

LEE COUNTY ORDINANCE NO: 00-26

AN ORDINANCE AMENDING AND RESTATING LEE COUNTY ORDINANCE NO. 96-20 RELATING TO CONTRACTOR LICENSING IN LEE COUNTY; PROVIDING FOR AMENDMENT AND RESTATEMENT OF LEE COUNTY ORDINANCE NO. 96-20; REPEAL OF LEE COUNTY ORDINANCE NOS. 91-25 AND 93-18; A TABLE OF CONTENTS; APPLICABILITY; EXEMPTIONS; CREATION OF A CONSTRUCTION LICENSING BOARD; DEFINITIONS; CATEGORIES OF CERTIFICATES OF COMPETENCY AND LICENSURE REQUIREMENTS; VIOLATIONS AND PENALTIES; DISCIPLINARY PROCEEDINGS; ACTION AGAINST UNLICENSED CONTRACTORS; CITATION PROCEDURE; DISCIPLINARY ACTION REPORTING REQUIREMENTS; CONFLICTS OF LAW; SEVERABILITY; CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS; AND AN EFFECTIVE DATE.

WHEREAS, F.S. §125.01 provides the county with the power to adopt and enforce regulations controlling the business industry that are necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners recognize that the construction and home improvement industries may pose a danger of significant harm to the public when incompetent or dishonest contractors provide unsafe, unstable or short-lived products or services; and

WHEREAS, the Board of County Commissioners finds that in the interest of public health, safety and welfare it is necessary to regulate the construction industry; and

WHEREAS, regulation of the construction industry is consistent with the policies and objectives of Lee Plan Goal 100; and

WHEREAS, state regulation of the construction industry requires supplementation in order to achieve consistent regulation in the construction industry and to include locally licensed contractors as part of this scheme.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT AND RESTATEMENT

Lee County Ordinance No. 96-20 is hereby amended and restated as follows with changes are indicated with strike through identifying deleted language and underline identifying additional or changed language.

SECTION TWO: REPEALER

Lee County Ordinance Nos. 91-25 and 93-18 are hereby repealed and of no further force and effect, except as to the establishment of beginning dates for the terms of the members comprising the Lee County Construction Licensing Board.

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SECTION FOUR: SHORT TITLE

This Ordinance will be known and may be cited as the Lee County Construction Licensing Board Ordinance.

SECTION FIVE: APPLICABILITY

This ordinance applies to any contractor performing work or contracting to perform work within unincorporated Lee County. The provisions of this ordinance constitute a supplement to the state regulations regarding the construction industry.

SECTION SIX: EXEMPTIONS

The provisions of this Ordinance do not apply to:

- A. Any employee of a duly licensed contractor who is acting within the scope of the employer’s license or with the employer’s knowledge and permission. However:
 - 1. If the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:
 - a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer’s license;
 - b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
 - c. Performs any of the acts which constitute contracting for services outside the scope of the employer’s license.
 - 2. The intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.
- B. An owner-builder.
 - 1. Owners of property (including an owner of a mobile home situated on a leased lot) when acting as their own contractor and providing direct, onsite supervision themselves of all

work not performed by licensed contractors are exempt from the provisions of this ordinance, when building or improving:

- a. farm buildings; or
 - b. one-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; or
 - c. building or improving commercial buildings, on the owner's property at a cost not to exceed \$25,000, for the occupancy or use of the owners and not offered for sale or lease.
2. If, within one year of completion, an owner-builder sells, leases or offers for sale or lease any building constructed or improved under an owner-builder exemption, the county can presume the construction or improvement was undertaken for the purposes of sale or lease.
 3. This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor.
 4. The owner cannot delegate the owner's responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this ordinance and the work performed is within the scope of that contractor's license.
 5. To qualify for exemption under this section, an owner must personally appear and sign the building permit application.
 6. The owner must also execute a disclosure statement in a form substantially similar to the following:

Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as owner of your property, to act as your own contractor with certain restrictions even though you do not have a license. You must provide direct onsite supervision of the construction yourself. You may build or improve a one-family or two-family residence or farm outbuilding. You may also build or improve a commercial building provided your costs do not exceed \$25,000. The building or residence must be for your own use or occupancy. It may not be built or substantially improved for sale or lease. If you sell or lease a building you have built or substantially improved yourself within 1 year after the construction is complete, the law will presume that you built or substantially improved it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person to act as your contractor or to supervise people working on your building. It is your responsibility to make sure the people you employ have all licenses required by state law and local ordinances. You may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on your building who is not licensed must work under your direct supervision and must be employed by you, which means that you must deduct FICA and withholding tax and provide workers' compensation for that employee, as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes and zoning regulations.

- C. An authorized employee of the United States, the State, Lee County, or any municipal or political subdivision, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.
- D. Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county or the state.
- E. A registered architect or engineer acting within the scope of his practice or any person exempted by the law regulating architects and engineers, including a person doing design work as specified in § 481.229(1)(b), F.S. However, an architect or engineer cannot act as a contractor unless properly licensed in accordance with this ordinance.
- F. An architect or landscape engineer licensed under F.S. Ch. 481 or an engineer licensed under F.S. Ch. 471 who offers or renders design-build services. However, a state certified general contractor must perform the construction services under the design-build contract.

SECTION SEVEN: CREATION OF CONSTRUCTION LICENSING BOARD

- A. **Establishment.** This ordinance establishes the Lee County Construction Licensing Board. The purpose of this Board is to:
 - 1. Review applications and grant or deny Lee County certificates of competency;
 - 2. Hear and decide complaints against contractors holding a Lee County certificate of competency for violations of this ordinance;
 - 3. Hear and decide complaints against state certified or registered contractors in accordance with F.S. Ch. 489;
 - 4. Make recommendations to the Construction Industry Licensing Board regarding local complaints against state certified and state registered contractors.
- B. **Appointment and Membership.** The Board of County Commissioners will appoint 14 members to the Construction Licensing Board as follows: four general , building or residential contractors, one roofing contractor, one sheet metal contractor, one air conditioning or mechanical contractor, one electrical contractor, one plumbing contractor, one pool contractor, ~~and~~ one architect or engineer, and three Consumer Representatives.
- C. **Qualifications.**
 - 1. Each member (except Consumer Representatives) must:
 - a. Hold a state or local certificate to contract, and
 - b. Be actively engaged in the construction business, and
 - c. Have 5 consecutive years of contracting experience prior to appointment, and
 - d. Be a resident of Lee County and at least 18 years of age.
 - 2. Consumer Representatives must:
 - a. Be a resident of Lee County, and
 - b. Be at least 18 years of age, and

c. Not be, either currently or in the past, a member or practitioner of a profession regulated by the Board or a member of any closely related profession.

D. **Term.** The membership term is two years. A vacancy on the Board may be filled for the unexpired term in the same manner as the original appointment. The Lee County Construction Licensing Board as currently comprised in accordance with Lee County Ordinance 94-25 96-20 will automatically become the Lee County Construction Licensing Board established under this ordinance, with terms of office likewise being carried forward.

The unexcused absence of any member from three consecutive meetings may be construed as a voluntary resignation and a new member may be appointed to fill the vacancy.

E. **Quorum.** Five members of the Board will constitute a quorum. Any action taken with respect to an application or complaint will require an affirmative vote of the majority of the members present. A Board member may not act in any case in which the member has a personal interest. The ~~Director~~ Building Official, or his designee, is an ex-officio member of the Board. As such, the ~~Director~~ Building Official can sit as a member of the Board, with full voting privileges to establish a quorum for Board action on all matters coming before the Board except disciplinary actions.

F. **Rules of Procedure; Meetings.** The Board will establish rules and regulations for its own procedures consistent with Lee County codes and ordinances. This procedure will become part of the Lee County Administrative Code. The Board will meet at regular intervals as determined by the chairman, but not less than once a month unless good cause is shown. All meetings will be conducted in accordance with Robert's Rules of Order.

G. **Record of Proceedings.** The building official or his designee will act as an *ex officio* secretary of the Board and will keep minutes of all meetings. An audio recording of the meeting will constitute the official record of the proceedings for appeal purposes. Any person desiring to appeal a decision of the Board may require a transcript of the proceedings. The cost of transcription is the responsibility of the requesting party.

SECTION EIGHT: DEFINITIONS

The words, terms and phrases below will have the following meaning unless the context clearly indicates otherwise.

Board means the Lee County Construction Licensing Board

Building Official means that officer who is so defined in the Lee County Land Development Code in Chapter 6, Article II, or his designee.

Business organization or business entity means any partnership, corporation, business trust, joint venture, or other legal entity that engages in the business of contracting or acts as a contractor.

Certificate of competency means a license granted by the Board to contract for a particular type of construction services within Lee County.

Code enforcement officer means any designated employee or agent of Lee County whose duty it is to enforce county codes and ordinances.

Contracting means engaging in business as a contractor and performing acts attributable to a contractor. The attempt to sell contracting services and the negotiation or bid for contract services also

constitutes contracting. If the construction services offered require licensure or agent qualification, then the offer, negotiation for a bid, or attempt to sell these services requires the corresponding licensure.

Contractor means the person who is qualified and responsible for the contracted project; the person who, for compensation, undertakes, submits a bid to, or does by himself or through others construct, repair, alter, remodel, add to, subtract from, demolish or improve any building or structure, including related improvements to real estate, for others or for resale. The term *Subcontractor* comes within the meaning of contractor, if the subcontractor is contracting his services to another contractor.

Credit report means a report from a nationally recognized credit agency that reflects the financial responsibility of the applicant and provides accurate, current and complete information on the following items:

- a. payment history;
- b. credit rating;
- c. public filings in county, state and federal courts;
- d. previous bankruptcies, business history, suits, liens, and judgments, all on a nationwide basis;
- e. location of business, number of years in business and social security numbers on all corporate officers, general partners and partners; and
- f. all federal employer identification numbers held by the applicant or any business entity that he currently qualifies or is applying to qualify.

Employee means a person that works for and is supervised by a contractor and for whose work and actions the contractor takes responsibility. An employee is distinguished from a subcontractor in accordance with the method of payment for services. An employee is paid by the contractor at regular intervals and all applicable taxes are withheld and paid by the contractor on behalf of the employee. The contractor also has an obligation to provide an employee with workers' compensation coverage. A subcontractor may be paid by the contractor at regular intervals, but the contractor does not withhold and pay the appropriate taxes (i.e. payment generating a Form 1099) nor does the contractor have an obligation to provide workers' compensation coverage.

~~*Director* means the Director or the Division of Codes and Building Services or his designee.~~

Division means the Development Services ~~Division of Codes and Building Services~~ of the Lee County Department of Community Development.

Licensed means a person or business entity holding a valid certificate of competency issued by Lee County or the state.

Nationally recognized credit agency means a credit agency that obtains credit information both within and outside the State of Florida; validates, updates and maintains the accuracy of credit information obtained; and receives credit reports from at least two credit bureaus.

Qualifying agent or qualifier means a person who possesses the requisite skill, knowledge, experience, and responsibility to supervise, direct, manage, and control the contracting activities as well as the financial aspects of the business organization with which he is connected; who has the responsibility to supervise, direct, manage, and control the contracting activities as well as the financial aspects on a job for which he has obtained a building permit; and whose technical and personal qualifications are verified by application, examination and licensure.

Specialty contractor means a contractor who holds a license that restricts the services he can contract to provide to a particular phase of construction.

State certified contractor means any contractor who holds a certificate of competency from the Department of Business and Professional Regulation. A state certified contractor can contract in any jurisdiction in the state without fulfilling local competency requirements.

State registered contractor means any contractor who holds a registration certificate from the Department of Business and Professional Regulation. State registered contractors must fulfill local competency requirements in order to contract in Lee County.

Supervision means to manage, direct and oversee all aspects of a project, including the work of employees or those unlicensed individuals engaged to complete the contracted work.

SECTION NINE: CERTIFICATES OF COMPETENCY AND LICENSURE REQUIREMENTS

A. **Applicability; Categories of Licensure.** All contractors performing work or contracting to perform work in Lee County must hold an appropriate license. Local certificates of competency are available in the categories set forth in Lee County Administrative Code 12-6.

The following types of contractors may legally contract for business in Lee County:

1. State certified contractors holding an active state certificate of competency.
2. State registered contractors holding an active state registration and Lee County certificate of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration.
3. Locally licensed contractors holding an active Lee County certificate of competency.
4. Restricted specialty contractors holding an active Lee County restricted certificate of competency.

B. **Examination Requirements; Reciprocity.**

1. All applicants must take and pass an appropriate exam in accordance with the administrative code. If a question arises as to which exam is appropriate, the Director Building Official will make the final determination.
2. A passing exam grade is 75% or better.
3. Exam administration and procedure is under the jurisdiction of the Board of County Commissioners and the Division.
4. The sponsorship fee for each exam is set out in the Lee County administrative code.
5. Lee County will accept a score of 75% or better on an appropriate exam administered in another county.
6. For application purposes, exam scores are valid for five years. An exemption from this requirement is applicable if:
 - a. The applicant is actively providing the type of services covered by the certificate of competency sought;

- b. The applicant has been engaged in providing these services for at least two years prior to application; and
- c. The applicant can prove that he took and passed an appropriate exam that is 5 years old or older.

C. Application Requirements.

1. *Application.* Any person seeking a local certificate of competency must file a complete application with the Division that includes the following:
 - a. A complete notarized application form. (Forms are available from the Division.)
 - b. A credit report from a nationally recognized credit bureau, not greater than 6 months old, detailing business and personal credit. A financial statement alone is not sufficient to satisfy this requirement.
 - c. Proof that the applicant has taken and passed the appropriate exams. Acceptable proof includes a copy of the Block Associates test result form or a letter of reciprocity from another Florida jurisdiction indicating the name of the exam, the date it was taken and the score.
 - d. Affidavits verifying the necessary length of experience for the certificate sought. The affidavits must be notarized originals and indicate the type of work performed for the employer. Proof of education or classroom experience can be used to verify up to 50% of the requisite experience. The Board, at its discretion, can accept alternative forms of experience verification.
 - e. Affidavit indicating insurance coverage will be maintained during all times the applicant maintains an active license.
 - f. Affidavit indicating workers' compensation insurance will be maintained in accordance with F.S. Ch. 440 at all times the applicant maintains an active license.
 - g. Affidavit stating that the applicant will not engage in contracting or perform work that is not within the scope of the certificate of competency issued.
 - h. A copy of the applicant's driver's license or some other official photographic identification.
 - i. Payment of the applicable fee as provided by the Lee County Administrative Code.
2. *Qualifying agent for business organization.* If an applicant proposes to engage in contracting as a business organization, or in any name other than the applicant's legal name (or a fictitious name where the applicant is doing business as a sole proprietorship), the business organization must apply for a certificate of competency through a qualifying agent.

The application for the qualifying agent must include an affidavit attesting that the applicant has final approval authority for all construction work performed in the County

and final approval authority on all business matters, including contracts, specifications, checks, drafts or payments, regardless of the form of payment, made by the entity.

No person can act as the qualifying agent for more than two business entities.

3. *Notice Regarding Board Action of the Application.* All applicants will receive written notification, by regular U.S. Mail or hand delivery, as to the date and time the Board will review and vote upon their application. It is the applicant's responsibility to be present or represented at this hearing in order to address any questions or concerns the Board may have after reviewing the application. Failure of the applicant to appear at this hearing or provide a complete application is grounds for denial of a certificate of competency.

Notice sent by regular U.S. Mail, whether or not actually received by the applicant, is sufficient to satisfy this requirement.

D. Criteria for Application Review.

1. During review of each application, the Board will consider the following:
 - a. Whether the application is complete.
 - b. Whether the application verifies the appropriate amount of trade experience. (Education or classroom time used to verify experience cannot exceed 50% of the actual trade experience required.)
 - c. The number of business entities the applicant seeks to qualify. (One individual can qualify up to two business entities.)
 - d. The applicant's business reputation.
 - e. Whether the applicant exhibits good moral character.
 - f. Whether the applicant has shown financial responsibility with respect to personal and business finances.
2. *"Financial responsibility"* refers to the ability to safeguard that the public will not sustain economic loss resulting from a contractor's inability to pay his lawful obligations under the contract. The grounds upon which the Board may deny a certificate of competency for lack of proof as to financial responsibility include the following:
 - a. Failure to submit the required credit reports.
 - b. Failure to answer the application questions truthfully and completely.
 - c. Evidence that the applicant has filed voluntary or involuntary bankruptcy within the five years preceding the application resulting in a loss to consumers.
 - d. The existence, within the 10 years preceding the application, of an unsatisfied court judgment rendered against the applicant based upon the applicant's failure to pay just obligations to parties with whom the applicant conducted business as a contractor.

- e. An unfavorable credit report or history as indicated by any of the documents submitted.
 - f. A determination by the Board that the applicant lacks the financial stability necessary to assure compliance with the standard set forth in this section. As guidelines for the determination of financial responsibility the Board will consider the applicant's response to the questions set forth in the application.
3. "*Good moral character*" refers to personal history of honesty, fairness and respect for the rights of others and the laws of the county and state. The Board may refuse to issue a certificate of competency for failure to satisfy the requirement of good moral character only if:
- a. There is a substantial connection between the lack of an applicant's good moral character and the contractor's professional responsibilities;
 - b. The Board finds the lack of good moral character is supported by clear and convincing evidence. If an applicant is denied a certificate of competency based upon the lack of good moral character, the Board must furnish the applicant with a statement containing the Board's findings, a copy of the determining evidence and notice of the right to appeal.

E. Types of Certificates Available.

- 1. *Permanent Certificate.* The Board may grant a permanent certificate of competency when it finds that the applicant has met all the county requirements. Granting a permanent certificate is within the sole discretion of the Board. The certificate is "permanent" only in the sense that further review of the current application is not necessary. The applicant must pay annual renewal fees and otherwise comply with the requirements of this ordinance in order to maintain a permanent certificate of competency.
- 2. *Probationary Certificate.* The Board may grant a probationary certificate of competency when it finds that the applicant does not meet one or more of the requirements or qualifications for the issuance of a permanent certificate of competency. The granting of a probationary certificate is within the sole discretion of the Board. If the Board grants a probationary certificate, it must state the deficiency in the application and indicate the action and evidence necessary for the applicant to correct the deficiency and ultimately obtain a permanent certificate. The length of the probationary period and the frequency of review intervals is determined by the Board. However, the probationary period cannot be less than 30 days. The Board has the discretion to grant successive probationary certificates. The applicant must pay appropriate fees and otherwise comply with the requirements of this ordinance in order to maintain a probationary certificate of competency.
- 3. *Restricted Certificate.* The Board may grant a permanent or probationary restricted specialty certificate of competency if the Board finds the applicant qualifies to contract with respect to certain aspects of a certificate offered by the county but does not qualify to contract with respect to all aspects of that certificate. If the Board grants a restricted specialty certificate it must:
 - a. Clearly indicate the scope of work allowed under the restricted specialty certificate; and

