ORDINANCE NO. 2020-013

AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE II OF CHAPTER 9 OF THE PALM BEACH COUNTY CODE OF ORDINANCES ("CODE"), ENTITLED PALM BEACH COUNTY EMERGENCY MANAGEMENT ORDINANCE; AMENDING SECTION 9-32 (AUTHORITY); AMENDING SECTION 9-34 (DEFINITIONS); AMENDING SECTION 9-35 (DECLARATION OF EMERGENCY); AMENDING SECTION 9-37 (ENFORCEMENT); PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, COVID-19, a respiratory virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the health and safety of the people of Palm Beach County; and

WHEREAS, on March 1, 2020, Governor DeSantis declared a Public Health Emergency as a result of COVID-19; and

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency as a result of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and

WHEREAS, on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and

WHEREAS, on March 13, 2020, pursuant to Section 252.38(3)(a)(5), Florida Statutes, Palm Beach County declared a local State of Emergency due to the Coronavirus pandemic, which has since been extended in accordance with applicable law; and

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order 20-70, which closed various establishments in Palm Beach County and vested in the County Administrator the power to enforce, relax, modify, or remove those closures, as warranted; and

WHEREAS, on March 26, 2020, the County Administrator, pursuant to her emergency management powers under state law and local ordinance, issued an emergency order directing the closure of all noncritical businesses in Palm Beach County, subject to certain conditions and limitations, as thereafter amended; and

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WHEREAS, there is no vaccine or drug currently available to combat COVID-19; and

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention ("CDC") and the Florida State Department of Health recommend implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings, social distancing of at least six (6) feet between persons in smaller gatherings, and the wearing of facial coverings; and

WHEREAS, limitations on gatherings, social distancing, and the wearing of facial coverings to prevent transmission of COVID-19 are especially important for senior citizens and individuals with underlying medical conditions because those populations are at a higher risk of severe illness and death from COVID-19; and

WHEREAS, Section 125.66(3), Florida Statutes, permits the Palm Beach County Board of County Commissioners (the "Board") to waive the usual notice requirements for enactment of an ordinance upon four-fifths (4/5) vote of the membership of the Board, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary; and

WHEREAS, immediate enactment of this Emergency Ordinance is necessary to protect the health, safety, and welfare of the County's residents; and

WHEREAS, the Board has determined that the immediate enactment of this Emergency Ordinance is necessary to reaffirm and reinforce the County Administrator's powers during the current public health emergency; and

WHEREAS, although the County shares jurisdiction with the state and municipalities over emergency management, the public health emergency created by COVID-19 has not been limited to one municipality and has had and will have countywide impact, thereby making countywide action necessary; and

WHEREAS, immediate enactment of this Emergency Ordinance is necessary to protect the health, safety, and welfare of the County's residents.

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

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SECTION 1. Section 9-32 of the Palm Beach County Code of Ordinances is hereby amended
to read as follows:

Sec. 9-32. - Authority.
This article is adopted under the authority of Chapter 125, Florida Statutes; Chapter 252,
Florida Statutes; and Part II of Chapter 501, Florida Statutes; and Chapter 162, Florida Statutes.

SECTION 2. Section 9-34 of the Palm Beach County Code of Ordinances is hereby amended
to read as follows:

Sec. 9-34. - Definitions.

Average Retail Price: The term "average retail price" shall mean the average price at which
similar merchandise, services, rentals or lodging were being sold or rented during the thirty
(30) days immediately preceding the declaration of a local emergency.

Commission: The term "commission" shall mean the Board of County Commissioners of
Palm Beach County.

Consumer Good: The term "consumer good" shall mean any service, article, product,
merchandise, or commodity of any kind or class, which is customarily produced or distributed
for sale or rental at retail or provided for consumption by or the use or benefit of individuals,
including but not limited to foods; water; ice; clothing; lumber, hardware, chainsaws,
generators, and home improvement materials; fuel products; and repairs, services, rentals or
lodging.

Emergency: The term "emergency" shall mean any occurrence, or threat thereof, whether
accidental, natural, or caused by man, in war or in peace, which results or may result in
substantial injury or harm to the population or substantial damage to or loss of property.

