RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

PROVIDING FOR A LOCAL MILEAGE REIMBURSEMENT RATE AND PROCESS

FOR CERTAIN EMPLOYEES ASSIGNED TO STANDBY DUTY WHEN USING A PRIVATE VEHICLE

Resolution No. 2011-M-07

WHEREAS, in Attorney General Opinion 2003-01, the Florida Attorney General reversed a previously released Attorney General Opinion (AGO 1974-18) when he stated that section 112.061, Florida Statutes, controls the maximum rate of per diem and other travel allowances paid to local officers, employees, or other authorized persons; and

WHEREAS, AGO 2003-01 resulted in a number of local governments repealing their local policies on locally established per diem and travel allowances in order to comply with AGO 2003-01; and

WHEREAS, on June 10, 2003, Governor Bush signed into law CS/SB 1426, creating Chapter 2003-125, Laws of Florida, which created subsection 112.061(14), Florida Statutes, to specifically exempt counties from section 112.061, Florida Statutes, relating to state-established per diem and travel mileage rates, if the County enacts an ordinance or resolution authorizing a different rate than that provided in section 112.061(7)(d), Florida Statutes; and

WHEREAS, in addition to setting a rate, section 112.061(7)(d), Florida Statutes, allows for the use of privately owned vehicles in lieu of publicly owned vehicles when authorized by the agency, which includes a county; and

WHEREAS, in April 2008, Orange County Facilities Management implemented divisional guidelines restricting the use of a county vehicle when an employee is assigned to standby duty to and from his/her worksite; and

WHEREAS, the implementation of these guidelines resulted in an unfair labor practice charge (ULP) against Orange County; and

WHEREAS, the ULP was resolved by language included in a new Collective Bargaining Agreement (CBA) between Orange County and Laborers' International Union of North America, Local 517 (LIUNA), approved by the Orange County Board of County Commissioners (BCC) on January 27, 2009; and
WHEREAS, the approved language states that the County will “provide adequate vehicles and equipment to all employees assigned to standby duty,” but allows the County to instead “pay to an employee who is assigned by management to standby duty mileage to and from the worksite to the employee’s place of residence when the employee responds to a call which requires him/her to report to the worksite during the standby time period”; and

WHEREAS, mileage to and from a worksite to an employee’s place of residence is generally referred to as “commuter miles”; and

WHEREAS, in August 2010, the Orange County Comptrollers’ Office discontinued payment of commuter miles for standby duty mileage incurred pursuant to the LIUNA CBA, citing conflict with section 112.061, Florida Statutes, according to various Attorney General Opinions; and

WHEREAS, the BCC wishes to adopt a Resolution providing for variance from the travel mileage rate stated in state law for non-wage payment of commuter mile reimbursements to employees assigned to standby duty in accordance with, and pursuant to, the LIUNA CBA, as well as to those similarly situated employees whose standby duty is assigned as if their employment was governed by the LIUNA CBA; and

WHEREAS, the BCC intends by the adoption of this Resolution to locally implement the non-wage payment of reimbursements for commuter miles in only those cases where mileage is incurred as a result of an employee’s standby duties, and those standby duties are assigned in accordance with, and pursuant to, the LIUNA CBA, as well as to those similarly situated employees whose standby duty is assigned as if the employee’s employment was governed by the LIUNA CBA; and

WHEREAS, the BCC further intends by the adoption of this Resolution to formally ratify the retroactive application of this Resolution (nunc pro tunc) to those employees entitled to payment of commuter mileage incurred due to their assignment to standby duty in accordance with, and pursuant to, the terms of the LIUNA CBA, as well as to those similarly situated employees whose standby duty was assigned as if their employment had been governed by the LIUNA CBA, during calendar year 2010; and

WHEREAS, the BCC also intends by the adoption of this Resolution to formally ratify the payment of any necessary increase (i.e., “grossing up”) of reimbursements made, or to be made, to those employees paid, or to be paid, for commuter mileage incurred due to their assignment to standby duty in accordance with, and pursuant to, the terms of the LIUNA CBA, as well as to those similarly situated employees whose standby duty was assigned as if their employment had been governed by the LIUNA CBA, during calendar year 2010, to accommodate for taxes owed on those reimbursements for those years only; and

WHEREAS, the BCC does not intend by the adoption of this Resolution to provide for the grossing up of reimbursement payments made to employees for commuter mileage incurred due to their assignment to standby duty in accordance with, and pursuant to, the terms of the LIUNA CBA, or to similarly situated employees whose standby duty was assigned as if their
employment was governed by the LIUNA CBA, during calendar years 2011 and beyond, and, therefore, does not intend to accommodate for taxes owed on those reimbursements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. Definitions.

For purposes of this Resolution, the following terms shall have the following meanings:

Commuter mileage reimbursement shall mean the reimbursement of mileage incurred by an employee while working on a standby duty assignment when said mileage is incurred for travel to and from his/her worksite to the employee’s place of residence, and only when the employee is responding to a call that requires him/her to report to the worksite during the standby assignment time period, and only when the standby duty is performed in accordance with, and pursuant to, the terms of a collective bargaining agreement that provides for such reimbursement. Commuter mileage reimbursement shall also mean the reimbursement of mileage incurred by a similarly situated employee, as that term is defined in this Section, while working on a standby duty assignment when said mileage is incurred for travel to and from the employee’s worksite to the employee’s place of residence, and only when the employee is responding to a call that requires him/her to report to the worksite during the standby assignment time period, and only when the standby duty is assigned as if the employee’s employment was governed by a collective bargaining agreement that provides for such reimbursement.
Similarly situated employee shall mean an employee whose terms and conditions of employment are not subject to a particular collective bargaining agreement, but whose standby duty is assigned in the same manner as standby duty assigned to employees within the same County department whose employment is governed by a collective bargaining agreement that provides for commuter mileage reimbursement.

Standby duty assignment shall mean an assignment made by a supervisor that requires a regular full-time or regular part-time County employee to be available for work on his/her off-duty time, and may include, but not be limited to, nights, weekends or holidays.

Section 3. Travel Mileage Rate and Applicability for All Employees Assigned to Standby Duty.

The Orange County Board of County Commissioners hereby approves and states that the County may provide a vehicle and adequate equipment to an employee assigned to standby duty; however, in those cases where the County does not provide said vehicle and equipment, the County shall pay commuter mileage reimbursement, as the term is defined in Section 2, at the mileage reimbursement rate offered to employees generally, to those employees responding to a call while on a standby duty assignment, as long as the standby duty is assigned in accordance with, and pursuant to, the terms of a collective bargaining agreement that provides for such reimbursement; and, the County shall pay commuter mileage reimbursement, as the term is defined in Section 2, at the mileage reimbursement rate offered to employees generally, to similarly situated employees responding to a call while on a standby duty assignment, as long as their standby duty is assigned as if their employment was governed by a collective bargaining agreement that provides for such reimbursement.
Section 4. Effective Date. This Resolution shall take effect on the date of its adoption.

DONE AND ORDERED by the Board of County Commissioners of Orange County, Florida, on this day of ___, 2011.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Teresa Jacobs
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners
By: Deputy Clerk

Date: MAR 1 5 2011

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