew about Mayor Triolo's situation. He advised he knew the online payment system for Lake Worth Utilities was an ongoing problem. He stated he was making efforts to ensure all customers were treated fairly when dealing with the Utilities Department. Respondent stated he was not ordered by Mayor Triolo to have the utilities restored, according to him it was the "right thing to do".

A news article outlining a similar situation was published approximately a year prior to this incident, in which Respondent made a similar call to have the power restored. This article verified some of the statements given by Respondent during his interview.

There was no discovery of evidence which showed Respondent or any other person personally benefitted by making the call to have the power restored at the Mayor's place of residence, in a manner that they were not entitled to benefit. There was also no evidence to suggest Respondent misused his office or position as City Manager by having Mayor Triolo's utilities restored. While the Mayor is technically his supervisor, he is also supervised by the other four (4) Commissioners.


In this case, the investigation did not find Respondent made a conscious effort to circumvent the restoration process to provide any special financial benefit to which he or anyone else was not entitled. There is insufficient evidence to show that Respondent or anyone else provided any improper "*special financial benefit*" in this case; because he has a documented record of assisting other Lake Worth residents who were dealing with similar situations, and he believed that Mayor Triolo was entitled to have her power on as she had properly paid her bill

using the online payment system. As the City Manager, Respondent was aware of the online payment problems and had ordered his staff to work on resolving it.

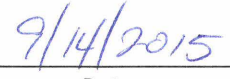
- **Recommendation**

Based on the above information, I recommend that a the COE Advocate file a recommendation for **NO PROBABLE CAUSE** in this matter, as there is no evidence that Respondent violated the PBC Code of Ethics by his actions.

Submitted by:



Anthony C. Bennett
PB County Commission on Ethics



Date

Reviewed by:



(Initials)



Date

Handicapped renters left without electricity after landlord is jailed

BY: Brian Entin (mailto:brian.entin@wptv.com)

POSTED: 11:13 PM, Aug 12, 2014

UPDATED: 4:59 PM, Aug 13, 2014

LAKE WORTH, Fla. - Handicapped residents living in a Lake Worth inn were left with no electricity on Tuesday after city officials say the owner of the Breezeway Inn didn't pay his electric bill.

"I pray to God it will be turned back on because I have nowhere to go," Basil Camilot said.

Camilot's electric wheelchair could not be charged because the power was turned off.

Camilot and almost a dozen others say they pay one thousand dollars a month in rent to live at the inn.

They say utilities are included, but when owner Mike Diaz was arrested Monday, the bills were not paid.

According to court records, Diaz was arrested for failure to appear in relation to a suspended license case.

"How upset would you be if they took all your money and you had nowhere to go? We have nothing," Kristy Green said.

Green says she is also handicapped and living at the inn.

According to Lake Worth City Manager Michael Bornstein, Diaz has had his power turned off four times already this year because of failure to pay.

Bornstein told city crews to turn the power back on on Tuesday night because he said it was not fair to the people living there.

"We have our own electric utility here in Lake Worth, so we have the ability to step in on a small scale and say this is not right and is not fair. So we will have the power reconnected tonight and work through this with them," Bornstein said.

The residents were relieved when the power came back on, but worry their relief is only temporary.

"If it wasn't for you, we wouldn't have the power on. But what are we going to do tomorrow or next week? We don't know," Green said.

Bornstein says city officials will reach out to the group to help them.

Palm Beach County Legal Aid representatives are also working on the situation.

A representative says they are drafting a lawsuit on behalf of the disabled renters.

But they say they cannot serve it because Diaz is still behind bars.

COE Sworn Interview Form

This is Anthony Bennett, Investigator with the Palm Beach County Commission on Ethics

This will be an interview with Michael Bornstein

Conducted in reference to COE case # C15-007 ? C15-008

Today's date is July 8, 2015

The time by my watch is 8:03 am

The location of this interview is: 7 North Dixie Highway
Lake Worth, FL

Please state:

- ☒ Your Full Name
- ☒ Your Occupation/ Title, and the Public Entity you serve
- ☒ Your Work Address
- ☒ Your Work Phone Number
- ☒ An Email Address that you wish to use for COE contact

Oath

☒ Please raise your right hand:

Do you swear or affirm that during this interview you will tell the truth, the whole truth and nothing but the truth?

- ☒ Do you understand that you are under oath?
- ☒ Do you agree that this interview is being conducted voluntarily, and that no threats or promises have been made to compel you to talk with me today?
- ☒ Do you understand that this conversation is being audio recorded?

Verbatim

Aug. 25, 2014, Budget Work Session

Discuss the Fiscal Year 2015 proposed budget

1) Electric rate and budget discussion

.....

Commissioner Amoroso -in looking at the business plan, because originally when we started with this, there was talk about outsourcing. We were able to not outsource....because we are a small town, the small town feel. This is the first contact people have with our Utility Department. So I asked them to look at the Business Plan--these are pieces of the Business Plan--one was credit card. How many of our larger corporate accounts use credit cards that we indeed are paying the service fee because I do the same thing in my own business. Every time somebody uses a credit card, you know you much rather have cash than the credit cards, and also, as we move forward with more people paying online, what is our strategy from a Business Plan that actually educate the people that you can save your City money, you can save yourself time by paying online, paying with a check, what the differences are. Steve is actually looking at that part of the Business Plan. Kinda like when you first open your business. This is what you're going to do with the Business Plan and these are your figures. I don't know if we ever did that. It's kinda going backwards and putting the Business Plan together again and seeing what the actual fees are.

Mayor Triolo - we have to fine tune our bill payment though because there are still a lot of issues with that. I somehow got knocked off the system myself and I had to reregister everything.