Enforcement Official: The term "enforcement official" shall mean any police or law
enforcement officer, any code compliance official, the personnel of the department of public
safety, division of emergency management and the division of consumer affairs; and any other
enforcement personnel as authorized by the county administrator appropriate municipal or
county official.

Fuel Product: The term "fuel product" shall mean home-heating oil, kerosene, propane,
natural gas, diesel fuel, methanol, and gasoline.

Irreparable or Irreversible: The term "irreparable or irreversible" shall mean a violation of

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this article that is not able to be undone. For example, committing an act or omission in
violation of an order issued under the authority of this article that imperils or threatens to
imperil the life, safety, or welfare of another is irreparable or irreversible in nature.

SECTION 3. Section 9-35 of the Palm Beach County Code of Ordinances is hereby amended
to read as follows:

Sec. 9-35. -- Declaration of Emergency.

(a) When an emergency has placed the citizens of the county in danger of loss of life or
property and a regular or special meeting of the board of county commissioners cannot
practically be convened, a state of emergency shall be declared, pursuant to County
Resolution Number R-89-384, by the chairman mayor of the board of county
commissioners, or the vice-chair vice-mayor in the chairman's mayor's absence, or by the
county administrator, in the absence of the chairman and vice-chair mayor and vice-mayor.
A state of emergency so declared shall continue for seven (7) days, unless extended as
necessary, in seventy-two-hour seven (7)-day increments, or for the period of time that a
state of emergency, as declared by the governor, remains in effect, whichever is longer.

... 

(c) The county administrator or his designee shall implement the provisions of this article in
accordance with the authority provided in this article, the adopted comprehensive
emergency management plan, and instructions furnished by the board of county
commissioners; the county administrator; and the director, department of public safety.

(d) The county administrator is authorized and empowered during a state of emergency
declared pursuant to this article to make, amend, and rescind emergency orders deemed
necessary to protect the health, safety, and/or welfare of the people of Palm Beach County,
including but not limited to, those necessary for implementation of the comprehensive
emergency management plan and any other emergency management purpose in accordance
with provisions of applicable law, including, but not limited to, the provisions of Section
252.46(1), Florida Statutes.

(de) In order to insure the public safety during a state of emergency declared pursuant to this
article, the county administrator, in consultation collaboration with the Sheriff of Palm
Beach County and municipal representatives municipalities located within the county, may

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establish a countywide curfew or a specific area curfew, to restrict travel and movement within the county.

If a curfew is enacted, the county administrator may exempt, from all or any part of such restrictions, those persons as may be deemed essential to the preservation of public order and immediately necessary to protect the public health, safety, and welfare. The county administrator may also identify in the curfew order other exempt classes of persons as deemed necessary.

If a curfew is enacted, the curfew order shall be filed in the office of the clerk of the circuit court and delivered to appropriate news media for publication and radio and television broadcast.

(f) Other restrictions including, but not limited to, prohibiting or limiting the gathering of individuals within Palm Beach County, directing the evacuation of any area(s) of Palm Beach County, ordering any or all commercial or business locations or places of public accommodation to close and remain closed until further order, ordering individuals to shelter in place, and limiting the sale, purchase, or possession of alcoholic beverages or flammable substances, may be instituted by the county administrator or his designee. The duration and application of such emergency restrictions shall be tailored to meet the specific crisis and may be modified from time to time.

If a curfew is enacted, the county administrator may exempt, from all or any part of such restrictions, those persons as may be deemed essential to the preservation of public order and immediately necessary to protect the public health, safety, and welfare. The county administrator may also identify in the curfew order other exempt classes of persons as deemed necessary.

If a curfew is enacted, the curfew order shall be filed in the office of the clerk of the circuit court and delivered to appropriate news media for publication and radio and television broadcast.

(eg) Nothing in this article shall be construed to limit the authority of the commission to declare, limit, or terminate a state of emergency, and take any action authorized by law, when convened in a regular or special meeting.
SECTION 4. Section 9-37 of the Palm Beach County Code of Ordinances is hereby repealed and replaced as follows:

Sec. 9-37. – Enforcement

(a) The county court shall have jurisdiction over all civil citations issued for violations of this article.

(b) This section shall also be enforced by personnel of the department of public safety, the emergency management division, consumer affairs division, county and municipal code enforcement officials, the police agencies of the various municipalities in the county and by the county sheriff’s office. When specifically authorized by the director, department of public safety, this section may be enforced by other county personnel.