- b. Specifically state the qualifications applicable to the restricted specialty certificate in a manner that will provide meaningful guidance to applicants desiring the same restricted specialty license in the future.
 - 4. *Inactive Certificate.* An inactive certificate allows a contractor to maintain a county license while relinquishing the right to contract or pull Lee County permits during the period the certificate is on inactive status. An active certificate becomes inactive in accordance with the following:
 - a. The applicant files a written request with the Division to place his active certificate on voluntary inactive status and pays the requisite annual fees to maintain inactive status. Failure to pay the annual inactive certificate fees will cause the certificate to lapse.
 - b. Any certificate not renewed by September 30 of each year will automatically be placed on involuntary inactive status. The Division will maintain the certificate on inactive status for up to six months. If the contractor does not reactivate the certificate by completing renewal requirements or place the certificate on voluntary inactive status within the six month period, the certificate will lapse.
 - c. If the Division receives notice that the license holder is not maintaining valid public liability insurance or workers' compensation insurance, the certificate will be placed on involuntary inactive status. The Division will maintain the certificate on inactive status for up to six months. If the contractor does not reactivate the certificate by complying with insurance requirements or place the certificate on voluntary inactive status within the six month period, the certificate will lapse.
 - d. If a license holder fails to comply with any disciplinary order rendered by the Board within the applicable time frame, the certificate will be placed on involuntary inactive status. The Division may maintain the certificate on inactive status for up to six months. If the contractor does not provide the Division with satisfactory proof of compliance within the six month period, the certificate will lapse.
 - e. A certificate that is allowed to lapse can only be renewed or reactivated by reapplication to the Board.
 - f. A probationary certificate cannot be placed on inactive status.
- F. **Requirements for Certificate Issuance.** The Division will issue a certificate of competency upon proof as to all of the following:
- 1. Board approval for a specific certificate of competency.
 - 2. *Proof of liability insurance.* All active contractors must carry public liability and property damage insurance. (Registered contractors must also comply with state insurance requirements.) Acceptable proof of insurance consists of a certificate from the insuring company indicating:
 - a. The name, address and phone number of the insuring company and the insurance agent.

- b. The name and address of the insured. All insurance policies must reflect the exact name of the entity qualified by the applicant.
 - c. The insurance policy number.
 - d. The effective dates of the insurance policy. All contractors holding an active certificate of competency must maintain current insurance.
 - e. The coverage amount is at least \$50,000 per person/\$100,000 per incident for liability and \$5,000 per incident for property damage.
 - f. Lee County, as certificate holder, will receive a written notice 30 days prior to cancellation.
 - g. The certificate must be prepared by a bonafide insurance agent.
3. *Proof of worker's compensation coverage.* All active contractors must obtain workers' compensation insurance or provide proof of a valid exemption in accordance with F.S. Ch. 440. Acceptable proof of insurance consists of a certificate from the Division of Employment and Workers' Compensation indicating compliance with Ch. 440. Workers' Compensation Insurance or an appropriate exemption must be in effect at all times the contractor maintains an active certificate of competency.
4. Valid state registration, if applicable.
5. *Issuance achieved within six months of a certificate of approval.* Applicants obtaining approval from the Board for issuance of a certificate, whether new, reactivated, probationary, permanent, restricted, etc., must complete all requirements necessary for certificate issuance within six months of Board approval. Failure to obtain a certificate within the 6-month period, will cause the approval to be deemed void and of no effect.

G. Certificate Renewal and Expiration.

- 1. Certificates are valid for a period of one year running from October 1 through September 30.
- 2. Certificates must be renewed annually. It is the contractor's responsibility to seek renewal. The County is not obligated to furnish the contractor with a reminder notice that renewal is necessary.
- 3. A certificate may be renewed at Division offices during regular business hours any time during the six weeks preceding October 1.
- 4. A certificate may be renewed through the mail by sending a copy of the current certificate, a check or money order in the appropriate amount, a copy of the proof of liability insurance and proof of worker's compensation insurance to the Division. It is the contractor's responsibility to insure that the mailed renewal, including all necessary documents, reaches the Division postmarked prior to October 1. The County is not responsible for the consequences of lost mail, renewal applications received after the expiration date, or incomplete applications.

- H. **Reactivating a Certificate on Inactive Status.** An inactive certificate may be reactivated administratively or upon Board approval as follows:
1. *Administrative Procedure.* The Division can administratively reactivate an inactive certificate under the following circumstances:
 - a. The applicant files a complete application to activate a certificate with the Division on the appropriate form.
 - b. As part of the application the applicant must submit personal and business credit reports not more than six months old. Applicants seeking to reactivate a certificate within 6 months of placement on involuntary inactive status are exempt from this requirement.
 - c. The applicant's certificate has not lapsed.
 - d. The applicant produces proof of appropriate liability insurance and workers' compensation coverage.
 - e. In addition to applicable license fees, a \$10 administrative fee applies to all applicants seeking to reactivate a certificate placed on involuntary inactive status. The fee is payable to the Division and is necessary to cover the costs associated with placement of a certificate on involuntary inactive status.
 - f. The ~~Director~~ Building Official or his designee reviews the application and finds that it meets the criteria set forth in this ordinance.
 2. *Board Procedure.* The Division will refer an application to reactivate a certificate to the Board for action only if, in the ~~Director~~ Building Official's opinion, the applicant no longer appears to meet the requirements of this ordinance. If an application to reactivate a certificate is presented to the Board for review, it is subject to meeting all criteria set forth in this ordinance as though it were an initial application.
- I. **Restoring a Certificate.**
1. If the previous certificate was voluntarily relinquished, the applicant must apply to the Board for a new certificate and comply with the requirements set forth in this ordinance.
 2. If the previous certificate lapsed after it was placed on inactive status, the applicant must apply to the Board for a new certificate and comply with the requirements set forth in this ordinance. The applicant must also provide the Board with a written explanation as to why the previous certificate was allowed to lapse.
 3. The Board cannot restore or issue a new certificate to an applicant whose certificate was suspended or revoked, until the applicant can satisfactorily show that all requirements of any final order against the contractor were met.
- J. **Grandfathered Certificates.** Any individual holding a valid Lee County certificate meeting the criteria outlined in Lee County Administrative Code 12-6 is "vested" with respect to the scope of work allowed under the certificate category. However, in order to maintain the certificate, the contractor must annually renew the certificate and otherwise comply with the requirements of this ordinance.

If a contractor holding a “grandfathered” certificate fails to renew the certificate or otherwise allows the certificate to lapse, then the contractor will lose any “vested” right that may attach to the previously held certificate. Thereafter, if the contractor wishes to continue contracting in Lee County under a local certificate, he must apply for a certificate of competency currently offered by Lee County.

J. **Certificate Holder’s Privileges and Responsibilities.** A Lee County certificate of competency provides a certificate holder with the following privileges and responsibilities.

1. A certificate holder or an employee of the certificate holder can contract only in the name of the business entity or individual indicated on the certificate. The Division will issue a certificate approved by the Board to the individual or entity indicated on the application reviewed by the Board.
2. The certificate holder must notify the county as to any change in business status.
3. A certificate holder may advertise the services available through the business entity. All offers for service, contracts, business proposals or advertisements, regardless of the medium used, must include the certificate holder’s Lee County certificate of competency number, state registration number or state certificate number. This requirement does not extend to business stationary, promotional novelties or articles of clothing.
4. If the certificate holder, or any of his employees, drives a vehicle bearing the name of the contractor, business organization or any text or artwork that would lead a reasonable person to believe that the vehicle is used for contracting or services rendered in accordance with contracting, the certificate number must be conspicuously and legibly displayed along with the name, text or artwork. Nothing in this subsection may be construed to create a mandatory requirement that all vehicles bear a name, text or artwork.
5. A certificate holder can contract for and perform work in the area covered by the certificate of competency.
6. A certificate holder is responsible for the action of his employees and must supervise employees or individuals working under his certificate.
7. A certificate holder must assure that bills are paid and work is done in accordance with the contract and all applicable codes and regulations.
8. A certificate holder must renew his certificate annually by paying the required fees in order to remain active.
9. An active certificate holder must maintain current public liability insurance in accordance with this ordinance.
10. An active certificate holder must maintain current workers’ compensation insurance in accordance with this ordinance.
11. A certificate holder who receives money, as an initial payment, totaling more than 10% of the contract price for repair, restoration, improvement or construction to residential real property must:

- a. apply for permits necessary to do the work within 30 days after the date the payment is made except where the work does not require a permit under the applicable codes regulations; and
- b. start work within 90 days after the date all necessary permits for work are issued, unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both.

12. A certificate holder must comply with the notice requirements set out below:

- a. All contractors performing work on any residential property must provide a clear, concise and conspicuous written statement to the homeowner informing them of their rights under the Construction Industries Recovery Fund as well as how and where a claim can be filed against the Fund. The only exception to this requirement occurs when the value of all labor and material does not exceed \$2,500. The written notice may be provided separately or as part of the contract. However, it must be conspicuous and in a form substantially similar to the following form:

CONSTRUCTION INDUSTRIES
RECOVERY FUND

PAYMENT MAY BE AVAILABLE FROM THE
CONSTRUCTION INDUSTRIES RECOVERY FUND
IF YOU LOSE MONEY ON A PROJECT
PERFORMED UNDER CONTRACT, WHERE THE
LOSS RESULTS FROM SPECIFIED VIOLATIONS
OF FLORIDA STATE LAW BY A LICENSED
CONTRACTOR. FOR INFORMATION ABOUT THE
RECOVERY FUND AND FILING A CLAIM,
CONTACT THE LEE COUNTY DEPARTMENT OF
COMMUNITY DEVELOPMENT, DEVELOPMENT
SERVICES DIVISION, 1500 MONROE STREET, P.O.
BOX 398, FORT MYERS, FLORIDA 33902-0398,
941/335-2535 .

- b. Fines. A contractor failing to provide the required notice may be fined up to \$250 by the Board for the first offense and \$500 for each additional offense. (This fine will be in addition to any fine imposed by the Construction Industry Licensing Board.)

13. When a contractor acting as qualifying agent for a business entity ceases affiliation with the business entity, he must notify the Division immediately. If this qualifying agent is the only licensed individual affiliated with the business entity, then the business entity must employ another qualifying agent within 60 days after the qualifying agent terminates the affiliation. Under no circumstances can a business entity contract without a qualifying agent. However, the financially responsible officer, president, sole proprietor, partner, or general partner (in the case of a limited partnership), who assumes all responsibilities of a primary qualifying agent, may apply to the ~~Director~~ Building Official for a 60 day temporary non-renewable certificate to proceed with completion of any outstanding contracts identified to the Division in writing at the time

of the request for the temporary certificate. Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for a predecessor's actions, but is responsible, even after a change in status, for matters that occurred while he was acting as qualifying agent.

K. Reporting Requirements for Change in Business Status.

1. All locally licensed contractors must provide the Division with written notice within 30 days of any change in business status concerning:
 - a. The name of the business entity or the name under which the business is contracting.
 - b. The business address.
 - c. The person qualifying the business.
 - d. The removal or resignation of a person qualifying the business.
 - e. The resident agent for purposes of service.
2. Board approval for a change in business status is not required, unless, in the opinion of the ~~Director~~ Building Official, the applicant no longer appears to meet the requirements of this ordinance. Any dispute with respect to approval of a change in business will be resolved by the Board.

- L. Appeal of Board Denial for Certificate of Competency.** An applicant may appeal the Board's denial of a certificate of competency by petition for writ of certiorari to the circuit court. The petition must be filed not later than 30 days after the date of the Board's oral decision. The applicant must provide the Division and the County Attorney's office a copy of the petition filed with the circuit court.

An applicant whose application is denied may request in writing that the Board reexamine his application based upon new evidence not available to the Board at the initial hearing. The request must be made no later than 30 days after the Board's decision to deny the application and include a copy of or a statement setting forth the new evidence. Rehearings are granted at the Board's discretion.

For purposes of this section, *new evidence* means evidence or documentation not considered at the time of the initial hearing that will substantially add to or clarify the application.

SECTION TEN: VIOLATIONS AND PENALTIES

- A. Violations - Locally Licensed and State Registered Contractors.** The Board can take action against a locally licensed contractor, including a state registered contractor, if the contractor or business organization qualified by the contractor is found guilty of any of the following acts:

1. Obtaining a certificate or registration by fraud or misrepresentation.
2. Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the practice of contracting or the ability to practice contracting.

3. Knowingly violating the applicable building codes or laws of the state of Florida or any municipality or county in the state.
4. Performing any act that assists a person or entity in engaging in the unlicensed practice of contracting, if the certificate holder knows or has reasonable grounds to know that the person or entity is not duly licensed.
5. Knowingly allowing an unlicensed person to use a valid certificate or registration for the purpose of evading the provisions of this ordinance. A certificate holder allowing use of a valid certificate by one or more business organizations without active and substantial participation in the operations, management, or control of these business organizations constitutes prima facie evidence of an intent to evade the provisions of this ordinance.
6. Entering into an agreement, oral or written, that allows an unlicensed person or business entity to use an active certificate for a fee or where the licensed contractor will not actively and substantially take part in the daily business activity of the entity using his certificate.
7. Contracting as a business entity or in a name other than that indicated on the certificate of competency. A change in the business name that is not reported in accordance with applicable regulations is not a valid defense to this violation.
8. Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a consumer. Prima facie evidence of financial mismanagement or misconduct exists when:
 - a. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or bond, within 75 days after the date the liens are filed in the public records;
 - b. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or
 - c. The contractor's job has been completed, and evidence indicates the customer had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless the cost increase resulted from circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract.
9. Being disciplined by any municipality, county or state for an act or violation of regulations similar to those contained in this ordinance or F.S. Ch. 489.
10. Failing in any material respect to comply with the provisions of this ordinance or violating a rule or lawful order of the Board.

11. Failing in any material respect to comply with the provisions of F.S. Ch. 489 or violating a rule or lawful order of the Construction Industry Licensing Board.
12. Abandoning a construction project under contract to the contractor. A project may be presumed abandoned after 90 days if the contractor terminates the project without just cause, fails to give the owner a proper notice explaining the reason for termination, or fails to perform work without just cause for 90 consecutive days.
13. Signing a statement with respect to a project or contract that falsely indicates the work is bonded; that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser or contractor; or that workers' compensation or public liability insurance is in effect.
14. Applying or obtaining a permit for construction work prior to entering into a contract to make improvements to, or perform contracting at, the real property specified in the application or permit. (This section does not prohibit a contractor from applying for and obtaining permits to allow the contractor to perform work for another person without compensation or to perform work on property owned by the contractor.)
15. Committing fraud or deceit in the practice of contracting. An inference of the intent to defraud occurs upon proof of the following:
 - a. A contractor received money for the repair, restoration, addition, improvement or construction of residential real property; and
 - b. The amount received exceeds the value of the work performed by the contractor; and
 - c. The contractor failed to perform any of the work for which he contracted during any 60-day period; and
 - d. The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or material breach of the contract by the owner; and
 - e. The contractor's failure to perform the contracted work continued for an additional 30 day period after the property owner mailed a certified letter to the contractor stating that:
 - (1) the contractor failed to perform any work for a 60-day period, and
 - (2) that the failure was not due to a material breach or termination of the contract by the owner, and
 - (3) that the contractor must recommence construction within 30 days of the date the letter was mailed.
16. Committing incompetency or misconduct in the practice of contracting.
17. Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.
18. Proceeding on any job without obtaining the required building permits and inspections.

19. Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to the owner or contractor regarding the intent to seek a lien on the subject property.
20. Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against a licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.
21. Failing to provide the Notice of Consumer Rights Under the Construction Industries Recovery Fund as required by F.S. §489.1425 and Section 8.J.12 of this ordinance.

B. **Violations - State Certified Contractors.** The Board can take action against state certified contractors, if the contractor or business organization qualified by the contractor is found guilty of any of the following acts:

1. Wilfully violating the applicable Lee County building codes.
2. Committing fraud or deceit in the practice of contracting. An inference of the intent to defraud occurs upon proof of the following:
 - a. A contractor received money for the repair, restoration, addition, improvement or construction of residential real property; and
 - b. The amount received exceeds the value of the work performed by the contractor; and
 - c. The contractor failed to perform any of the contracted work for a period of 60 days; and
 - d. The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or material breach of the contract by the owner; and
 - e. The contractor's failure to perform the contracted work continued for an additional 30 day period after the property owner mailed a certified letter to the contractor stating that:
 - (1) the contractor failed to perform any work for a 60-day period, and
 - (2) that the failure was not due to a material breach or termination of the contract by the owner, and
 - (3) that the contractor must recommence construction within 30 days of the date the letter was mailed.

C. **Penalties - Locally Licensed and State Registered Contractors.** One or combination of the following penalties can be imposed against the contractor as part of the disciplinary process.

1. Probation
2. Restitution
3. Reprimand

4. Suspension
5. Revocation
6. Fine of up to \$5,000
7. Assessment of legal and investigation costs incurred by the county to prosecute the case.

D. **Penalties - State Certified Contractors.** One or a combination of the following penalties can be imposed against a state certified contractor as part of the disciplinary process:

1. Suspension of Lee County permit pulling privileges.
2. Revocation of Lee County permit pulling privileges.
3. Recommendation to the Construction Industry Licensing Board for further action that may be taken based upon evidence obtained through the local disciplinary process indicating a violation of F.S. Ch. 489.

SECTION ELEVEN: DISCIPLINARY PROCEEDINGS

A. Complaint.

1. All complaints involving a violation of this ordinance are to be filed with the Division on the appropriate form. The Division is responsible for the investigation of a complaint only if it is in writing and legally sufficient.
2. A complaint is legally sufficient if it contains the necessary facts to indicate a probable violation of this ordinance. During review for legal sufficiency, the Board or Division may request additional documentation or information from the complainant. If there is a question as to whether the complaint is legally sufficient, the final determination will be made by the ~~Director~~ Building Official and the County Attorney's Office.
3. The Board or Division may investigate an anonymous complaint if:
 - a. the complaint is in writing;
 - b. legally sufficient;
 - c. the alleged violation is substantial, and
 - d. the Division has reason to believe, after preliminary inquiry, that the violation alleged in the complaint is true.
4. The Board or the Division may initiate an investigation if there is reason to believe that a licensee or a group of licensees has committed a violation of this ordinance.

B. Investigation.

1. The Division must investigate all complaints that are in writing, signed by the complainant and found legally sufficient.

2. The Division must promptly furnish the subject contractor or the subject contractor's attorney with a copy of the complaint or document that results in the initiation of an investigation.
3. The Division may conduct an investigation without notification to the subject contractor if the Board makes a written finding that notification will be detrimental to the investigation or if the act under investigation is a criminal offense.
4. The subject contractor may submit a written response to the Division concerning the information contained in the complaint or document within 20 days after receipt of notice regarding the complaint. This response will be included in any documentation sent to the Board for review.

C. Mediation

1. After the initial investigation, Division staff may schedule a meeting with the complainant and contractor. This meeting will be considered an informal mediation session.
2. Division staff's role at this meeting is to explain the nature of the violation, offer possible methods of achieving abatement and act as mediator.
3. The objective of this mediation session is to obtain an agreement identifying the action that will be taken to abate the violation. This agreement will be reduced to written form within 5 days after the meeting and become effective upon execution by all parties.
4. If the agreement is not executed within 30 days after the mediation session, the county may present the complaint to the Board for a probable cause determination and proceed to the formal hearing.
5. Once the agreement is executed, the parties are required to comply with its written terms. If the contractor fails to comply with the terms of the agreement, the county may present the complaint to the Board for a probable cause determination and proceed to formal hearing.
6. The Division will retain a copy of the mediation agreement in the contractor's file.
7. A contractor can avoid the formal hearing process by entering into a mediation agreement and complying with its terms. However, a contractor can use this method of addressing violations only 3 times in any 5 year period. Once the threshold limit is met, the contractor must obtain Board approval to enter into subsequent mediation agreements. The Board has the sole discretion to grant or deny approval.
8. Mediation is not mandatory. It is intended only as a means to obtain compliance on an expedited basis.

D. Probable Cause Determination.

1. If, after the Division conducts its investigation, the complaint is deemed legally sufficient, the Division will submit a Request for Probable Cause Determination to the Board.

2. The determination as to whether probable cause exists will be made by a majority vote of the Board sitting as a Probable Cause Panel.
3. The Probable Cause Panel may request additional investigation if the Panel reasonably believes that additional information is necessary to make the probable cause determination.
4. If the Panel finds probable cause does exist, the Division will file a formal complaint against the subject contractor and set the date for hearing.
5. In lieu of a finding of probable cause, the Panel may issue a letter of guidance to the subject contractor.

E. Formal Hearing Process.

1. A formal hearing date will be set within 30 days after the Panel finds probable cause.
2. The Chairman has the discretion to delay or continue the hearing date for good cause. A request for continuance must be delivered to the Division in writing and it must state the specific reasons for the request.
3. All parties must be given 10 days notice prior to formal hearing unless otherwise agreed by the parties.
4. The notice of hearing must include the following:
 - a. a statement of the time, place and nature of the hearing;
 - b. a statement of the legal authority and jurisdiction under which the hearing is to be held; and
 - c. a copy of the administrative complaint.
5. During the hearing all parties will have an opportunity to present evidence and argument, to conduct cross-examination, and submit rebuttal evidence.
6. At the discretion of the Board, the general public will have an opportunity to present oral testimony or written communications. If this evidence is considered by the Board, the opposing party will be given the opportunity to cross-examine, challenge or rebut it.
7. All testimony must be under oath.
8. A representative of the County Attorney's Office will represent the Division in the disciplinary proceedings against the contractor.
9. The standard of proof applicable to these hearings is "clear and convincing evidence." [Florida case law indicates that "clear and convincing evidence" requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.]

10. Irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs will be admissible, whether or not the evidence would be admissible in civil court. Any part of the evidence may be received in written form.
11. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
12. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original.
13. All pleadings, motions or other papers filed in the proceedings must be signed by a party, the party's attorney or the party's qualified representative.
14. Upon a party's request, the Board Chairman can issue a subpoena for hearing. Any person subject to a subpoena may, before compliance and on a timely petition, request the Board to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonable in scope, or requires the production of irrelevant material.
15. At the conclusion of the hearing the Board will render an oral decision. The decision becomes final upon execution of the final order. However, if the Board decision includes suspension or revocation of permit pulling privileges, this portion of the decision will go into effect at the start of business on the day following the hearing.

F. Final Orders.

1. Within 14 days after the hearing, the parties may submit a proposed recommended order to the Board Attorney. The submitting party will also provide a copy to the opposing party.
2. Within 30 days after the conclusion of the hearing, the Board's attorney will prepare and submit a recommended order to the Division that reflects the Board's determination. Any order imposing disciplinary action against a contractor must contain, at minimum, the following:
 - a. A clear statement of the violation charged and the factual basis for the charge;
 - b. Evidence that the contractor was given notice of the charges and an opportunity to appear and present evidence and testimony regarding the charges;
 - c. Findings of fact based exclusively on evidence of record and matters officially recognized by the Board. The findings of fact cannot merely track statutory language, unless the order contains a concise and explicit statement of the underlying facts used to support findings;
 - d. Conclusions of law demonstrating that the facts alleged constitute a violation of state or local regulations;
 - e. A statement of the penalty imposed against the contractor;

- f. A recommended penalty to the Construction Industry Licensing Board for further action against the registered contractor or state certified contractor, if appropriate; and
 - g. A clear statement concerning the right to appeal the Board's decision or challenge the recommendation to the Construction Industry Licensing Board.
3. The Division will provide each Board member present at the hearing, the subject contractor and the County Attorney's Office with a copy of the recommended order. The Board will consider the recommended order at its next regular meeting.
4. The Board may adopt the recommended order as the final order or make any amendments it deems necessary.
5. The Board's attorney will prepare the final order. The final order must be in writing and signed by the chairman within 60 days after the hearing is concluded.
6. A copy of any order rendered by the Board will be provided to the parties, including the complainant, by regular U.S. Mail.
7. The Board's order is final upon execution by the Chairman.

G. Recommendation to State Construction Industry Licensing Board.

1. If the disciplinary proceedings involve a registered contractor, the Board must issue a recommended penalty for Construction Industry Licensing Board action. The Board's recommendation will be made part of the final order. The recommended penalty may include a recommendation for no further action, suspension, revocation, restitution, or restriction of the registration or a fine to be levied by the Construction Industry Licensing Board or a combination of these actions.
2. As part of the final order, the Board must inform the subject contractor and the complainant of the local penalty imposed, the recommendation to the Construction Industry Licensing Board, the contractor's right to appeal and the consequences should the contractor choose not to appeal.
3. The Board must inform the Construction Industry Licensing Board of the action taken by the Board against any contractor, including the penalty imposed, within 3 days of the Board's final action. Sending a copy of the Board's final order along with a record of the proceedings to the Construction Industry Licensing Board will fulfill this requirement.

