

ORDINANCE NO. 95-04

AN ORDINANCE AMENDING POLK COUNTY ORDINANCE NO. 90-16, AS AMENDED, WHICH CREATED THE POLK COUNTY CONTRACTOR LICENSING BOARD; AMENDING SECTION 16 TO PROVIDE MORE SPECIFIC PROCEDURES FOR THE ENFORCEMENT OF UNLICENSED INDIVIDUALS OR FIRMS; PROVIDING A NAME FOR SECTION 16; PROVIDING FOR INVESTIGATIONS BY POLK COUNTY CODE ENFORCEMENT OFFICERS; PROVIDING FOR THE ISSUANCE OF CITATIONS; PROVIDING FOR ENFORCEMENT PROCEEDINGS BEFORE THE CONTRACTOR LICENSING BOARD; PROVIDING FOR CIVIL PENALTIES; PROVIDING FOR THE RECOVERY OF CIVIL PENALTIES; PROVIDING MISCELLANEOUS ENFORCEMENT REGULATIONS AND PROCEEDINGS; PROVIDING THAT THIS SECTION IS SUPPLEMENTAL IN NATURE; PROVIDING FOR INTERLOCAL AGREEMENTS WITH MUNICIPALITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has determined that it would be in the best interest of the residents of Polk County to stop uncertified and unlicensed individuals from operating illegally within the County; and

WHEREAS, Chapter 489, Florida Statutes, provides authority to local governments to enforce ordinances against unlicensed individuals and authorizes the issuance of citations and enforcement before a licensing board; and

WHEREAS, Chapter 489, Florida Statutes, sets certain parameters for enforcement, citations and the conduct of hearings before a licensing board; and

WHEREAS, This amendment to Polk County Ordinance No. 92-16, as amended, establishes a local citation system and enforcement procedure to implement the enforcement authority granted to the

County in Chapter 489, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA;

SECTION ONE:

Section 16 of Polk County Ordinance No. 90-16, as amended, shall be named, and hereafter referred to as, the "Unlicensed Individual Enforcement Section."

SECTION TWO:

For purposes of Section 16 of Polk County Ordinance No. 90-16, as amended, an unlicensed person is any person who acts as a contractor as defined in this ordinance without the appropriate license, certificate or registration.

SECTION THREE:

SECTION 16 of Polk County Ordinance No. 90-16, as amended, is hereby amended as follows:

SECTION 16: UNLICENSED INDIVIDUALS OR FIRMS

(I) PROHIBITED ACTIVITIES.

(A) It shall be a violation of this Ordinance for any person or firm to :

- (1) Falsely hold himself or a business organization out as a licensee, certificateholder or registrant;
- (2) Falsely impersonate a certificateholder or registrant;
- (3) Present as his own the certificate or registration of another;
- (4) Give false or forged evidence to the County or board for the purpose of obtaining a certificate or registration;
- (5) Use or attempt to use a certificate or registration which has been suspended or revoked;

- (6) Engage in the business or act in the capacity of a contractor without being duly licensed, registered or certified;
- (7) Advertise himself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly licensed, registered or certified;
- (8) Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent;
- (9) Commence or perform work for which a building permit is required pursuant to any applicable building code without such building permit being in effect;
- (10) Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors;
- (11) Employ for consideration persons who are not certified or registered to practice contracting; or
- (12) Conceal information relative to violations of this part.

(B) No person associated with a contracting firm qualified by a qualifying agent shall violate the provisions of Section 489.132, Florida Statutes, as set forth below:

- (1) Conceal or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;
- (2) Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;
- (3) Knowingly cause any part of the contracting firm's activities; financial or otherwise, to be conducted without the primary qualifying agents's supervision; or
- (4) Assist or participate with any certificateholder or registrant in the violation of any provision of this chapter.

(II) VIOLATIONS.

(A) Any person found to be in violation of any prohibition or prohibitions set forth in this Section shall be guilty of a civil

infraction.

(B) Each violation and each separate day a violation of this Section continues constitutes a separate and distinct offense. However, a citation must be issued to the alleged violator for each day an alleged violation continues to exist in order for a separate fine to be imposed.

(III) CITATIONS.

(A) Pursuant to the provisions of Sections 489.127 and 489.531, and Chapter 125, Florida Statutes, the Polk County Codes Enforcement Officers and the employees of the Building Division designated by the Building Division Director shall have the authority to issue citations for violations of this Section whenever the investigator, based upon personal investigation, has reasonable and probable grounds that such a violation has occurred.

(B) A citation issued by a Code Enforcement officer or Building Division employee shall be in the form prescribed by the Board and, at a minimum, shall state:

- (1) The time and date of issuance.
- (2) The name and address of the alleged violator.
- (3) The time and date of the violation.
- (4) A brief description of the nature of the violation.
- (5) The location of the violation.
- (6) The name of the Code Enforcement Officer or Building Division employee.
- (7) The procedure for the alleged violator to follow in order to pay the civil penalty or to contest the citation.
- (8) The applicable civil penalty if the alleged violator elects not to contest the citation.

(C) Citations shall be provided to the alleged violator by hand delivery by the Code Enforcement Officer or Building Division

employee; by certified mail, return receipt requested; or by leaving the citation at the alleged violator's residence with any person residing therein who is fifteen (15) years of age or older and informing such person of the contents of the citation. Issuance of a citation to a business may be accomplished by certified mail, return receipt requested, or by leaving a copy at the business, during regular business hours, with any employee, and informing the employee of the contents. Each employee of the business may be deemed to be a agent of the business for service of citations.

(D) Any person who willfully refuses to sign and accept a citation issued by a Code Enforcement Officer or Building Division employee pursuant to this Section shall be guilty of a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes.

(IV) ENFORCEMENT PROCEDURE.

(A) The act for which the citation is issued must be ceased upon receipt of the citation.

(B) A person who has been served with a citation shall, within ten days of the receipt of the citation, exclusive of weekends and legal holidays, select either to:

- (1) Correct the violation and pay the civil penalty in the manner indicated on the citation; or
- (2) Request, in writing, an administrative hearing before the Contractor Licensing Board to challenge the issuance of or appeal the citation.

(C) Failure by the alleged violator to request an administrative hearing to appeal the issuance of the citation

within ten days shall constitute a waiver of the alleged violator's right to a hearing. A waiver of the right to a hearing shall constitute an admission of the violation and penalties may be imposed accordingly.

(V) CIVIL PENALTIES.

The civil penalty imposed for a citation issued pursuant to this Section shall be in the following amounts:

First Violation	\$150.00
Second Violation	\$300.00
Third Violation	\$500.00
Each Subsequent Violation	\$500.00

At the conclusion of a hearing conducted pursuant to this Section, the Contractor Licensing Board may impose a fine greater than that set forth in this subparagraph, pursuant to subparagraph (IX)(C) below, and may also impose costs in addition to the fine, as provided in subparagraph (IX)(D).

(VI) NOTICES.

An alleged violator who is the subject of proceedings before the Contractor Licensing Board shall be provided timely notice of such proceedings pursuant to the provisions of subsection III(C) above, or by including a hearing date within the citation. Pursuant to Section 286.0105, Florida Statutes, a notice of any hearing and the agenda for Board meetings shall advise that, if a person decides to appeal any decision made by the Contractor Licensing Board with respect to any matter considered at such meeting or hearing, that person will need a record of the proceedings, and that, for such purpose, they may need to ensure

that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

(VII) HEARINGS.

(A) Upon receipt of a timely written request, as set forth above, for an administrative hearing to appeal the citation, the matter shall be set for hearing on the next regularly scheduled hearing date or as soon thereafter as possible.

(B) Upon receipt of the request for an administrative hearing, the County shall, unless it has included a hearing date in the citation as provided above, serve a notice of hearing to the alleged violator, which notice shall include, but not be limited to, the following:

- (1) Place, date and time of the hearing.
- (2) Right of the alleged violator to present witnesses and evidence and conduct cross-examination.
- (3) A conspicuous statement that a person deciding to appeal any decision of the Contractor Licensing Board will need to ensure that a verbatim record of the meeting is made.

If the hearing date is included in the citation, the citation must also include the information required by this subsection.

(C) The Contractor Licensing Board shall conduct any hearing scheduled pursuant to this Section pursuant to the requirements of Sections 162.07 and 162.08, Florida Statutes. Accordingly, the Contractor Licensing Board has the authority to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the Sheriff of the County or Police Department of the Municipalities.
- (3) Subpoena evidence to its hearings.

- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(D) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any relevant matter, as determined by the Contractor Licensing Board.

(E) Formal rules of evidence shall not apply in these proceedings but fundamental principles of due process shall be observed and govern the proceedings. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a court of law.

(F) Lack of a county license certification or registration may be established by confirming with the County Building Division that the named violator does not hold a county license, certification, or registration. An original or certified copy of a written statement from the custodian of records of the Building Division that he or she has reviewed the records of the Division and confirmed that there is no record of a County license, certification or registration of an alleged violator shall be admissible into evidence and sufficient to establish the presumption that the alleged violator is not a county certified contractor. The alleged violator has the right to present evidence to overcome this presumption.

(G) A party may appeal a final order of the Contractor

Licensing Board by filing an appeal with the Circuit Court for the Tenth Judicial Circuit in and for Polk County within thirty (30) days from the date of the final order. Such appeal shall not be a hearing de novo but shall be limited to an appellate review of the record created before the Board.

(VIII) FAILURE TO PAY OR APPEAR.

Upon written notification from the Code Enforcement Officer or Building Division employee that an alleged violator has not contested the citation or paid the civil penalty within the time frame allowed in the citation, as set forth herein, or that a violation has not been corrected within the time frame set forth in the notice of violation, the Contractor Licensing Board shall enter an order ordering the violator to pay the civil penalty set forth in the citation, and a hearing shall not be necessary for the issuance of such order.

(IX) FINDINGS.

(A) The Contractor Licensing Board shall make findings of fact based upon the evidence presented at the hearing. In order to make a finding affirming the citation and imposing a penalty, the Contractor Licensing Board must find that the alleged violator was responsible for the violation of the provisions of this Section.

(B) If the alleged violator, or his designated representative, proves that the citation is invalid, the Contractor Licensing Board may dismiss the citation.

(C) If the Board finds that a violation exists, the

Contractor Licensing Board may order the violator to pay a civil penalty of not less than the amount set forth on the citation, but not more than \$1,000.00 per day for each violation. In determining the amount of the penalty, the Contractor Licensing Board shall consider the following factors:

- (1) The gravity of the violation.
- (2) Any actions taken by the violator to correct the violation.
- (3) Any previous violations committed by the violator.

(D) If the alleged violator is found guilty of the violation, the Contractor Licensing Board may impose upon the violator the reasonable cost of the investigation and administrative hearing in addition to the penalty imposed pursuant to this Section.

(X) RECOVERY OF CIVIL PENALTIES

A certified copy of the order imposing a civil penalty against an unlicensed or uncertified contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgement by the sheriffs of this state, including a levy against personal property; however, such order may not be deemed to be a court judgement except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the Contractor Licensing Board may authorize the County Attorney to foreclose or otherwise execute on the lien.

(XI) APPELLATE REVIEW.

The violator or the County may appeal a decision of the

Contractor Licensing Board by certiorari to the Circuit Court of the Tenth Judicial Circuit. Such appeal shall be filed within 30 days of the execution of the order to be appealed and shall be limited to appellate review of the record created before the Contractor Licensing Board.

(XII) SUPPLEMENTAL ENFORCEMENT.

Nothing contained in this Section shall prohibit the County from enforcing the provision of this Section by any other means.

(XIII) INTERLOCAL AGREEMENTS.

The Board of County Commissioners may enter into interlocal agreements with any municipality within the County so that the municipality may by ordinance, resolution, policy or administrative order, authorize appropriate persons to enforce this Section. Such person shall be subject to the same training requirements that are required for Polk County Code Enforcement Officers.

SECTION FOUR:

Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional for any reason, such holding shall not effect the validity of the remaining portions of this Ordinance.

SECTION FIVE:

Effective Date. This Ordinance shall become effective upon receipt of acknowledgement from the Department of State that a certified copy of this ordinance has been filed with said office.

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FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

DIVISION OF ELECTIONS
Bureau of Administrative Code
The Elliot Building
401 South Monroe Street
Tallahassee, Florida 32399-0250
(904) 488-8427

RECEIVED

4-6-95

Clerk Of The Board

M Crews

April 3, 1995

Honorable E. D. Dixon
Clerk and Auditor
Board of County Commissioners
Polk County
330 West Church Street
Post Office Box 988
Bartow, Florida 33831

Attention: Martha H. Crews, Deputy Clerk

Dear Mr. Dixon:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge your letter dated March 31, 1995 and certified copy of Polk County Ordinance No. 95-04, which was filed in this office on April 3, 1995.

Sincerely,

Liz Cloud

Liz Cloud, Chief
Bureau of Administrative Code

LC/mw