

**ORDINANCE NO. 2015- 038**

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

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

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

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

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

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

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

18           **WHEREAS**, the Florida Department of Children and Families, Adult Protective  
19 Services is charged with protecting vulnerable adults from being harmed, and receives an

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

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

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

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

13

14 **SECTION 1. TITLE:**

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

16

17 **SECTION 2. APPLICABILITY:**

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

22

23 **SECTION 3. DEFINITIONS:**

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

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

26           *Covered Activities* include Activities of Daily Living (bathing, grooming, shaving, oral  
27 care, using the toilet or other continence-related activities, dressing, eating, transferring from

28           *covered activities include activities in and out of body; and Instrumental Activities of Daily*

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

2   Division.

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

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

10

11   **SECTION 4. LICENSING:**

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

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

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

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

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

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

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

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

18 Applicants who are employed by, or are independent contractors placed through, home  
19 health agencies, nurse registries, homemaker and companion services providers, and  
20 hospice providers which are licensed by the Florida Agency for Health Care  
21 Administration (AHCA), may comply with the fingerprinting and criminal history  
22 records screening requirement of this section by causing the applicant's AHCA licensed  
23 agency, registry, or provider to submit directly to the Division an affidavit on a form  
24 provided by the Division, in which the AHCA licensed agency, registry, or provider  
25 attests that the applicant has undergone a level two criminal history records screening  
26 and is currently licensed by AHCA. All AHCA licensed agencies, registries, and  
27 providers submitting such an affidavit on behalf of their employee or independent

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

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

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

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

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

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

6

7 **SECTION 5. DISQUALIFICATIONS:**

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

- 10 (1) Having been found guilty of, regardless of adjudication, or having entered a plea  
11 of nolo contendere or guilty to, any offense prohibited under any of the following  
12 provisions of Florida Statutes or under any similar statute of another jurisdiction within  
13 the past fifteen (15) years:
- 14 a. Section 415.111, relating to reporting adult abuse, neglect, or exploitation of aged  
15 persons or disabled adults; or
  - 16 b. Chapter 782, relating to homicide; or
  - 17 c. Chapter 784, relating to assault, battery, and culpable negligence; or
  - 18 d. Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child,  
19 custody offenses; or
  - 20 e. Chapter 794, relating to sexual battery;
  - 21 f. Chapter 800, relating to lewdness, indecent exposure; or
  - 22 g. Chapter 806, relating to arson; or
  - 23 h. Chapter 810, relating to burglary and trespass, if the offense is a felony; or
  - 24 i. Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony;  
25 or
  - 26 j. Chapter 817, relating to fraudulent practices; or
  - 27 k. Chapter 825, relating to abuse, neglect, and exploitation of elderly persons and

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

21

22 **SECTION 6. ADMINISTRATIVE APPEAL:**

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

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

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

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

27 (e) Any person may appeal a final determination of the consumer affairs hearing



1 **SECTION 7. ENFORCEMENT:**

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

5

6 **SECTION 8. PENALTIES:**

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

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

16

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

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

20

21 **SECTION 10. SEVERABILITY:**

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

25

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

27 The provisions of this Ordinance shall become and be made a part of the Palm Beach  
28 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish

1 **SECTION 12. CAPTIONS:**

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

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

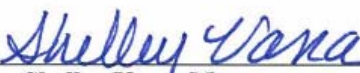
7 The provisions of this Ordinance shall become effective upon filing with the  
8 Department of State.

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

12 **SHARON R. BOCK, CLERK**  
13 **AND COMPTROLLER**

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

14  
15  
16 By:   
17 Deputy Clerk

By:   
Shelley Vana, Mayor

18  
19 **APPROVED AS TO FORM AND**  
20 **LEGAL SUFFICIENCY**

21  
22  
23 By:   
24 County Attorney  
25

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



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

October 26, 2015

Honorable Sharon R. Bock  
Clerk and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2015-038, which was filed in this office on 10/26/2015.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb