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RESOLUTION

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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

44 **WHEREAS**, the approved language states that the County will “*provide adequate*
45 *vehicles and equipment to all employees assigned to standby duty,*” but allows the County to
46 instead “*pay to an employee who is assigned by management to standby duty mileage to and*
47 *from the worksite to the employee’s place of residence when the employee responds to a call*
48 *which requires him/her to report to the worksite during the standby time period*”; and

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

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

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

60 **WHEREAS**, the BCC intends by the adoption of this Resolution to locally implement
61 the non-wage payment of reimbursements for commuter miles in only those cases where mileage
62 is incurred as a result of an employee’s standby duties, and those standby duties are assigned in
63 accordance with, and pursuant to, the terms of the LIUNA CBA, or are assigned as if the
64 employee’s employment was governed by the LIUNA CBA; and

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

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

78 **WHEREAS**, the BCC does not intend by the adoption of this Resolution to provide for
79 the grossing up of reimbursement payments made to employees for commuter mileage incurred
80 due to their assignment to standby duty in accordance with, and pursuant to, the terms of the
81 LIUNA CBA, or to similarly situated employees whose standby duty was assigned as if their
82 employment had been governed by the LIUNA CBA; and

88 employment was governed by the LIUNA CBA, during calendar years 2011 and beyond, and,
90 therefore, does not intend to accommodate for taxes owed on those reimbursements.

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

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

96 *Section 2. Definitions.*

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

98 *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
100 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
102 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
104 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
106 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
108 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
110 governed by a collective bargaining agreement that provides for such reimbursement.

112 *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
114 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
116 provides for commuter mileage reimbursement.

Standby duty assignment shall mean an assignment made by a supervisor that requires a
118 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.

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

122 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;
124 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
126 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
128 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
130 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
132 their standby duty is assigned as if their employment was governed by a collective bargaining
agreement that provides for such reimbursement.

