

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 8, 2020 Consent Regular
 Ordinance Public Hearing

Department: Office of Equal Opportunity

Submitted By: Office of Equal Opportunity

I. EXECUTIVE BRIEF

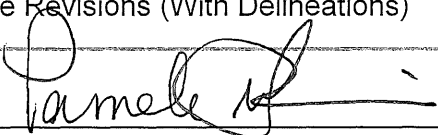
Motion and Title: Staff recommends motion to approve on preliminary reading and permission to advertise for public hearing on January 12, 2021 at 9:30 a.m.: An ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Palm Beach County Code, Chapter 2, Article VI, codifying Ordinance 2017-013, the Palm Beach County Equal Employment Ordinance; providing for amending the definition of employer; 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 an effective date.

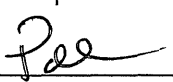
Summary: After several amendments, over the past two decades, the Palm Beach County Equal Employment Ordinance (Ordinance) was repealed and replaced in 2017 to bring it into substantial compliance with Federal and State Laws governing equal employment and the County's policy concerning Advisory Boards such as the Equal Employment Board. Notwithstanding, the current definition of "Employer" protects employees and prospective employees, only where a person that is regularly engaged in an industry affecting commerce has 15 or more employees. Furthermore, the Ordinance "Employer" definition is inconsistent with Miami-Dade County, Broward County and the City of West Palm Beach's "Employer" definition, which includes any person who in the regular course of business has five or more employees. Amending the definition will expand the protection against discrimination afforded to job applicants and employees in Palm Beach County. The League of Cities has no opposition to the proposed amendment to the Ordinance on the condition that the County conduct outreach regarding the proposed amendment to the small business community. County staff has coordinated with the Office of Equal Business Opportunity to conduct outreach to the small business community regarding the proposed revision. The Equal Employment Board supports the Ordinance in its proposed form. Countywide (DRO)

Background and Policy Issues: The County first enacted the Equal Employment Ordinance in 1995 to protect the interest of its citizens regarding fair treatment and equal employment opportunities. In 2017, the Ordinance was repealed and replaced to bring it into substantial compliance with Federal and State Laws governing equal employment and the County's policy concerning Advisory Boards such as the Equal Employment Board. County staff has coordinated with the Office of Equal Business Opportunity to conduct outreach to the small business community regarding the proposed revision.

Attachments:

1. Proposed Ordinance Revisions (Without Delineations)
2. Proposed Ordinance Revisions (With Delineations)

Recommended By:  6 November 20 20.
Department Director Date

Approved By:  11/20/20
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2021 | 2022 | 2023 | 2024 | 2025 |
|---|------|------|------|------|------|
| Capital Expenditures | | | | | |
| Operating Costs | | | | | |
| External Revenues | | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | ** | | | | |
| # ADDITIONAL FTE POSITIONS (CUMULATIVE) | 0 | 0 | 0 | 0 | 0 |

Is Item included in current budget? Yes No

Does this Item include the use of federal funds? Yes No

Budget Account No.:

Fund _____ Agency _____ Organization _____ Object _____

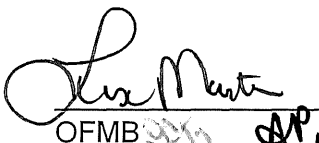
B. Recommended Sources of Funds/Summary of Fiscal Impact:

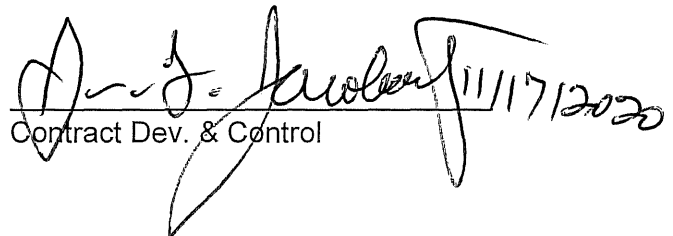
**NET FISCAL IMPACT – indeterminable at this time

C. Departmental Fiscal Review:

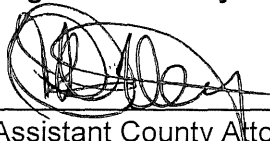
III. REVIEW COMMENTS

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


 OFMB *11/4/2020*
AP 11/4


 Contract Dev. & Control *11/17/2020*

B. Legal Sufficiency


 Assistant County Attorney

C. Other Department Review

 Department Director

ORDINANCE NO. 2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 2 ARTICLE VI, CODIFYING ORDINANCE 2017-013, THE PALM BEACH COUNTY EQUAL EMPLOYMENT ORDINANCE; PROVIDING FOR AMENDING THE DEFINITION OF EMPLOYER; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; 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 of said County, standards which will ensure their health, wealth, and well-being; and

WHEREAS, Section 125.01 Florida Statutes, as amended, 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, it is for the public policy of the United States of America to provide for equal employment opportunities throughout the United States and the policy of Palm Beach County, Florida, to also so provide; and

WHEREAS, since the Board of County Commissioners originally enacted the Equal Employment Ordinance No. 95-31, providing for equal opportunities in employment, it has been necessary to amend it from time to time in order to best serve the citizens of Palm Beach County and provide for their general welfare; and

WHEREAS, the Equal Employment Board was established to assist, advise and cooperate with the Board of County Commissioners and local, state and federal agencies to protect the interest of the public regarding fair treatment and equal opportunity in employment, and to carry out adjudicatory functions pertaining to alleged unlawful discriminatory acts or practices; and

WHEREAS, in consideration of ordinances in Broward County, Leon County, Miami-Dade County, Orange County, Pinellas County, and the City of West Palm Beach, which perceptively define the term "employer" more expansively than Palm Beach County's by using a five employee benchmark; and

WHEREAS, amending the current code will provide greater protection for all persons, regardless of their protected status, in attaining and maintaining employment; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds that it is in the best public interest to amend the code to bring employers with five (5) employees under the purview of Palm Beach County's commitment to equal opportunities for all.

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

Chapter 2, Article VI, of the Palm Beach County Code, "Equal Employment Ordinance," (Ordinance No. 95-31, as amended), is hereby repealed and replaced with the following:

Sec. 2-261. – Short title.

This article shall be known and may be cited as the "Palm Beach County Equal Employment Ordinance."

Sec. 2-262. – Purpose.

It shall be the policy of the Board of County Commissioners, in the exercise of its police power for the public safety, public health, and general welfare to assure, within constitutional limitations, that all persons regardless of race, color, sex, national origin, religion, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information as defined by Title VII of the Civil Rights Act of 1991, as amended, the Equal Pay Act of 1963, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Rehabilitation Act, as amended, the Americans with Disabilities Act Amendments Act of 2008, as amended, the Florida Civil Rights Act, as amended, the Genetic Information Nondiscrimination Act of 2008, as amended, or otherwise provided herein, be afforded equal opportunity to all terms and conditions of employment. The county shall take all necessary and reasonable action to prevent discrimination in employment.

Sec. 2-263. – Definitions.

In this article unless the context otherwise requires:

Age provisions contained herein apply to any person at least forty (40) years of age.

Aggrieved person includes any person that: (1) claims to have been injured by a discriminatory practice; or (2) believes that he or she will be injured by a discriminatory practice that is about to occur.

Auxiliary aids and services includes, but is not limited to: (1) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (3) acquisition or modification of equipment or devices; and (4) other similar services and actions.

Because of sex or on the basis of sex includes, but is not limited to, because of or on the basis of pregnancy, childbirth, gender stereotyping or related medical conditions; and women affected by pregnancy, childbirth, gender stereotyping or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. "Because of sex" or "on the basis of sex" also includes, but is not limited to sexual harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3e) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Board unless a different meaning clearly appears from the context, means the Palm Beach County Equal Employment Board, created by this article.

Bona fide occupational qualification means a physical, educational, intellectual, economic or other standard, requirement or quality that:

- (1) Is required of persons who apply for or occupy the job position for which it is prescribed; and
- (2) Is related to and necessary for job performance; and
- (3) Cannot be possessed, performed or met by a person excluded from the job position by reason of the qualification.

Bona fide seniority system means an employment practice whereby employees are promoted, laid off, rehired, assigned, transferred, offered additional or improved employment opportunities, given increased compensation or other benefits or otherwise dealt with on the basis, wholly or partially, of length of service, which, on its face, does not discriminate and is not intended or designed to disguise discrimination.

Chairperson or chair means the chairperson of the Equal Employment Board.

Complainant shall mean the person filing a complaint pursuant to this article.

Complaint means a written statement which alleges the occurrence of a discriminatory practice.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent and the Office of Equal Opportunity.