(c) The consumer affairs division shall maintain a system by which violators are given written notice of all violations. The county clerk shall accept designated fines and issue receipts therefor.

(d) The personnel authorized to enforce the provisions of this section shall issue civil citations for fines not to exceed two hundred fifty dollars ($250.00) for the first violation and five hundred dollars ($500.00) for each additional violation. Each incident of a continuing violation shall be deemed a separate additional violation.

(e) Payment shall be made, either by mail or in person, to the violations bureau within the time specified upon the citation. If such person follows this procedure, he shall be deemed to have admitted to the infraction and to have waived his right to a hearing on the issue of the commission of the infraction.

(f) All fines collected as a result of said citations shall be paid into the county treasury and deposited in the fine and forfeiture fund.

(g) Any person who fails to make payment within the time period specified on the citation shall be deemed to have waived his right to pay the civil penalty as set forth in the citation and shall appear before the county court.

(h) Any person who elects to appear before the court to contest the citation shall be deemed to waive his right to pay the civil penalty. The court, after a hearing, shall make a finding as to whether a violation has occurred and may impose a civil penalty not to exceed five hundred dollars ($500.00) plus court costs.

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(i) If a person fails to pay the civil penalty or fails to appear in court to contest the citation, he shall be deemed to have waived his right to contest the citation and, in such case, a default judgment shall be entered and the judge shall impose a fine at that time. If the fine is paid, the case shall be dismissed. If the fine is not paid, judgment may be entered up to the maximum civil penalty of five hundred dollars ($500.00) plus court costs.

(j) Any person who refuses to sign and accept a citation issued pursuant to this section shall be guilty of a misdemeanor of the second degree, punishable as provided by Florida Statutes, §§ 775.082, 775.083, and 775.084.

(k) Failure to comply with the requirements of sections 9-35(d) and 9-36 shall also constitute a violation of county ordinance, including the consumer affairs ordinance of the county (Ord. No. 77-10, as amended), and upon conviction, shall be deemed a misdemeanor of the second degree and shall be punishable by a fine not to exceed five hundred dollars ($500.00) per violation, or imprisonment not exceeding sixty (60) days, or both such fine and imprisonment, pursuant to section 125.69(1), Florida Statutes. Each incident of continuing violation and each day of noncompliance shall be considered a separate offense. In addition to the sanctions contained herein, the county may bring an action in the circuit court to enforce this article. The court in such an action shall have right to grant such relief as the court finds necessary to redress injury to persons resulting from a violation of this article and the county shall take any other appropriate legal action, including but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article. It is the purpose of this section to provide additional cumulative remedies.

(a) The Sheriff of Palm Beach County, other law enforcement agencies including municipal law enforcement agencies, county and municipal code enforcement officers, public safety personnel, and any other enforcement personnel as authorized by the county administrator, are authorized to enforce the provisions of this article, including, but not limited to, any rules or orders issued pursuant to Section 9-35.

(b) Any person violating any provision within Chapter 252, Florida Statutes, any rule or order made pursuant to the authority provided therein, or any rule or order made pursuant to the authority provided under this article, including, but not limited to, any
rules or orders issued pursuant to Section 9-35, is guilty of a misdemeanor of the second
degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes.

(c) Violations of any rule or order made pursuant to the authority provided under this
article, including, but not limited to, any rules or orders issued pursuant to Section 9-35,
may also be enforced through the issuance of civil citations as follows.

1. The county court shall have jurisdiction over all civil citations issued pursuant to
this article.

2. The county shall maintain a system by which violators are given written notice
of all violations. The county clerk shall accept designated fines and issue
receipts therefor.

3. Authorized enforcement personnel who have reasonable cause to believe that a
person has committed an act in violation of this article, shall issue civil citations
for fines not to exceed two hundred fifty dollars ($250.00) for the first violation
and five hundred dollars ($500.00) for each additional violation. If the person
who has committed the violation does not contest the citation, the fines shall not
exceed one hundred twenty five dollars ($125.00) for the first violation and two
hundred fifty dollars ($250.00) for each additional violation.

4. Payment shall be made, either by mail or in person, to the violations bureau to
the location and within the time specified upon the citation. If such person
follows this procedure, the person shall be deemed to have admitted to the
infraction and to have waived their right to a hearing on the issue of the
commission of the infraction.