H. Record of the Proceedings.

1. The record of these proceedings will consist of the following:
 - a. All notices, pleadings, motions and orders.
 - b. All evidence received or considered by the Board.
 - c. All staff memoranda or data submitted to the Board during the hearing or prior to its disposition except communications by advisory staff.

- d. All matters placed on the record after ex parte communication.
 - e. The official transcript. The official transcript is the audio recording made during the hearing.
2. The Division is also responsible for preservation of the record. Upon written request, the Division must make a full or partial transcript of the proceedings available at no more than actual cost. However, the Division is not responsible for payment of transcription costs unless the County is the requesting party.
- I. **Challenge by a Contractor of Board Recommendation to Construction Industry Licensing Board.** In accordance with F.S. §489.131(7), the Department of Business and Professional Regulation, a complainant or contractor can challenge a recommendation of the Board to the Construction Industry Licensing Board. A challenge must be filed with the Construction Industry Licensing Board within 60 days after the Board executes its final order. Failure to file a challenge with the Construction Industry Licensing Board constitutes a waiver of the right to hearing before the Construction Industry Licensing Board. Under F.S. Ch. 489, a waiver is deemed an admission of the violation and the recommended order becomes the final order of the Construction Industry Licensing Board without further action. A final order of the Construction Industry Licensing Board is appealable to the district court.
- J. **Ex-parte Communications.**
- 1. Ex parte communication is prohibited. No ex parte communication relative to the merits of a case under Board jurisdiction may be made to a member of the Board by:
 - a. Any county employee officially involved in prosecuting the matter under consideration.
 - b. A party to the proceeding, including an authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed action.
 - 2. A Board member who is involved in the decision process that receives an ex parte communication must place on the record of the proceedings all written communication received or a memorandum stating the substance of all oral communications received and all oral responses made, and must also advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so. A request for rebuttal must be made within 10 days after notice of the communication is received. The Board member may withdraw from participation in the decision if he deems it necessary to eliminate the effect of the ex parte communication.

SECTION TWELVE: ACTION AGAINST UNLICENSED CONTRACTORS; CITATION PROCEDURE

- A. **Applicability.** The County is authorized to enforce the provisions of this ordinance against licensed and unlicensed contractors doing business in the unincorporated area of Lee County in accordance with the procedures set forth below.
- B. **Citation Procedure.**
- 1. A code enforcement officer may issue a citation against a licensed or unlicensed contractor for any violation of this ordinance, whenever, based upon personal

investigation, the code enforcement officer has reasonable and probable grounds to believe that a violation has occurred.

2. The code enforcement officer does not have to provide the person with time to correct the violation prior to issuing a citation.
 3. A citation must be in a form prescribed by the Division and contain:
 - a. The date and time of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The date and time the civil infraction was committed.
 - d. The facts constituting probable cause.
 - e. The number or section of the code or ordinance violated.
 - f. The name and authority of the code enforcement officer.
 - g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - h. The applicable civil penalty if the person elects to contest the citation.
 - i. The applicable civil penalty if the person elects not to contest the citation.
 - j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he will be deemed to have waived his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
 4. The act for which the citation is issued must cease upon receipt of the citation.
 5. Each day a willful, knowing violation continues constitutes a separate offense under this ordinance. Therefore, if appropriate, a code enforcement officer may issue successive citations.
 6. After issuing a citation to the alleged violator, the code enforcement officer must deposit the original citation and one copy of the citation with the county court.
 7. A schedule of penalties to be assessed by the code enforcement officer is set out in the Lee County Administrative code. The maximum civil penalty that can be assessed is \$500.
 8. Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer will be guilty of a misdemeanor of the second degree as provided in F.S. §775.082 or §775.083.
- C. **Funds Collected.** Any funds collected in accordance with this section will be retained by the Division to support future code enforcement activities.

SECTION THIRTEEN: DISCIPLINARY ACTION REPORTING REQUIREMENTS

The Division will submit a monthly report to the Construction Industry Licensing Board in accordance with F.S. §489.131 covering the following:

1. Any disciplinary action taken against contractors; and
2. Any administrative or disciplinary action taken against an unlicensed person engaging in the business or acting in the capacity of a contractor, including cease and desist orders; and
3. Any fines issued as a result of a disciplinary proceeding.

SECTION FOURTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FIFTEEN: SEVERABILITY

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, that portion will be deemed a separate provision and will not affect any remaining provisions of the ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION SIXTEEN: CODIFICATION, INCLUSION IN CODE AND SCRIVENER’S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code; and that sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Manager, or the County Manager’s designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Clerk of Circuit Court.

SECTION SEVENTEEN: EFFECTIVE DATE

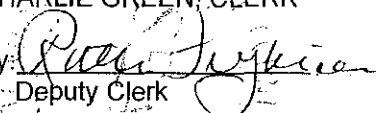
This Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

THE FOREGOING ORDINANCE was offered by Commissioner Andrew W. Coy, who moved its adoption. The motion was seconded by Commissioner Robert P. Janes and, being put to a vote, the vote was as follows:

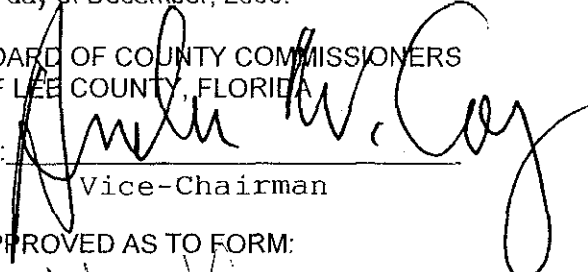
ROBERT P. JANES	AYE
DOUGLAS ST. CERNY	AYE
RAY JUDAH	AYE
ANDREW W. COY	AYE
JOHN E. ALBION	AYE

DULY PASSED AND ADOPTED THIS 12th day of December, 2000.

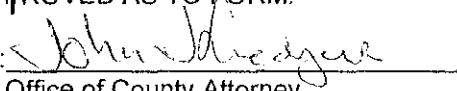
ATTEST:
CHARLIE GREEN, CLERK

By: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 
Vice-Chairman

APPROVED AS TO FORM:

By: 
Office of County Attorney