Conciliation agreement means an agreement entered into between the complainant and respondent resolving the alleged discriminatory practice and which may require respondent to refrain from committing a discriminatory practice or to take affirmative action. The agreement may include consent to the entry of a court decree embodying its terms and shall be subject to approval by the Director of the Palm Beach County Office of Equal Opportunity.

Director means the Director of the Palm Beach County Office of Equal Opportunity.

Disability means, with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (b) A record of such impairment;
- (c) Being regarded as having such an impairment; or
- (d) Rules of construction regarding the definition of disability shall be construed in accordance with the ADA Amendments Act of 2008, as amended.

Discrimination classification means a classification on the basis of race, color, religion, national origin, sex, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.

Discrimination practice means a practice designated as discriminatory under the terms of this article.

Document includes, but is not limited to, writings, drawings, graphs, charts, photographs, phono-records and other data or compilations from which information can be obtained.

Employee means any individual employed by, or seeking employment from an employer.

Employer means a person engaged in an industry affecting commerce who has five (5) or more employees for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year, and any agent of such person; including, but not limited to, all state and local governments, governmental agencies, and political subdivisions unless opted out. The term does not include the United States, an Indian Tribe, a bona fide private membership club which is exempt from taxation under 501(c) of Title 26.

Employment agency means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such person.

Familial status means an individual who has legal custody of one or more children who has not attained the age of eighteen (18). The protection afforded against discrimination on the basis of familial status shall apply to any individual who is expecting the birth of a child or is in the process of securing legal custody of a child under the age of eighteen (18).

Gender identity or expression means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth. *Genetic information* means, with respect to any individual, information about:

- (i) such individual's genetic tests;
- (ii) the genetic tests of family members of such individual;
- (iii) the manifestation of a disease or disorder in family members of such individual; and
- (iv) rules of construction regarding the definition of genetic information shall be construed in accordance with the Genetic Information Nondiscrimination Act of 2008, as amended.

Labor organization means any organization engaged in an industry affecting commerce, and any agent of such an organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, whole or in part, of collective bargaining or of dealing with employers, or other mutual aid or protection in connection with employment. Labor organization includes: (1) An organization

of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment; (2) A conference, general committee, system board, or council which is subordinate to a national or international labor organization. A labor organization shall be deemed to be engaged in an industry affecting commerce if it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or the number of its members is fifteen (15), and such labor organization is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

Marital status means the status of being married, single, divorced or widowed.

National origin includes the national origin of an ancestor.

Office of Equal Opportunity or the OEO means the Palm Beach County Office of Equal Opportunity.

Person includes one (1) or more individuals, associations, corporations, trustees, joint apprenticeship committees, joint stock companies, partnerships, labor unions, legal representatives, mutual companies, receivers, trusts, trustees in bankruptcy, unincorporated organizations, fiduciaries or any other legal or commercial entity, the state, or any governmental entity or agency in Palm Beach County.

Qualified individual means, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this article, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Reasonable accommodation for disability – The term "reasonable accommodation" may include:

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Religion means all aspects of religious observance, practice and beliefs.

Religious accommodation means an employer or other covered entity is required to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Respondent shall mean the person or other entity accused in a complaint of a discriminatory practice and any other person or entity identified in the course of the investigation not named as a respondent in the initial complaint who may be joined as an additional or substitute respondent upon written notice.

Sexual orientation means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

Substantially limited shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008, as amended.

Training programs mean any plan containing terms and conditions for qualification, recruitment, selection, employment, or training of employees to: (1) Enter a specific trade or occupation after completion of a specified training program; or (2) Offer a person already either partially or wholly trained in a specific trade or occupation an opportunity to advance after completion of a specified training program. A training program may be "joint" i.e., managed and supervised by representatives of labor and management or unilateral.

Undue hardship for disability means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) The nature and cost of the accommodation needed; (2) The overall financial resources of the facility or facilities involved in the provision of

the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (4) The type of operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Undue hardship for religion means an accommodation that requires an employer to bear more than a "de minimis" burden on operation of the business. Any proffered hardship, however, must be actual. An employer cannot rely merely on speculation.

Unlawful employment practice includes only those practices specified in Section 2-311.

Sec. 2-264 - 2-270. – Reserved.

Sec. 2-271. – In general.

The county administrator exercising his/her power of appointment shall employ a Director and such other personnel in the OEO as may be provided for in the budget approved by the board of county commissioners and for which an appropriation has been made. The Director and staffing complement shall be referred to as the OEO. It shall be the responsibility of the Director and/or the Director's designee to investigate complaints of discrimination prohibited by this article, and the laws of the United States of America and the State of Florida, and attempt to conciliate and mediate complaints of discrimination, to perform such other duties which will promote and provide for equal opportunity and for enforcement of this article and the laws of the United States of America and the State of Florida; and to perform such other duties of an administrative nature as may be assigned by the county administrator.

Sec. 2-272. – Duties and powers of the OEO .

The duties, functions, powers and responsibilities of the office shall include the following:

- (1) The enforcement of the provisions of this article and rules and regulations promulgated hereunder.
- (2) Publish and disseminate public information and materials relating to equal employment opportunities issues.
- (3) Perform, such other administrative duties as may be assigned by the county administrator.
- (4) To become a referral agency for the state and federal government and comply with the necessary state and federal regulations.

Sec. 2-273. – Duties and powers of the Director.

The powers and duties of the Director and/or the Director's designee shall be:

- (1) To investigate and make findings regarding:
 - a. Tension or prejudice in relation to all equal employment involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information.
 - b. Discrimination against any person by any person with regard to employment on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (2) To attempt to conciliate and mediate complaints of discrimination brought pursuant to this article.
- (3) To prepare conciliation agreements embodying any agreement reached by the parties relating to the complaint, and advise the Board of such agreement.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any investigation authorized by this article.
- (5) To administratively dismiss complaints pursuant to the provisions of this article.
- (6) To exercise all powers reasonable and necessary to fulfill the purpose of this article.

- (7) To petition for enforcement of a subpoena in the appropriate court in the case of a refusal to obey a subpoena issued by the Director and/or the Director's designee.

Secs. 2-274 - 2-280 – Reserved.

Sec. 2-281. Equal Employment Board – Established; composition; qualification; terms of office; attendance.

The Board is hereby created and established. The Board is to be comprised of nine (9) citizens of the County appointed by the Board of County Commissioners to serve for terms of three (3) years. There shall be a limit of three consecutive three-year terms. Terms shall begin on October 1st and end on September 30th. All Board members must be residents of Palm Beach County at the time of appointment and while serving on the Board. Board appointments should reflect, to the greatest extent possible, the racial, gender and ethnic make-up of the community. Members of this Board shall be the same as members of the Fair Housing Board created by the Palm Beach County Housing Ordinance as codified in Article III, Chapter 15, sections 15-36 through 15-67 of the Palm Beach County Code. Seven (7) of the appointments shall be made as district appointments and two (2) of the appointments shall be made at large by the Board of County Commissioners on the basis of community representation, integrity, experience and interest in the area of equal opportunities. In order that the terms of office of all members shall not expire at the same time, all current members of the Board shall serve the remainder of their respective terms, if they so elect. Any member who elects not to serve the remainder of their term shall be replaced by appointments made by the Board of County Commissioners to serve the unexpired portion of the term. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation. Travel reimbursement is limited to expenses incurred only for travel outside Palm Beach County necessary to fulfill Board member responsibilities when sufficient funds have been budgeted and are available as set forth in PPM CW-O-038. No other expenses are reimbursable except documented long distance phone calls to the OEO. Approval authority for pre-authorized Board member travel is designated to the County Administrator and Deputy County Administrator and shall be in accordance with Countywide Policy and Procedures Memoranda (PPM) CW-F-009. Each district appointee serves at the pleasure of the appointing Commissioner and may be removed without cause by the appointing Commissioner at any time, and at large appointees may be removed without cause by a majority vote of the Board of County Commissioners at any time. The maximum number of boards that an individual appointed by the Board of County Commissioners may serve on at one (1) time shall be three (3), however, membership on the Fair Housing Board and this Board shall only be considered membership on one (1) advisory board. Members shall comply with the applicable provisions of the Palm Beach County Code of Ethics, as codified in sections 2-441 through 2-448 of the Palm Beach County Code and the State Code of Ethics. Abstention from voting due to a conflict of interest on more than three (3) separate matters during a calendar year shall result in automatic removal. Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than one-half ($\frac{1}{2}$) of the meetings scheduled during a calendar year. Participation for less than three-fourths ($\frac{3}{4}$) of a meeting shall be the same as 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. Board members shall not be prohibited from qualifying as a candidate for elected office. County employees, other than Commissioners' Aides, may not be appointed to the Board. Former Board of County Commission members may not be appointed to the Board for at least two (2) years following their last day in office as a County Commissioner. Members of the Board shall appoint a chairperson and vice-chairperson, and the Board may promulgate rules and regulations for the conduct of its meetings and affairs.

Board terms, rules and regulations and organization.

The following rules and regulations shall govern the operation of the Board:

- (1) The chairperson of the Board shall be elected by majority vote of the Board and shall serve for a term of one (1) year and have the following duties:
 - a. Call Board meetings and set the agenda for the same.
 - b. Preside at Board meetings.
 - c. Sign subpoenas.
 - d. Perform such other functions as the Board may assign by rule or order.

- (2) The vice-chairperson shall be elected by 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 chairperson's absence and such other duties as the chairperson may assign.
- (3) If a vacancy occurs in the office of chairperson, the vice-chairperson shall become the chairperson for the unexpired term of the chairperson. If a vacancy occurs in the office of vice-chairperson, the Board will elect another member to fill the unexpired term of the vice-chairperson.
- (4) At least three (3) members of the Board or any other odd number shall constitute a hearing panel for the purpose of hearing discrimination complaints. A majority of members appointed shall constitute a quorum to hold a meeting for any other purpose. Board business shall be taken by a majority vote.
- (5) All meetings shall be governed by Robert's Rules of Order.

Board meetings.

The Board shall comply with the Sunshine Law. The Board shall meet on a regular basis and as necessary to conduct administrative hearings. Reasonable notice of the time and place of the meeting shall be given to all Board members and all parties scheduled to be heard, and shall be made public. All meetings of the Board shall be open to the public. The chairperson may call an unscheduled meeting upon not less than twenty-four (24) hours notice, and preferably at least seventy-two (72) hours reasonable notice to the public, and meetings may also be called by the Director upon the request of three (3) members of the Board. The County Administrator shall provide such staff as may reasonably be required in his/her discretion to assist the Board in the performance of its duties. The County Administrator shall provide a regular meeting place for the Board.

Objectives of the Board.

The objectives of the Board shall be:

- (1) To promote and encourage fair treatment and equal opportunity in employment for all persons regardless of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, gender identity or expression, or genetic information; to promote and encourage mutual understanding and respect among such persons and to endeavor to eliminate employment discrimination against and antagonism between such persons;
- (2) To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions;
- (3) To make such investigations and studies in the field of employment as in its judgment will aid in effectuating its general purposes;
- (4) To assist various groups and agencies of the community to cooperate in educational programs and campaigns devoted to the elimination of discrimination in employment;
- (5) To aid in permitting the County to benefit from the fullest realization of its equal employment resources;
- (6) To recommend to the Board of County Commissioners the acceptance of certain grants and contracts from foundations and other sources for the purposes of carrying out the purposes of this article; and
- (7) To recommend to the Board of County Commissioners methods for elimination of discrimination and intergroup tensions. The objectives set forth above are not to be construed as duties, and the Board of County Commissioners shall have the discretion to determine when each objective is implemented.

The powers and duties of the Board shall be:

- (1) To refer or accept referral of complaints when appropriate and to cause, through the OEO, investigations of:

- a. Tension or prejudice in relation to all employment matters involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information.
 - b. Discrimination against any person by any with regard to employment matters on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, or gender identity or expression, or genetic information.
- (2) To propose reasonable rules and regulations as are necessary to effectuate the policies of this article and govern the proceedings of the Board. Such rules and regulations shall become effective upon approval by the board of county commissioners.
 - (3) To receive, initiate, seek to conciliate, hold hearings upon and adjudicate complaints alleging violation of this article; to recommend methods and alternatives for eliminating injustices occasioned thereby; to carry out and enforce the purpose of this article.
 - (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any hearing convened pursuant to the powers and duties authorized by this article.
 - (5) To subpoena witnesses and compel production of evidence requested by the OEO relating to an investigation being conducted pursuant to this article.
 - (6) To issue remedial orders prohibiting violations of this article and providing affirmative relief from the effects of the violations as specified in section 2-311.

Secs. 2-282 – 2-300. – Reserved.

Sec. 2-301. – Filing of complaints alleging discrimination in employment.

- (a) A complaint that any person has engaged in or is engaging in an unlawful employment practice within the meaning of this article may be made by or on behalf of any person claiming to be aggrieved within one hundred eighty (180) days of the alleged discriminatory act.
 - (1) Any person who claims to have been injured by an unlawful discriminatory practice must file a sworn written complaint with the OEO, which shall state the name and address of the complainant and the person or persons against whom the complaint is made.
 - (2) A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency or organization.
 - (3) A complaint shall be in writing and signed by the complainant. Each complaint should contain the following information:
 - a. The full name and address and telephone number of the person making the complaint except in cases where the complaint is being made on behalf of another person;
 - b. The full name and address of the person against whom the complaint is made; and
 - c. A general description of the action or practices complained of.
- (b) A complaint may be filed by the Director of the OEO, with the approval of the Board.
- (c) Intake of complaints may be done in person, by telephone, facsimile, or by U.S. Mail, or electronic mail at the OEO.
 - (4) Complaints may be amended to cure technical defects, omissions, or to clarify and amplify allegations. Amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

Sec. 2-302. – Notice of complaints.

Upon the filing of a complaint, the Director shall serve notice upon the complainant acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article. The Director or the Director's designee shall, not later than ten (10) days after such filing or the identification of an additional respondent, serve on the respondent a notice identifying the alleged discriminatory employment practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint. The respondent may file a sworn written answer to the complaint within

thirty (30) days of the receipt of the complaint. Any subsequent amendment to the complaint or answer thereto shall be served on the respondent or the complainant.

Sec. 2-303. – Processing complaints.

Within one hundred eighty (180) days of the filing of a complaint, the staff of the OEO shall make such investigation as the Director or the Board deems appropriate to ascertain facts and issues. In conducting an investigation to ascertain whether or not there has been a violation of this article, the Director and/or the Director's designee shall have access at all reasonable times to premises, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the OEO complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The Director, chairperson, vice-chairperson or any other member of the Board may issue subpoenas to compel access to, or the production of, such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. In the case of a refusal to obey a subpoena issued to any person, or refusal to comply with any method of discovery authorized in the Florida Rules of Civil Procedure the Board and/or the Director shall request the county attorney to make application to the appropriate court to order the witness to comply with the request for discovery, or to appear before the Board and to produce evidence, if so requested, or to give testimony concerning the matter in question. The Director and/or the Board may administer oaths. If the complaint is not settled within one hundred eighty (180) days of the filing of the complaint, and if the Director determines that there are reasonable cause to believe an unlawful employment practice has occurred and is appropriate for conciliation, then the Director and/or the Director's designee shall attempt to conciliate the matter.

Sec. 2-304. – Withdrawal of complaint.

A complaint filed pursuant to this article may be withdrawn at any time by the complaining party upon notifying the OEO; however, the Director may continue an action against the respondent if the facts establish reasonable cause to support a finding of discrimination and the Board approves such further action.

Sec. 2-305. – Preservation of records.

Following service of the complaint in the manner provided herein, the respondent shall preserve all personnel records, payroll records or any other written or documentary material relating to the complaint until the complaint has been resolved.

Sec. 2-306. –Dismissal of complaint.

- (a) Any complaint filed pursuant to this article shall be dismissed by the Director upon the following cause:
 - (1) The complainant has failed or refused to cooperate or the complainant cannot be located after reasonable efforts to do so have been made and after twenty (20) days notice to the complainant by mail to the complainant's last known address the complainant has failed to duly respond.
 - (2) The complaint has not been timely filed with the OEO.
 - (3) The complainant refuses to accept full remedy when there is a settlement negotiation prior to a finding being issued.
 - (4) The complainant and respondent have entered into a separate independent settlement agreement regarding the subject matter of the complaint.
 - (5) The complainant withdraws the complaint.
 - (6) The complainant files a complaint in state or federal court which divests the OEO of jurisdiction.
- (b) In the event that any other agency of the state or of any other unit of state or federal government has jurisdiction of the subject matter of any complaint filed with the OEO and has legal authority to investigate or act upon the complaint, the OEO may refer such complaint to such agency. Referral of such a complaint by the OEO shall not constitute agency action

within the meaning of Florida Statute § 120.52(2). In the event of any referral under this subsection, the OEO shall accord substantial weight to final findings and orders of any such agency.

Sec. 2-307. – Investigation procedures.

After a complaint has been filed, the OEO shall conduct an investigation. The OEO may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws. The following procedures shall be followed:

- (1) Requests for information. In conducting an investigation the Director and/or the Director's designee shall have access at all reasonable times to premises, and may examine records, documents, and other evidence or possible sources of evidence, and may record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the Director and/or the Director's designee complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The Director and/or the Director's designee may obtain information by:
 - a. Oral interview; and/or
 - b. Requests for written statement or affidavit; or
 - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.
- (2) Access to files during investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, the respondent, or their authorized representative, or to witnesses, only when disclosure is deemed necessary by the Director for the investigation or for securing appropriate disposition of the complaint. The Director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law and/or the Federal Privacy Act.

Sec. 2-308. – Determination of reasonable cause.

Notice

- (a) Upon completion of an investigation, the Director and/or the Director's designee shall make a determination as to whether there is reasonable cause believe that an unlawful employment practice has occurred. The Director and/or the Director's designee shall provide a copy of the determination to the Board.
- (b) A determination of reasonable cause shall include an invitation to participate in conciliation.
- (c) After service of a determination, records and documents in the custody of the OEO that pertain to the determination shall be open for public inspection in accordance with the provisions of the Florida Public Records Law (F.S. § 119.01 et seq.).

Conciliation procedure.

- (a) After service of a determination of reasonable cause the OEO shall endeavor to eliminate any unlawful employment practice through mediation or conciliation. Where such conciliation attempts are successful, the terms of the agreement shall be reduced to writing and signed by the complainant, the respondent and the Director. The original of the signed agreement shall be filed with the Director and copies shall be served upon the respondent and complainant.
- (b) If after thirty (30) days from issuing the determination, an agreement has not been signed, the Director shall serve a failure of conciliation upon the complainant and respondent.
- (c) Nothing said or done in the course of the conciliation process may be made public or used as evidence in subsequent proceedings without the written consent of the parties. Any employee of the OEO who violates this section shall be prosecuted in the same manner as a misdemeanor of the second degree, punishable as provided in Florida Statutes Chapter 775. The final executed and approved conciliation agreement will be made public.

Sec. 2-309. – Administrative remedies.

- (a) If the Director is unable to obtain voluntary compliance with this article and has reasonable cause to believe that an unlawful employment practice has occurred, the Director may institute an administrative proceeding before the Board on any Director initiated complaint.
- (b) The complainant may request an administrative proceeding before the Board within thirty (30) days after receiving notice of failure of conciliation.
- (c) In conducting an administrative hearing to ascertain whether or not there has been a violation of this article, the Board shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents and receive evidence. The Board shall conduct the administrative hearing in accordance with F.S. §120.57, as amended.
- (d) All recommended orders issued by the Board as a result of such hearing or hearings shall conform with the requirements in F.S. § 120.57, as amended.
- (e) The Board shall issue a copy of the order to each party to the administrative proceedings. The recommended order shall be considered as the final order of the Board as provided by F.S. § 120.57, as amended.
- (f) Any party to such administrative proceedings shall have the right to appeal the administrative order described herein by filing notice of appeal pursuant to Florida Appellate Rule 9.110(a)(2) within thirty (30) days of the issuance of such order by the Board. Any party shall have the right to bring an action in the appropriate court to insure compliance with this order.
- (g) In the case of a refusal to obey a subpoena issued by the Board, the County or the person at whose request it was issued may, in addition to any other remedies made available, petition for its enforcement in the appropriate court.
- (h) Should any party fail or refuse to comply with the final order issued or breach a conciliation agreement as provided herein, then following the expiration of the appeal time provided herein, the Board may forward such order or conciliation agreement to the Board of County Commissioners with a request to authorize the County Attorney to bring such action or actions as necessary to obtain compliance with this article.
- (i) When an act is required or allowed to be done at or within a specified time by this section, for cause shown, the Board, in its discretion, and upon the written request of a party, may order the period enlarged unless otherwise prohibited by law.
- (j) All written motions upon which a ruling is requested shall be filed with the OEO at least ten (10) days prior to the hearing date established by the Board. Such motions shall be considered and ruled upon by the Board prior to the start of the final hearing.
- (k) All motions and orders thereon shall be made a part of the record of such administrative proceedings.
- (l) No appeal may be made from rulings on such motions until a final order has been issued.
- (m) If there are separately filed cases before the Board which involve similar issues of law and fact and identity of parties, then such cases may be consolidated by the Director for hearing before the Board.
- (n) Discovery shall be permitted and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
- (o) The Board may order a pre-hearing conference prior to any administrative hearing. Prior to such conference the Board may direct that the parties submit a pre-conference statement addressing the issues of law and fact that will be involved in such hearing, identifying the witnesses that will testify, providing a list of all documents or other exhibits that will be submitted and providing such other information as requested by the Board.
- (p) The Director shall set the time and place of any administrative hearing. The Director shall serve notice by certified mail of such hearing on the parties no later than fourteen (14) calendar days prior to the final hearing. Such notice requirement may be waived with the written consent of all parties. The notice shall also contain:
 - (1) A statement of the nature of the hearing.
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - (3) A reference to the statutes, ordinance and rules involved.

- (q) Requests for subpoenas in any administrative proceeding shall be filed with the OEO and forwarded to the Board. Such requests shall set forth the name and address of the person whose attendance is requested and shall describe with particularity any material to be produced. Such subpoenas shall be issued by the Board or the Director. The requesting party shall be responsible for service of any subpoena.
- (r) A subpoena shall be subject to a motion to quash or a motion for protective order before the appropriate court.
- (s) The official transcript of a hearing shall be preserved by electronic recording or by a court reporter.
- (t) Should a party elect to provide a court reporter for a hearing, that party shall be responsible for entire payment of the reporter's fee.
- (u) If the Board finds that an unlawful practice has occurred, it shall issue an order prohibiting the practice and awarding affirmative relief from the effects of the practice, including actual damages and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under this article.
- (v) To vindicate the public interest, the Board, may assess a civil penalty against the respondent in an amount not to exceed ten thousand dollars (\$10,000.00). Funds recovered under this section shall be paid to the Board of County Commissioner's general fund.

Sec. 2-310. – Enforcement by private persons.

- (a) A person may commence a civil action in any court of competent jurisdiction against the named employer, employment agency, labor organization, joint labor-management committee or person no later than one (1) year after the date of determination of reasonable cause by the OEO. The commencement of such action shall divest the OEO of jurisdiction of such complaint, except that the OEO may intervene as a matter of right.
- (b) Nothing in this article shall be construed to waive the right of any person to file a charge with any other agency with the legal authority to investigate or act upon the complaint. The commencement of such action shall not divest the OEO and the Board of jurisdiction of such complaint.
- (c) If the court finds that an unlawful practice has occurred, it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, actual and punitive damage, and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under this article. It is intended that any award of attorneys fees be interpreted in a manner consistent with federal case law, involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury.

Sec. 2-311. – Unlawful employment practices.

- (a) It is an unlawful employment practice for an employer:
 - (1) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (3) To refuse to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship as defined in this article.

- (b) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, or gender identity or expression, or genetic information, or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (c) It is an unlawful employment practice for a labor organization:
 - (1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (2) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this article.
- (d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information, or in admission to, or employment in, any program established to provide apprenticeship or other training.
- (e) Whenever, a profession, occupation, or trade, requires that a person receive a license, certification, or other credential to become a member of an association of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (f) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print or cause to be printed or published, any notice or advertisement relating to employment, membership, certification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (g) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to intimidate, coerce, threaten or interfere with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.
- (h) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to retaliate or discriminate in any manner against a person who has opposed a practice declared discriminatory by this article, or who has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this article.
- (i) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article; or to obstruct or prevent any person from complying with the provision of this article or any order issued thereunder.
- (j) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to resist, prevent, impede or interfere with the

Board or any of its members or representatives in the lawful performance of its or their duty under this article.

- (k) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to initiate maliciously, frivolously or in bad faith any charge under the provisions of this article for the purpose of harassment.

Sec. 2-312. – Limitations and exceptions – Employment.

Notwithstanding any other provision of this article, it is not an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to:

- (1) Take or fail to take any action on the basis of religion, sex or national origin in those certain instances in which religion, sex or national origin is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.
- (2) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality or production, which is not designed, intended, or used to evade the purposes of Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Equal Pay Act of 1963, as amended, the Rehabilitation Act, as amended, the Americans with Disabilities Act Amendments Act of 2008, as amended, or the Florida Civil Rights Act, as amended. However, no such employee benefit plan or system which measures earnings shall excuse the involuntary retirement of any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, nor shall this article preclude such physical and medical examinations of all employees or persons offered employment to determine fitness for the job or position held or offered.

Section 2-311 shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. Section 2-311 shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

Secs. 2-313 – 2-330. – Reserved.

Section 2-331. Applicability.

It is hereby provided that this Ordinance shall constitute a uniform law applicable in all the unincorporated and incorporated areas of Palm Beach County, Florida, to the extent permitted under the Florida Constitution, Article VIII, Section I.

Section 2-332. 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 2-333. Savings clause.

Notwithstanding the section of this ordinance regarding repeal of laws in conflict, complaints, investigations, orders, hearing processes, and all other functions of the OEO and Board, initiated or completed pursuant to Chapter 2, Article VI of the Palm Beach County Code shall remain in full force and effect.

Section 2-334. 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 2-335. Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made 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 2-336. 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 2-337. 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 _____ day of _____, 20__.

SHARON R. BOCK, CLERK AND
COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICICENCY

By: _____
Chief Assistant County Attorney

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

ORDINANCE NO. 2016-2020-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 2 ARTICLE VI, CODIFYING ORDINANCE 2017-013, THE PALM BEACH COUNTY EQUAL EMPLOYMENT ORDINANCE; PROVIDING FOR AMENDING THE DEFINITION OF EMPLOYER; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

~~AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING PALM BEACH COUNTY CODE, CHAPTER 2 ARTICLE VI, CODIFYING ORDINANCE NO. 95-31 AS AMENDED BY ORDINANCE NO. 2007-041, THE PALM BEACH COUNTY EQUAL EMPLOYMENT ORDINANCE; AND ADOPTING A NEW PALM BEACH COUNTY EQUAL EMPLOYMENT ORDINANCE; PROVIDING FOR SHORT TITLE; PROVIDING FOR PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR DUTIES AND POWERS OF THE OFFICE OF EQUAL OPPORTUNITY; PROVIDING FOR POWERS AND DUTIES OF THE DIRECTOR; PROVIDING FOR THE EQUAL EMPLOYMENT BOARD; PROVIDING FOR FILING OF COMPLAINTS; PROVIDING FOR NOTICE OF COMPLAINT; PROVIDING FOR PROCESSING COMPLAINT; PROVIDING FOR WITHDRAWAL OF COMPLAINT; PROVIDING FOR PRESERVATION OF RECORDS; PROVIDING FOR DISMISSAL OF COMPLAINT; PROVIDING FOR INVESTIGATION PROCEDURES; PROVIDING FOR DETERMINATION OF REASONABLE CAUSE; PROVIDING FOR ADMINISTRATIVE REMEDIES; PROVIDING FOR ENFORCEMENT BY PRIVATE PERSONS; PROVIDING FOR UNLAWFUL EMPLOYMENT PRACTICES; PROVIDING FOR LIMITATIONS AND EXCEPTIONS, 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 of said County, standards which will ensure their health, wealth, and well-being; and

WHEREAS, Section 125.01 Florida Statutes, as amended, 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, it is for the public policy of the United States of America to provide for equal employment opportunities throughout the United States and the policy of Palm Beach County, Florida, to also so provide; and

WHEREAS, since the Board of County Commissioners originally enacted the Equal Employment Ordinance No. 95-31, providing for equal opportunities in employment, it has been necessary to amend it from time to time in order to best serve the citizens of Palm Beach County and provide for their general welfare; and

WHEREAS, the Equal Employment Board was established to assist, advise and

cooperate with the Board of County Commissioners and local, state and federal agencies to protect the interest of the public regarding fair treatment and equal opportunity in employment, and to carry out adjudicatory functions pertaining to alleged unlawful discriminatory acts or practices; and

~~WHEREAS, in consideration of ordinances in Broward County, Leon County, Miami-Dade County, Orange County, Pinellas County, and the City of West Palm Beach, which perceptively define the term "employer" more expansively than Palm Beach County's by using a five employee benchmark; and~~WHEREAS, the Board of County Commissioners of Palm Beach County adopted Resolution 2013-0193 on March 1, 2013, which imposes specific requirements on members of County advisory boards; and

~~WHEREAS, amending the current code will provide greater protection for all persons, regardless of their protected status, in attaining and maintaining employment; and~~WHEREAS, the Equal Employment Board is subject to the provisions of Resolution 2013-0193; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds that it is in the best public interest to amend the code to bring employers with five (5) employees under the purview of Palm Beach County's commitment to equal opportunities for all.

~~WHEREAS, due to the substantial procedural and substantive changes made to this Ordinance since it was last amended in 2007, it is necessary for the Board of County Commissioners to repeal and replace the Equal Employment Ordinance its entirety.~~

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

Chapter 2, Article VI, of the Palm Beach County Code, "Equal Employment Ordinance," (Ordinance No. 95-31, as amended), is hereby repealed and replaced with the following:

Sec. 2-261. – Short title.

This article shall be known and may be cited as the "Palm Beach County Equal Employment Ordinance."

Sec. 2-262. – Purpose.

It shall be the policy of the Board of County Commissioners, in the exercise of its police power for the public safety, public health, and general welfare to assure, within constitutional limitations, that all persons regardless of race, color, sex, national origin, religion, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information as defined by Title VII of the Civil Rights Act of 1991, as amended, the Equal Pay Act of 1963, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Rehabilitation Act, as amended, the Americans with Disabilities Act Amendments Act of 2008, as amended, the Florida Civil Rights Act, as amended, the Genetic Information Nondiscrimination Act of 2008, as amended, or otherwise provided herein, be afforded equal opportunity to all terms and conditions of employment. The county shall take all necessary and reasonable action to prevent discrimination in employment.

Sec. 2-263. – Definitions.

In this article unless the context otherwise requires:

Age provisions contained herein apply to any person at least forty (40) years of age.

Aggrieved person includes any person that: (1) claims to have been injured by a discriminatory practice; or (2) believes that he or she will be injured by a discriminatory practice that is about to occur.

Auxiliary aids and services includes, but is not limited to: (1) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, or other effective methods of making visually

delivered materials available to individuals with visual impairments; (3) acquisition or modification of equipment or devices; and (4) other similar services and actions.

Because of sex or on the basis of sex includes, but is not limited to, because of or on the basis of pregnancy, childbirth, gender stereotyping or related medical conditions; and women affected by pregnancy, childbirth, gender stereotyping or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. "Because of sex" or "on the basis of sex" also includes, but is not limited to sexual harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3e) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Board unless a different meaning clearly appears from the context, means the Palm Beach County Equal Employment Board, created by this article.

Bona fide occupational qualification means a physical, educational, intellectual, economic or other standard, requirement or quality that:

- (1) Is required of persons who apply for or occupy the job position for which it is prescribed; and
- (2) Is related to and necessary for job performance; and
- (3) Cannot be possessed, performed or met by a person excluded from the job position by reason of the qualification.

Bona fide seniority system means an employment practice whereby employees are promoted, laid off, rehired, assigned, transferred, offered additional or improved employment opportunities, given increased compensation or other benefits or otherwise dealt with on the basis, wholly or partially, of length of service, which, on its face, does not discriminate and is not intended or designed to disguise discrimination.

Chairperson or chair means the chairperson of the Equal Employment Board.

Complainant shall mean the person filing a complaint pursuant to this article.

Complaint means a written statement which alleges the occurrence of a discriminatory practice.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent and the Office of Equal Opportunity.

Conciliation agreement means an agreement entered into between the complainant and respondent resolving the alleged discriminatory practice and which may require respondent to refrain from committing a discriminatory practice or to take affirmative action. The agreement may include consent to the entry of a court decree embodying its terms and shall be subject to approval by the Director of the Palm Beach County Office of Equal Opportunity.

Director means the Director of the Palm Beach County Office of Equal Opportunity.

Disability means, with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (b) A record of such impairment;
- (c) Being regarded as having such an impairment; or
- (d) Rules of construction regarding the definition of disability shall be construed in accordance with the ADA Amendments Act of 2008, as amended.

Discrimination classification means a classification on the basis of race, color, religion, national origin, sex, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.

Discrimination practice means a practice designated as discriminatory under the terms of this article.

Document includes, but is not limited to, writings, drawings, graphs, charts, photographs, phono-records and other data or compilations from which information can be obtained.

Employee means any individual employed by, or seeking employment from an employer.

Employer means a person engaged in an industry affecting commerce who has ~~fifteen (15)~~ five (5) or more employees for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year, and any agent of such person; including, but not limited to, all state and local governments, governmental agencies, and political subdivisions unless opted out. The term does not include the United States, an Indian Tribe, a bona fide private membership club which is exempt from taxation under 501(c) of Title 26.

Employment agency means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such person.

Familial status means an individual who has legal custody of one or more children who has not attained the age of eighteen (18). The protection afforded against discrimination on the basis of familial status shall apply to any individual who is expecting the birth of a child or is in the process of securing legal custody of a child under the age of eighteen (18).

Gender identity or expression means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth. *Genetic information* means, with respect to any individual, information about:

- (i) such individual's genetic tests;
- (ii) the genetic tests of family members of such individual;
- (iii) the manifestation of a disease or disorder in family members of such individual; and
- (iv) rules of construction regarding the definition of genetic information shall be construed in accordance with the Genetic Information Nondiscrimination Act of 2008, as amended.

Labor organization means any organization engaged in an industry affecting commerce, and any agent of such an organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, whole or in part, of collective bargaining or of dealing with employers, or other mutual aid or protection in connection with employment. Labor organization includes: (1) An organization of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment; (2) A conference, general committee, system board, or council which is subordinate to a national or international labor organization. A labor organization shall be deemed to be engaged in an industry affecting commerce if it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or the number of its members is fifteen (15), and such labor organization is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

Marital status means the status of being married, single, divorced or widowed.

National origin includes the national origin of an ancestor.

Office of Equal Opportunity or the OEO means the Palm Beach County Office of Equal Opportunity.

Person includes one (1) or more individuals, associations, corporations, trustees, joint apprenticeship committees, joint stock companies, partnerships, labor unions, legal representatives, mutual companies, receivers, trusts, trustees in bankruptcy, unincorporated organizations, fiduciaries or any other legal or commercial entity, the state, or any governmental entity or agency in Palm Beach County.

Qualified individual means, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this article, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Reasonable accommodation for disability – The term “reasonable accommodation” may include:

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Religion means all aspects of religious observance, practice and beliefs.

Religious accommodation means an employer or other covered entity is required to reasonably accommodate an employee’s religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer’s business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Respondent shall mean the person or other entity accused in a complaint of a discriminatory practice and any other person or entity identified in the course of the investigation not named as a respondent in the initial complaint who may be joined as an additional or substitute respondent upon written notice.

Sexual orientation means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

Substantially limited shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008, as amended.

Training programs mean any plan containing terms and conditions for qualification, recruitment, selection, employment, or training of employees to: (1) Enter a specific trade or occupation after completion of a specified training program; or (2) Offer a person already either partially or wholly trained in a specific trade or occupation an opportunity to advance after completion of a specified training program. A training program may be "joint" i.e., managed and supervised by representatives of labor and management or unilateral.

Undue hardship for disability means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) The nature and cost of the accommodation needed; (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (4) The type of operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Undue hardship for religion means an accommodation that requires an employer to bear more than a "de minimis" burden on operation of the business. Any proffered hardship, however, must be actual. An employer cannot rely merely on speculation.

Unlawful employment practice includes only those practices specified in Section 2-311.

Sec. 2-264 - 2-270. – Reserved.

Sec. 2-271. – In general.

The county administrator exercising his/her power of appointment shall employ a Director and such other personnel in the OEO as may be provided for in the budget approved by the board of county commissioners and for which an appropriation has been made. The Director and staffing complement shall be referred to as the OEO. It shall be the responsibility of the Director and/or the Director's designee to investigate complaints of discrimination prohibited by this article, and the laws of the United States of America and the State of Florida, and attempt to conciliate and mediate complaints of discrimination, to perform such other duties which will promote and provide for equal opportunity and for enforcement of this article and the laws of the United States of America and the State of Florida; and to perform such other duties of an administrative nature as may be assigned by the county administrator.

Sec. 2-272. – Duties and powers of the OEO .

The duties, functions, powers and responsibilities of the office shall include the following:

- (1) The enforcement of the provisions of this article and rules and regulations promulgated hereunder.
- (2) Publish and disseminate public information and materials relating to equal employment opportunities issues.
- (3) Perform, such other administrative duties as may be assigned by the county administrator.
- (4) To become a referral agency for the state and federal government and comply with the necessary state and federal regulations.

Sec. 2-273. – Duties and powers of the Director.

The powers and duties of the Director and/or the Director's designee shall be:

- (1) To investigate and make findings regarding:
 - a. Tension or prejudice in relation to all equal employment involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information.
 - b. Discrimination against any person by any person with regard to employment on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (2) To attempt to conciliate and mediate complaints of discrimination brought pursuant to this article.
- (3) To prepare conciliation agreements embodying any agreement reached by the parties relating to the complaint, and advise the Board of such agreement.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any investigation authorized by this article.
- (5) To administratively dismiss complaints pursuant to the provisions of this article.
- (6) To exercise all powers reasonable and necessary to fulfill the purpose of this article.
- (7) To petition for enforcement of a subpoena in the appropriate court in the case of a refusal to obey a subpoena issued by the Director and/or the Director's designee.

Secs. 2-274 - 2-280 – Reserved.

Sec. 2-281. Equal Employment Board – Established; composition; qualification; terms of office; attendance.

The Board is hereby created and established. The Board is to be comprised of nine (9) citizens of the County appointed by the Board of County Commissioners to serve for terms of three (3) years. There shall be a limit of three consecutive three-year terms. Terms shall begin on October 1st and end on September 30th. All Board members must be residents of Palm Beach County at the time of appointment and while serving on the Board. Board appointments should reflect, to the greatest extent possible, the racial, gender and ethnic make-up of the community. Members of this Board shall be the same as members of the Fair Housing Board created by the Palm Beach County Housing Ordinance as codified in Article III, Chapter 15, sections 15-36 through 15-67 of the Palm Beach County Code. Seven (7) of the appointments shall be made as district appointments and two (2) of the appointments shall be made at large by the Board of County Commissioners on the basis of community representation, integrity, experience and interest in the area of equal opportunities. In order that the terms of office of all members shall not expire at the same time, all current members of the Board shall serve the remainder of their respective terms, if they so elect. Any member who elects not to serve the remainder of their term shall be replaced by appointments made by the Board of County Commissioners to serve the unexpired portion of the term. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation. Travel reimbursement is limited to expenses incurred only for travel outside Palm Beach County necessary to fulfill Board member

responsibilities when sufficient funds have been budgeted and are available as set forth in PPM CW-O-038. No other expenses are reimbursable except documented long distance phone calls to the OEO. Approval authority for pre-authorized Board member travel is designated to the County Administrator and Deputy County Administrator and shall be in accordance with Countywide Policy and Procedures Memoranda (PPM) CW-F-009. Each district appointee serves at the pleasure of the appointing Commissioner and may be removed without cause by the appointing Commissioner at any time, and at large appointees may be removed without cause by a majority vote of the Board of County Commissioners at any time. The maximum number of boards that an individual appointed by the Board of County Commissioners may serve on at one (1) time shall be three (3), however, membership on the Fair Housing Board and this Board shall only be considered membership on one (1) advisory board. Members shall comply with the applicable provisions of the Palm Beach County Code of Ethics, as codified in sections 2-441 through 2-448 of the Palm Beach County Code and the State Code of Ethics. Abstention from voting due to a conflict of interest on more than three (3) separate matters during a calendar year shall result in automatic removal. Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than one-half ($\frac{1}{2}$) of the meetings scheduled during a calendar year. Participation for less than three-fourths ($\frac{3}{4}$) of a meeting shall be the same as 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. Board members shall not be prohibited from qualifying as a candidate for elected office. County employees, other than Commissioners' Aides, may not be appointed to the Board. Former Board of County Commission members may not be appointed to the Board for at least two (2) years following their last day in office as a County Commissioner. Members of the Board shall appoint a chairperson and vice-chairperson, and the Board may promulgate rules and regulations for the conduct of its meetings and affairs.

Board terms, rules and regulations and organization.

The following rules and regulations shall govern the operation of the Board:

- (1) The chairperson of the Board shall be elected by majority vote of the Board and shall serve for a term of one (1) year and have the following duties:
 - a. Call Board meetings and set the agenda for the same.
 - b. Preside at Board meetings.
 - c. Sign subpoenas.
 - d. Perform such other functions as the Board may assign by rule or order.
- (2) The vice-chairperson shall be elected by 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 chairperson's absence and such other duties as the chairperson may assign.
- (3) If a vacancy occurs in the office of chairperson, the vice-chairperson shall become the chairperson for the unexpired term of the chairperson. If a vacancy occurs in the office of vice-chairperson, the Board will elect another member to fill the unexpired term of the vice-chairperson.
- (4) At least three (3) members of the Board or any other odd number shall constitute a hearing panel for the purpose of hearing discrimination complaints. A majority of members appointed shall constitute a quorum to hold a meeting for any other purpose. Board business shall be taken by a majority vote.
- (5) All meetings shall be governed by Robert's Rules of Order.

Board meetings.

The Board shall comply with the Sunshine Law. The Board shall meet on a regular basis and as necessary to conduct administrative hearings. Reasonable notice of the time and place of the meeting shall be given to all Board members and all parties scheduled to be heard, and shall be made public. All meetings of the Board shall be open to the public. The chairperson may call an unscheduled meeting upon not less than twenty-four (24) hours notice, and preferably at least seventy-two (72) hours reasonable notice to the public, and meetings may also be called by the Director upon the request of three (3) members of the Board. The County Administrator shall provide such staff as may reasonably be required in his/her discretion to assist the Board in the

performance of its duties. The County Administrator shall provide a regular meeting place for the Board.

Objectives of the Board.

The objectives of the Board shall be:

- (1) To promote and encourage fair treatment and equal opportunity in employment for all persons regardless of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, gender identity or expression, or genetic information; to promote and encourage mutual understanding and respect among such persons and to endeavor to eliminate employment discrimination against and antagonism between such persons;
- (2) To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions;
- (3) To make such investigations and studies in the field of employment as in its judgment will aid in effectuating its general purposes;
- (4) To assist various groups and agencies of the community to cooperate in educational programs and campaigns devoted to the elimination of discrimination in employment;
- (5) To aid in permitting the County to benefit from the fullest realization of its equal employment resources;
- (6) To recommend to the Board of County Commissioners the acceptance of certain grants and contracts from foundations and other sources for the purposes of carrying out the purposes of this article; and
- (7) To recommend to the Board of County Commissioners methods for elimination of discrimination and intergroup tensions. The objectives set forth above are not to be construed as duties, and the Board of County Commissioners shall have the discretion to determine when each objective is implemented.

The powers and duties of the Board shall be:

- (1) To refer or accept referral of complaints when appropriate and to cause, through the OEO, investigations of:
 - a. Tension or prejudice in relation to all employment matters involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression, or genetic information.
 - b. Discrimination against any person by any with regard to employment matters on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation, or gender identity or expression, or genetic information.
- (2) To propose reasonable rules and regulations as are necessary to effectuate the policies of this article and govern the proceedings of the Board. Such rules and regulations shall become effective upon approval by the board of county commissioners.
- (3) To receive, initiate, seek to conciliate, hold hearings upon and adjudicate complaints alleging violation of this article; to recommend methods and alternatives for eliminating injustices occasioned thereby; to carry out and enforce the purpose of this article.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any hearing convened pursuant to the powers and duties authorized by this article.
- (5) To subpoena witnesses and compel production of evidence requested by the OEO relating to an investigation being conducted pursuant to this article.
- (6) To issue remedial orders prohibiting violations of this article and providing affirmative relief from the effects of the violations as specified in section 2-311.

Secs. 2-282 – 2-300. – Reserved.

Sec. 2-301. – Filing of complaints alleging discrimination in employment.

- (a) A complaint that any person has engaged in or is engaging in an unlawful employment practice within the meaning of this article may be made by or on behalf of any person claiming to be aggrieved within one hundred eighty (180) days of the alleged discriminatory act.
- (1) Any person who claims to have been injured by an unlawful discriminatory practice must file a sworn written complaint with the OEO, which shall state the name and address of the complainant and the person or persons against whom the complaint is made.
 - (2) A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency or organization.
 - (3) A complaint shall be in writing and signed by the complainant. Each complaint should contain the following information:
 - a. The full name and address and telephone number of the person making the complaint except in cases where the complaint is being made on behalf of another person;
 - b. The full name and address of the person against whom the complaint is made; and
 - c. A general description of the action or practices complained of.
- (b) A complaint may be filed by the Director of the OEO, with the approval of the Board.
- (c) Intake of complaints may be done in person, by telephone, facsimile, or by U.S. Mail, or electronic mail at the OEO.
- (4) Complaints may be amended to cure technical defects, omissions, or to clarify and amplify allegations. Amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

Sec. 2-302. – Notice of complaints.

Upon the filing of a complaint, the Director shall serve notice upon the complainant acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article. The Director or the Director's designee shall, not later than ten (10) days after such filing or the identification of an additional respondent, serve on the respondent a notice identifying the alleged discriminatory employment practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint. The respondent may file a sworn written answer to the complaint within thirty (30) days of the receipt of the complaint. Any subsequent amendment to the complaint or answer thereto shall be served on the respondent or the complainant.

Sec. 2-303. – Processing complaints.

Within one hundred eighty (180) days of the filing of a complaint, the staff of the OEO shall make such investigation as the Director or the Board deems appropriate to ascertain facts and issues. In conducting an investigation to ascertain whether or not there has been a violation of this article, the Director and/or the Director's designee shall have access at all reasonable times to premises, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the OEO complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The Director, chairperson, vice-chairperson or any other member of the Board may issue subpoenas to compel access to, or the production of, such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. In the case of a refusal to obey a subpoena issued to any person, or refusal to comply with any method of discovery authorized in the Florida Rules of Civil Procedure the Board and/or the Director shall request the county attorney to make application to the appropriate court to order the witness to comply with the request for discovery, or to appear before the Board and to produce evidence, if so requested, or to give testimony concerning the matter in question. The Director and/or the Board may administer oaths. If the complaint is not settled within one hundred eighty (180) days of the filing of the complaint, and if the Director determines that there are reasonable cause to believe an

unlawful employment practice has occurred and is appropriate for conciliation, then the Director and/or the Director's designee shall attempt to conciliate the matter.

Sec. 2-304. – Withdrawal of complaint.

A complaint filed pursuant to this article may be withdrawn at any time by the complaining party upon notifying the OEO; however, the Director may continue an action against the respondent if the facts establish reasonable cause to support a finding of discrimination and the Board approves such further action.

Sec. 2-305. – Preservation of records.

Following service of the complaint in the manner provided herein, the respondent shall preserve all personnel records, payroll records or any other written or documentary material relating to the complaint until the complaint has been resolved.

Sec. 2-306. – Dismissal of complaint.

- (a) Any complaint filed pursuant to this article shall be dismissed by the Director upon the following cause:
- (1) The complainant has failed or refused to cooperate or the complainant cannot be located after reasonable efforts to do so have been made and after twenty (20) days notice to the complainant by mail to the complainant's last known address the complainant has failed to duly respond.
 - (2) The complaint has not been timely filed with the ~~the~~ OEO.
 - (3) The complainant refuses to accept full remedy when there is a settlement negotiation prior to a finding being issued.
 - (4) The complainant and respondent have entered into a separate independent settlement agreement regarding the subject matter of the complaint.
 - (5) The complainant withdraws the complaint.
 - (6) The complainant files a complaint in state or federal court which divests the OEO of jurisdiction.
- (b) In the event that any other agency of the state or of any other unit of state or federal government has jurisdiction of the subject matter of any complaint filed with the OEO and has legal authority to investigate or act upon the complaint, the OEO may refer such complaint to such agency. Referral of such a complaint by the OEO shall not constitute agency action within the meaning of Florida Statute § 120.52(2). In the event of any referral under this subsection, the OEO shall accord substantial weight to final findings and orders of any such agency.

Sec. 2-307. – Investigation procedures.

After a complaint has been filed, the OEO shall conduct an investigation. The OEO may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws. The following procedures shall be followed:

- (1) Requests for information. In conducting an investigation the Director and/or the Director's designee shall have access at all reasonable times to premises, and may examine records, documents, and other evidence or possible sources of evidence, and may record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the Director and/or the Director's designee complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The Director and/or the Director's designee may obtain information by:
 - a. Oral interview; and/or
 - b. Requests for written statement or affidavit; or
 - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.

- (2) Access to files during investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, the respondent, or their authorized representative, or to witnesses, only when disclosure is deemed necessary by the Director for the investigation or for securing appropriate disposition of the complaint. The Director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law and/or the Federal Privacy Act.

Sec. 2-308. – Determination of reasonable grounds cause–.

Notice

- (a) Upon completion of an investigation, the Director and/or the Director's designee shall make a determination as to whether there is reasonable cause believe that an unlawful employment practice has occurred. The Director and/or the Director's designee shall provide a copy of the determination to the Board.
- (b) A determination of reasonable cause shall include an invitation to participate in conciliation.
- (c) After service of a determination, records and documents in the custody of the OEO that pertain to the determination shall be open for public inspection in accordance with the provisions of the Florida Public Records Law (F.S. § 119.01 et seq.).

Conciliation procedure.

- (a) After service of a determination of reasonable cause the OEO shall endeavor to eliminate any unlawful employment practice through mediation or conciliation. Where such conciliation attempts are successful, the terms of the agreement shall be reduced to writing and signed by the complainant, the respondent and the Director. The original of the signed agreement shall be filed with the Director and copies shall be served upon the respondent and complainant.
- (b) If after thirty (30) days from issuing the determination, an agreement has not been signed, the Director shall serve a failure of conciliation upon the complainant and respondent.
- (c) Nothing said or done in the course of the conciliation process may be made public or used as evidence in subsequent proceedings without the written consent of the parties. Any employee of the OEO who violates this section shall be prosecuted in the same manner as a misdemeanor of the second degree, punishable as provided in Florida Statutes Chapter 775. The final executed and approved conciliation agreement will be made public.

Sec. 2-309. – Administrative remedies.

- (a) If the Director is unable to obtain voluntary compliance with this article and has reasonable cause to believe that an unlawful employment practice has occurred, the Director may institute an administrative proceeding before the Board on any Director initiated complaint.
- (b) The complainant may request an administrative proceeding before the Board within thirty (30) days after receiving notice of failure of conciliation.
- (c) In conducting an administrative hearing to ascertain whether or not there has been a violation of this article, the Board shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents and receive evidence. The Board shall conduct the administrative hearing in accordance with F.S. §120.57, as amended.
- (d) All recommended orders issued by the Board as a result of such hearing or hearings shall conform with the requirements in F.S. § 120.57, as amended.
- (e) The Board shall issue a copy of the order to each party to the administrative proceedings. The recommended order shall be considered as the final order of the Board as provided by F.S. § 120.57, as amended.
- (f) Any party to such administrative proceedings shall have the right to appeal the administrative order described herein by filing notice of appeal pursuant to Florida Appellate Rule 9.110(a)(2) within thirty (30) days of the issuance of such order by the Board. Any party shall have the right to bring an action in the appropriate court to insure compliance with this order.

- (g) In the case of a refusal to obey a subpoena issued by the Board, the County or the person at whose request it was issued may, in addition to any other remedies made available, petition for its enforcement in the appropriate court.
- (h) Should any party fail or refuse to comply with the final order issued or breach a conciliation agreement as provided herein, then following the expiration of the appeal time provided herein, the Board may forward such order or conciliation agreement to the Board of County Commissioners with a request to authorize the County Attorney to bring such action or actions as necessary to obtain compliance with this article.
- (i) When an act is required or allowed to be done at or within a specified time by this section, for cause shown, the Board, in its discretion, and upon the written request of a party, may order the period enlarged unless otherwise prohibited by law.
- (j) All written motions upon which a ruling is requested shall be filed with the OEO at least ten (10) days prior to the hearing date established by the Board. Such motions shall be considered and ruled upon by the Board prior to the start of the final hearing.
- (k) All motions and orders thereon shall be made a part of the record of such administrative proceedings.
- (l) No appeal may be made from rulings on such motions until a final order has been issued.
- (m) If there are separately filed cases before the Board which involve similar issues of law and fact and identity of parties, then such cases may be consolidated by the Director for hearing before the Board.
- (n) Discovery shall be permitted and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
- (o) The Board may order a pre-hearing conference prior to any administrative hearing. Prior to such conference the Board may direct that the parties submit a pre-conference statement addressing the issues of law and fact that will be involved in such hearing, identifying the witnesses that will testify, providing a list of all documents or other exhibits that will be submitted and providing such other information as requested by the Board.
- (p) The Director shall set the time and place of any administrative hearing. The Director shall serve notice by certified mail of such hearing on the parties no later than fourteen (14) calendar days prior to the final hearing. Such notice requirement may be waived with the written consent of all parties. The notice shall also contain:
 - (1) A statement of the nature of the hearing.
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - (3) A reference to the statutes, ordinance and rules involved.
- (q) Requests for subpoenas in any administrative proceeding shall be filed with the OEO and forwarded to the Board. Such requests shall set forth the name and address of the person whose attendance is requested and shall describe with particularity any material to be produced. Such subpoenas shall be issued by the Board or the Director. The requesting party shall be responsible for service of any subpoena.
- (r) A subpoena shall be subject to a motion to quash or a motion for protective order before the appropriate court.
- (s) The official transcript of a hearing shall be preserved by electronic recording or by a court reporter.
- (t) Should a party elect to provide a court reporter for a hearing, that party shall be responsible for entire payment of the reporter's fee.
- (u) If the Board finds that an unlawful practice has occurred, it shall issue an order prohibiting the practice and awarding affirmative relief from the effects of the practice, including actual damages and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under this article.
- (v) To vindicate the public interest, the Board, may assess a civil penalty against the respondent in an amount not to exceed ten thousand dollars (\$10,000.00). Funds recovered under this section shall be paid to the Board of County Commissioner's general fund.

Sec. 2-310. – Enforcement by private persons.

- (a) A person may commence a civil action in any court of competent jurisdiction against the named employer, employment agency, labor organization, joint labor-management committee or person no later than one (1) year after the date of determination of reasonable cause by the OEO. The commencement of such action shall divest the OEO of jurisdiction of such complaint, except that the OEO may intervene as a matter of right.
- (b) Nothing in this article shall be construed to waive the right of any person to file a charge with any other agency with the legal authority to investigate or act upon the complaint. The commencement of such action shall not divest the OEO and the Board of jurisdiction of such complaint.
- (c) If the court finds that an unlawful practice has occurred, it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, actual and punitive damage, and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under this article. It is intended that any award of attorneys fees be interpreted in a manner consistent with federal case law, involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury.

Sec. 2-311. – Unlawful employment practices.

- (a) It is an unlawful employment practice for an employer:
 - (1) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (3) To refuse to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship as defined in this article.
- (b) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, or gender identity or expression, or genetic information, or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (c) It is an unlawful employment practice for a labor organization:
 - (1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
 - (2) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such

individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.

- (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this article.
- (d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information, or in admission to, or employment in, any program established to provide apprenticeship or other training.
- (e) Whenever, a profession, occupation, or trade, requires that a person receive a license, certification, or other credential to become a member of an association of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (f) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print or cause to be printed or published, any notice or advertisement relating to employment, membership, certification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation, gender identity or expression or genetic information.
- (g) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to intimidate, coerce, threaten or interfere with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.
- (h) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to retaliate or discriminate in any manner against a person who has opposed a practice declared discriminatory by this article, or who has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this article.
- (i) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article; or to obstruct or prevent any person from complying with the provision of this article or any order issued thereunder.
- (j) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to resist, prevent, impede or interfere with the Board or any of its members or representatives in the lawful performance of its or their duty under this article.
- (k) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to initiate maliciously, frivolously or in bad faith any charge under the provisions of this article for the purpose of harassment.

Sec. 2-312. – Limitations and exceptions – Employment.

Notwithstanding any other provision of this article, it is not an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to:

- (1) Take or fail to take any action on the basis of religion, sex or national origin in those certain instances in which religion, sex or national origin is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.
- (2) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by

quantity or quality or production, which is not designed, intended, or used to evade the purposes of Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Equal Pay Act of 1963, as amended, the Rehabilitation Act, as amended, the Americans with Disabilities Act Amendments Act of 2008, as amended, or the Florida Civil Rights Act, as amended. However, no such employee benefit plan or system which measures earnings shall excuse the involuntary retirement of any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, nor shall this article preclude such physical and medical examinations of all employees or persons offered employment to determine fitness for the job or position held or offered.

Section 2-311 shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. Section 2-311 shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

Secs. 2-313 – 2-330. – Reserved.

Section 2-331. Applicability.

It is hereby provided that this Ordinance shall constitute a uniform law applicable in all the unincorporated and incorporated areas of Palm Beach County, Florida, to the extent permitted under the Florida Constitution, Article VIII, Section I.

Section 2-332. 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 2-333. Savings clause.

Notwithstanding the section of this ordinance regarding repeal of laws in conflict, complaints, investigations, orders, hearing processes, and all other functions of the OEO and Board, initiated or completed pursuant to Chapter 2, Article VI of the Palm Beach County Code shall remain in full force and effect.

Section 2-334. 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 2-335. Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made 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 2-336. 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 2-337. 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 _____ day of _____, 20____.

SHARON R. BOCK, CLERK AND
COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICENCY

By: _____
Chief Assistant County Attorney

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