

ORDINANCE FOR CALHOUN COUNTY

ORDINANCE 94-_____

AN ORDINANCE AMENDING ORDINANCE NUMBER 75-01 AND 85-02, REGARDING THE ESTABLISHMENT OF A BOARD OF REVIEW FOR COMPLAINTS AGAINST CONTRACTORS HOLDING A CERTIFICATE OF COMPETENCY AND OCCUPATIONAL LICENSE; PROVIDING DEFINITIONS, PROVIDING A REQUIREMENT FOR CERTIFICATE, SETTING FEES, PROVIDING FOR RENEWAL AND EXPIRATION OF CERTIFICATES, PROVIDING FOR DISCIPLINARY PROCEEDINGS, ESTABLISHING A REVIEW BOARD AND PROVIDING FOR REHEARING APPEALS; PROVIDING FOR SEVERABILITY AND AN EFFECT DATE

WHEREAS, the State of Florida has required that certain boards be set up to review complaints against building contractors operating in Calhoun County, and

WHEREAS, it is in the best interest of the citizens and residents of Calhoun County, Florida, for the Board of County Commissioners of Calhoun County to establish these boards to review and investigate complaints by citizens and to make recommendations to the State Board of Contractors regarding improper activities by contractors;

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

Section 1: Occupational License.

Upon the issuance to an applicant of a Certificate of Competency, the applicant and holder shall be deemed to have an occupational license for the conduct, within Calhoun County, Florida, for the business or occupation for which the Certificate is issued. The Certificate shall reflect that the holder is the holder of such Calhoun County occupational license. No additional fee shall be charged by the building department for such license. The occupational license shall remain in effect in conjunction with and for the same term as the Certificate of Competency. Upon the revocation, suspension or termination of the Certificate of Competency for any reason, the occupational license shall be deemed terminated.

Section 2. Definitions: As used in this Ordinance:

(a) "Contractor" means a person who is qualified for, or becomes responsible for, by express or implied contract or otherwise, the construction of an entire project contracted for, or means any person who, for compensation, undertakes to, submits a bid to, or does himself or by others construct, repair, alter, remodel, add to, subtract from or improve any building or structure, including related improvements to real estate, for others or for resale to others.

(b) "General Contractor" means a contractor whose services are unlimited as to the type of work which he may do or contract to do.

(c) "Building Contractor" means a contractor whose services are limited to construction of commercial dwellings and single-dwelling or multi-dwelling residential buildings, which commercial or residential buildings do not exceed three (3) stories in height, and accessory use structures in connection therewith, or a

contractor whose services are limited to remodeling, repair or improvement of any size building if the services do not affect the structural members of the building.

(d) "Residential Contractor" means a contractor whose services are limited to the construction, remodeling, repair or improvement of one-family, two-family, or three-family residences not exceeding two stories in height, and accessory use structures in connection therewith.

(e) "Mechanical Contractor" means any contractor whose services are unlimited in the execution of contracts, or who obligates himself by implied or express contract to perform services, requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend, or design central air-conditioning, refrigeration, heating and ventilation systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and to install, maintain, repair, fabricate, alter, extend or design piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic controlled piping, gasoline tanks and pump installations and piping for the same, stand pipes, air-piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, and installation of a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal, other than a direct connection to a sanitary system.

(f) "Roofing Contractor" means a contractor whose services are unlimited in the roofing trade and require the experience, knowledge and skill to install, maintain, repair, alter, extend or design and use materials and items used in the installation, maintenance, extension and alteration of all kinds of roofing and water-proofing.

(g) "Air-conditioning Contractor" means any person whose services are necessary in the execution of contracts requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend or design central air-conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessels systems, and all appurtenances, apparatus, and/or equipment used in connection therewith, or to install, maintain, repair, fabricate, alter, extend or design piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, and installation of a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal, other than a direct connection to a sanitary system.

(h) "Plumbing Contractor" means any person whose services, experience, knowledge or skill are necessary for the installation, maintenance, extension or

alteration of all piping fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure, or conveyance, including the practice and materials used in the installation, maintenance, extension or alteration of the storm water or sewerage or water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

(i) "Electrical Contractor" means any persons that engages in the business of electrical contracting under express or implied contract or that undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to or does himself or by others, engage in installing, repairing, altering or adding to any electrical wiring, fixtures, appliances, apparatus, raceways, conduit or any part thereof, which generates, transmits, transforms or utilizes electrical energy in any form for light, heat, power or communication.

(j) The use of any word herein denoting genders shall expressly include both genders.

Section 3. Requirement for Certificate: Any person, firm or corporation actually doing business or who intends to do business as a general contractor, building contractor, residential contractor, mechanical contractor, plumbing contractor or electrical contractor shall, prior to the commencement of any such construction or the providing of services or labor in the unincorporated areas of Calhoun County, Florida (or in such incorporated areas in Calhoun County, Florida, as shall elect or have elected previously by ordinance or resolution to enter into any interlocal agreement with Calhoun County to adopt, enforce or administer building codes or requirements within that municipality), prior to the entry into any agreement with any person, firm or corporation to provide such construction, services or labor, or prior to the submission of any application for building permit for any such construction, be the holder of a valid and unexpired certificate of competency issued by the Board of County Commissioners of Calhoun County, Florida. No person, firm or corporation who is not the holder of such a valid and unexpired certificate shall commence such construction or the providing of such services of labor, enter into any agreement with any person, firm or corporation to provide such construction, services or labor, or submit any application for a building permit on any such construction. A firm or corporation shall be deemed to be the holder of such a certificate of competency if the person ultimately responsible for the performance, supervision and control of the services or labor, within the corporation or firm, is the holder of such a certificate.

Section 4. Application for Certificate:

(a) Any person over the age of 18 years seeking to obtain a certificate of competency shall submit his application therefor (on a form to be supplied by the

County Building Department) together with: (1) three letters of reference from three different persons or firms for whom the applicant has previously performed construction services or labor attesting to the timely and satisfactory performance of those services or labor, and indicating the nature of the services and labor and the approximate date of performance; (2) two letters from two different persons, firms or corporations from whom the applicant is authorized to purchase construction materials and supplies on a credit basis; (3) one letter from a person, other than the above, of good standing in his respective community, attesting to his personal familiarity with and knowledge of the applicant's good character and reputation in that community; PROVIDED, that if the applicant is currently the holder of a certificate of competency issued by the respective agency or board of the State of Florida for which he seeks a county certificate, the applicant shall attach to his application a copy of his Florida certification and may dispense with the letters required in subparagraphs (1) and (3) above. The application shall also be accompanied by an application fee payable to the County Building Department in the following amounts:

<u>Certification</u>	<u>Amount</u>
General Contractor	\$
Building Contractor	\$
Residential Building Contractor	\$
Mechanical, including A/C and Sheet Metal	\$
Electrical	\$
Plumbing	\$
Roofing	\$

Upon receipt of a properly completed application, with all necessary documents and fee attached, the County Building Inspector shall make investigation to determine the truth and accuracy of the matters contained in the application and attachments and shall also investigate the applicant's certification status and standing within the State of Florida and in the County in which the applicant maintains his principal place of business.

(b) The application, all attachments, and the results of the County Building Inspector's investigation, shall be presented to the Board of County Commissioners at its next regular meeting. If the Board finds from the application, attachments and investigation that the applicant is qualified and competent to perform and complete construction, services and labor for which he intends to contract, the Board shall issue its certificate of competency for the area in which the application was made.

(c) If the Board declines to issue to the applicant the certificate of competency for which he applied, the County Building Department shall refund to the applicant the sum of \$25.00 from the application fee. Otherwise, any and all application fees shall be non-refundable.

(d) As a prerequisite to registration, the Board shall require the applicant to submit satisfactory evidence that he has obtained public liability insurance in the amount of \$100,000.00 and property damage insurance in the amount of \$25,000.00 or the minimum amount of liability and property damage insurance required for registration with the State of Florida Department of Professional Regulation, whichever is the largest. Specialty contractors are required to carry the amount of insurance as set by the State of Florida.

Section 5. Renewal and Expiration of Certificates:

(a) Certificates issued by the Board of County Commissioners (or by any other county agency in the past) prior to or after the effective date of this Ordinance shall automatically expires on the last day of the birth month of the certificate holder.

(b) If the holder of a certificate desires that the certificate be renewed, he shall make application for the renewal with the County Building Department on a form provided by that Department. The application shall be accompanied by a non-refundable renewal fee in the amount of \$25.00. Upon receipt of a properly completed application for renewal, with all necessary documents and fees attached, the County Building Inspector shall make investigation to determine the truth and accuracy of the matters contained in the application and attachments and shall also investigate the applicant's continuing certification status and standing within the State of Florida and the County in which the applicant maintains his principal place of business. The renewal application, attachments and results of the County Building Inspector's investigation shall be presented to the Board of County Commissioners at its next regular meeting. If the Board finds from the application, attachments and investigation that the applicant continues to be qualified and competent to perform and complete construction, services and labor for which he intends to contract, the Board shall renew its certificate of competency for the area in which the renewal application was made.

(c) Any renewed certificate of competency issued pursuant to this section shall automatically expire on the last day of the next succeeding birth month of the applicant.

(d) The Board shall have the power in addition to all other powers provided for in the ordinance, to suspend for a length of time not to exceed six months or to revoke the registration or certification of any licensed contractor who shall be guilty of any one or more of the following acts or omissions:

(1) Fraud or deceit in obtaining registration;

(2) Negligence, incompetence or misconduct in the practice of contracting within the meaning of this ordinance or the Southern Building Code as adopted by Calhoun County;

(3) Willful or deliberate disregard and violation of this ordinance or the County's Building Code;

(4) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting if the certificate holder or registrant knows or has reasonable grounds to know the person or entity was uncertified or unregistered;

(5) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his certificate or registration to be used by an unregistered person with the intent to evade the provisions of this ordinance.

(e) Any person directly interested, the Building Inspector of Calhoun County, or the architect or engineer of any building or construction may prefer charges against a licensed contractor under this ordinance. Such charges shall be made in writing and sworn to by the applicant and submitted to the Board. At the earliest possible date and no later than thirty (30) days after receipt of charges, it is the duty of the Board to investigate the charges and render its decision without delay. A copy of the charge, together with the time and place of the hearing, shall be served on the accused at least five (5) days before the date fixed for the hearing. At the hearing the accused shall have the right to appear personally with counsel and to cross-examine witnesses against him and to produce witnesses and evidence in his defense.

If, after the hearing, the Board's decision is that the accused shall be guilty of the charges preferred against him, the Board shall thereupon suspend for a period of time or revoke the accused's registration as a licensed contractor.

Upon the revocation of the accused's registration of competency, any and all rights or privilege to perform construction work or engage in the business of contracting in Calhoun County shall be revoked and withdrawn; no refund shall be made for amounts previously paid for registration of competency.

It shall be unlawful for any person to engage in or work at the business of contracting in Calhoun County when his registration has been revoked or suspended.

(f) It is unlawful for any person to engage in the business or act in the capacity of a contractor in Calhoun County, Florida, without having been duly registered under the provisions hereof.

(g) Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding \$500.00 or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment.

Section 6. Disciplinary Proceedings: Notice and Hearing:

(a) Upon the receipt of a written complaint by any person, the Board of Construction Review shall cause the matter to be investigated. If it is then determined by a majority of Board members present at any meeting that probable

cause exists to believe that there exists grounds under this or any other ordinance or applicable law or regulation, a hearing shall be scheduled to consider possible disciplinary action against the certificate holder.

Establishment of Review Board:

The written complaints identified in section (a) above shall be filed with the County Building Inspector, who shall forward them to the Board of Construction Practices Review. The membership of the Board of Construction Practices Review shall consist of the Board of County Commissioners along with at least one (1) contractor who holds the same type of certification as that held by the respondent contractor. That is, if a complaint is brought against a roofing contractor, the Construction Practices Review Board shall consist of the Board of County Commissioners and at least one roofing contractor. The Board of County Commissioners may, from time to time, upon enactment of this Ordinance, appoint contractors for each field of expertise which are licensed by the Board to sit on the Construction Practices Review Board. The County Building Inspector shall be an ex-officio, non-voting member of the Board and shall interpret the various trade codes adopted by the county for the benefit of the members of the board regarding policy. (b) The alleged violator shall be notified in writing of the alleged grounds for disciplinary action, and of the time, place and date of the hearing before the board, not less than ten (10) nor more than thirty (30) days prior to the hearing. The alleged violator shall have the right to appear at such hearing, be represented by counsel, produce evidence and cross-examine witnesses.

(c) The Board shall have the power to suspend or revoke a local competency certificate or withhold permits from the holder of a state or county certificate, if its holder shall have:

- (1) Misrepresented any material fact in the application for a certificate or for a permit;
- (2) Failed to correct, or continued to perform work done in a negligent, incompetent or unworkmanlike manner;
- (3) Acted in the capacity of a contractor without a valid occupational license, where required by law;
- (4) Contracted in a name other than that registered with the County Building Department;
- (5) Abandoned a construction project in which such person is engaged or under contract. An unfinished project will be considered to have been abandoned after twenty (20) days if the contractor terminates work on the project without just cause;
- (6) Diverted property or funds received pursuant to a contract entered in this capacity as a contractor to other contracts or obligations;

(7) Violated any provisions of this Ordinance, the building codes, or state law relating to contractors and construction;

(8) Combined or conspired with any person to allow a certificate to be used, or a permit to be obtained, to evade the requirements of this Ordinance or state law. When a contractor allows his certificate to be used by one or more individuals or companies without having any active participation in the operation and management of such companies, this shall constitute prima facie evidence of an intent to evade the requirements of this Ordinance;

(9) Engaged in unfair or deceptive trade practices;

(10) Been responsible for acts or omissions which did result or could have resulted in a lien being placed on property due to nonpayment.

(d). If, following the required hearing, the Board shall determine that grounds for discipline do exist, it shall enter a written order signed by the Chairman, which shall either:

(1) Reprimand the violator;

(2) Suspend or revoke a local certificate for a maximum period of three (3) years; or

(3) Declare that future permits will be withheld from the holder of a local or state certificate holder, for such period of time, or upon such conditions, as may be specified in the order; or

(4) Any combination of the above.

(e) Any order suspending a local certificate, or declaring that permits are to be withheld from the holder of a certificate, may be withdrawn by the Board upon proof of compliance with any conditions prescribed in the order. In the absence of any such conditions, the order may be withdrawn at the discretion of the Board.

(f) After revocation of a local certificate, the certificate shall not be reissued for a least one (1) year after revocation, and then only upon a showing of rehabilitation of the contractor.

Rehearing and Appeals:

(a) If the Board takes disciplinary action against a contractor following the hearing provided for in Section 6, its order shall take effect immediately, provided, however, that the violator may file a petition for rehearing as provided in subsection (b).

(b) A petition for rehearing may be filed with the County Administrator within ten (10) days after the entry of an order by the Board. The petition must specify the grounds upon which it is based, including a reference to any evidence that may not have been presented or considered at the prior hearing. In its decision to grant or deny the rehearing, the Board shall set forth in writing the grounds for its action. A copy of the decision shall be mailed to the petitioner and to any other

parties who have supported or opposed the petition within five (5) days following the decision.

(c) If a rehearing is granted, the Board may vacate its prior disciplinary order, and shall set the matter for further hearing after giving reasonable notice to the parties concerned. After the rehearing, the Board shall promptly render its decision and give notice thereof in the same manner as provided for in original decision.

(d) If a petition for rehearing has been denied by the Board, or if, following a rehearing, the Board takes or affirms disciplinary action against the petitioner, such individual may file a writ of certiorari in the Circuit Court to review the County Commissioners' decision. Such action shall be reviewed under standards applicable to certiorari proceedings.

Section 7. Severability: If any section, sub-section, paragraph, sentence, clause, or phrase of this ordinance is held for any reason, to be unconstitutional, void, or invalid, the validity of the remaining portion of this ordinance shall not be affected thereby. Nothing in this ordinance shall be construed to affect any suit or proceeding not pending in any Court, or any rights accrued or existing under any act or ordinance repealed hereby.

Section 8. Effective Date: This ordinance shall take effect upon receipt of official acknowledgments from the Office of the Secretary of State.

Section 9. Compliance with Rule 61G4-20.001(6): This ordinance is enacted in compliance with F.A.C. Rule 61G4-20.0001(6), and that the procedures established in this rule shall be utilized by the local licensing body along with the utilization of the sample administrative complaint and order forms referenced above shall be considered prima facie evidence of compliance with this rule with the commensurate registration of licensees from the submitting governmental entity.

THIS ORDINANCE SHALL BE READ IN CONJUNCTION WITH ORDINANCE NUMBER 75-001 AND 85-02. IN THE EVENT OF A CONFLICT BETWEEN SAID ORDINANCES, THIS ORDINANCE SHALL TAKE PRECEDENCE AND GOVERN THE CONFLICT.

PASSED AND ADOPTED this _____ day of _____, 1994.

BOARD of COUNTY COMMISSIONERS
CALHOUN COUNTY, FLORIDA

BY: _____
WILLIE TRUMAN GRANT, Chairman

ATTEST:

WILLIE D. WISE, Clerk.