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ORDINANCE NO. 2015- 008

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY POLLUTANT STORAGE TANK SYSTEM COMPLIANCE ORDINANCE; PROVIDING FOR A SHORT TITLE; APPLICABILITY; AUTHORITY; PROVIDING A PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING THAT ORDINANCE IS SUPPLEMENTAL TO FEDERAL AND STATE LAW; PROVIDING FOR ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE; PROVIDING FOR VIOLATIONS; ENFORCEMENT; PENALTIES; PROVIDING FOR REPEAL AND REPLACEMENT OF ORDINANCE 2003-020; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING A 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, Chapter 125, Florida Statutes, authorizes the Board of County Commissioners to enact ordinances and regulations necessary for the health, safety and welfare of the citizens and visitors of Palm Beach County; and

WHEREAS, the Legislature of the State of Florida has declared in Chapter 376, Florida Statutes, that the preservation of surface and ground water is a matter of the highest urgency and priority and that the storage, transportation, and disposal of petroleum products is a hazardous undertaking that poses a threat to the environment and water resources; and

WHEREAS, the State of Florida adopted rules for pollutant storage tank system compliance in 1983; and

WHEREAS, Palm Beach County has enforced pollutant storage tank system compliance rules under contract with the Florida Department of Environmental Protection ("FDEP") since 1988; and

WHEREAS, due to the sensitive nature of the drinking water supply, it is in the best interest of Palm Beach County to have a Pollutant Storage Tank System Compliance program for regulated aboveground and underground pollutant storage tank systems to ensure these systems are in compliance with the rules and not discharging to the environment and water resources; and

1           **WHEREAS**, Palm Beach County, through its local enforcement procedures, has the  
2 ability to quickly respond to pollutant storage tank system violations and reported discharges at  
3 regulated facilities at the local level; and

4           **WHEREAS**, it is the intent and policy of the Palm Beach County Board of County  
5 Commissioners to ensure the continued health, safety, welfare, and quality of life for the  
6 existing and future residents of Palm Beach County by protecting its valuable and critical water  
7 resources; and

8           **WHEREAS**, the Palm Beach County Board of County Commissioners finds that it is in  
9 the best interest of the citizens of Palm Beach County to amend the countywide ordinance  
10 providing for local enforcement of pollutant storage tank system compliance; and

11           **WHEREAS**, the Palm Beach County Board of County Commissioners intends to repeal  
12 and replace its existing Petroleum Storage Systems Ordinance, which replicated certain  
13 provisions of the Florida Administrative Code, and to instead adopt and incorporate by  
14 reference certain provisions of the Florida Administrative Code pertaining to pollutant storage  
15 tank systems.

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

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20           **Section 1. SHORT TITLE; APPLICABILITY; AUTHORITY.**

21           (a) This Ordinance shall be known as the "Palm Beach County Pollutant Storage Tank  
22 System Compliance Ordinance."

23           (b) All provisions of this Ordinance shall be effective within unincorporated and incorporated  
24 Palm Beach County.

25           (c) This Ordinance is adopted under the authority of Article VIII, Section 1, of the Florida  
26 Constitution, Chapter 125, Florida Statutes, Sections 376.303, 376.3073 and 376.317, Florida  
27 Statutes, and the County Charter.

28

29           **Section 2. PURPOSE.**

30           (a) Except for aboveground mineral acid storage tank systems, the purpose of this Ordinance  
31 is to provide standards for the registration, construction, installation, operation, maintenance,  
32 repair, closure, and disposal of pollutant storage tank systems that store regulated substances

1 and to minimize the occurrence and environmental risks of releases and discharges. This  
2 Ordinance provides standards for underground storage tank systems having individual storage  
3 tank capacities greater than one hundred ten (110) gallons and aboveground storage tank  
4 systems having individual storage tank capacities greater than five hundred fifty (550) gallons.

5 (b) For mineral acid storage tank systems, the purpose of this Ordinance is to minimize the  
6 occurrence and environmental risks of discharges from aboveground storage tanks having  
7 capacities greater than one hundred ten (110) gallons that contain hydrobromic, hydrochloric,  
8 hydrofluoric, phosphoric or sulfuric acid.

9 (c) The purpose of this Ordinance is to establish a registration program for compression  
10 vessels and aboveground hazardous substance storage tank systems with individual capacities  
11 greater than one hundred ten (110) gallons.

12 (d) This Ordinance implements the requirements of Chapter 376, Florida Statutes.

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15 **Section 3. DEFINITIONS.**

16 The following terms when used in this Ordinance shall have the meanings ascribed to  
17 them in this section. In addition, the definitions and terms contained in Section 376.301,  
18 Florida Statutes, and Chapters 62-761 and 62-762, Florida Administrative Code, are hereby  
19 adopted and incorporated herein by reference. When not inconsistent with the context, words  
20 used in the present tense include the future, words in the plural number include the singular  
21 number, words in the singular number include the plural number, and the use of any gender  
22 shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are  
23 mandatory and the word "may" is permissive. Words not defined shall be given their common  
24 and ordinary meaning.

25 "County" means Palm Beach County.

26 "Director" means the director of the Palm Beach County Department of Environmental  
27 Resources Management.

28 "ERM" means the Palm Beach County Department of Environmental Resources  
29 Management.

30 "FDEP local program" means the Palm Beach County program established pursuant to  
31 a contract pursuant to Section 376.3073, Florida Statutes, to assist the Florida Department of  
32 Environmental Protection in the administration of the petroleum contamination site cleanup.

1           “Groundwater and Natural Resources Protection Board” (GNRPB) means that board  
2 designated by the Board of County Commissioners to hear alleged violations of state and local  
3 laws protecting the groundwater and natural resources of the county.

4 **Section 4. ORDINANCE IS SUPPLEMENTAL TO FEDERAL AND STATE LAW.**

5 (a) The provisions of this Ordinance are not intended to and shall not be construed as  
6 changing, modifying, amending, repealing, superseding, conflicting with, or substituting any  
7 provisions or sections of the Florida Statutes or Florida Administrative Code related to  
8 pollutant storage tank system compliance but shall be construed as supplemental and additional  
9 thereto. This Ordinance shall not be construed as impairing the jurisdiction of any court within  
10 the county. This Ordinance shall be deemed to be an alternative or additional method for the  
11 County, its officers and agents, to affect the purposes of each of the state rules adopted by  
12 reference in this Ordinance.

13 (b) Persons or entities subject to this Ordinance must comply with applicable state and  
14 federal regulations. Approvals received under this Ordinance do not qualify as local approval  
15 as may be required under state and/or federal rules unless the approval is expressly designated  
16 as approval for both this Ordinance and another applicable state or federal rule or regulation.

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18 **Section 5. ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE.**

19           The following portions of the Florida Administrative Code are hereby adopted and  
20 incorporated by reference and shall be part of this Ordinance as if they were set out in their  
21 entirety:

22 (1) Rule 62-761, Florida Administrative Code.

23 (2) Rule 62-762, Florida Administrative Code.

24  
25 **Section 6. VIOLATIONS; ENFORCEMENT; PENALTIES.**

26 (a) Failure to comply with any requirement of this Ordinance shall constitute a violation of this  
27 Ordinance punishable as provided herein.

28 (b) Each day a violation of a provision of this Ordinance continues constitutes a separate  
29 violation.

30 (c) If the owner of the property which is the subject of enforcement proceedings under this  
31 Ordinance transfers ownership of such property between the time the noncompliance letter or  
32 notice of violation was served and the time of the hearing, such owner shall:

- 1 (1) Disclose, in writing, the existence and the nature of the proceeding to the  
2 prospective transferee.
- 3 (2) Deliver to the prospective transferee a copy of all notices and materials relating to  
4 the proceeding received by the transferor.
- 5 (3) Disclose in writing to the prospective transferee that the new owner may be  
6 responsible for compliance with the Ordinance and with orders issued in the  
7 enforcement proceeding.
- 8 (4) File a notice of the transfer of the property with ERM with the identity and address  
9 of the new owner and copies of the disclosures made to the new owner, within five days  
10 of the date of the transfer.

11 A failure to make the disclosure described herein before the transfer creates a rebuttable  
12 presumption of fraud.

13 (d) The violation of any provision of this Ordinance may be enforced pursuant to Chapter 162,  
14 Florida Statutes, as a civil infraction with a maximum penalty as provided by law.

15 (e) The violation of any provision of this Ordinance may be enforced pursuant to Section  
16 125.69, Florida Statutes, and shall be punishable by a fine not to exceed five hundred dollars  
17 (\$500.00), by imprisonment in the county jail not to exceed sixty (60) days, by both such fine  
18 and imprisonment, or by such other penalty as may hereafter be provided in Section 125.69,  
19 Florida Statutes.

20 (f) The violation of any provision of this Ordinance may be enforced pursuant to Sections  
21 403.121, 403.141, 403.161, Florida Statutes.

22 (g) In addition to the sanctions contained herein, the county may take any other appropriate  
23 legal action, including but not limited to seeking temporary and/or permanent injunctive relief  
24 to enforce the provisions of this Ordinance.

25 (h) The violation of any provision of this Ordinance may be referred by ERM to the GNRPB  
26 for corrective actions and civil penalties as provided in Article 10, Palm Beach County Unified  
27 Land Development Code, and Section 403.121, Florida Statutes, as amended. Any person who  
28 is party to the proceeding before the GNRPB may appeal a final decision of the GNRPB to the  
29 circuit court of the county in accordance with the Florida Rules of Appellate Procedure. Funds  
30 collected pursuant to administrative penalties levied by the GNRPB for violations of this  
31 Ordinance shall be deposited in the Palm Beach County Pollution Recovery Trust Fund or such  
32 other place as may be designated by resolution of the Board of County Commissioners.

1 (i) In order to provide an expeditious settlement that is beneficial to the enforcement of this  
2 Ordinance and is in the best interest of the citizens of the county, the Director of ERM is  
3 authorized to enter into voluntary consent (settlement) agreements with alleged violators. Any  
4 such agreement shall be a formal written consent agreement between ERM on behalf of the  
5 county, by and through its Director, and any such alleged violators, and shall be approved as to  
6 form and legal sufficiency by the county attorney's office. The agreement can be entered into at  
7 any time prior to the hearing before the GNRPB.

8 (1) Conditions. Such consent agreements may be conditioned upon a promise by the  
9 alleged violator to:

- 10 a. Bring the parcel into compliance with this Ordinance and maintain it in that  
11 condition, and
- 12 b. Remit payment of a monetary settlement not to exceed the maximum amount  
13 allowed per violation, as set forth in this Ordinance, and
- 14 c. Remit payment for costs and expenses of the county for investigation and  
15 enforcement, and
- 16 d. Any other remedies and corrective action deemed necessary and appropriate  
17 by the Director of ERM to ensure compliance with this Ordinance.

18 (2) The consent agreement shall not serve as evidence of a violation of this Ordinance  
19 and shall expressly state that the alleged violator neither admits nor denies culpability  
20 for the alleged violations by entering into such agreement. In addition, prior to  
21 entering into any such consent agreement, each alleged violator shall be apprised of the  
22 right to have the matter heard by the GNRPB in accordance with the provisions of this  
23 Ordinance and that execution of the agreement is not required.

24 (3) The consent agreement shall be valid and enforceable in a court of competent  
25 jurisdiction in the county and shall abate any enforcement proceedings available to  
26 ERM for so long as the terms and conditions of such agreement are complied with. In  
27 the event the alleged violator fails to comply with the terms and conditions set forth in  
28 the executed agreement, the director of ERM may either:

- 29 a. Consider the consent agreement void and pursue any remedies available for  
30 enforcement of the applicable provisions of this Ordinance; or
- 31 b. Initiate legal proceedings for specific performance of the consent agreement.

1 (j) Funds collected pursuant to a consent agreement shall be deposited in the Palm Beach  
2 County Pollution Recovery Trust Fund.

3 (k) An action taken pursuant to the authority granted by this Ordinance shall not preclude any  
4 other legal or administrative action lawfully pursued by any governmental entity.

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6 **Section 7. REPEAL AND REPLACEMENT OF ORDINANCE 2003-020.**

7 This Ordinance repeals and replaces Ordinance 2003-020.

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9 **Section 8. REPEAL OF LAWS IN CONFLICT.**

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

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13 **Section 9. SAVINGS CLAUSE.**

14 All noncompliance letters, notices of noncompliance, enforcement orders, ongoing  
15 enforcement actions, lien orders and all other actions of the Board of County Commissioners,  
16 the Groundwater Natural Resource Protection Board, all other County decision-making and  
17 advisory boards, Special Masters, Hearing Officers and all other County officials, issued  
18 pursuant to Ordinance 2003-020 prior to the effective date of this Ordinance shall remain in full  
19 force and effect for the limited purpose of enforcing any alleged violations of Ordinance 2003-  
20 020 which occurred prior to its repeal and collection of any fines, costs or lien orders related to  
21 said violations.

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23 **Section 10. SEVERABILITY.**

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

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28 **Section 11. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

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

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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.

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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 10th day of March, 2015.

12 **SHARON R. BOCK, CLERK**

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

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16 By: *Sharon R. Bock*  
17 Deputy Clerk

By: *Shelley Vana*  
Shelley Vana, Mayor

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

21  
22  
23 By: *[Signature]*  
24 County Attorney

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28 **EFFECTIVE DATE:** Filed with the Department of State on the 13 day of  
29 MARCH, 2015.

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STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk & Comptroller certify  
this to be a true and correct copy of the original  
filed in my office on MAR 10 2015  
dated at West Palm Beach, Florida 3-14-15  
By: *Sharon R. Bock*  
Deputy Clerk

