

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 6, 2015

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: On preliminary reading and advertise for public hearing on October 20, 2015 at 9:30 A.M.: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE "HOME CAREGIVER ORDINANCE"; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR LICENSING; PROVIDING FOR DISQUALIFICATIONS; PROVIDING FOR ADMINISTRATIVE APPEAL; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Summary: The Board of County Commissioners directed staff to work with the Palm Beach County Sheriff's Office in researching an ordinance requiring licensure and fingerprinting of home caregivers. This Ordinance will require licensure of those who qualify as "Home Caregivers" under the Ordinance, by the County's Department of Public Safety, Consumer Affairs Division. The Ordinance will be enforced primarily by the Palm Beach County Sheriff's Office. Countywide (HH)

Background and Justification: Palm Beach County has the third largest population of Florida's counties, and is second among Florida's counties for number of residents aged 60 and over. As the population of elderly and disabled persons in Palm Beach County increases, so does the pool of potential victims of abuse, neglect, and exploitation. The Palm Beach County Sheriff's Office, Financial Crimes Unit, investigates exploitation of the elderly and disabled, and recognizes that most of the crimes investigated involve unlicensed home caregivers who are not subject to background screening. This Ordinance will require level 2 background screening and licensure of Home Caregivers who receive compensation from vulnerable adults in exchange for assisting vulnerable adults with covered activities of daily living and/or instrumental activities of daily living. The Ordinance exempts most relatives of the vulnerable adult, volunteers for charitable organizations, and specific licensed professionals.

Attachments:

- 1. Proposed Ordinance

Recommended by: _____

County Attorney

9/9/15

Date

Approved by: _____

**N/A
County Administrator**

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* -0-	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

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

**No Fiscal Impact*

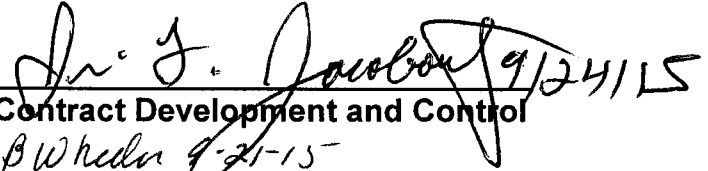
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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




 OFMB
 9/10 9/10



 Contract Development and Control
 BWhelan 9-25-15

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

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

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE "HOME CAREGIVER ORDINANCE"; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR LICENSING; PROVIDING FOR DISQUALIFICATIONS; PROVIDING FOR ADMINISTRATIVE APPEAL; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Palm Beach County is the largest Florida county in size, and has the third
2 largest population with 1,360,734 residents; and

3 **WHEREAS**, in 2011, there were 11,468,487 people aged 18 to 64 in Florida, and
4 1,131,661, or 9.9%, had at least one disability; and there were 3,296,861 people aged 65 and
5 older, and 1,136,372, or 24.5% had at least one disability; and

6 **WHEREAS**, Palm Beach County is second among Florida's 67 counties for number of
7 residents aged 60 and over, with 387,520 residents, or 28.5% of the County's population being
8 aged 60 and over; and

9 **WHEREAS**, people who survive to the age of 65 can be expected to live another 19.2
10 years, and as the populations of elderly and disabled persons in Florida increases, so does the
11 pool of potential victims of abuse, neglect, and exploitation; and

12 **WHEREAS**, 47,347 of Palm Beach County seniors live at or below 125% of the
13 poverty level and 101,059 seniors live alone; and

14 **WHEREAS**, the Area Agency on Aging, Palm Beach County, reported 4,928 Senior
15 Crime Victims in Palm Beach County in a one year period in 2013-14, with the most common
16 crime being burglary (1,583 of those cases) and the second most common crime being
17 fraud/theft (1,324 of those cases); and

18 **WHEREAS**, the Florida Department of Children and Families, Adult Protective
19 Services is charged with protecting vulnerable adults from being harmed, and receives an
20 average of 222 calls of abuse, neglect, and exploitation in Palm Beach County each month; and

21 **WHEREAS**, vulnerable adults who are victims of abuse, neglect, and exploitation
22 suffer from fear, anxiety, and embarrassment, and prosecution of the abuser is often
23 complicated by the victim's incapacity to testify; and

1 **WHEREAS**, the Board of County Commissioners finds that it will serve the public
2 health, safety and welfare of the citizens of Palm Beach County to protect Palm Beach
3 County’s vulnerable adults and disabled citizens by establishing licensing requirements for
4 Home Caregivers as provided in this Ordinance; and

5 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
6 its authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
7 Statutes, and the Palm Beach County Charter, hereby adopts the Palm Beach County Home
8 Caregiver Ordinance; and

9 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public
10 hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes.

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

13 **SECTION 1. TITLE:**

14 This Ordinance shall be titled the Palm Beach County Home Caregiver Ordinance.

15 **SECTION 2. APPLICABILITY:**

16 This Ordinance shall be applicable within the unincorporated areas of Palm Beach County, and
17 in all municipalities that have not adopted an ordinance in conflict. Unless otherwise provided,
18 nothing in this Ordinance shall be construed to relieve any person from compliance with any
19 applicable county or municipal regulations.

20 **SECTION 3. DEFINITIONS:**

21 As used in this Ordinance, unless some other meaning is plainly intended:

22 *Board* is the Palm Beach County Board of County Commissioners.

23 *Covered Activities* include Activities of Daily Living (bathing, grooming, shaving, oral
24 care, using the toilet or other continence-related activities, dressing, eating, transferring from
25 seated to standing position, getting in and out of bed); and Instrumental Activities of Daily
26 Living (finding and utilizing resources such as making and keeping doctor’s appointments,
27 driving or arranging for travel – either by public transportation or private car, preparing meals,
28 shopping, housework, managing medication, and managing finances).

29 *Division* is the Palm Beach County Department of Public Safety Consumer Affairs
30 Division.

1 *Home Caregiver* is a person who receives compensation directly or indirectly from a
2 “vulnerable adult” in exchange for assisting that vulnerable adult with one or more “covered
3 activities.”

4 *Vulnerable Adult* is a person 18 years of age or older whose ability to perform the
5 normal activities of daily living or to provide for his or her own care or protection is impaired
6 due to a mental, emotional, sensory, long-term physical, or developmental disability or
7 dysfunction, or brain damage, or the infirmities of aging.

8 **SECTION 4. LICENSING:**

9 (a) It shall be unlawful for any person to act as a Home Caregiver without first obtaining a
10 Home Caregiver license; however, this Ordinance shall not apply to the following:

11 (1) The vulnerable adult’s spouse, domestic partner, parents, step-parents,
12 grandparents, step-grandparents, children, step-children, grandchildren, step-
13 grandchildren, great grandchildren, siblings, or step-siblings;

14 (2) Charitable and/or faith based organizations which are exempt from federal
15 income tax pursuant to 26 U.S.C. § 501(c)(3), and which serve Vulnerable Adults by
16 making referrals of volunteers to provide Covered Activities;

17 (3) People who receive compensation directly or indirectly from a Vulnerable Adult
18 in exchange for assisting that Vulnerable Adult with one or more Covered Activities on
19 a non-recurring basis, not to exceed 3 days in any calendar month or 24 days in any
20 calendar year;

21 (4) People who are currently licensed in Florida as a: Registered Nurse (RN),
22 Licensed Practical Nurse (LPN), Certified Nursing Assistant (CNA), Clinical Nurse
23 Specialist (CNS), Advanced Registered Nurse Practitioner (ARNP), Physical Therapist
24 (PT), Physical Therapist Assistant (PTA), Occupational Therapist (OT), or
25 Occupational Therapist Assistant (OTA).

26 (b) A person not exempt pursuant to this section who wishes to act as a Home Caregiver
27 shall make application to the Division for a Home Caregiver license. All applicants for a Home
28 Caregiver license shall conform to all of the following, and failure to meet each of these
29 conditions is grounds for denial of a Home Caregiver license:

30 (1) Be at least eighteen (18) years of age;

31 (2) On initial application and on each fifth yearly renewal thereafter, the applicant
32 must provide the original request form for his/her Florida Department of Law

1 Enforcement (FDLE) criminal history/records report to the Division, as well as payment
2 for the amount required to secure the criminal history/records report. The Division shall
3 then be responsible for processing the request and payment to the FDLE. Prior to
4 submitting a request for a criminal history record check pursuant to this Ordinance, the
5 Division shall notify each applicant to be fingerprinted that his or her fingerprints will
6 be sent to the State Department of Law Enforcement for a state criminal history record
7 check and to the Federal Bureau of Investigation for a national criminal history record
8 check. The notification shall also state that the Home Caregiver license applicant has a
9 right to:

- 10 a. Obtain a copy of his or her criminal history records;
- 11 b. To challenge the completeness and accuracy of the criminal history records
12 pursuant to state and federal law; and
- 13 c. To request a correction, change or update to the criminal history records
14 pursuant to state and federal law.

15 (3) Every application or renewal application for a Home Caregiver license shall be
16 in writing and signed by the applicant and shall be filed with the Division on a form
17 provided by the Division together with the nonrefundable license application fee which
18 shall not be subject to proration. The license application fee shall be established by
19 resolution of the Board;

20 (4) Applicants must submit to a fullface photograph or digital image prior to the
21 issuance of the Home Caregiver license by the Division;

22 (5) Applicants must complete the Home Caregiver license registration affidavits
23 provided by the Division;

24 (6) Each Home Caregiver license shall be valid for a one-year period and must be
25 renewed by the applicant every year from the date of the initial/renewal application. The
26 Division may deny a Home Caregiver license if it is determined that the applicant has
27 misrepresented, omitted, or concealed a fact on the application, renewal application or
28 replacement application. If the Home Caregiver license is denied, the Division shall not
29 accept an application for said license for one (1) year from the date the license is
30 denied. Any person renewing a Home Caregiver license must file a renewal application,
31 furnish the documentation requested by the Division, and submit payment for the
32 required nonrefundable renewal fee(s) not more than ninety (90) days before the

1 expiration date of a Home Caregiver license. Persons who fail to reapply for their Home
2 Caregiver license thirty (30) days prior to expiration, risk having a gap in their
3 authorization to act as a Home Caregiver. Any applicant who fails to submit a renewal
4 application within twenty (20) days of the expiration of a current license will be
5 considered a new applicant when reapplying and no grandfathered provisions will
6 apply. The license renewal fee shall be established by resolution of the Board.

7 (c) Licensed Home Caregivers shall maintain the license issued pursuant to this Ordinance
8 while acting as a Home Caregiver in such a manner as to make it available for inspection to the
9 public, Division personnel, and all law enforcement officials.

10 (d) Each Home Caregiver license shall, at a minimum, contain the name of the Home
11 Caregiver, date of expiration, and fullface photograph or digital image of the Home Caregiver.

12 (e) The Division may issue a replacement Home Caregiver license to any Home Caregiver
13 on application, payment of a nonrefundable replacement fee, presentation of proof or a sworn
14 affidavit that the license has been lost, stolen, or for any other valid reason, and any other
15 documentation or requirement requested by the Division. The replacement fee shall be
16 established by resolution of the Board.

17 **SECTION 5. DISQUALIFICATIONS:**

18 An applicant for a Home Caregiver license shall be disqualified from receiving such a license,
19 and a licensed Home Caregiver may have his or her license revoked, by reason of:

20 (1) Having been found guilty of, regardless of adjudication, or having entered a plea
21 of nolo contendere or guilty to, any offense prohibited under any of the following
22 provisions of Florida Statutes or under any similar statute of another jurisdiction within
23 the past fifteen (15) years:

24 a. Section 415.111, relating to reporting adult abuse, neglect, or exploitation of aged
25 persons or disabled adults; or

26 b. Chapter 782, relating to homicide; or

27 c. Chapter 784, relating to assault, battery, and culpable negligence; or

28 d. Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child,
29 custody offenses; or

30 e. Chapter 794, relating to sexual battery;

31 f. Chapter 800, relating to lewdness, indecent exposure; or

32 g. Chapter 806, relating to arson; or

- 1 h. Chapter 810, relating to burglary and trespass, if the offense is a felony; or
- 2 i. Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony;
- 3 or
- 4 j. Chapter 817, relating to fraudulent practices; or
- 5 k. Chapter 825, relating to abuse, neglect, and exploitation of elderly persons and
- 6 disabled adults; or
- 7 l. Chapter 827, relating to abuse of children; or
- 8 m. Chapter 831, relating to forgery and counterfeiting; or
- 9 n. Chapter 847, relating to obscenity, if the offense is a felony; or
- 10 o. Chapter 859, relating to poisons, adulterated drugs, if the offense is a felony; or
- 11 p. Chapter 893, relating to drug abuse prevention and control, if the offense is a felony;
- 12 or
- 13 q. Chapter 896, relating to offenses concerning financial transactions.
- 14 (2) Failing to notify the Division within ten (10) business days of being found guilty
- 15 of, regardless of adjudication, or having entered a plea of nolo contendere or guilty to,
- 16 any of the crimes enumerated in section (1) above;
- 17 (3) Having unsatisfied penalties, judgments or administrative orders pertaining to
- 18 this Ordinance;
- 19 (4) Being enjoined by a court of competent jurisdiction from engaging in the Home
- 20 Caregiver business;
- 21 (5) Having a conviction in any military or foreign jurisdiction, federal, state, county
- 22 or municipal jurisdiction within the United States for violations analogous or parallel to
- 23 those violations enumerated in all sections herein;
- 24 (6) Misrepresenting, omitting, or concealing a fact on the Home Caregiver
- 25 application, renewal application, or replacement application;
- 26 (7) Altering or otherwise changing the contents of the information included on the
- 27 face of a Home Caregiver license; or
- 28 (8) Obstructing, hampering, or interfering with an investigation of an alleged
- 29 violation of this Ordinance conducted by Division personnel, any law enforcement
- 30 officer or an employee of any other agency enforcing this Ordinance.

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1 **SECTION 6. ADMINISTRATIVE APPEAL:**

2 (a) If an applicant is disqualified from receiving a Home Caregiver license, or if a Home
3 Caregiver license is revoked, the Division will serve written notice of disqualification or
4 revocation by certified mail (return receipt requested) on the applicant or licensee. The written
5 notice shall specify the grounds for the disqualification or revocation. On receipt of the written
6 notice, a person shall be entitled to appeal such decision to the consumer affairs hearing
7 board/special master.

8 (b) An appeal to the consumer affairs hearing board/special master shall be initiated by
9 filing with the Division a written request for an appeal, along with a non-refundable filing fee,
10 within twenty (20) days of receipt of the written notice of disqualification or revocation. The
11 filing fee shall be established by resolution of the Board. Failure to timely file a written request
12 for an appeal and accompanying filing fee shall be deemed a waiver of the right to appeal and
13 admission of the grounds for disqualification or revocation.

14 (c) Appeals shall be considered at a hearing of the consumer affairs hearing board/special
15 master within sixty (60) days of receipt by the Division of the request for an appeal. Written
16 notice of the time, date, and place of the hearing of the appeal shall be served on the appellant
17 no later than twenty (20) days prior to the date of the hearing, by certified mail (return receipt
18 requested). Failure to appear at a duly noticed hearing shall be deemed a waiver of the right
19 to appeal and an admission of the grounds for disqualification or revocation.

20 (d) At the hearing before the consumer affairs hearing board/special master, all parties may
21 be represented by an attorney and shall be entitled to present evidence and argument on all
22 issues involved, conduct cross examination, and submit rebuttal evidence. All testimony shall
23 be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental
24 due process shall be observed and shall govern the proceedings. Irrelevant, immaterial or
25 unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied
26 on by reasonably prudent persons in the conduct of their affairs shall be admissible, (including
27 hearsay), whether or not such evidence would be admissible in a trial in the courts of this state.
28 The appellant shall have the burden of proof by a preponderance of the evidence. The
29 appellant's criminal history/records reports shall be admitted into evidence before the consumer
30 affairs hearing board/special master. The consumer affairs hearing board/special master shall
31 consider all evidence and documentation de novo, and shall, on the basis of competent
32 substantial evidence before it, affirm or reverse the disqualification or revocation. At the

1 conclusion of the appeal hearing, the consumer affairs hearing board/special master shall orally
2 render its decision. The decision shall be by motion approved by the affirmative vote of those
3 members present and voting. The decision shall be stated in a written order and mailed to the
4 appealing party not later than ten (10) days after the hearing, and shall be deemed final agency
5 action with regard to the matter appealed.

6 (e) Any person may appeal a final determination of the consumer affairs hearing
7 board/special master within thirty (30) days of the rendition of the decision by filing a petition
8 for writ of certiorari in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach
9 County.

10 **SECTION 7. ENFORCEMENT:**

11 In addition to the penalties set forth in section 8 of this Ordinance, this Ordinance is
12 enforceable by all means provided by law. Additionally, Palm Beach County may choose to
13 enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

14 **SECTION 8. PENALTIES:**

15 (a) Pursuant to section 125.69, Florida Statutes, violations of county ordinances shall be
16 prosecuted in the same manner as misdemeanors are prosecuted. Any person violating any of
17 the provisions of this Ordinance, any terms of a notice to appear citation, any notice to correct a
18 violation, or any other lawful order of the Division Director; or who shall fail to abide by and
19 obey all orders and resolutions promulgated as herein provided, shall, on conviction, be
20 punished by a fine not to exceed \$500 or imprisonment for not more than 60 days, or both for
21 each violation, payment of all costs and expenses involved in prosecuting the offense, and
22 permanent disqualification from receiving a Home Caregiver license.

23 (b) Each day that a violation occurs shall constitute a separate violation.

24 **SECTION 9. REPEAL OF LAWS IN CONFLICT:**

25 All local laws and ordinances in conflict with any provisions of this Ordinance are
26 hereby repealed to the extent of such conflict.

27 **SECTION 10. SEVERABILITY:**

28 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
29 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
30 such holding shall not affect the remainder of this Ordinance.

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1 **SECTION 11. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

2 The provisions of this Ordinance shall become and be made a part of the Palm Beach
3 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
4 such, and the word Ordinance may be changed to section, article, or other appropriate word.

5 **SECTION 12. CAPTIONS:**

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

9 **SECTION 13. EFFECTIVE DATE:**

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

12 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
13 County, Florida, on this the ____ day of _____, 2015.

14 **SHARON R. BOCK, CLERK**
15 **AND COMPTROLLER**

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

16
17
18 By: _____
19 **Deputy Clerk**

By: _____
Shelley Vana, Mayor

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21
22 **APPROVED AS TO FORM AND**
23 **LEGAL SUFFICIENCY**

24
25
26 By: 
27 **County Attorney**

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29 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
30 _____, 2015.