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PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 17, 2013

Consent Regular
 Ordinance Public Hearing

Department

Submitted By: County Attorney's Office

Submitted For: Department of Public Safety Consumer Affairs Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to adopt: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, repealing Palm Beach County Code, Chapter 9, Article I, codifying Ordinance No. 72-2, as amended, "The Palm Beach County Consumer Affairs Ordinance," relating to consumer affairs and unfair or deceptive trade practices; and adopting a new consumer affairs ordinance; providing for title; providing for definitions; providing for scope of ordinance; providing for exemptions; providing for other rights and remedies; providing for a Consumer Affairs Division; providing for a Director of Prohibitor Affairs; providing for Powers of Director; providing for Complaints; providing for the Prohibition of Unfair or Deceptive Trade Practices; providing for a Consumer Affairs Hearing Board; providing for Powers of the Consumer Affairs Hearing Board—Proceedings at Hearing; providing for Assurance of Voluntary Compliance; providing for Cease and Desist Order of Director; providing for Order to Show Cause; providing for Statutes Adopted; providing for Enforcement and Civil Penalties; providing for Repeal of Laws in Conflict; providing for Savings Clause; providing for Severability; providing for Inclusion in the Code of Laws and Ordinances; providing for Captions; and, providing for an Effective Date.

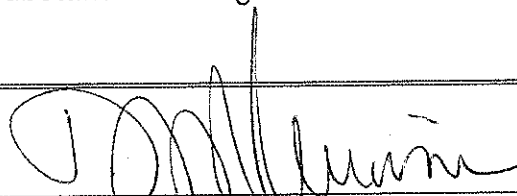
Summary: On December 3, 2013, the Board of County Commissioners held preliminary reading of this ordinance and authorized advertising for public hearing. The current Consumer Affairs Ordinance was last amended in 1977. Due to the substantial procedural and substantive changes made to the ordinance with the purpose of bringing it into compliance with the numerous County policies and procedures implemented since 1977, including Resolution 2013-0193 concerning County Advisory Boards affecting the Consumer Affairs Hearing Board, repealing and replacing the Consumer Affairs Ordinance in its entirety is more efficient than amending it piecemeal. The League of Cities has no opposition to the proposed ordinance. The Consumer Affairs Hearing Board supports the proposed ordinance in its present form. **Countywide (PGE)**

Background and Policy Issues: The County first enacted the Consumer Affairs Ordinance in 1972 to protect its citizens against unfair or deceptive trade acts or practices. In 1977 the ordinance was amended to establish the Consumer Affairs Hearing Board to assist and advise the BCC, as well as perform other functions as deemed necessary to protect and promote the welfare of county consumers. The proposed ordinance repealing the Consumer Affairs Ordinance brings it into compliance with the uniform policies and procedures implemented since 1977, including Resolution 2013-0193 concerning County Advisory Boards, directly impacting the Consumer Affairs Hearing Board.

Attachment:

- 1) Proposed Consumer Affairs Ordinance 2013
- 2) Brief Summary of Substantive Changes in Consumer Affairs Ordinance

Recommended by: _____


County Attorney

11/25/13
Date

Approved By: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	<u>_____*</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes _____ No _____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____
 Rev No: Fund _____ Department _____ Unit _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* Although this new ordinance has a provision for a \$250 fine for the first violation and a \$500 fine for a repeat violation, the fiscal impact is indeterminable at this time.

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Susan Murray 11/26/13
 OFMB 11/25
 Contract Dev. and Control 12/4/13
 12/14/13

B. Legal Sufficiency:

Barbara Gillingham 11/25/13
 Assistant County Attorney

C. Other Department Review:

 Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

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ORDINANCE NO. 2013-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING PALM BEACH COUNTY CODE, CHAPTER 9, ARTICLE I, CODIFYING ORDINANCE NO. 72-2, AS AMENDED, "THE PALM BEACH COUNTY CONSUMER AFFAIRS ORDINANCE," RELATING TO CONSUMER AFFAIRS AND UNFAIR OR DECEPTIVE TRADE PRACTICES; AND ADOPTING A NEW CONSUMER AFFAIRS ORDINANCE; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR SCOPE OF ORDINANCE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR OTHER RIGHTS AND REMEDIES; PROVIDING FOR A CONSUMER AFFAIRS DIVISION; PROVIDING FOR A DIRECTOR OF CONSUMER AFFAIRS; PROVIDING FOR POWERS OF DIRECTOR; PROVIDING FOR COMPLAINTS; PROVIDING FOR THE PROHIBITION OF UNFAIR OR DECEPTIVE TRADE PRACTICES; PROVIDING FOR A CONSUMER AFFAIRS HEARING BOARD; PROVIDING FOR POWERS OF THE CONSUMER AFFAIRS HEARING BOARD – PROCEEDINGS AT HEARING; PROVIDING FOR ASSURANCE OF VOLUNTARY COMPLIANCE; PROVIDING FOR CEASE AND DESIST ORDER OF DIRECTORS; PROVIDING FOR ORDER TO SHOW CAUSE; PROVIDING FOR STATUTES ADOPTED; PROVIDING FOR ENFORCEMENT AND CIVIL PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 125.01, Florida Statutes, as amended, authorizes the Board of County Commissioners of Palm Beach County to provide and maintain for the citizens and visitors of said County, standards which will insure their health, welfare, and well being; and

WHEREAS, Section 125.01, Florida Statutes, provides that the Board of County Commissioners of Palm Beach County may adopt ordinances and resolutions as may be necessary to the exercise of their powers; and

WHEREAS, the protection of the citizens and visitors of Palm Beach County from unfair and deceptive trade acts or practices is necessary in the general interest of the public and to promote the general welfare; and

WHEREAS, it is the intent of the Board of County Commissioners of Palm Beach County to continuously improve consumer protection in Palm Beach County while maximizing the efficient utilization of available resources; and

1 **WHEREAS**, since the date of adoption and implementation of the original enactment of
2 the Consumer Affairs Ordinance, No. 72-2, it has been necessary to amend it from time to time
3 in order to best serve the citizens of Palm Beach County and provide for their general safety and
4 welfare; and

5 **WHEREAS**, a Consumer Affairs Hearing Board was established in 1977 to assist, advise
6 and cooperate with the Board of County Commissioners and local, state, and federal agencies
7 and officials to protect the interest of the consumer public; and to carry out the adjudicatory
8 functions pertaining to alleged unfair or deceptive trade acts or practices; and

9 **WHEREAS**, the Board of County Commissioners of the Palm Beach County adopted
10 Resolution 2013-0193 on March 1, 2013, which imposes specific requirements on members of
11 County advisory boards; and

12 **WHEREAS**, the Consumer Affairs Hearing Board is subject to the provisions of
13 Resolution 2013-0193; and

14 **WHEREAS**, due to the substantial procedural and substantive changes made to this
15 ordinance to bring it into compliance with other County ordinances, since it was last amended in
16 1977, it is more efficient and in the best interest of the Board of County Commissioners to repeal
17 and replace the Consumer Affairs Ordinance in its entirety.

18 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
19 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

20 **Section 1. The Consumer Affairs Ordinance.**

21 Chapter 9, Article I, of the Palm Beach County Code, "The Consumer Affairs Ordinance,"
22 (Ordinance No. 72-2, as amended), is hereby repealed and the Palm Beach County Consumer
23 Affairs Ordinance of 2013 is hereby adopted as follows;

24
25 **Section 2. Title.**

26 This Ordinance shall be designated and may be cited as the "Palm Beach County Consumer
27 Affairs Ordinance of 2013."

28
29 **Section 3. Definitions.**

30 The following words when used in this Ordinance shall have the following meanings ascribed to
31 them unless the text requires or specifies a different meaning:

- 32
33 (a) "Board" shall mean the Consumer Affairs Hearing Board of Palm Beach
34 County;
- 35
36 (b) "Consumer" means a purchaser or lessee or prospective purchaser or lessee of
37 consumer goods or services or consumer credit, including a co-obligor or
38 surety;
- 39
40 (c) "Consumer goods, services, credit and debts" means goods, services, credit
41 and debts which are primarily for personal, household, or family purposes;

- 1
2 (d) "Consumer transaction: means a sale, lease, assignment, award by chance or
3 other commercial disposition of any item of goods, a consumer service or an
4 intangible instrument or commodity to any individual for purposes that are
5 primarily personal, family or household, or that relate to a business
6 opportunity that requires either the consumer's expenditure of money or
7 property and/or his or her personal services on a continuing basis and in
8 which he or she has not been previously engaged, or solicitation by a supplier
9 with respect to any of the foregoing dispositions;
10
11 (e) "Director" shall mean the director or the manager of the Consumer Affairs
12 Division;
13
14 (f) "Division" shall mean the Palm Beach County Department of Public Safety
15 Consumer Affairs Division;
16
17 (g) "Hearing" shall mean an administrative appeal heard by the Consumer Affairs
18 Hearing Board on matters filed by person appealing the decisions of the
19 Division;
20
21 (h) "Meeting" shall mean a meeting of the Board and Division staff to conduct its
22 regular business as necessary;
23
24 (i) "Merchant" means a seller, lessor, creditor or any person who makes
25 available either directly or indirectly goods, services, or credit to consumers.
26 "Merchant" shall include manufacturers, wholesalers and others who are
27 responsible for any unfair or deceptive trade acts or practices as defined in
28 this Ordinance;
29
30 (j) "Person" shall include, where applicable, natural persons, corporations, trusts,
31 partnerships, limited liability companies, incorporated or unincorporated
32 associations, and any other legal business entity whatsoever; and,
33
34 (k) "Unfair or deceptive trade acts or practices" shall mean unfair methods of
35 competition and unfair deceptive acts or practices in the conduct of any
36 consumer transaction and shall include but are not limited to those acts
37 referenced in Section 11. Prohibition of Unfair or Deceptive Trade Acts or
38 Practices.
39

40 **Section 4. Scope of Ordinance.**

41 This Ordinance shall be applicable in both the unincorporated and incorporated areas of Palm
42 Beach County, except that it shall not apply in any municipality that has adopted and maintains
43 in effect ordinances or regulations governing the same matters.
44

45 **Section 5. Exemptions.**

46 Nothing in this Ordinance shall apply to any television or radio broadcasting station or to any
47 publisher or printer of a newspaper, magazine, or other form of printed advertising, which
48 broadcasts, publishes, or prints such advertisements, except insofar as said station or publisher or
49 printer is guilty of deception in the sale, or in the offering for sale of its own services, or to
50 actions or transactions regulated under laws administered by the state public service commission.
51

52 **Section 6. Other Rights and Remedies.**

53 Nothing herein shall prevent any person from exercising any right or seeking any private remedy
54 to which he might otherwise be entitled or from filing any complaint with any other agency.
55

56 **Section 7. Consumer Affairs Division.**

57 There is hereby created the Consumer Affairs Division under the Department of Public Safety.
58

1 **Section 8. Director of Consumer Affairs Division.**

2 The Director of the Consumer Affairs shall be a County employee under the supervision and
3 control of the Director of the Department of Public Safety.
4

5 **Section 9. Powers of Director.**

6 The functions and powers of the Director of the Consumer Affairs Division shall include the
7 following:
8

- 9 (a) To receive complaints from all persons complaining of unfair or deceptive
10 trade acts or practices as defined in this Ordinance;
11
- 12 (b) To represent the interests of consumers before administrative and regulatory
13 agencies and legislative bodies;
14
- 15 (c) To enforce the provisions of this Ordinance;
16
- 17 (d) To investigate complaints, institute actions and proceedings under this
18 Ordinance;
19
- 20 (e) To conduct appropriate surveys and inspections to determine whether the
21 provisions of this Ordinance are being complied with;
22
- 23 (f) To report to the appropriate law enforcement officers any information
24 concerning violations of any consumer protection law;
25
- 26 (g) To render annual reports to the Board of County Commissioners as to the
27 number of complaints filed, the nature thereof and the disposition thereof and
28 other relevant activities of the office and the Board undertaken during the
29 previous year;
30
- 31 (h) To publicize and disseminate information to the public concerning consumer
32 affairs and to recommend methods for improvement thereof;
33
- 34 (i) To enlist and encourage public support and the assistance of civic
35 organizations and the cooperation of business enterprises and organizations in
36 consumer affairs;
37
- 38 (j) To make periodic reports concerning the status of consumer affairs in Palm
39 Beach County and the enforcement of the provisions of this Ordinance, and
40 recommendations concerning consumer protection. Such reports shall be
41 made to the Consumer Affairs Hearing Board and to the Board of County
42 Commissioners of Palm Beach County;
43
- 44 (k) To prepare assurances of voluntary compliance as provided for in Section 15
45 of this Ordinance; and
46
- 47 (l) To assist, develop and conduct programs of consumer education and
48 information through public hearings, meetings, publications or other materials
49 prepared for distribution to the consumer.
50

51 **Section 10. Complaints.**

- 52
- 53 (a) Any consumer may make or file a complaint stating the name and address (if
54 known) of the person alleged to have committed the violation complained of
55 and the particulars thereof, and such other information as may be required by
56 the Consumer Affairs Division.
57
- 58 (b) Upon the filing of a complaint, the Director shall review the complaint and
59 supporting documentation, if any, and assign a staff investigator, if
60 appropriate. If the staff investigator determines that there are reasonable

1 grounds to believe a violation has occurred, the staff investigator may attempt
2 to conciliate the matter through conferences with all interested parties and
3 such representatives as the parties may chose to assist them, or alternatively,
4 may issue a civil citation.

- 5
6 (c) If the staff investigator determines that there are no reasonable grounds to
7 believe that a violation occurred, the investigator shall prepare a closure letter
8 for the Director to review and approve, prior to dismissing the complaint.
9

10 **Section 11. Prohibition of Unfair or Deceptive Trade Practices.**
11

12 No person shall engage in any unfair method of competition or deceptive act or practice in the
13 conduct of any consumer transaction. A person engages in an unfair method of competition or
14 deceptive trade act or practice when in the course of his or her business, vocation or occupation,
15 he or she knows, or in the exercise of care should know, that he or she in the past engaged, or is
16 now engaging in, any unfair method of competition or deceptive acts or practices in the conduct
17 of any trade or commerce as herein defined. Unfair or deceptive trade acts or practices shall
18 include, but are not limited to, the following:
19

- 20 (a) Representations that goods or services have sponsorship, approval,
21 characteristics, ingredients, uses, benefits, or quantities which they do not
22 have;
23
24 (b) Representations that a person or supplier has a sponsorship, approval, status,
25 affiliation or connection which he or she does not have;
26
27 (c) Representations that goods are original or new if in fact they are not, or if
28 they are deteriorated, altered, reconditioned, reclaimed, or second-hand;
29
30 (d) Representations that goods are of a particular standard, brand, quality, style,
31 or model, if they are of another;
32
33 (e) Representations that goods or services are those of another, if they are not;
34
35 (f) Using deceptive representations or designations of geographic origin in
36 connection with goods or services;
37
38 (g) Advertising goods or services intending not to sell them as advertised;
39
40 (h) Advertising goods or services with intent not to supply reasonable expectable
41 public demand, unless the advertisement discloses a limitation of quantity;
42
43 (i) Making false or misleading statements concerning the need for, or necessity
44 of, any goods, services, replacements, or repairs;
45
46 (j) Disparaging the goods, services, or business of another by false or misleading
47 representations of fact;
48
49 (k) Making false or misleading statements of fact concerning the reasons for the
50 existence of, or amounts of price reductions;
51
52 (l) Failing to return or refund deposits or advance payments for goods not
53 delivered or services not rendered, when no default or further obligation of
54 persons making such deposits or advance payments exists;
55
56 (m) Taking consideration for goods or services intending not to deliver such
57 goods or perform such services, or intending to deliver goods or provide
58 service materially different from those ordered or sold;
59
60 (n) Making false or misleading statements concerning the profitability, risk, or
61 any other material aspect of any home-operated business opportunity or
62 venture;

- 1
2 (o) Offering gifts, prizes, free items, or other gratuities, intending not to provide
3 them as offered in connection with a sale of goods or services to a consumer;
4
5 (p) Making false or misleading statements concerning the existence, terms, or
6 probability of any rebate, additional goods or services, commission, discount
7 offered as an inducement for the sale of goods or services;
8
9 (q) Using physical force, threat of physical force, or coercion in dealing with
10 consumers;
11
12 (r) Any violation of the Florida Deceptive and Unfair Trade Practices Act,
13 Section 501.201 et seq., Florida Statutes;
14
15 (s) Advertising, representing, or offering for sale an article of food or food
16 product as “kosher” or having the word “kosher” in any language inscribed
17 thereon if such food is not in fact kosher as sanctioned by orthodox Hebrew
18 religious requirements, and,
19
20 (t) Selling or exposing for sale in any hotel, restaurant or other place where food
21 products are sold for consumption on the premises, any meat or meat
22 preparation, or article of food, or food preparation falsely representing the
23 same to be kosher or as having been prepared in accordance with the orthodox
24 Hebrew religious requirements when the meat or meat preparation, article of
25 food or food preparation is not kosher or not prepared in accordance with
26 orthodox Hebrew religious requirements, or; or selling or exposing for sale in
27 such hotel, restaurant or such other place kosher and non-kosher food or food
28 preparation, the latter having not been prepared in accordance with Jewish
29 ritual or not sanctioned by the Hebrew orthodox religious requirements and
30 failing to conspicuously display a sign or other public notice in block letters
31 at least four inches in height “kosher and non-kosher food served here;” or
32 displaying within or outside such hotel, restaurant or other place, words or
33 letters in Hebraic characters or any sign, emblem, insignia symbol or mark in
34 simulation of same, the display of which might reasonably be calculated to
35 deceive or lead a reasonable person to believe that a representation is being
36 made that all food sold or offered for sale on the premises is kosher and
37 prepared in accordance with the orthodox Hebrew religious requirements if
38 such is not true of all the food products sold on the premises.
39

40 **Section 12. Consumer Affairs Hearing Board.**
41

- 42 (a) The Palm Beach County Consumer Affairs Hearing Board is hereby recreated
43 and reestablished. The Board shall be subject to the uniform policies and
44 procedures established by the Board of County Commissioners for Advisory
45 Boards as currently set forth in Resolution No. 2013-0193, as may be further
46 amended by action of the Board of County Commissioners.
47
48 (b) The Board shall consist of seven (7) members appointed at-large by the Board
49 of County Commissioners. The members of this Board shall be residents of
50 Palm Beach County at the time of appointment and while serving on the
51 Board. At least one (1) member shall be an attorney, licensed to practice in
52 the State of Florida, and all other appointments shall be made by the Board of
53 County Commissioners on the basis of experience or interest in the field of
54 consumer affairs. All Board appointments shall be for a term of three (3)
55 years, with a limit of three (3) consecutive terms. Terms shall begin on
56 October 1st, and end on September 30th. Existing member’s terms shall end
57 on September 30th of the year in which their term expires. Vacancies
58 occurring during a term shall be filled for the unexpired portion of the term,
59 and shall not count toward a member’s term limits. Members serve without
60 compensation. Members shall be governed by the applicable provisions of
61 the State Ethics Code and the applicable provisions of the Palm Beach County
62 Code of Ethics, as may be amended.

- 1
2 (c) Members shall be automatically removed for lack of attendance. Lack of
3 attendance is defined as failure to attend three (3) consecutive meetings or a
4 failure to attend more than one-half of the meetings scheduled during a
5 calendar year. Participation for less than three-fourths of a meeting shall be
6 the same as a failure to attend a meeting. Members removed pursuant to this
7 paragraph shall not continue to serve on the Board and such removal shall
8 create a vacancy. Vacancies shall be filled in the same manner as the original
9 appointments for the remainder of the vacant term.
10
11 (d) Members shall appoint a chairperson and a vice-chairperson. The chairperson
12 and the vice-chairperson shall be elected by a majority vote of the Board and
13 shall serve for a term of one (1) year. The vice-chairperson shall perform the
14 duties of the chairperson in the absence of the chairperson. In the absence of
15 both the chairperson and the vice-chairperson, the Division director or
16 manager may conduct the meeting or hearing. Meetings and hearings shall be
17 governed by Robert's Rules of Order, and shall be open to the public, duly
18 advertised and otherwise comply with all applicable requirements of Florida's
19 "Sunshine" law as set forth in Chapter 286, Florida Statutes. A majority of
20 the members currently appointed shall constitute a quorum and action may be
21 taken by the Board upon a vote of a majority of the members present. At any
22 meeting or hearing, the Board may fix and call a meeting or hearing on a
23 future date. The Board shall meet on a regular basis to conduct its business
24 and as necessary to conduct administrative hearings filed by persons
25 appealing the decisions of the Division.
26
27 (e) Any appeal of a decision rendered by the Consumer Affairs Hearing Board
28 regarding a violation of Chapter 501 Florida Statutes shall be directed to the
29 Florida Office of the Attorney General with subsequent judicial review
30 through the District Courts of Appeal. Adjudications of the Consumer Affairs
31 Hearing Board of substantive violations of this Ordinance shall be appealed to
32 the Circuit Court of the Fifteenth Judicial Court by Writ of Certiorari.
33
34 (f) Alternatively, the Division shall have the option to utilize a Special Master to
35 hear matters for appeal, instead of scheduling those appellate matters before
36 the Consumer Affairs Hearing Board. The Division shall establish policies
37 and procedures governing the Special Master process prior to said utilization.
38

39 **Section 13. Powers of the Consumer Affairs Hearing Board.**

40
41 The Consumer Affairs Hearing Board shall have the following authority and power:

- 42
43 (a) To assist, advise, and cooperate with the Board of County Commissioners and
44 local, state, and federal agencies and officials to protect the interests of the
45 consumer-public;
46
47 (b) To hear appeals by persons aggrieved by actions of the Consumer Affairs
48 Division not already referred to the state attorney for criminal prosecution;
49 the Board shall reach a prompt decision on all such appeals and may affirm or
50 reverse the action or decision appealed from, provided that such decision shall
51 not be in conflict with the provisions of this Ordinance; and,
52
53 (c) To exercise and perform such other functions, powers and duties as may be
54 deemed necessary or appropriate to protect and promote the welfare of county
55 consumers.
56

57 **Section 14. Consumer Affairs Hearing Board – Proceedings at Hearing.**

- 58
59 (a) The Board shall give probative effect to the evidence which would be
60 admissible to civil proceedings in the courts of this state but in receiving
61 evidence due regard shall be given to the competent, reliable and technical

1 evidence which will aid the Board in making a fair determination of the
2 matter, regardless of the existence of any common law or statutory rule which
3 might otherwise make improper the admission of such evidence.

- 4
- 5 (b) The rules of privilege shall be effective to the same extent that they are now
6 or hereafter may be recognized in civil action. Irrelevant and unduly
7 repetitious evidence shall be excluded.
- 8
- 9 (c) At the hearing the parties may present testimony and evidence, and the right
10 to cross examine witnesses shall be preserved. All testimony and evidence
11 shall be given under oath or by affirmation.
- 12
- 13 (d) The Board shall keep a full record of the hearing, which record shall be public
14 and open to inspection by any person; and upon request by any principal party
15 to the proceedings the Board shall furnish such party a copy of the hearing
16 record, at such cost as the Board of County Commissioners deems
17 appropriate.
- 18
- 19 (e) The general procedure for the hearing shall be as set forth above, and as well,
20 each party shall have the following rights:
- 21
- 22 (1) To call and examine witnesses;
- 23 (2) To introduce exhibits;
- 24 (3) To cross examine opposing witnesses on any relevant matter
25 even though the matter was not covered under direct
26 examination;
- 27 (4) To impeach any witness regardless of which party first called
28 him to testify; and,
- 29 (5) To rebut the evidence.
- 30

31 **Section 15. Assurance of Voluntary Compliance.**

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- 33 (a) In the enforcement of this Ordinance, the Director may accept an Assurance
34 of Voluntary Compliance with respect to any method, act or practice deemed
35 to be violative of law from any person who has engaged or was about to
36 engage in such method, act or practice. Any such assurance shall be a formal
37 written agreement between the Consumer Affairs Division and the merchant,
38 approved as to form and legal sufficiency by the County Attorney's Office
39 and filed with the Clerk of the Circuit Court. Such Assurances of Voluntary
40 Compliance may be conditioned on a commitment to reimburse consumers or
41 any other appropriate corrective action such as the voluntary payment by the
42 merchant of the costs of the investigation by the Consumer Affairs Division.
43 An Assurance of Voluntary is not evidence of prior violation of this section,
44 however, unless an Assurance of Voluntary has been rescinded by agreement
45 of the parties or voided by the court for good cause. Subsequent failure to
46 comply with the terms of an Assurance of Voluntary shall be deemed prima
47 facie evidence of a violation of this Ordinance. No such Assurance of
48 Voluntary shall act as a limitation upon any action or remedy available to a
49 person aggrieved by a violation of this Ordinance.
- 50
- 51 (b) Every merchant desiring to negotiate an Assurance of Voluntary Compliance
52 shall be apprised of his right to have his case heard by the Board in the event
53 he does not wish to enter into such Assurance of Voluntary Compliance.
- 54

55 **Section 16. Cease and Desist Order of Director.**

56

- 57 (a) If the Director, after due investigation, has reason to believe that a person has
58 been or is violating any of the provisions of this Ordinance, then the Director
59 shall cause to be served upon such person a demand to cease and desist,
60 stating the charges and containing a notice of hearing to be held not sooner
61 than ten (10) days and not later than thirty-one (31) days after service of the
62 demand.

1
2 (b) Official notice of hearing, which shall be by personal service, certified mail or
3 posting in a conspicuous place at the merchant's place of business, shall
4 incorporate and set out the following:

- 5
6 (1) The name of the complainant;
7 (2) The alleged charge and approximate date of the commission
8 of the act;
9 (3) The section of this Ordinance alleged to be involved;
10 (4) Notification as to the time and place of the Board hearing which
11 shall be held not sooner than ten (10) days and not later than
12 thirty-one (31) days after service of the demand;
13 (5) Notice to the respondent that he may be represented by counsel,
14 and that he may bring all original documents and other data
15 pertinent to the case; and,
16 (6) That the respondent will be given an opportunity to present
17 witnesses and evidence he may deem appropriate.
18

19 **Section 17. Order to Show Cause.**

20
21 The person against whom a complaint is filed under this Ordinance shall have the right to appear
22 at the place and time so fixed and show cause why the demand for the Cease and Desist Order
23 should not be upheld by the Board.
24

25 **Section 18. Statutes Adopted.**

- 26
27 (a) All statutes of the state and rules adopted there under defining and
28 prohibiting false advertising and offenses relating to consumer protection,
29 trade standards, and weights and measures, defined by state law, are adopted
30 and incorporated by reference as part of this Ordinance to the same extent
31 and the same effect as if the provisions of each such statute were set out in
32 full herein, defining and prohibiting each such offense against the state to be
33 prohibited by, or an offense in violation of this Ordinance. This shall
34 include, but is not limited to Part II of Chapter 501, Florida Statutes, and all
35 rules adopted pursuant to section 501.205, Florida Statutes, Chapter 817,
36 Florida Statutes, is hereby adopted by reference. It is the intent of this
37 Ordinance that due consideration and great weight be given to the
38 interpretations of the Federal Trade Commission and the federal courts
39 relating to section 5(a)(1) of the Federal Trade Commission Act (15 USC
40 45(a)(1)), as from time to time amended.
41
42 (b) Rules having the force and effect of law as authorized under sections 4, 5,
43 and 6 of the Fair Packaging and Labeling Act (P.L. 89-755) that supersede
44 state and local laws which are less stringent than or require information
45 different from such act, are hereby adopted by reference, as published in the
46 Federal Register as part of this Ordinance. No person shall distribute or
47 cause to be distributed, offer for sale, or sell, in this county any packaged
48 consumer commodity unless in conformity with the Fair Packaging and
49 Labeling Act and/or the rules which shall be established by the
50 promulgating authority.
51

52 **Section 19. Enforcement and Civil Penalties.**

- 53
54 (a) It shall be the duty and responsibility of all law enforcement officials to
55 assist in the enforcement of this Ordinance to the extent that it is within their
56 jurisdiction to do so.
57
58 (b) Whenever any person has been issued a civil citation by a staff investigator
59 and has been found to have engaged in any acts or practices which constitute
60 a violation of any provision of this Ordinance, the person shall be required
61 to pay Palm Beach County a civil penalty not to exceed Two Hundred Fifty

Dollars (\$250) for the first violation and Five Hundred Dollars (\$500) for each repeat violation.

Section 20. Repeal of Laws in Conflict.

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provision of this article are hereby repealed to the extent of any conflict.

Section 21. Savings Clause.

All complaints, investigations, orders, hearing processes, and all other functions of the Consumer Affairs Division, or the Consumer Affairs Hearing Board, initiated or completed pursuant to Ordinance 72-2, as amended, shall remain in full force and effect.

Section 22. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, it is the intent of the Board of County Commissioners that such holding shall not affect the remainder of this Ordinance.

Section 23. Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 24. Captions.

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 25. Effective Date.

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach

County, Florida, on this the ____ day of _____, 20____.

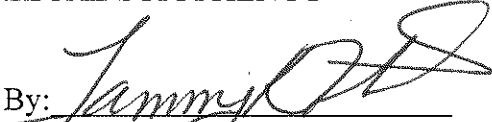
SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 20____.

**BRIEF SUMMARY OF SUBSTANTIVE CHANGES
IN THE PROPOSED CONSUMER AFFAIRS ORDINANCE (2013)**

1. **Changes affecting the Consumer Affairs Hearing Board (“CAHB”):**
 - a. Board membership is reduced from 9 members to 7 members.
 - b. With the exception of at least one member having a current license to practice law in Florida, all other special/technical qualifying categories have been eliminated, leaving the only “requirement” for appointment an interest in the field of consumer affairs.
 - c. With respect to hearing administrative appeals stemming from the decision of the Consumer Affairs Division Manager to deny various business operating permits or driver identification applications, the CAHB’s authority is limited to either “affirm” or “reverse” the manager’s decision; the option to “modify” has been eliminated.
 - d. Members must comply with the State Ethics Code and PBC Code of Ethics.
 - e. The uniform policies and procedures established by Resolution 2013-0193 concerning County Advisory Boards (i.e., term limits, attendance, removal, and the like) has been specifically incorporated into the Code.
 - f. At the discretion of the Director, establish a “Special Master” process wherein the Special Master may hear any matters which could be heard by the Consumer Affairs Hearing Board.

2. **Elimination of the reference to “Consumer Advocate” as the assistant county attorney** designated to represent the office of consumer affairs, as well as the elimination of certain legal functions required to be handled by the “Consumer Advocate.”

3. **Expanded and Restructured Definition Section.** For clarification purposes, several terms used in the Code, such as “hearing” and “meeting” have been defined in the definition section. In addition, the specific definitions relating to “unfair or deceptive trade practices” have been moved from the definition section to the section in the Code entitled “Prohibition of Unfair or Deceptive Trade Practices.”

4. **Authority of Staff Investigators to issue Civil Citations** upon the findings of code violations after investigation of consumer complaints of deceptive and unfair trade practices.

5. **Updating the reference to the Office of Consumer Affairs** as a Division of the Department of Public Safety.

ORDINANCE NO. 2013-_____

1 |
2
3 AN ORDINANCE OF THE BOARD OF COUNTY
4 COMMISSIONERS OF PALM BEACH COUNTY,
5 FLORIDA, REPEALING PALM BEACH COUNTY CODE,
6 CHAPTER 9, ARTICLE I, CODIFYING ORDINANCE NO.
7 72-2, AS AMENDED, "THE PALM BEACH COUNTY
8 CONSUMER AFFAIRS ORDINANCE," RELATING TO
9 CONSUMER AFFAIRS AND UNFAIR OR DECEPTIVE
10 TRADE PRACTICES; AND ADOPTING A NEW
11 CONSUMER AFFAIRS ORDINANCE; PROVIDING FOR
12 TITLE; PROVIDING FOR DEFINITIONS; PROVIDING
13 FOR SCOPE OF ORDINANCE; PROVIDING FOR
14 EXEMPTIONS; PROVIDING FOR OTHER RIGHTS AND
15 REMEDIES; PROVIDING FOR A CONSUMER AFFAIRS
16 DIVISION; PROVIDING FOR A DIRECTOR OF
17 CONSUMER AFFAIRS; PROVIDING FOR POWERS OF
18 DIRECTOR; PROVIDING FOR COMPLAINTS;
19 PROVIDING FOR THE PROHIBITION OF UNFAIR OR
20 DECEPTIVE TRADE PRACTICES; PROVIDING FOR A
21 CONSUMER AFFAIRS HEARING BOARD; PROVIDING
22 FOR POWERS OF THE CONSUMER AFFAIRS HEARING
23 BOARD - PROCEEDINGS AT HEARING; PROVIDING
24 FOR ASSURANCE OF VOLUNTARY COMPLIANCE;
25 PROVIDING FOR CEASE AND DESIST ORDER OF
26 DIRECTORS; PROVIDING FOR ORDER TO SHOW
27 CAUSE; PROVIDING FOR STATUTES ADOPTED;
28 PROVIDING FOR ENFORCEMENT AND CIVIL
29 PENALTIES; PROVIDING FOR REPEAL OF LAWS IN
30 CONFLICT; PROVIDING FOR SAVINGS CLAUSE;
31 PROVIDING FOR SEVERABILITY; PROVIDING FOR
32 INCLUSION IN THE CODE OF LAWS AND
33 ORDINANCES; PROVIDING FOR CAPTIONS; AND,
34 PROVIDING FOR AN EFFECTIVE DATE.

35
36 WHEREAS, Section 125.01, Florida Statutes, as amended, authorizes the Board of
37 County Commissioners of Palm Beach County to provide and maintain for the citizens and
38 visitors of said County, standards which will insure their health, welfare, and well being; and

39 WHEREAS, Section 125.01, Florida Statutes, provides that the Board of County
40 Commissioners of Palm Beach County may adopt ordinances and resolutions as may be
41 necessary to the exercise of their powers; and

42 WHEREAS, the protection of the citizens and visitors of Palm Beach County from
43 unfair and deceptive trade acts or practices is necessary in the general interest of the public and
44 to promote the general welfare; and

45 WHEREAS, it is the intent of the Board of County Commissioners of Palm Beach
46 County to continuously improve consumer protection in Palm Beach County while maximizing
47 the efficient utilization of available resources; and

ADD'L BACKUP

1 **WHEREAS**, since the date of adoption and implementation of the original enactment of
2 the Consumer Affairs Ordinance, No. 72-2, it has been necessary to amend it from time to time
3 in order to best serve the citizens of Palm Beach County and provide for their general safety and
4 welfare; and

5 **WHEREAS**, a Consumer Affairs Hearing Board was established in 1977 to assist, advise
6 and cooperate with the Board of County Commissioners and local, state, and federal agencies
7 and officials to protect the interest of the consumer public; and to carry out the adjudicatory
8 functions pertaining to alleged unfair or deceptive trade acts or practices; and

9 **WHEREAS**, the Board of County Commissioners of the Palm Beach County adopted
10 Resolution 2013-0193 on March 1, 2013, which imposes specific requirements on members of
11 County advisory boards; and

12 **WHEREAS**, the Consumer Affairs Hearing Board is subject to the provisions of
13 Resolution 2013-0193; and

14 **WHEREAS**, due to the substantial procedural and substantive changes made to this
15 ordinance to bring it into compliance with other County ordinances, since it was last amended in
16 1977, it is more efficient and in the best interest of the Board of County Commissioners to repeal
17 and replace the Consumer Affairs Ordinance in its entirety.

18 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
19 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

20
21 **Section 1. ~~Short~~The Consumer Affairs Ordinance.**

22 Chapter 9, Article I, of the Palm Beach County Code, "The Consumer Affairs Ordinance,"
23 (Ordinance No. 72-2, as amended), is hereby repealed and the Palm Beach County Consumer
24 Affairs Ordinance of 2013 is hereby adopted as follows:

25
26 **Section 2. Title.**

27 This ~~Section~~⁻¹⁶ Ordinance shall be ~~known~~^{designated} and may be cited as the "Palm Beach County
28 Consumer Affairs Ordinance of Palm Beach County, 2013."

29
30 **Section ~~2.3~~3. Definitions.**

31 ~~Section 9-1 of Chapter 9, Article I of the Palm Beach County Code shall be amended to read~~
32 ~~as follows:~~

33 The following words when used in this ~~ordinance~~^{Ordinance} shall have the following meanings
34 ascribed to them unless the text requires or specifies a different meaning:—

- 35
36 (a) "Board" shall mean the Consumer Affairs Hearing Board of Palm Beach
37 County;:

1 (b) "Consumer" means a purchaser or lessee or prospective purchaser or lessee of
2 consumer goods or services or consumer credit, including a co-obligor or
3 surety-;

4
5 (c) "Consumer goods, services, credit and debts" means goods, services, credit
6 and debts which are primarily for personal, household, or family purposes-;

7 "
8 (d) "Consumer transaction" means a sale, lease, assignment, award by chance or
9 other commercial disposition of any item of goods, a consumer service or an
10 intangible instrument or commodity to any individual for purposes that are
11 primarily personal, family or household, or that relate to a business
12 opportunity that requires either the consumer's expenditure of
13 money or property and/or his or her personal services on a continuing basis
14 and in which he or she has not been previously engaged, or solicitation by a
15 supplier with respect to any of the foregoing dispositions-;

16
17 (e) "Director" shall mean the director or the manager of the Consumer Affairs
18 Division-;

19
20 (f) "Division" shall mean the Palm Beach County Department of Public Safety
21 Consumer Affairs Division-;

22
23 (g) "Hearing" shall mean an administrative appeal heard by the Consumer Affairs
24 Hearing Board on matters filed by person appealing the decisions of the
25 Division-;

26
27 (h) "Meeting" shall mean a meeting of the Board and Division staff to conduct its
28 regular business as necessary-;

29
30 (i) "Merchant" means a seller, lessor, creditor or any person who makes
31 available either directly or indirectly goods, services, or credit to consumers."
32 "Merchant" shall include manufacturers, wholesalers and others who are
33 responsible for any unfair or deceptive trade acts or practices as defined in
34 this chapter. Ordinance;

35
36 (j) "Person" shall include, where applicable, natural persons, corporations, trusts,
37 partnerships, limited liability companies, incorporated or unincorporated
38 associations, and any other legal business entity whatsoever; and,

39
40 (k) "Unfair or deceptive trade acts or practices" shall mean unfair methods of
41 competition and unfair deceptive acts or practices in the conduct of any
42 consumer transaction and shall include but are not limited to those acts
43 referenced in Section 9-19 (11. Prohibition of Unfair or deceptive trade
44 acts Deceptive Trade Acts or practices). Practices.

45
46 Section 3. Territorial applicability

-16

47 Section 9-24. Scope of Chapter 9, Article I of the Palm Beach County Code shall be
48 amended to read as follows: Ordinance.

49 This article Ordinance shall be applicable in both the unincorporated and incorporated areas of
50 Palm Beach County, except that this article it shall not apply in any municipality that has adopted
51 and maintains in effect ordinances or regulations governing the same matters.

52
53 Section 4. Consumer Affairs Hearing Board - Generally

54 Section 9-5 of Chapter 9, Article I of the Palm Beach County Code shall be amended to
55 read as follows: Exemptions.

56 (a) A Palm Beach County Consumer Affairs Hearing Board is hereby created and
57 established. The Board shall be subject to the uniform policies and procedures established

1 ~~by the Board of County Commissioners for Advisory Boards as currently set forth in~~
2 ~~Resolution No. 2013-0193, as may be further amended by action of the Board of County~~
3 ~~Commissioners.~~

4 (b) ~~The Board shall consist of seven (7) members appointed by the Board of County~~
5 ~~Commissioners. The members of this Board shall be residents of Palm Beach County. At~~
6 ~~least one (1) member shall be an attorney, licensed to practice in the State of Florida, and all~~
7 ~~other appointments shall be made by the Board of County Commissioners on the basis of~~
8 ~~experience or interest in the field of consumer affairs. In order to provide continuity, initial~~
9 ~~appointments shall be for staggering terms in accordance with prior ordinances and all~~
10 ~~appointments thereafter shall be for a period of three (3) years with a limit of three (3)~~
11 ~~consecutive terms, unless removed for grounds hereinafter stated. Each member shall be~~
12 ~~eligible for reappointment and shall continue to serve until his or her successor is duly~~
13 ~~appointed and qualified, but no member may serve for more than three (3) terms, or a~~
14 ~~maximum of nine (9) years, consistent with Resolution No. 2013-0193, as may be amended~~
15 ~~from time to time. Terms shall begin on October 1st, and end on September 30th. Existing~~
16 ~~member's terms shall end on September 30th of the year in which their term expires.~~
17 ~~Vacancies occurring during a term shall be filled for the unexpired portion of the term, and~~
18 ~~shall not count toward a member's term limits. Members serve without compensation.~~
19 ~~Members shall be governed by the applicable provisions of the State Ethics Code and the~~
20 ~~applicable of the Palm Beach County Code of Ethics, as may be amended.~~

21 ~~(a) (c) Members shall be automatically removed for lack of attendance.~~
22 ~~Lack of attendance is defined as failure to attend three (3) consecutive~~
23 ~~meetings or a failure to attend more than one half of the meetings scheduled~~
24 ~~during a calendar year. Participation for less than three-fourths of a meeting~~
25 ~~shall be the same as a failure to attend a meeting. Members removed~~
26 ~~pursuant to this paragraph shall not continue to serve on the Board and such~~
27 ~~removal shall create a vacancy. Vacancies shall be filled in the same manner~~
28 ~~as the original appointments for the remainder of the vacant term.~~

29 (d) ~~Members shall appoint a chairperson and a vice chairperson. The chairperson and~~
30 ~~the vice chair person shall be elected by majority vote of the Board and shall serve for a~~
31 ~~term of one (1) year. In the absence of both the chairperson and the vice chairperson, the~~
32 ~~Division director or manager may conduct the meeting or hearing. Meetings and hearings~~
33 ~~shall be governed by Robert's Rules of Order. The vice chairperson shall perform the duties~~
34 ~~of the chairperson in the absence of the chairperson. A majority of the members currently~~
35 ~~appointed shall constitute a quorum and action may be taken by the Board upon a vote of a~~
36 ~~majority of the members present. At any meeting or hearing, the Board may fix and call a~~
37 ~~meeting or hearing on a future date. All meetings and hearings shall be public. The Board~~
38 ~~shall meet on a regular basis to conduct its business and as necessary to conduct~~
39 ~~administrative hearings filed by persons appealing the decisions of the Division.~~

40 ~~(e) Any appeal of a decision rendered by the Consumer Affairs Hearing Board regarding a~~
41 ~~violation of Chapter 501 shall be directed to the Florida State Department of Legal Affairs with~~
42 ~~subsequent judicial review through the District Courts of Appeal. Adjudications of the Consumer~~
43 ~~Affairs Hearing Board of substantive violations of this Ordinance shall be appealed to the Circuit~~
44 ~~Court of the fifteenth Judicial Circuit by Writ of Certiorari. Nothing in this Ordinance shall apply~~
45 ~~to any television or radio broadcasting station or to any publisher or printer of a newspaper,~~
46 ~~magazine, or other form of printed advertising, which broadcasts, publishes, or prints such~~
47 ~~advertisements, except insofar as said station or publisher or printer is guilty of deception in the~~

1 sale, or in the offering for sale of its own services, or to actions or transactions regulated under
2 laws administered by the state public service commission.

3
4 **Section 5. Consumer Affairs Division 6. Other Rights and Remedies.**

5 Nothing herein shall prevent any person from exercising any right or seeking any private remedy
6 to which he might otherwise be entitled or from filing any complaint with any other agency.

7
8 **Section 9-8 of Chapter 9, Article I of the Palm Beach County Code shall be amended to**
9 **read as follows: 7. Consumer Affairs Division.**

10 There is hereby created the Consumer Affairs Division under the Department of Public Safety.

11
12 **Section 6.8. Director of Consumer Affairs Division.**

13
14
15 Section 9-9 of Chapter 9, Article I of the Palm Beach County Code shall be amended to read
16 as follows:

17 The ~~Director of the Consumer Affairs Division~~ shall be a County employee under the
18 supervision and control of the Director of the Department of Public Safety.

19
20 **Section 7.9. Powers of Director.**

21
22
23 Section 9-10 of Chapter 9, Article I of the Palm Beach County Code shall be amended to
24 read as follows:

25 The functions and powers of the Director of the Consumer Affairs Division shall include the
26 following:

27 (1) —

28 (a) To receive complaints from all persons complaining of unfair or deceptive
29 trade acts or practices as defined in this ~~Code~~; Ordinance;

30 (2) —

31 (b) To represent the interests of consumers before administrative and regulatory
32 agencies and legislative bodies;

33 (3) —

34 (c) To enforce the provisions of this ~~Code~~ Ordinance;

35
36 (d) (4) — To investigate complaints, institute actions and proceedings under
37 this Ordinance;

38 Ordinance;

39 (5) —

40 (e) To conduct appropriate surveys and inspections to determine whether the
41 provisions of this Ordinance are being complied with;

42 (6) —

43 (f) To report to the appropriate law enforcement officers any information
44 concerning violations of any consumer protection law;

45 (7) —

46 (g) To render annual reports to the Board of County Commissioners as to the
47 number of complaints filed, the nature thereof and the disposition thereof and
48 other relevant activities of the office and the Board undertaken during the
49 previous year;

50 previous year;

51 (8) —

52 (h) To publicize and disseminate information to the public concerning consumer
53 affairs and to recommend methods for improvement thereof;

54 (9) —

55 (i) To enlist and encourage public support, and the assistance of civic
56 organizations and the cooperation of business enterprises and organizations in
57 consumer affairs;

1 (10) —

2 (j) To make periodic reports concerning the status of consumer affairs in Palm
3 Beach County and the enforcement of the provisions of this Ordinance, and
4 recommendations concerning consumer protection. Such reports shall be
5 made to the Consumer Affairs Hearing Board and to the Board of County
6 Commissioners of Palm Beach County;

7 (11) —

8 To prepare assurances of voluntary compliance as provided for in

9 (k) ~~Section 9-11.15 of the Code;~~ this Ordinance; and

10 (12)

11 (l) To assist, develop and conduct programs of consumer education and
12 information through public hearings, meetings, publications or other materials
13 prepared for distribution to the consumer; and _____

14 (13) ~~To file with the Consumer Affairs Hearing Board complaints for which
15 he or she has determined there are grounds to believe an unfair or deceptive trade act or
16 practice has occurred.~~

17
18 **Section 8.10. Complaints.**

19 ~~Section 9-12 of Chapter 9, Article I of the Palm Beach County Code shall be amended to
20 read as follows:~~

21 (a) —

22 (a) Any consumer may make or file a complaint stating the name and address (if
23 known) of the person alleged to have committed the violation complained of
24 and the particulars thereof, and such other information as may be required by
25 the Consumer Affairs Division.

26 (b)

27 (b) Upon the filing of a complaint, the ~~director~~ Director shall review the
28 complaint and supporting documentation, if any, and assign a staff
29 investigator ~~to investigate, if deemed appropriate.~~ If the staff investigators
30 ~~determine~~ investigator determines that there are reasonable grounds to believe
31 a violation has occurred, the staff investigator ~~may attempt to conciliate the~~
32 matter through conferences with all interested parties and such representatives
33 as the parties may chose to assist them, or alternatively, may issue a civil
34 citation.

35 (c)

36 (c) If the staff investigator determines that there are no reasonable grounds to
37 believe that a violation ~~has occurred,~~ the investigator shall prepare a closure
38 letter for the ~~director~~ Director to review and approve, prior to dismissing the
39 complaint.
40

41 **Section 9. Enforcement**

42
43 ~~Section 9-16 of Chapter 9, Article I of the Palm Beach County Code shall be amended to~~
44 ~~read as follows:~~ -16

45 (a) ~~It shall be the duty and responsibility of all law enforcement officials to assist in~~
46 ~~the enforcement of this Ordinance to the extent that it is within their jurisdiction to do so.~~

47
48 (b) ~~Whenever any person has been issued a civil citation by a staff investigator~~
49 ~~and has been found to have engaged in any acts or practices which constitute a~~
50 ~~violation of any provision of this Ordinance, the person shall be required to pay Palm~~
51 ~~Beach County a civil penalty not to exceed Two Hundred Fifty Dollars (\$250.00) for~~
52 ~~the first violation and Five Hundred Dollars (\$500.00) for each repeat violation.~~

53
54 **Section 10. Consumer Advocate, etc.**

1
2 Section 9-17 of Chapter 9, Article I of the Palm Beach County Code shall be deleted in its
3 entirety:

4
5
6 **Section 11. Prohibition of Unfair or Deceptive Trade Practices.**

7 Section 9-19 of Chapter 9, Article I of the Palm Beach County Code shall be amended to
8 read as follows:

9
10 No person shall engage in any unfair method of competition or deceptive act or practice in the
11 conduct of any consumer transaction. A person engages in an unfair method of competition or
12 deceptive trade act or practice when in the course of his or her business, vocation or occupation,
13 he or she knows, or in the exercise of care should know, that he or she in the past engaged, or is
14 now engaging in, any unfair method of competition or deceptive acts or practices in the conduct
15 of any trade or commerce as herein defined. Unfair or deceptive trade acts or practices shall
16 include, but are not limited to, the following:

17 (1) —

18 (a) Representations that goods or services have sponsorship, approval,
19 characteristics, ingredients, uses, benefits, or quantities which they do not
20 have;

21 (2) —

22 (b) Representations that a person or supplier has a sponsorship, approval, status,
23 affiliation or connection which he or she does not have;

24 (3) —

25 (c) Representations that goods are original or new if in fact they are not, or if
26 they are deteriorated, altered, reconditioned, reclaimed, or second-hand;

27 (4) —

28 (d) Representations that goods are of a particular standard, brand, quality, style,
29 or model, if they are of another;

30 (5) —

31 (e) Representations that goods or services are those of another, if they are not;

32 (6) —

33 (f) Using deceptive representations or designations of geographic origin in
34 connection with goods or services;

35 (7) —

36 (g) Advertising goods or services intending not to sell them as advertised;

37 (8) —

38 (h) Advertising goods or services with intent not to supply reasonable expectable
39 public demand, unless the advertisement discloses a limitation of quantity;

40 (9) —

41 (i) Making false or misleading statements concerning the need for, or necessity
42 of, any goods, services, replacements, or repairs;

43 (10) —

44 (j) Disparaging the goods, services, or business of another by false or misleading
45 representations of fact; -16

46 (11) —

47 (k) Making false or misleading statements of fact concerning the reasons for the
48 existence of, or amounts of price reductions;

49 (12) —

50 (l) Failing to return or refund deposits or advance payments for goods not
51 delivered or services not rendered, when no default or further obligation of
52 persons making such deposits or advance payments exists;

53 (13) —

54 (m) Taking consideration for goods or services intending not to deliver such
55 goods or perform such services, or intending to deliver goods or provide
56 service materially different from those ordered or sold;

57 (14) —

58 (n) Making false or misleading statements concerning the profitability, risk, or
59 any other material aspect of any home-operated business opportunity or
60 venture;

- 1 | ~~(15)~~—
2 | (o) Offering gifts, prizes, free items, or other gratuities, intending not to provide
3 | them as offered in connection with a sale of goods or services to a consumer;
4 | ~~(16)~~—
5 | (p) Making false or misleading statements concerning the existence, terms, or
6 | probability of any rebate, additional goods or services, commission, discount
7 | offered as an inducement for the sale of goods or services;
8 | ~~(17)~~—
9 | (q) Using physical force, threat of physical force, or coercion in dealing with
10 | consumers;
11 | ~~(18)~~—
12 | (r) Any violation of the Florida Deceptive and Unfair Trade Practices Act,
13 | Section 501.201 et seq., Florida Statutes;
14 | ~~(19)~~—
15 | (s) Advertising, representing, or offering for sale an article of food or food
16 | product as “kosher” or having the word “kosher” in any language
17 | inscribed thereon if such food is not in fact kosher as sanctioned by orthodox
18 | Hebrew religious requirements, and,
19 | ~~(20)~~—
20 | (t) Selling or exposing for sale in any hotel, restaurant or other place where food
21 | products are sold for consumption on the premises, any meat or meat
22 | preparation, or article of food, or food preparation falsely representing the
23 | same to be kosher or as having been prepared in accordance with the orthodox
24 | Hebrew religious requirements when the meat or meat preparation, article of
25 | food or food preparation is not kosher or not prepared in accordance with
26 | orthodox Hebrew religious requirements, or; or selling or exposing for sale in
27 | such hotel, restaurant or such other place kosher and non-kosher food or food
28 | preparation, the latter having not been prepared in accordance with Jewish
29 | ritual or not sanctioned by the Hebrew orthodox religious requirements and
30 | failing to conspicuously display a sign or other public notice in block letters
31 | at least four inches in height “kosher and non-kosher food served here;” or
32 | displaying within or outside such hotel, restaurant or other place, words or
33 | letters in Hebraic characters or any sign, emblem, insignia symbol or mark in
34 | simulation of same, the display of which might reasonably be calculated to
35 | deceive or lead a reasonable person to believe that a representation is being
36 | made that all food sold or offered for sale on the premises is kosher and
37 | prepared in accordance with the orthodox Hebrew religious requirements if
38 | such is not true of all the food products sold on the premises.

39 |
40 | **Section -12. Consumer Affairs Hearing Board.**
41 |

42 | (b) The Palm Beach County Consumer Affairs Hearing Board is hereby recreated
43 | and reestablished. The Board shall be subject to the uniform policies and
44 | procedures established by the Board of County Commissioners for Advisory
45 | Boards as currently set forth in Resolution No. 2013-0193, as may be further
46 | amended by action of the Board of County Commissioners.

47 | -16

48 | (c) The Board shall consist of seven (7) members appointed at-large by the Board
49 | of County Commissioners. The members of this Board shall be residents of
50 | Palm Beach County at the time of appointment and while serving on the
51 | Board. At least one (1) member shall be an attorney, licensed to practice in
52 | the State of Florida, and all other appointments shall be made by the Board of
53 | County Commissioners on the basis of experience or interest in the field of
54 | consumer affairs. All Board appointments shall be for a term of three (3)
55 | years, with a limit of three (3) consecutive terms. Terms shall begin on
56 | October 1st, and end on September 30th. Existing member’s terms shall end
57 | on September 30th of the year in which their term expires. Vacancies
58 | occurring during a term shall be filled for the unexpired portion of the term,
59 | and shall not count toward a member’s term limits. Members serve without
60 | compensation. Members shall be governed by the applicable provisions of
61 | the State Ethics Code and the applicable provisions of the Palm Beach County
62 | Code of Ethics, as may be amended.

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- (d) Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or a failure to attend more than one-half of the meetings scheduled during a calendar year. Participation for less than three-fourths of a meeting shall be the same as a failure to attend a meeting. Members removed pursuant to this paragraph shall not continue to serve on the Board and such removal shall create a vacancy. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term.
 - (e) Members shall appoint a chairperson and a vice-chairperson. The chairperson and the vice-chairperson shall be elected by a majority vote of the Board and shall serve for a term of one (1) year. The vice-chairperson shall perform the duties of the chairperson in the absence of the chairperson. In the absence of both the chairperson and the vice-chairperson, the Division director or manager may conduct the meeting or hearing. Meetings and hearings shall be governed by Robert's Rules of Order, and shall be open to the public, duly advertised and otherwise comply with all applicable requirements of Florida's "Sunshine" law as set forth in Chapter 286, Florida Statutes. A majority of the members currently appointed shall constitute a quorum and action may be taken by the Board upon a vote of a majority of the members present. At any meeting or hearing, the Board may fix and call a meeting or hearing on a future date. The Board shall meet on a regular basis to conduct its business and as necessary to conduct administrative hearings filed by persons appealing the decisions of the Division.
 - (f) Any appeal of a decision rendered by the Consumer Affairs Hearing Board regarding a violation of Chapter 501 Florida Statutes shall be directed to the Florida Office of the Attorney General with subsequent judicial review through the District Courts of Appeal. Adjudications of the Consumer Affairs Hearing Board of substantive violations of this Ordinance shall be appealed to the Circuit Court of the Fifteenth Judicial Court by Writ of Certiorari.
 - (f) Alternatively, the Division shall have the option to utilize a Special Master to hear matters for appeal, instead of scheduling those appellate matters before the Consumer Affairs Hearing Board. The Division shall establish policies and procedures governing the Special Master process prior to said utilization.

39 **Section 13. Powers of the Consumer Affairs Hearing Board.**

40 The Consumer Affairs Hearing Board shall have the following authority and power:

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- (a) To assist, advise, and cooperate with the Board of County Commissioners and local, state, and federal agencies and officials to protect the interests of the consumer-public;
 - (b) To hear appeals by persons aggrieved by actions of the Consumer Affairs Division not already referred to the state attorney for criminal prosecution; the Board shall reach a prompt decision on all such appeals and may affirm or reverse the action or decision appealed from, provided that such decision shall not be in conflict with the provisions of this Ordinance; and,
 - (c) To exercise and perform such other functions, powers and duties as may be deemed necessary or appropriate to protect and promote the welfare of county consumers.

57 **Section 14. Consumer Affairs Hearing Board – Proceedings at Hearing.**

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- (a) The Board shall give probative effect to the evidence which would be admissible to civil proceedings in the courts of this state but in receiving evidence due regard shall be given to the competent, reliable and technical

1 evidence which will aid the Board in making a fair determination of the
2 matter, regardless of the existence of any common law or statutory rule which
3 might otherwise make improper the admission of such evidence.

4
5 (b) The rules of privilege shall be effective to the same extent that they are now
6 or hereafter may be recognized in civil action. Irrelevant and unduly
7 repetitious evidence shall be excluded.

8
9 (c) At the hearing the parties may present testimony and evidence, and the right
10 to cross examine witnesses shall be preserved. All testimony and evidence
11 shall be given under oath or by affirmation.

12
13 (d) The Board shall keep a full record of the hearing, which record shall be public
14 and open to inspection by any person; and upon request by any principal party
15 to the proceedings the Board shall furnish such party a copy of the hearing
16 record, at such cost as the Board of County Commissioners deems
17 appropriate.

18
19 (e) The general procedure for the hearing shall be as set forth above, and as well,
20 each party shall have the following rights:

21
22 (1) To call and examine witnesses;

23 (2) To introduce exhibits;

24 (3) To cross examine opposing witnesses on any relevant matter
25 even though the matter was not covered under direct
26 examination;

27 (4) To impeach any witness regardless of which party first called
28 him to testify; and,

29 (5) To rebut the evidence.

30
31 **Section 15. Assurance of Voluntary Compliance.**

32
33 (a) In the enforcement of this Ordinance, the Director may accept an Assurance
34 of Voluntary Compliance with respect to any method, act or practice deemed
35 to be violative of law from any person who has engaged or was about to
36 engage in such method, act or practice. Any such assurance shall be a formal
37 written agreement between the Consumer Affairs Division and the merchant,
38 approved as to form and legal sufficiency by the County Attorney's Office
39 and filed with the Clerk of the Circuit Court. Such Assurances of Voluntary
40 Compliance may be conditioned on a commitment to reimburse consumers or
41 any other appropriate corrective action such as the voluntary payment by the
42 merchant of the costs of the investigation by the Consumer Affairs Division.
43 An Assurance of Voluntary is not evidence of prior violation of this section,
44 however, unless an Assurance of Voluntary has been rescinded by agreement
45 of the parties or voided by the court for good cause. Subsequent failure to
46 comply with the terms of an Assurance of Voluntary shall be deemed prima
47 facie evidence of a violation of this Ordinance. No such Assurance of
48 Voluntary shall act as a limitation upon any action or remedy available to a
49 person aggrieved by a violation of this Ordinance.

50
51 (b) Every merchant desiring to negotiate an Assurance of Voluntary Compliance
52 shall be apprised of his right to have his case heard by the Board in the event
53 he does not wish to enter into such Assurance of Voluntary Compliance.

54
55 **Section 16. Cease and Desist Order of Director.**

56
57 (a) If the Director, after due investigation, has reason to believe that a person has
58 been or is violating any of the provisions of this Ordinance, then the Director
59 shall cause to be served upon such person a demand to cease and desist,
60 stating the charges and containing a notice of hearing to be held not sooner
61 than ten (10) days and not later than thirty-one (31) days after service of the
62 demand.

1
2 (b) Official notice of hearing, which shall be by personal service, certified mail or
3 posting in a conspicuous place at the merchant's place of business, shall
4 incorporate and set out the following:

5
6 (1) The name of the complainant;

7 (2) The alleged charge and approximate date of the commission
8 of the act;

9 (3) The section of this Ordinance alleged to be involved;

10 (4) Notification as to the time and place of the Board hearing which
11 shall be held not sooner than ten (10) days and not later than
12 thirty-one (31) days after service of the demand;

13 (5) Notice to the respondent that he may be represented by counsel,
14 and that he may bring all original documents and other data
15 pertinent to the case; and,

16 (6) That the respondent will be given an opportunity to present
17 witnesses and evidence he may deem appropriate.

18
19 **Section 17. Order to Show Cause.**

20
21 The person against whom a complaint is filed under this Ordinance shall have the right to appear
22 at the place and time so fixed and show cause why the demand for the Cease and Desist Order
23 should not be upheld by the Board.

24
25 **Section 18. Statutes Adopted.**

26
27 (a) All statutes of the state and rules adopted there under defining and
28 prohibiting false advertising and offenses relating to consumer protection,
29 trade standards, and weights and measures, defined by state law, are adopted
30 and incorporated by reference as part of this Ordinance to the same extend
31 and the same effect as if the provisions of each such statute were set out in
32 full herein, defining and prohibiting each such offense against the state to be
33 prohibited by, or an offense in violation of this Ordinance. This shall
34 include, but is not limited to Part II of Chapter 501, Florida Statutes, and all
35 rules adopted pursuant to section 501.205, Florida Statutes, Chapter 817,
36 Florida Statutes, is hereby adopted by reference. It is the intent of this
37 Ordinance that due consideration and great weight be given to the
38 interpretations of the Federal Trade Commission and the federal courts
39 relating to section 5(a)(1) of the Federal Trade Commission Act (15 USC
40 45(a)(1)), as from time to time amended.

41
42 (b) Rules having the force and effect of law as authorized under sections 4, 5,
43 and 6 of the Fair Packaging and Labeling Act (P.L. 89-755) that supersede
44 state and local laws which are less stringent than or require information
45 different from such act, are hereby adopted by reference, as published in the
46 Federal Register as part of this Ordinance. No person shall distribute or
47 cause to be distributed, offer for sale, ~~or~~ sell, in this county any packaged
48 consumer commodity unless in conformity with the Fair Packaging and
49 Labeling Act and/or the rules which shall be established by the
50 promulgating authority.

51
52 **Section 19. Enforcement and Civil Penalties.**

53
54 (a) It shall be the duty and responsibility of all law enforcement officials to
55 assist in the enforcement of this Ordinance to the extent that it is within their
56 jurisdiction to do so.

57
58 (b) Whenever any person has been issued a civil citation by a staff investigator
59 and has been found to have engaged in any acts or practices which constitute
60 a violation of any provision of this Ordinance, the person shall be required
61 to pay Palm Beach County a civil penalty not to exceed Two Hundred Fifty

Dollars (\$250) for the first violation and Five Hundred Dollars (\$500) for each repeat violation.

Section 20. Repeal of lawsLaws in conflictConflict.

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provision of this article are hereby repealed to the extent of any conflict.

Section 1321. Savings Clause.

All complaints, investigations, orders, hearing processes, and all other functions of the Consumer Affairs Division, or the Consumer Affairs Hearing Board, initiated or completed pursuant to Ordinance 72-2, as amended, shall remain in full force and effect.

Section 22. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, it is the intent of the Board of County Commissioners that such holding shall not affect the remainder of this Ordinance.

Section 1423. Inclusion in the codeCode of lawsLaws and ordinancesOrdinances.

The provisions of this Ordinance shall become and be made a part of the codeCode of lawsLaws and ordinancesOrdinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 1524. Captions.

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 1625. Effective Date-.

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 2013. _____, 20_____.

SHARON R. BOCK, _____ PALM BEACH CLERK PALM BEACH COUNTY, FLORIDA, BY ITS FLORIDA, BY ITS CLERK & COMPTROLLER _____ BOARD OF COUNTY COMMISSIONERS

By _____ By: _____ BOARD OF COUNTY COMMISSIONERS

By: _____ Deputy Clerk Priscilla A. Taylor, Mayor By: _____ Steven L. Abrams

APPROVED AS TO FORM AND

1 LEGAL SUFFICIENCY

2
3
4 By: _____

5 APPROVED AS TO FORM AND
6 LEGAL SUFFICIENCY

7
8
9 By: _____
10 County Attorney

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12
13
14 EFFECTIVE DATE: Filed with the Department of State on the _____ day of
15 _____, 2013. _____, 20____.