5. All fines collected by the county as a result of said citations shall be paid into
the county treasury and deposited in the fine and forfeiture fund. All fines
collected by a municipality as a result of said citations shall be paid into the
respective municipal treasury.

6. Any person who fails to make payment within the time period specified on the
citation shall be deemed to have waived the right to pay the civil penalty as set
forth in the citation and shall appear before the county court.

7. Any person who elects to appear before the court to contest the citation shall be
deemed to waive the right to pay the civil penalty. The court, after a hearing.
shall make a finding as to whether a violation has occurred and may impose a
civil penalty not to exceed five hundred dollars ($500.00) plus court costs.

8. If a person fails to pay the civil penalty or fails to appear in court to contest the
citation, he shall be deemed to have waived his right to contest the citation and,
in such case, a default judgment shall be entered and the judge may impose a
penalty up to the maximum civil penalty of five hundred dollars ($500.00) plus
court costs.

9. Any person who refuses to sign and accept a citation issued pursuant to this
section shall be guilty of a misdemeanor of the second degree, punishable as
provided by Florida Statutes, §§ 775.082 or 775.083.

(d) Violations of any rule or order made pursuant to the authority provided under this
article, including, but not limited to, any rules or orders issued pursuant to Section 9-35,
may also be enforced by authorized enforcement personnel pursuant to the terms and
procedures in F.S. Ch. 162, Local Government Code Enforcement Boards Act, and
Article 10 of the Palm Beach County Unified Land Development Code, all as may be
amended or recodified from time to time. Pursuant to § 162.09(2)(d), Fla. Stat., a code
enforcement board or Palm Beach County Special Master may impose fines that shall
not exceed $1,000 per day per violation for a first violation, $5,000 per day per
violation for a repeat violation, and up to $15,000 per violation if the code enforcement
board or Palm Beach County Special Master finds the violation to be irreparable or
irreversible in nature. In determining the amount of the fine, the code enforcement
board or Palm Beach County Special Master shall consider (1) the gravity of the
violation; (2) any actions taken by the violator to correct the violation; and (3) any
previous violations committed by the violator.

(e) The provisions of this article, including, but not limited to, any rules or orders issued
pursuant to Section 9-35, may also be enforced by the county administrator ordering the
closure of any noncompliant establishment, including, but not limited to, any
commercial business location, place of public accommodation, or any other
noncompliant physical location, for a duration of time that is tailored to protect the
health, safety, and welfare of the people of Palm Beach County under the circumstances
presented by the specific emergency.
(f) Each violation of any rule or order made pursuant to the authority provided under this article, including, but not limited to, any rules or orders issued pursuant to Section 9-35, shall constitute a separate offense and shall be punishable as such.

(g) Nothing herein shall limit any other enforcement mechanisms authorized by law, including, but not limited to, the right to seek injunctive or any other equitable relief.

SECTION 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

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

SECTION 6. SAVINGS CLAUSE:

Notwithstanding anything to the contrary, all provisions of Palm Beach County Code Chapter 9, codifying Palm Beach County Ordinances No. 92-37, 98-23, 05-043, and 2011-020, are specifically preserved and remain in full force and effect for the limited purpose of enforcing any alleged violations of said Code which occurred prior to its repeal or amendment.

SECTION 7. SEVERABILITY:

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

SECTION 8. REPEAL OF LAWS IN CONFLICT:

All local ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 9. ENFORCEMENT:

This Ordinance is enforceable by all means provided by law. Additionally, the County may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

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SECTION 10. PENALTY:

Any violation of any portion of this Ordinance shall be punishable as provided by law.

SECTION 11. 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 12. EFFECTIVE DATE:

Pursuant to Section 125.66(3), Florida Statutes, this Emergency Ordinance shall be transmitted by the clerk of the board of county commissioners by e-mail to the Department of State. It shall be deemed to be filed and shall take effect when a copy has been accepted and confirmed by the department by e-mail.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 28th day of July, 2020.

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

By:  
Deputy Clerk

By:  
Dave Kerner, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:  
County Attorney

Filed with the Department of State on the 28th day of July, 2020.

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July 28, 2020

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

Attention: Mr. Timothy Montiglio

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. 2020-013, which was filed in this office on July 28, 2020.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb