

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

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Meeting Date: March 1, 2016	[ ]	Consent	[X]	Regular
	[ ]	Ordinance	[ ]	Public Hearing

Department: Department of Public Safety  
 Submitted By: Department of Public Safety  
 Submitted For: Division of Consumer Affairs

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to: **A) Adopt** a resolution of the Board of County Commissioners of Palm Beach County Florida establishing fees and fines for the Home Caregiver Ordinance; and **B) Approve** the Florida Department of Law Enforcement (FDLE) Criminal Justice Information Services Criminal History Record Check User Agreement for Non-Criminal Justice Purposes (User Agreement), which authorizes the Palm Beach County Division of Consumer Affairs (Consumer Affairs) to process fingerprint based criminal background checks on Home Caregivers through FDLE’s Volunteer and Employee Criminal History System (VECHS) databases using livescan technology; and **C) Authorize** the County Administrator or designee to execute any amendments or extensions of time relating to this FDLE User Agreement.

**Summary:** On October 20, 2015, the Board of County Commissioners approved a Home Caregiver Ordinance 2015-038 requiring licensure of Home Caregivers. The Ordinance provides that the Board of County Commissioners shall establish by resolution certain licensing, renewal, and replacement fees, and allows Consumer Affairs to run “Level 2” fingerprint based national criminal history background checks on Home Caregivers through the FDLE and the FBI databases. The Palm Beach County Sheriff’s Office will be assisting Consumer Affairs with the fingerprint and photograph process for home caregivers. The attached resolution establishes licensing fees and civil fines. Execution of the attached User Agreement is an FDLE prerequisite to finalizing the approved action allowing Consumer Affairs Staff to process the “Level 2” criminal history checks though the FDLE databases. **Countywide (HH)**

**Background and Justification:** The Division of Consumer Affairs now has the authority to perform statewide and national fingerprint based criminal background checks for other regulated industries. To set up and finalize the process of obtaining Home Caregiver fingerprints and electronically submitting the fingerprints to FDLE, a User Agreement with the County is a prerequisite for Consumer Affairs to access the reports generated by FDLE through its criminal justice information databases.

**Attachments**

1. Resolution including Schedule of Fees/Fines
2. The Florida Department of Law Enforcement (FDLE) Criminal Justice Information Services Criminal History Record Check User Agreement for Non-Criminal Justice Purposes (“User Agreement”).
3. VECHS Entity Application
4. Home Caregiver Ordinance 2015-038

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Recommended by:	<u>V. J. Bonvento</u> Department Director	<u>2/9/16</u> Date
Approved By:	<u>V. J. Bonvento</u> Assistant County Administrator	<u>2/9/16</u> Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact**

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>Net Fiscal Impact</b>	<u><u>**0</u></u>	<u><u>          </u></u>	<u><u>          </u></u>	<u><u>          </u></u>	<u><u>          </u></u>

# ADDITIONAL FTE POSITIONS (Cumulative)      0                      0                      0                      0                      0

Is Item Included In Current Budget?    Yes \_\_\_\_\_ No X

Budget Account Exp No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Rev No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ RevSc \_\_\_\_\_

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

\*\*The fiscal impact is indeterminable at this time. However, any additional revenue collected from the fees will be accounted for in the Public Safety Department's budget.

Departmental Fiscal Review: *[Signature]*

**III. REVIEW COMMENTS**

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

*[Signature]*                      *[Signature]* 2/19/16  
 OFMB                      Contract Administration

**B. Legal Sufficiency:**

*[Signature]*  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

**RESOLUTION NO. R-2016**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA ESTABLISHING FEES AND FINES FOR THE HOME CAREGIVER ORDINANCE.**

**WHEREAS**, Section 125, Florida Statutes, establishes the right and power of counties to provide for the health, safety, and welfare of existing and future residents; and

**WHEREAS**, the Palm Beach County Board of County Commissioners enacted the Palm Beach County Home Caregiver Ordinance on October 20, 2015; and

**WHEREAS**, Sections 4(b)(3), 4(b)(6), 4(e), and 6(b) of the Home Caregiver Ordinance provide that the license application fee, license renewal fee, license replacement fee, and administrative appeal filing fee, respectively, shall be established by resolution of the Board of County Commissioners; and

**WHEREAS**, the Home Caregiver Ordinance requires a schedule of civil fines for violations of the Ordinance to be established by resolution of the Board of County Commissioners; and

**WHEREAS**, this resolution shall be applicable to amendments to the Palm Beach County Home Caregiver Ordinance No. 2015-038.

