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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA PROVIDING FOR REGULATION OF CONTRACTORS ; REPEALING ORDINANCE 86-8, AS AMENDED; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITIONS; PROVIDING FOR ISSUANCE OF CITATIONS FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR CEASE AND DESIST ORDERS; PROVIDING FOR CRIMINAL VIOLATIONS; PROVIDING FOR ISSUANCE OF NOTICES TO APPEAR; PROVIDING FOR REPEAL AND SAVINGS CLAUSE; PROVIDING FOR APPLICABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE OF LAWS AND ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the business of construction and building improvements is a matter substantially affecting the public interest; and

WHEREAS, in order to protect the health, safety and welfare of the public, it is necessary to ensure that individuals engaged in the construction industry are duly qualified and that construction is done according to code; and

WHEREAS, pursuant to Fla. Stat. § 489.127, a county may enforce the provisions of Fla. Stat. § 489.127(1) and § 489.132 (1) **against** persons who **engage** in activity for which a county license or state certification or registration is required; and

WHEREAS, pursuant to Fla. Stat § 489.531(3) ,a county may enforce the provisions of Fla. Stat. § 489.531(1) **against** persons who **engage** in activity for which a county certification is required; and

WHEREAS, pursuant to Fla. Stat. § 489.127(5) and § 489.531(3), a county is authorized to enforce codes and ordinances against unlicensed contractors and may enact an ordinance establishing procedures for implementing same; and

WHEREAS, Laws of Florida, Chapter 67-1876, as amended, authorizes the Construction Industry Licensing Board of Palm Beach County ("CILB") to oversee local licensure of contractors and discipline of same; and

WHEREAS, Laws of Florida, Chapter 67-1876, as amended, declares it unlawful for any Person to engage in the business of contracting without the required local certificate of competency;

and

2 WHEREAS, Palm Beach County desires to protect the public by restricting and penalizing
3 construction activities performed by unlicensed contractors and to enforce the provisions of Fla. Stat.
4 Chapter 489 and Laws of Florida, Chapter 67-1876, as amended.

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

7 SECTION I. DEFINITIONS.

8 As used herein, the following terms shall have the meaning described. Any term not defined
9 herein shall have the meaning found in Fla. Stat. Chapter 489 and/or Laws of Florida, Chapter 67-
10 1876, as amended.

- 11 A. "Certificate" or "License" shall mean a current valid Certificate of Competency
12 issued by the CILB pursuant to Laws of Florida, Chapter 67-1876, as amended, or
13 a certificate issued by the state of Florida pursuant to Fla. Stat. Chapter 489.
- 14 B. "Certificate holder" or "Licensee" shall mean that contractor who holds a current,
15 valid certificate issued by the CILB or the state of Florida.
- 16 C. "CILB" shall mean the Construction Industry Licensing Board of Palm Beach
17 County, as established by Laws of Florida, Chapter 67-1876, as amended.
- 18 D. "Contractor" shall mean the person who is qualified for and responsible for an entire
19 project contracted for and means (except as exempted by Laws of Florida, Chapter
20 67-1876, as amended) the person who, for compensation, undertakes to, submits a
21 bid to, or does him/herself or by others construct, repair, alter, remodel, add to,
22 subtract from, or improve any building or structure, including related improvements
23 to real estate, for others or for resale to others. A contractor shall hold a license or
24 certificate as provided by law before bidding or performing work requiring such
25 license or certificate.
- 26 E. "Code Compliance officer" or "investigator" shall mean those persons designated
27 by Palm Beach County Contractors Certification Division for enforcement of the
28 regulations contained in Laws of Florida, Chapter 67-1876, Fla. Stat. Chapter
29 489, and this ordinance.

2 F. "Registrant" shall mean that contractor who holds a license issued by the CILB and
who has registered with the state of Florida pursuant to Fla. Stat. Chapter 489.

3 G. "Special Act" shall mean Laws of Florida, Chapter 67-1876, as may be amended
4 from time to time.

5 **SECTION 2. PROHIBITIONS.**

6 A. No person shall:

- 7 (1) falsely hold himself/herself or a business organization out as a licensee,
8 certificate holder, or registrant;
- 9 (2) falsely impersonate a certificate holder, or registrant;
- 10 (3) present as his/her own the certificate or registration of another;
- 11 (4) knowingly give false or forged evidence to the CILB or member thereof;
- 12 (5) use or attempt to use a certificate or registration which has been suspended
13 or revoked;
- 14 (6) engage in the business or act in the capacity of a contractor or advertise
15 himself/herself or a business organization as available to engage in the
16 business or act in the capacity of a contractor without being duly registered
17 or certified.
- 18 (7) operate a business organization engaged in contracting after 60 days
19 following the termination of its only qualifying agent without designating
20 another primary qualifying agent, except as provided in Fla. Stat. §489.119
21 and §489.1195;
- 22 (8) commence or perform work for which a building permit is required pursuant
23 to the adopted state minimum building code without such building permit
24 being in effect;
- 25 (9) willfully or deliberately disregard any county ordinance related to uncertified
26 or unregistered contractors.

27 B. No person shall:

- 28 (1) **engage** in the business or act in the capacity of a contractor without having
29 met the provisions of the Special Act.

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- (2) It is unlawful for a person who is required to possess a certificate of competency, but who does not possess a current certificate of competency:
 - (a) to advertise to the public in a newspaper ad, airwave transmission, or a telephone directory, or by issuance of a card, or otherwise, that he/she is a contractor, or is qualified to engage in business as a contractor;
 - (b) to hold himself/herself out as a contractor, whether as a plaintiff, defendant or witness in any court in this County;
- (3) It is unlawful for a contractor or a qualified business organization to fail to identify any of his/her vehicles used to transport materials and equipment to a job site. Identification shall be effectuated by placing upon said vehicles the contractor's name or symbol and certificate of competency number, in two locations;
- (4) It is unlawful for a contractor to fail to include his/her certificate of competency number in any advertising to the public in a newspaper, magazine or other periodical, telephone directory display ad, airwave transmission, business card, pamphlet, or other advertising medium announcing, advertising, or promoting services regulated pursuant to the Special Act, excluding a single-line listing in a telephone directory

C. The following acts are prohibited:

- (1) willful or deliberate disregard and violation of the applicable building codes or laws of the County or the State of Florida;
- (2) aiding or abetting an uncertified person or business organization to evade any provision of the Special Act;
- (3) knowingly combining or conspiring with an uncertified person with intent to evade the provisions of the Special Act;
- (4) acting in the capacity of a contractor in any name other than that on the certificate and/or different from the scope of work for which he/she is certified to perform;

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- (5) diversion of funds or property received for prosecution or completion of a specified construction project or operating where, as a result of the diversion the contractor is or will be unable to fulfill the terms of his/her obligations or contract;
- (6) failure in any material respect to comply with the provisions of the Special Act;
- (7) failure to maintain insurance coverage as set by the CILB or required by state or federal regulations;
- (8) falsification of application or testimony given before the CILB;
- (9) abandonment of a construction project in which the contractor is engaged or under contract as a contractor. A project shall be considered abandoned after 30 days if the contractor terminates the project without written notification to the owner or the prospective owner without just cause, or fails to substantially perform work under the contract;
- (10) signing a statement with respect to a project or contract falsely indicating that the work is bonded, falsely indicating that payment has been made for all subcontracted work, labor and material which results in a financial loss to the owner, purchaser or another contract, or falsely indicating that workers' , compensation and public liability insurance are provided;
- (11) a finding of proof and continued evidence that the certificate holder is guilty of fraud or deceit, gross negligence, incompetency and misconduct in the practice of contracting;
- (12) subcontracting any work to any person, firm or business organization not holding a certificate of competency for work involved in the subcontract;
- (13) obtaining a permit for any work in which the certificate holder does not actually supervise, direct and control the construction or installation covered by such permit;
- (14) **being** convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of contracting or the ability

to practice contracting;

2 (15) failure to satisfy, within a reasonable time, the terms of a civil judgment
3 obtained against the licensee relating to the practice of the licensee's
4 profession.

5 (16) Committing mismanagement or misconduct in the practice of contracting that
6 causes financial harm to a customer. Financial mismanagement or
7 misconduct occurs when:

8 1. Valid liens have been recorded against the property of a contractor's
9 customer for supplies or services ordered by the contractor for the
10 customer's job, the contractor has received funds from the customer
11 to pay for the supplies or services, and the contractor has not had the
12 liens removed from the property, by payment or by bond, within 75
13 days after the date of such liens;

14 2. The contractor has abandoned a customer's job and the percentage of
15 completion is less than the percentage of the total contract price paid
16 to the customer as of the time of abandonment, unless the contractor
17 is entitled to retain such funds under the terms of the contract or
18 refunds the excess funds within 30 days after the date the job is
19 abandoned;or

20 3. The contractor's job has been completed, and it is shown that the
21 customer has had to pay more for the contracted job than the original
22 contract price, as adjusted for subsequent change orders, unless such
23 increase in cost was the result of circumstances beyond the control of
24 the contractor, was the result of circumstances caused by the
25 customer, or was otherwise permitted by the terms of the contract
26 between the contractor and the customer.

27 SECTION 3, ISSUANCE OF CITATION, ADMINISTRATIVE HEARING AND
28 PENALTIES

A. Designation of Code Compliance Officers.

Palm Beach County hereby designates the investigators with the Palm Beach County Contractor Certification Division as code enforcement officers with the authority to enforce the provisions of Fla. Stat. § 489.127, Laws of Florida, Chapter 67-1876 and this Ordinance against persons who engage in construction activity that requires a County Certificate of Competency or state certification or registration. Nothing in this section shall be construed to authorize disciplinary proceedings against individuals holding the proper valid state certification.

B. Issuance of Citation

(1) **Issuance of Citation.** Whenever, based upon personal investigation and in accordance with policies and procedures established by the Contractor Regulations Division, the investigator has reasonable and probable grounds to believe that a person has committed a prohibited act (as set forth in Section 2 of this Ordinance), the officer may issue a citation to the respondent which shall include the following information:

- I. Date and time of issuance.
2. Name and address of person to whom the citation is issued.
3. Time and date of violation.
4. A brief description of the violation and the facts constituting reasonable cause.
5. The name of the investigator.
6. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
7. The applicable civil penalty if the person elects not to contest the citation.

(2) **Citation Penalty.** The maximum civil penalty which may be levied by citation shall not exceed \$500. Moneys collected in payment for citations shall be retained by Palm Beach County to support future enforcement activities.

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(3) Effect of Citation: Appeal of Citation. The act for which the citation is issued shall cease upon receipt of the citation, and the person charged with the violation shall elect either to correct the violation and pay the civil penalty in the manner indicated on the citation or, within ten days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing before the CILB or designated Special Master to appeal the issuance of the citation by the investigator. If the hearing date is not set forth in the citation, a notice of hearing shall be served on the Respondent as provided in Section 3(G). Failure of the respondent to appeal the decision of the investigator within the time period set forth herein shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation, and penalties may be imposed accordingly.

(4) Administrative Hearing:. Administrative hearings on appeals of citations shall be held before the CILB pursuant to the CILB's authority to conduct hearings and assess fines as set forth in Fla. Stat. § 489.127 and the Special Act. In the alternative, administrative hearings may be held before designated Special Masters. The members of the CILB may serve ex officio as Special Masters, with the power to preside individually over administrative hearings to hear appeals of the issuance of a citation. The Special Master shall conduct the hearing in accordance with the procedure described herein. '

(5) Non-Criminal Citation. A person issued a citation for a violation is charged with a noncriminal infraction.

(6) Order. Upon written notification by the investigator that a respondent has not contested the citation or paid the penalty within the time allowed on the citation, or if a violation has not been corrected within the time set forth on the citation, the CILB or Special Master shall enter an order ordering the respondent to pay the civil penalty set forth on the citation. A hearing shall not be necessary for the issuance of such an order. The order shall include

2 a notice, if applicable, that fine(s) were imposed, and that a certified copy of
3 such order may be recorded in the public records of Palm Beach County.
4 Florida and may thereafter constitute a lien against any real or personal
5 property owned by the respondent.

6 C. Administrative Hearing:

7 Upon appeal of a citation, or at such other times as may be necessary, a hearing
8 before the CILB or Special Master may be convened. The meeting shall be held pursuant
9 to the requirements of Fla. Stat. § 162.07 and § 162.08, and the following shall apply:

- 10 1. Minutes shall be kept of all hearings and all hearings shall be open to the
11 public.
- 12 2. At the hearing, the burden of proof shall be upon the County to show by a
13 preponderance of the evidence that a violation(s) does exist. Where proper
14 notice of the hearing has been provided to the respondent as provided for
15 herein, a hearing may proceed even in the absence of the respondent.
- 16 3. All testimony shall be under oath and shall be recorded.
- 17 4. The formal rules of evidence shall not apply but fundamental due process
18 shall be observed and shall govern the proceedings. Upon determination by
19 the chairperson, irrelevant, immaterial or unduly repetitious evidence may be
20 excluded, but all other evidence of a type commonly relied upon by
21 reasonably prudent persons in the conduct of their affairs shall be admissible,
22 whether or not such evidence would be admissible in a trial in the courts of
23 Florida.
- 24 5. Any member of the CILB or Special Master, the attorney representing the
25 CILB or Special Master, the respondent and his/her attorney may inquire or
26 question any witness present at the hearing. The respondent or his/her
27 attorney shall be allowed to cross-examine all witnesses present at the
28 hearing, and present testimony and evidence.
- 29 6. At the conclusion of the hearing, the CILB or Special Master shall orally
render an order based on evidence entered into the record. In the case of

2 hearings before the CILB, the decision shall be by motion approved by the
3 affirmative vote of those persons present and voting, except that at least four
4 members of the CILB must vote for the action to be official. An order setting
5 forth findings of fact and conclusions of law shall then be mailed to the
6 respondent within ten days of the hearing.

7 7. If the CILB or Special Master finds that a violation exists, the CILB or
8 Special Master may order the respondent to pay a civil penalty of no more
9 than \$1,000 per day for each violation. In determining the amount of the
10 penalty, the CILB or Special Master shall consider the following factors:

- 11 I. The gravity of the violation;
- 12 2. Any actions taken by the violator to correct the violation; and
- 13 3. Any previous violations committed by the violator.

14 D.

15 A certified copy of an order imposing a civil penalty against the respondent may be
16 recorded in the public records and thereafter shall constitute a lien against any real or personal
17 property owned by the respondent. Upon petition to the Circuit Court, such order may be enforced
18 in the same manner as a court judgment by the sheriff of the state, including a levy against personal
19 property. The order shall not be deemed a court judgment except for enforcement purposes. A civil
20 penalty imposed pursuant to this part shall continue to accrue until the respondent comes into
21 compliance or until judgment is rendered in a suit to foreclose on a lien, whichever occurs first.
22 After three months from the filing of any such lien which remains unpaid, the CILB or designated
23 Special Master may authorize the local governing body's attorney to foreclose on the lien. No lien
24 created pursuant to this part may be foreclosed on real property which is homestead, under Section
25 4, Article X of the Florida Constitution.

26 E. Dismissal

27 If the respondent or his designated representative proves at the administrative hearing
28 that the citation is invalid or that the violation has been corrected prior to appearing before the CILB
29 or Special Master, the CILB or Special Master may reduce the fine or dismiss the citation, unless
the violation is irreparable or irreversible.

F. Appeal to Circuit Court.

An aggrieved party, including the local governing body, may appeal a final administrative order of the CILB or Special Master to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created at the hearing. The appeal shall be filed within 30 days of the execution of the order to be appealed.

G. Service of Notice.

Proper notice of hearing is given where notice has been mailed to the respondent by certified mail, return receipt requested; by hand delivery by the sheriff or law enforcement or investigator; by leaving the notice at the violator's usual place of residence with some person in the family above fifteen years of age and informing said person of the contents of the notice; or where an investigator, under oath, testifies that he/she did hand deliver the citation to the respondent which included a hearing date.

F. Refusal to Accept Citation.

Any person who willfully refuses to sign and accept a citation issued by an investigator commits a misdemeanor of the second degree punishable as provided in Fla. Stat. § 775.082 or § 775.083.

SECTION 4, CEASE AND DESIST ORDERS

The investigators have the authority, in accordance with Article 14 of the Palm Beach County Unified Land Development Code and F.S. Chapter 489, to issue a cease and desist order in the form of a written official order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed. The cease and desist order may be posted on the premises where such violation has been committed or exists.

SECTION 5, CRIMINAL VIOLATIONS.

Any person who commits an act prohibited by Section 2 of this Ordinance may be charged with a first degree misdemeanor and may be punished accordingly. In accordance with the Florida Statutes § 489.127, any unlicensed person who commits a violation of section 2(A) of this Ordinance, after having been found previously guilty of such violation, commits a felony of the third degree. In accordance with Florida Statutes §489.127, any person who refuses to accept a citation

commits a second degree misdemeanor.

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SECTION 6. ISSUANCE OF NOTICE To APPEAR

The investigators with the Contractor Regulations Division are designated Code Compliance officers pursuant to Fla. Stat. Chapter 162. Pursuant to the authority set forth in Fla. Stat. Chapter 162, an investigator may issue a Notice to Appear at any hearing conducted by county court if the investigator, based upon personal investigation, has reasonable cause to believe that a locally licensed contractor or unlicensed contractor has committed a prohibited act set forth in Section 2 of this Ordinance. A Notice to Appear means a written order by an investigator in lieu of arrest requiring a person accused of violating the law to appear in a designated court at a specified date and time. Prior to issuing the Notice to Appear, the investigator shall provide written notice of the violation of this ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be not less than 5 days and no more than 30 days. If upon personal investigation, the investigator finds that the person has not corrected the violation within the prescribed time period, a Notice to Appear may be issued to the person who committed the violation. The investigator is not required to provide a reasonable time period to correct if there is reason to believe that the violation presents a serious threat to the public health safety and welfare, or if the violation is irreparable or irreversible.

SECTION 7. APPLICABILITY

This ordinance shall apply to the unincorporated areas of Palm Beach County pursuant to the Special Act, Article VIII and Florida Statutes Sec. 489.127. Municipalities may, by interlocal agreement with the County, and ordinance or resolution, authorize enforcement of this ordinance within the municipality.

SECTION 8. ENFORCEMENT.

- A. Nothing herein contained shall prohibit the County from enforcing its codes and ordinances by any other means. Nothing herein contained shall prohibit the CILB from **exercising** its full authority pursuant to the Special Act and Fla. Stat Chapter 489, as amended.
- B. The Director of the Contractor Regulations Division and CILB are authorized to inspect and audit the records of construction firms to determine

compliance with this ordinance, the Special Act, and Fla. Stat. Chapter 489,
based upon reasonable suspicion that a violation of any law or ordinance has
occurred.

C. The Director of the Contractor Regulations Division and CILB are
authorized to subpoena records, surveys, drawings, contracts or other
documentary materials regarding activities regulated by this ordinance, the
Special Act or Fla. Stat. Chapter 489, based upon reasonable suspicion that
a violation of any law or ordinance has occurred.

D. The Director of the Contractor Regulations Division and CILB are
authorized to subpoena telephone company records regarding telephone
numbers used in advertisements or listings regarding regulated activity
pursuant to this Ordinance, Special Act or Fla. Stat. Chapter 489, where
address of the telephone number and/or name and address of the subscriber
is unavailable to the investigator. The information obtained via subpoena
shall be limited to the name of the person or entity who has obtained phone
service, the mailing address of the person or entity who has obtained phone
service, and the address where the phone line in question is located.

SECTION 2. REPEAL AND SAVINGSCLAUSE

Ordinance 86-8, as amended by Ordinance 86-25 and Ordinance 90-23 and Ordinance 94-5,
is hereby repealed in its entirety. All other Ordinances in conflict with this Ordinance are hereby
repealed to the extent of said conflict. However, all provisions of Ordinance 86-8, as amended, are
preserved for the limited purpose of prosecuting violations of Ordinance 86-8, as amended, which
violations were committed prior to the effective date of this Ordinance.

SECTION 10. SEVERABILITY

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

SECTION 11. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this ordinance shall become and be made a part of the Code of Laws and

Ordinances of Palm Beach County, Florida. The sections of the ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section" or "article" or any other appropriate word.

SECTION 12, EFFECTIVE DATE

The provisions of this ordinance shall become effective upon filing with the Secretary of State.

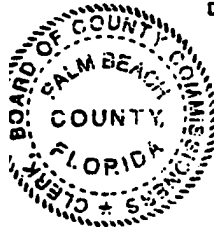
APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County on the 18th day of November, 1997.

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]
COUNTY ATTORNEY

Board of County Commissioners
By *[Signature]*
DEPUTY CLERK



Filed with the Department of State on the 21 day of November, 1997.

STATE OF FLORIDA, COUNTY OF PALM BEACH
DOROTHY H. WILKEN, ex-officio Clerk of the Board of County Commissioners certify this to be a true and correct copy of the original filed in my office on 11/21/97
DATED at West Palm Beach, FL on 12/4/97
DOROTHY H. WILKEN, Clerk
By: *[Signature]* D.C