

Price Gouging Ordinance

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PALM BEACH COUNTY CODE
Chapter 9
CONSUMER AFFAIRS
ARTICLE 11 - EMERGENCY MANAGEMENT
Ordinances 92-37 and 98-23

WHEREAS, Florida Statutes Chapter 125 (County Government) authorizes the Board of County Commissioners of Palm Beach County to enact such ordinances as are necessary to protect the health, safety and welfare of the citizens of Palm Beach County; and

WHEREAS, Palm Beach County residents face the imposition or demand of excessive and/or exorbitant prices for consumer goods, services and lodging essential for their health, safety and welfare after the occurrence of natural or manmade disasters and emergencies; and

WHEREAS, Florida Statute, Chapter 252.38(3) (a) 5 (1997) and Palm Beach County Resolution Number R-89-384 provides authority for Palm Beach County to declare a state of local emergency and to waive the procedures and formalities otherwise required of Palm Beach County by law in order to take whatever action is necessary to ensure the health, safety and welfare of its citizens; and

WHEREAS, Florida Statute, Chapter 252 and Palm Beach County Resolution Number R-89-2127 identifies the Director of the Division of Emergency Management, Department of Public Safety, as the coordinator for services, activities and programs required in the event of an emergency; and

WHEREAS, Part II of Chapter 501, Florida Statutes (1991), the "Florida Deceptive and Unfair Trade Practices Act, prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, and authorizes local governments to enact consistent consumer protection ordinances; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds and declares that it is necessary to protect the health, safety and welfare of the citizens of Palm Beach County from unscrupulous vendors or merchants taking advantage of the scarcity of consumer goods, including the addition of services, rentals or lodging as a prohibited practice, during a period of emergency.

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

Sec 9-33. Purpose

The purpose of this article is to set in place measures necessary for the protection of life and property in the county threatened as a result of natural and manmade disasters and emergencies in the event the Board of County Commissioners is unable to convene and take such action in a regular or special meeting. This article is not intended to preempt or restrict the application of other, more restrictive ordinances of the county already in effect, nor is this article intended to preempt or preclude the application or enforcement of local emergency management measures already in effect, or which will be effective, upon a declaration of emergency. This article is not intended and shall not be construed as imposing price controls upon lawful business activities in the county.

(Ord. No. 92-37, § 3, 12-15-92)

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 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.

(Ord. No. 92-37, § 4, 12-15-92; Ord. No. 98-23, § 1, 6-16-98)

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 of the Board of County Commissioners, or the vice-chair, in the chairman's absence, or by the county administrator, in the absence of the chairman and vice-chair. A state of emergency so declared shall continue for seven (7) days, unless extended as necessary, in seventy-two-hour increments or for the period of time that a state of emergency, as declared by the governor, remains in effect, whichever is longer.
- (b) **A declaration of emergency** shall activate the applicable county emergency plans and shall constitute authority for the following in lieu of the procedures and formalities otherwise required of the county by law pertaining to:
 - (1) Performance of public work, and any other prudent action necessary to ensure the health, safety, and welfare of the citizens of the county.
 - (2) Entering into contracts.
 - (3) Incurring obligations.
 - (4) Employment of permanent and temporary workers.
 - (5) Utilization of volunteer workers.
 - (6) Rental of equipment.
 - (7) Acquisition and distribution, with or without compensation, of supplies, materials and facilities.
 - (8) Appropriation and expenditure of public funds.
- (c) The county administrator or his designee shall implement the provisions of this article in accordance with the instructions furnished by the Board of County Commissioners; the County Administrator; and the director of the Department of Public Safety.
- (d) 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.

(Ord. No. 92-37, § 5,12-15-92)

Sec. 9-36. Prohibition on price gouging

- (a) Upon declaration of an emergency pursuant to section 9-35, and during the duration of such emergency it shall be prima facie evidence that an unlawful method of competition and an unfair and deceptive trade act or practice has occurred if any individual or business entity doing business in the county charges more than the average retail price for any consumer good and such price exceeds the average price at which the same or similar consumer good was readily obtainable in the county during the thirty days immediately prior to a declaration of a state of emergency; or the charges represent a gross disparity between the price of the consumer good or dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold or offered for rent or sale in the usual course of business during the thirty (30) days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or for a person or his agent or business entity or its employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any consumer good including, but not limited to, supplies, services, provisions or equipment that is necessary for consumption or use as a direct result of the emergency.
- (b) This section does not prevent the seller of consumer goods from charging an amount in excess of the average retail price, if such higher price is the direct result of, and limited to, any increased cost due to the transportation of the consumer good during the state of emergency or any increased cost for the consumer good from the manufacturer, distributor, or wholesaler to the seller. In such instances only the actual cost increase per item from the manufacturer, distributor, or wholesaler can be added to the average retail price.
- (c) A price increase approved by an appropriate government agency shall not be in violation of this section.
- (d) This section shall not apply to sales by growers, producers or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

Ord. No. 92-37, § 6, 12-15-92; Ord. No. 98-23, § 2, 6-16-98)

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 Sheriffs Office. When specifically authorized by the director of the

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.
- (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 section 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.

Ord. No. 92-37, § 7, 12-15-92; Ord. No. 98-23, § 3, 6-16-98)

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, on the 16th day of June, 1998.

EFFECTIVE DATE: File with the Department of State on the 23rd day of June, 1998.