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

A) The following schedule of fees be established:

1) **Home Caregiver License Fee/Renewal Fee (Every 5 years):**

- a) With Florida Department of Law Enforcement (FDLE) Fingerprint Based Criminal History Record Check.....\$70
- b) With Palm Beach County Sheriff's Office fingerprint verification....\$60
- c) With Palm Beach County Sheriff's Office fingerprint and photograph verification.....\$55
- d) With Notarized Affidavit in lieu of (FDLE) Fingerprint Based Criminal History Record Check (Section 4(b)(2)).....\$20

- 2) **Home Caregiver License Replacement fee**.....\$15
- 3) **Administrative Appeal Filing Fee**.....\$100

B) The following civil fines be established:

- 1) **Violations of Section 4. Licensing:** \$500 – first offense, \$500 - second offense, \$500 - third offense (with a possible mandatory court appearance on first, second, and third offense).
- 2) **Violations of all other sections of the Ordinance:** \$250 – first offense, \$500 – second offense; \$500 – third offense (with a possible mandatory court appearance on first, second, and third offense).

C) The effective date for these fees shall be the license year with begins October 20, 2015 and shall apply to any amendment to the Palm Beach County Home Caregiver Ordinance No. 2015- 038.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- District 1, Hal R. Valeche \_\_\_\_\_
- District 2, Paulette Burdick \_\_\_\_\_
- District 3, Shelley Vana \_\_\_\_\_
- District 4, Steven L. Abrams \_\_\_\_\_
- District 5, Mary Lou Berger \_\_\_\_\_
- District 6, Melissa McKinlay \_\_\_\_\_
- District 7, Priscilla A. Taylor \_\_\_\_\_

The Mayor thereupon declared the resolution duly passed and adopted this \_\_\_\_\_ day of March, 2016.

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

Sharon R. Bock, Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By Deleane C. Strind  
Assistant County Attorney



Florida Department of Law Enforcement  
Criminal Justice Information Services Division  
User Services Bureau

## **VECHS USER AGREEMENT**

### **Volunteer & Employee Criminal History System (VECHS)**

for Criminal History Record Checks by a Qualified Entity  
under the National Child Protection Act of 1993, as amended,  
and Section 943.0542, Florida Statutes

#### **I. Parties to Agreement**

This Agreement, entered into by the Florida Department of Law Enforcement (hereinafter referred to as FDLE), an agency of the State of Florida, with headquarters in Tallahassee, Florida, and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of Commissioners, (hereinafter referred to as the User), located at 50 South Military Trail, Suite 201, West Palm Beach, Florida 33415, is intended to set forth the terms and conditions under which criminal history background checks authorized by the National Child Protection Act of 1993, as amended, (hereafter referred to as the NCPA), and as implemented by Section 943.0542, Florida Statutes, (F.S.), shall be conducted.

- A. FDLE has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information in accordance with subsection 943.05(2), F.S., and, additionally, is authorized and does participate in similar multi-state and federal criminal history records systems pursuant to subsection 943.05(2), F.S.;
- B. FDLE and its user agencies are subject to and must comply with pertinent state and federal regulations relating to the receipt, use, and dissemination of records and record information derived from the systems of FDLE and the United States Department of Justice (Chapter 943, F.S., Chapter 11C-6, F.A.C., 28 C.F.R. Part 20);
- C. User is a public, private, for profit, or not-for-profit entity operating within the State of Florida and is authorized to submit fingerprint cards and review resultant criminal history records as part of the screening process for its current and/or prospective employees, volunteers, and Palm Beach County Home Caregiver License Applicants (which classes of persons shall be understood for purposes of this Agreement to include contractors and vendors who have or may have unsupervised access to the children, disabled, or elderly persons for whom User provides care), pursuant to section 943.0542, F.S., and the NCPA, and forms the legal basis for User's access to criminal history record information derived from the systems of the U.S. Department of Justice; and
- D. User is desirous of obtaining and FDLE is required and willing to provide such services so long as proper reimbursement is made and all applicable federal and state laws, rules, and regulations are strictly complied with.

Now, therefore, in light of the foregoing representations and the promises, conditions, terms, and other valuable considerations more fully set forth hereinafter or incorporated by reference and made a part hereof, FDLE and User agree as follows:

II. Service, Compliance, and Processing

A. FDLE agrees to:

1. Assist User concerning the privacy and security requirements imposed by state and federal laws, and regulations; provide User with copies of all relevant laws, rules, and or regulations as well as updates as they occur; offer periodic training for User's personnel;
2. Provide User with such state criminal history records and information as reported to, processed, and contained in its systems and legally available to the User; and
3. Act as an intermediary between User and the United States Department of Justice, securing for the use and benefit of User such federal and multi-state criminal history records or information as may be available to User under federal laws and regulations.

B. User agrees to:

1. Submit requests to FDLE for criminal history background checks pursuant to this agreement only for User's current and prospective Florida employees and volunteers, for whom User is not already required to obtain state and national (Level 2) criminal history background checks under any other state or federal statutory provision. User shall continue to comply with all other such statutory provisions for all applicable persons;
2. Determine whether the current or prospective employee or volunteer has been convicted of, or is under pending indictment for, a crime that bears upon his or her fitness to have access to or contact with children, the elderly, or individuals with disabilities;
3. Obtain a completed and signed Waiver Agreement and Statement form (provided by FDLE) from every current or prospective employee, volunteer, and Palm Beach County Home Caregiver License Applicant for whom User submits a request for a criminal history background check to FDLE. (The signed Waiver Agreement and Statement allows the release of state and national criminal history record information to the qualified entity.) The Waiver Agreement and Statement must include the following: (a) the person's name, address, and date of birth that appear on a valid identification document (as defined at 18 U.S.C. section 1028); (b) an indication of whether the person has or has not been convicted of a crime, and, if convicted, a description of the crime and the particulars of the conviction; (c) a notification to the person that User may request a criminal history background check on the person as authorized by section 943.0542, F.S., and the NCPA; (d) a notification to the person of his or her rights as explained in paragraph 12 below; and (e) a notification to the person that, prior to the completion of the background check, User may choose to deny him or her unsupervised access to a

person to whom User provides care. User shall retain the original of every Waiver Agreement and Statement and provide FDLE with a copy thereof;

4. Use only fingerprint cards provided by FDLE specifically designed for use with requests for criminal history record checks under the NCPA; provide FDLE with a properly completed and executed fingerprint card for each current or prospective employee and volunteer for whom User requests a criminal history record check pursuant to this agreement; and indicate either "NCPA/VCA VOLUNTEER" or NCPA/VCA EMPLOYEE" in the "reason fingerprinted" block of each fingerprint card submitted. (VCA refers to Volunteers for Children Act);
5. Keep all records necessary to facilitate a security audit by FDLE and to cooperate in such audits as FDLE or other authorities may deem necessary. Examples of records that may be subject to audit are criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed User Agreement with FDLE;
6. **\*\*IF ENTITY IS PRIVATE, FOR PROFIT OR NOT FOR PROFIT\*\*** - Pay for services provided by FDLE and the Federal Bureau of Investigation (FBI) in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards;
7. **\*\*IF ENTITY IS A GOVERNMENTAL AGENCY\*\*** - If set up on a billing account with FDLE for services requested pursuant to this agreement, reimburse FDLE, in a timely fashion, in accordance with rule 11C-6.004, F.A.C., upon proper presentation of billing for state services rendered and reimburse the FBI, in a timely fashion via FDLE, upon proper presentation of billing for federal services rendered. If not on a billing account, User shall pay for services provided by FDLE and the FBI in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards and requests for criminal history background checks;
8. **\*\*IF ENTITY IS A GOVERNMENTAL AGENCY\*\*** - Maintain adequate records and monitor allocate funds for payment of services under this agreement;
9. Insure that the appropriate personnel know to keep the information obtained under this agreement in a secure place and to use it only for the screening as outlined in this agreement;
10. Promptly advise FDLE of any violations of this agreement;
11. Share criminal history information with other qualified entities only after confirming with FDLE that the requesting entity has been designated a qualified entity and has signed a user agreement, and only after verifying that the current prospective employee or volunteer has authorized the release of his or her criminal history records, if any, to other qualified entities by a statement on his or her signed waiver. User will respond that it is unable to provide any information to the requesting entity if the current or prospective employee or volunteer has requested that his or her criminal history record (s) not be released to any other qualified entity; and
12. Notify the current or prospective employee or volunteer of his or her right to obtain a copy of the criminal history records, if any, contained in the report, and of the



person's right to challenge the accuracy and completeness of any information contained in any such report, and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. (Information on these rights may be obtained by contacting FDLE, regarding Florida records, at FDLE, Attn: USB/VECHS Unit, P.O. Box 1489, Tallahassee, Florida 32302-1489, (850) 410-8324, or by contacting the FBI, regarding federal/national records, at FBI, Criminal Justice Information Services Division, Attn: SCU, MOD D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625-3878.) A qualified entity that is required by law to apply screening criteria, notwithstanding any right to contest or request an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the department.

### III. Privacy and Security

- A. User shall use criminal history record information acquired hereunder only to screen User's Florida current and/or prospective employees, volunteers, and/or Palm Beach County Home Caregiver License Applicants, and only for purpose(s) of employment and/or determination of suitability for access to children, elderly, or disabled persons, pursuant to the terms of the NCPA of 1993, as amended, and section 943.0542, F.S. If User is a governmental agency, such records may additionally be used in administrative hearings associated with one of the enumerated purposes;
- B. User shall not commingle criminal history records with other records, whether such other records are public or not;
- C. User shall not duplicate and/or disseminate criminal history records acquired hereunder for use outside of User entity except as authorized by state and federal law. Sharing of criminal history records with other qualified entities is permitted by the FBI provided that:
  1. Such other entity is authorized to receive criminal history record information derived from the systems of the U.S. Department of Justice in the manner specified herein and User has verified the other entity's qualifying status as required herein; and
  2. User properly listed "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE", in the "reason fingerprinted" block of the fingerprint card User submitted to FDLE for the applicable current or prospective employee or volunteer. (VCA represents Volunteers for Children Act);
- D. User has been approved to receive criminal history record information pursuant to specific statutory authority and shall not use criminal history record information acquired pursuant to such approval for any other purpose;
- E. User shall not use or rely upon a criminal history record or information which is or is likely to be out-of-date and, in any event, if criminal activity is pertinent to and considered at the time of an employee or volunteer's service, a current computerized criminal history must be requested and relied upon;
- F. User may destroy criminal history records when they are no longer needed. The original Waiver Agreement and Statement form must be retained by User for as long as the employee or volunteer is working for User, as long as the Palm Beach County Home Caregiver License Applicant is licensed by the User,

Attachment #

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Page

4

of

6

or for five years, whichever is longer.

Destruction must be accomplished in a way so that the information cannot be retrieved; for example, for example, the records may be shredded;

- G. User shall keep criminal history records acquired hereunder in a secure file, safe, or other security device, such as locked file cabinet in an access-controlled area, and shall take such further steps as are necessary to insure that the records are accessible only to those of its employees who have been trained in their proper use and handling and have a need to examine such records; and
- H. **\*\*IF ENTITY IS SUBJECT TO THE PUBLIC RECORDS ACT\*\*** - If User is subject to the Public Records Act, chapter 119, F.S., User shall, upon receipt of any request, pursuant to the public records law, for a processed fingerprint card or criminal history record, transmit the request, along with the involved fingerprint card and criminal history record, to the Florida Department of Law Enforcement, Attention: User Services Bureau. FDLE will prepare copies of the involved documents, obliterating any state or federal data which is not available for dissemination under the Florida public records law, and return all documents to the User for response to the requester. However, a processed card, or photocopy of same, may be provided to a law enforcement agency for fingerprint identification purposes, if so requested. User shall not release any criminal history information that is made exempt from public records disclosure by law. In particular, record information derived from the U.S. Department of Justice shall not be disseminated outside the User entity or used for a purpose other than that specified in the statute authorizing the request, section 943.0542, F.S.

#### IV. Termination

Either FDLE or User may suspend the performance of services under this agreement when, in the reasonable estimation of FDLE or User, the other party has breached any material term of the agreement. Furthermore, upon FDLE becoming aware of a violation of this agreement which might jeopardize Florida's access to federal criminal history information, FDLE shall have the option of suspending services under this agreement, pending resolution of the problem. The violation of any material term of this agreement or of any substantive requirement or limitation imposed by the federal or state statutes, regulations, or rules referred to in this agreement shall be deemed a breach of a material term of the agreement.

Section 943.053(4), F.S., provides that criminal history record information received from (FDLE) "shall be used only for the purpose stated in the request." National criminal history information received from the FBI is made confidential by federal law and regulation. Section 815.04(3)(b), F.S., prohibits, as a third-degree felony, the willful and knowing disclosure of data from a computer system, without authorization, which data is made confidential by law.

#### V. Miscellaneous

##### A. User agrees that

1. User is currently operating a lawful business or other entity within the State of Florida, with a physical address in Florida;
2. User is legally authorized to operate its business or other entity within the State of Florida;

Attachment # 2

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3. User has complied and will continue to comply with all requirements to properly operate its business or other entity within the State of Florida; and
  4. User shall promptly notify FDLE upon any change to the above, including but not limited to name, address, and status as a business or other entity operating in Florida.
- B. This agreement supersedes any previous agreements concerning the NCPA of 1993, as amended, and/or section 943.0542, F.S.;
- C. This agreement may be amended by FDLE as needed, to comply with state or federal laws or regulations, or administrative needs of FDLE; and
- D. This agreement is binding upon all User employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, and assigns.

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed by the proper officers and officials.

NAME OF USER ENTITY PALM BEACH COUNTY

ENTITY HEAD MARY LOU BERGER TITLE MAYOR  
(PLEASE PRINT) (PLEASE PRINT)

ENTITY HEAD \_\_\_\_\_  
(SIGNATURE)


DATE \_\_\_\_\_

WITNESS \_\_\_\_\_ TITLE \_\_\_\_\_

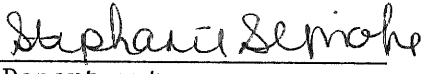
FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)

BY \_\_\_\_\_ TITLE \_\_\_\_\_

APPROVED AS TO TERMS AND  
LEGAL SUFFICIENCY

By:   
Assistant County Attorney

Approved as to Terms  
and Conditions

By:   
for Department



Florida Department of Law Enforcement
Criminal Justice Information Services Division/User Services Bureau

VECHS QUALIFIED ENTITY APPLICATION
Volunteer & Employee Criminal History System (VECHS)
for Criminal History Record Checks
under the National Child Protection Act of 1993, as amended,
and Section 943.0542, Florida Statutes

ENTITY NAME: Palm Beach County

MAILING ADDRESS IN FLORIDA:

PHYSICAL OPERATING ADDRESS IN FLORIDA: 50 South Military Trail, Suite 201, West Palm Beach, Florida 33415

COUNTY: Palm Beach ENTITY PHONE: ( 561 ) 712-6605 EXT. FAX: ( 561 ) 712-6610

NAME OF ENTITY HEAD: Mary Lou Berger E-MAIL ADDRESS: MBerger@pbcgov.org

NAME OF CONTACT PERSON: Eugene Reavis E-MAIL ADDRESS: ereavis@pbcgov.org

LEGAL TYPE OF ENTITY (Select one): Governmental (Public) [checked] Private - Non-Profit [ ] Private - Profit [ ]

Please check all appropriate areas below that apply to the service(s) provided by your entity to children, the elderly, and/or the disabled.
NOTE: A "child" includes any unmarried person under 18 years of age that has not been emancipated by order of a court. An "elderly person" means any person 60 years of age or older. A "disabled person" includes any person with a mental or physical impairment who requires assistance to perform one or more daily tasks.

Table with 6 columns: Type of Person(s), Care or Treatment, Education, Training, or Instruction, Supervision, Recreation, Care Placement. Rows include Child, Elderly, and Disabled.

SUMMARY OF TYPE OF SERVICES YOUR ENTITY PROVIDES - Please describe in detail the services your entity provides that would qualify your entity to receive state and national criminal history record checks under this program and the applicable laws: (continue on separate page, if necessary):

PBC Ordinance No. 2015-038. A Home Caregiver who receives compensation directly or indirectly from a vulnerable adult (18 years of age or older) in exchange for assisting that vulnerable adult with covered activities of daily living.

Do you plan to request state & national criminal history checks through the VECHS Program on YOUR current or prospective FLORIDA employees, volunteers, contractors/vendors? YES [checked] NO [ ] If no, please explain (continue on separate page, if necessary):

(Contractors or vendors may be checked through the VECHS Program, if they have or may have unsupervised access to the children, elderly, or disabled persons for whom a qualified entity provides care.)

Are you currently required by law to obtain state and national (LEVEL 2) criminal history record checks on any of your current/prospective employees, volunteers? YES [checked] NO [ ] If yes, what state agency monitors your entity and these required record checks? Florida Department of Law Enforcement

PLEASE NOTE: Entities that are required to obtain state and national (LEVEL 2) criminal history checks under other statutory provisions, on all or specific employees/volunteers, must continue to comply with those statutes and the procedures that specifically apply to them. Requests for these required criminal history record checks may not be processed through the VECHS Program, pursuant to federal and Florida law.

Livescan devices allow for the electronic submission of fingerprints and descriptive data to FDLE for processing. Qualified entities must first complete and submit a Civil Workflow Control System (CWCS) Registration form to FDLE for processing. Once your CWCS Registration form has been received and approved by FDLE, you will receive an e-mail confirmation stating your entity is authorized to submit fingerprints electronically.

A list of approved service providers and livescan vendors can be found at www.fdle.state.fl.us/backgroundchecks

SIGNATURE OF ENTITY HEAD: DATE:

Please mail your completed application, user agreement, and cwcs registration form to FDLE at the address below. Please contact us at the number below for further information.

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
USER SERVICES BUREAU - ATTN: VECHS UNIT - P.O. BOX 1489
TALLAHASSEE, FL. 32302-1489
(850) 410-8324

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
[Signature]
County Attorney

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

14 **SECTION 1. TITLE:**

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

16

17 **SECTION 2. APPLICABILITY:**

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

22

23 **SECTION 3. DEFINITIONS:**

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

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

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

1            *Division* is the Palm Beach County Department of Public Safety Consumer Affairs  
2 Division.

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

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

10

11 **SECTION 4. LICENSING:**

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

14 (1) The vulnerable adult’s spouse, domestic partner, parents, step-parents,  
15 grandparents, step-grandparents, children, step-children, grandchildren, step-  
16 grandchildren, great-grandchildren, siblings, or step-siblings;

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

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

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

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

1 (1) Be at least eighteen (18) years of age;  
2 (2) On initial application and on each subsequent renewal thereafter, the applicant  
3 must provide the original request form for his/her Florida Department of Law  
4 Enforcement (FDLE) criminal history/records report to the Division, as well as payment  
5 for the amount required to secure the criminal history/records report. The Division shall  
6 then be responsible for processing the request and payment to the FDLE. Prior to  
7 submitting a request for a criminal history record check pursuant to this Ordinance, the  
8 Division shall notify each applicant to be fingerprinted that his or her fingerprints will  
9 be sent to the State Department of Law Enforcement for a state criminal history record  
10 check and to the Federal Bureau of Investigation for a national criminal history record  
11 check. The notification shall also state that the Home Caregiver license applicant has a  
12 right to:

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

18 Applicants who are employed by, or are independent contractors placed through, home  
19 health agencies, nurse registries, homemaker and companion services providers, and  
20 hospice providers which are licensed by the Florida Agency for Health Care  
21 Administration (AHCA), may comply with the fingerprinting and criminal history  
22 records screening requirement of this section by causing the applicant's AHCA licensed  
23 agency, registry, or provider to submit directly to the Division an affidavit on a form  
24 provided by the Division, in which the AHCA licensed agency, registry, or provider  
25 attests that the applicant has undergone a level two criminal history records screening  
26 and is currently licensed by AHCA. All AHCA licensed agencies, registries, and  
27 providers submitting such an affidavit on behalf of their employee or independent  
28 contractor are required to advise the Division, in writing, immediately on learning: 1)  
29 that the employee or independent contractor who is the subject of the affidavit has been  
30 designated by AHCA as "ineligible"; 2) that the employee or independent contractor  
31 who is the subject of the affidavit is no longer employed by, or placed through, the  
32 AHCA licensed agency, registry, or provider which provided the affidavit; and 3) that



1 the employee or independent contractor has taken a leave of absence for more than 90  
2 days.

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

8 (4) Applicants must submit to a full-face photograph or digital image prior to the  
9 issuance of the Home Caregiver license by the Division;

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

12 (6) Each Home Caregiver license shall be valid for a five-year period and must be  
13 renewed by the applicant every five years from the date of the initial/renewal  
14 application. The Division may deny a Home Caregiver license if it is determined that  
15 the applicant has misrepresented, omitted, or concealed a fact on the application,  
16 renewal application or replacement application. If the Home Caregiver license is  
17 denied, the Division shall not accept an application for said license for one (1) year  
18 from the date the license is denied. Any person renewing a Home Caregiver license  
19 must file a renewal application, furnish the documentation requested by the Division,  
20 and submit payment for the required nonrefundable renewal fee(s) not more than ninety  
21 (90) days before the expiration date of a Home Caregiver license. Persons who fail to  
22 reapply for their Home Caregiver license thirty (30) days prior to expiration, risk having  
23 a gap in their authorization to act as a Home Caregiver. Any applicant who fails to  
24 submit a renewal application within twenty (20) days of the expiration of a current  
25 license will be considered a new applicant when reapplying and no grandfathered  
26 provisions will apply. The license renewal fee shall be established by resolution of the  
27 Board.

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

31 (d) Each Home Caregiver license shall, at a minimum, contain the name of the Home  
32 Caregiver, date of expiration, and full-face photograph or digital image of the Home Caregiver.

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

6

7 **SECTION 5. DISQUALIFICATIONS:**

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

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

- 14 a. Section 415.111, relating to reporting adult abuse, neglect, or exploitation of aged  
15 persons or disabled adults; or
- 16 b. Chapter 782, relating to homicide; or
- 17 c. Chapter 784, relating to assault, battery, and culpable negligence; or
- 18 d. Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child,  
19 custody offenses; or
- 20 e. Chapter 794, relating to sexual battery;
- 21 f. Chapter 800, relating to lewdness, indecent exposure; or
- 22 g. Chapter 806, relating to arson; or
- 23 h. Chapter 810, relating to burglary and trespass, if the offense is a felony; or
- 24 i. Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony;  
25 or
- 26 j. Chapter 817, relating to fraudulent practices; or
- 27 k. Chapter 825, relating to abuse, neglect, and exploitation of elderly persons and  
28 disabled adults; or
- 29 l. Chapter 827, relating to abuse of children; or
- 30 m. Chapter 831, relating to forgery and counterfeiting; or
- 31 n. Chapter 847, relating to obscenity, if the offense is a felony; or
- 32 o. Chapter 859, relating to poisons, adulterated drugs, if the offense is a felony; or

- 1 p. Chapter 893, relating to drug abuse prevention and control, if the offense is a felony;  
2 or  
3 q. Chapter 896, relating to offenses concerning financial transactions.
- 4 (2) Failing to notify the Division within ten (10) business days of being found guilty  
5 of, regardless of adjudication, or having entered a plea of nolo contendere or guilty to,  
6 any of the crimes enumerated in section (1) above;
- 7 (3) Having unsatisfied penalties, judgments or administrative orders pertaining to  
8 this Ordinance;
- 9 (4) Being enjoined by a court of competent jurisdiction from engaging in the Home  
10 Caregiver business;
- 11 (5) Having a conviction in any military or foreign jurisdiction, federal, state, county  
12 or municipal jurisdiction within the United States for violations analogous or parallel to  
13 those violations enumerated in all sections herein;
- 14 (6) Misrepresenting, omitting, or concealing a fact on the Home Caregiver  
15 application, renewal application, or replacement application;
- 16 (7) Altering or otherwise changing the contents of the information included on the  
17 face of a Home Caregiver license; or
- 18 (8) Obstructing, hampering, or interfering with an investigation of an alleged  
19 violation of this Ordinance conducted by Division personnel, any law enforcement  
20 officer or an employee of any other agency enforcing this Ordinance.

21

22 **SECTION 6. ADMINISTRATIVE APPEAL:**

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

29 (b) An appeal to the consumer affairs hearing board/special master shall be initiated by  
30 filing with the Division a written request for an appeal, along with a non-refundable filing fee,  
31 within twenty (20) days of receipt of the written notice of disqualification or revocation. The  
32 filing fee shall be established by resolution of the Board. Failure to timely file a written request

1 for an appeal and accompanying filing fee shall be deemed a waiver of the right to appeal and  
2 admission of the grounds for disqualification or revocation.

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

9 (d) At the hearing before the consumer affairs hearing board/special master, all parties may  
10 be represented by an attorney and shall be entitled to present evidence and argument on all  
11 issues involved, conduct cross examination, and submit rebuttal evidence. All testimony shall  
12 be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental  
13 due process shall be observed and shall govern the proceedings. Irrelevant, immaterial or  
14 unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied  
15 on by reasonably prudent persons in the conduct of their affairs shall be admissible, (including  
16 hearsay), whether or not such evidence would be admissible in a trial in the courts of this state.  
17 The appellant shall have the burden of proof by a preponderance of the evidence. The  
18 appellant's criminal history/records reports shall be admitted into evidence before the consumer  
19 affairs hearing board/special master. The consumer affairs hearing board/special master shall  
20 consider all evidence and documentation de novo, and shall, on the basis of competent  
21 substantial evidence before it, affirm or reverse the disqualification or revocation. At the  
22 conclusion of the appeal hearing, the consumer affairs hearing board/special master shall orally  
23 render its decision. The decision shall be by motion approved by the affirmative vote of those  
24 members present and voting. The decision shall be stated in a written order and mailed to the  
25 appealing party not later than ten (10) days after the hearing, and shall be deemed final agency  
26 action with regard to the matter appealed.

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

31

32

1 **SECTION 7. ENFORCEMENT:**

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

5

6 **SECTION 8. PENALTIES:**

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

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

16

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

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

20

21 **SECTION 10. SEVERABILITY:**

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

25

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

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

1 **SECTION 12. CAPTIONS:**

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

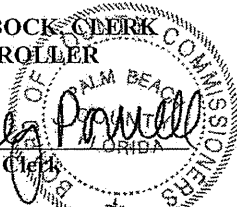
5  
6 **SECTION 13. EFFECTIVE DATE:**

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

9  
10 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach  
11 County, Florida, on this the 20th day of October, 2015.

12 SHARON R. BOCK, CLERK  
13 AND COMPTROLLER

14  
15  
16 By: [Signature]  
17 Deputy Clerk



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

18 By: [Signature]  
19 Shelley Vana, Mayor

20 APPROVED AS TO FORM AND  
21 LEGAL SUFFICIENCY

22  
23 By: [Signature]  
24 County Attorney

25  
26 EFFECTIVE DATE: Filed with the Department of State on the 26th day of  
27 October, 2015.

28  
29  
30  
31  
32

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