Commissioner McVoy - me too.

Mayor Triolo - and then when I reregistered--then it lost my password--then it came back again and then I made a payment online and it said it didn't go through. Then I called the Utility Department to say...to see if it had gone through or not because it was deducted from my bank account, but the pay...the sheet said it didn't go through and then I made...they made another payment and I ended up paying 800 and something dollars by the time I was done with two transactions that apparently one of them did go through. So we gotta fine tune that puppy or at least I'm already prepaid for the next month.

Anthony Bennett

From: Michael Bornstein [mbornstein@LakeWorth.org]
Sent: Thursday, August 20, 2015 10:59 AM
To: Anthony Bennett
Cc: Shilah James
Subject: RE: Contact Info/Documentation Request

Anthony,

I'm still chasing down examples of keeping utility services on due to extenuating circumstances. When is the case scheduled before the Commission and when is the agenda package closed?

Thanks
M

From: Anthony Bennett [mailto:ABennett@palmbeachcountyethics.com]
Sent: Wednesday, July 08, 2015 10:34 AM
To: Michael Bornstein
Subject: Contact Info/Documentation Request

Good Morning Mr. Bornstein,

Per our conversation, this is my contact information. Please forward the discussed information to me and it will be added to the file. If you have any questions, contact me directly. Thank you in advance for your assistance.

Anthony C. Bennett
Investigator
Palm Beach County Commission on Ethics
The Historic 1916 Palm Beach County Courthouse
300 North Dixie Highway, Suite 450
West Palm Beach, FL 33401

Ph 561-355-1956
C 561-951-8139
Fx 561-355-1904

www.palmbeachcountyethics.com



"Honesty, Integrity, Character"

NOTICE: Florida has a broad public records law. Most written communications to or from government officials or employees that involve official business are public records that will be disclosed to the public and media upon request. E-mail communications may be subject to public disclosure.

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Anthony Bennett

Subject: Interview Michael Bornstein
Location: 7 North Dixie Highway, Lake Worth, FL
Start: Wed 7/8/2015 8:00 AM
End: Wed 7/8/2015 9:00 AM
Recurrence: (none)
Organizer: Anthony Bennett

C15-008 & C15-007

Bornstein Interview

PALM BEACH COUNTY COMMISSION ON ETHICS

PROBABLE CAUSE RECOMMENDATION

To: Commission on Ethics
From: Christie E. Kelley, Esquire
Re: C15-008 – Michael Bornstein, City Manager, City of Lake Worth

All background information and facts from the Memorandum of Inquiry, Legal Sufficiency Determination, Memorandum of Investigation, and supporting documents are adopted by reference into this Probable Cause Recommendation.

- **Recommendation**

A finding of NO PROBABLE CAUSE should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Michael Bornstein, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

The COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

Article V, Division 8, Section 2-258. *Powers and duties.* (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions, and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Sec. 2-443. Prohibited conduct.

- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

- **Analysis**

To prove that Respondent violated §2-443(b), *Corrupt misuse of official position*, the evidence would have to show that Respondent used his official position or office, or any property or resource within his trust to corruptly secure or attempt to secure a special privilege, benefit or exemption for himself or others.

Based on the information revealed during the investigation, the facts do not support a violation of §2-443(b) because there is insufficient evidence to prove that Respondent or anyone else received any improper special benefit. The investigation revealed that Respondent had a documented record of assisting other Lake Worth residents who were dealing with similar situations, and he believed that Mayor Triolo had properly paid her bill

using the online payment system and was entitled to have her electric utilities connected. As the City Manager, Respondent was aware of the online payment problems and had ordered his staff to work on resolving it.

Here, the evidence showed that Respondent and Mayor Pam Triolo had a conversation during a business trip to Tallahassee concerning an on-going problem Mayor Triolo was having while attempting to make payments for her utilities through the online service. According to Mayor Triolo, she had made the payment prior to the trip to Tallahassee and stated to Respondent, "I hope they don't cut off my power." Upon their return, Mayor Triolo discovered the utilities had been turned off. She called Respondent directly to relay the issue. Respondent then made a telephone call to the Lake Worth Utilities customer service manager. Mayor Triolo's electric utilities were subsequently reconnected later that same day. Respondent stated that he would have made the call for any resident based on what he knew about Mayor Triolo's situation. He stated he knew the online payment system for Lake Worth Utilities was an ongoing problem and was making efforts to ensure all customers were treated fairly when dealing with Lake Worth Utilities.

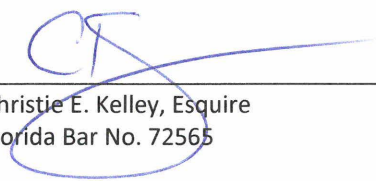
Furthermore, in his sworn statement, Respondent stated he was not ordered by Mayor Triolo to have the utilities restored. He said he made the call to the customer service manager because it was the "right thing to do" and he honestly believed the payment had already been submitted by Mayor Triolo.

Based on the information revealed during the investigation, there is no evidence which proves that Respondent corruptly misused his office or position as City Manager to give himself or any other person an improper special benefit. During the investigation, Investigator Bennett located a news article from approximately a year prior to this incident which showed that Respondent had made a similar call to have the power restored for residents in a similar situation.

- **Conclusion**

Based on the facts and circumstances, there is **NO PROBABLE CAUSE** to believe that Respondent, Michael Bornstein, violated §2-443(b) of the Palm Beach County Code of Ethics. Therefore, I recommend that a finding of **NO PROBABLE CAUSE** and an **ORDER of DISMISSAL** be entered.

By:


Christie E. Kelley, Esquire
Florida Bar No. 72565

9-14-15
Date