ORDINANCE
2003-16

AN ORDINANCE PROVIDING DEFINITIONS; ESTABLISHING A CONTRACTOR COMPETENCY BOARD; ESTABLISHING ENFORCEMENT PROCEDURES; ESTABLISHING PROCEDURES FOR CONDUCTING HEARINGS; ESTABLISHING PROHIBITIONS AND VIOLATIONS; ESTABLISHING PENALTY RANGES; AGGRAVATING AND MITIGATING CIRCUMSTANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Board of County Commissioners finds that the safety, health, and welfare of the citizens of Walton County would be best protected by the regulation of construction contracting; and

WHEREAS, The Board of County Commissioners finds that the regulation of construction contracting is best conducted by a Competency Board; and

NOW, THEREFORE BE IT ORDAINED, BY THE Board of County Commissioners to adopt the following:

Section 1. Short Title

This ordinance shall be known as "The Walton County Contractor Competency Ordinance."

Section 2. Authority; purpose and intent. This ordinance is adopted pursuant to section 125.01 and Chapter 489 Florida Statutes.

Section 3. Sections 6-94 through 6-98 of the Walton County Code of Ordinances are hereby deleted in their entirety.

Section 4. Section 6-110 is hereby created to read:

Section 6-110 Definitions

For the purposes of this section, the definitions set out in Florida statutes §489.105, as amended, are hereby adopted and incorporated by reference in this ordinance. In addition, the following words and terms shall have the meanings respectively ascribed to them:

(A) *Board* means the Walton County Contractor Competency Board, unless the context otherwise specifies.

(B) *Certificate* means the act of obtaining or holding a certificate of competency from the Board as provided in this article.

(C) *Certificate of Competency* means a license issued by the Walton County Contractor Competency Board as provided in this ordinance.

(D) *Certified contractor* means any contractor who possesses a certificate of competency issued by the Department of Business and Professional Regulations and who shall be allowed to contract in the County without fulfilling the competency requirements of the Board.

(E) *Contractor* means the person defined in §489.105 (3) Florida Statutes, as amended.

(F) *Registered contractor* means any contractor who has registered with the Department of' Business and Professional Regulations pursuant to fulfilling competency requirements.

(C) *Registrant* means a person who is a registered contractor.

(H) *Registration* means a certificate of competency has been registered with the Department of Business and Professional Regulations.

Section 5. Section 6-111 is created to read:

Section 6-111 CONTRACTOR COMPETENCY BOARD

The Walton County Contractor Competency Board is hereby established.

(A) *Composition:* The Board shall consist of nine (9) members who shall be appointed by the County Commissioners and, whenever possible, shall include a general contractor, a building contractor, a residential contractor, a specialty contractor, a mechanical contractor, and a plumbing contractor. In addition, there shall be three consumer representatives appointed to the Board.

(B) *Term*: The members of the Board shall serve terms of three (3) years. The terms shall be staggered so that only three (3) Board positions expire each year. A member of the Board may be reappointed upon approval of the Board of County Commissioners.

(C) *Quorum:*The presence of five (5) of more members shall constitute a quorum of the Board.

(D) *Vacancies:* An appointment to fill any vacancy on the Board shall be for the remainder of the unexpired term. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the Board may declare the member's office vacant, and the County Commissioners shall promptly fill such vacancy.

(E) *Removal of Board Members:* Any member of the Board may be removed from office without cause by a majority vote of the Board of County Commissioners. Board members may also be suspended and removed for cause as provided in this Ordinance.

(F) *Organization:* The Board shall elect a chair and vice-chair and such other officers as it deems necessary, from its membership, whose term shall expire at the end of each fiscal year of the county. The Board is authorized to adopt rules and regulations not in conflict with any county ordinance or with state law to govern its procedures.

(G) *Duties of the Board:* It shall be the duty of the Board to:

1) Accept applications for certificate of competency as a contractor.

2) Determine through review of supporting data, the qualifications of applicants for licensure, and issue a certificate of competency as a licensed contractor to those whom the Board deems qualified in the appropriate trades.

3) To investigate any complaint or violation of this ordinance or of Chapter 489 of the Florida Statutes as amended, to conduct hearings for discipline of contractors and to take such actions and impose such penalties as is authorized by this ordinance or Chapter 489 of the Florida Statutes as amended against the contractors.

SECTION 6 Section 6-112 is created to read:

6-112 ENFORCEMENT PROCEEDINGS

It shall be the duty of the office of the building official of Walton County to initiate enforcement proceedings of this ordinance. Disciplinary actions taken against a locally licensed contractor shall provide due process protections consistent with the Florida and the United States Constitutions, including: notice to the contractor of the charges against the contractor by personal service, certified mail, or notice by publication in accordance with §120.60 (7), *Florida Statutes* (2002), as amended; notice of any action being considered against the contractor and notice of an opportunity for the complainant and

the contractor to present evidence and testimony on his or her behalf.

(A) If a violation of this ordinance or the building code of the State of Florida is found, the building inspector shall notify the contractor and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the building inspector shall notify the Board and request a hearing. The Board through its clerical staff, shall schedule a hearing on the violation and notice shall be furnished as specified in this ordinance.

(B) If the violation is corrected and then reoccurs or if the violation is not corrected by the time specified for correction by the building inspector, the case may be presented to the Board even if the violation has been corrected prior to the Board hearing, and the notice shall so state.

(C) If a repeat violation is found, the building inspector shall notify the contractor but is not required to give the contractor a reasonable time to correct the violation. The building inspector, upon notifying the contractor of a repeat violation, shall notify the Board and request a hearing. The Board through its clerical staff shall schedule a hearing and shall provide notice as specified in this ordinance. The case may be presented to the Enforcement Board even if the repeat violation has been corrected prior to the Board hearing, and the notice shall so state. If the repeat violation has been corrected, the Board retains the right to schedule a hearing to determine cost and impose the payment of reasonable enforcement fees upon the contractor. The contractor may choose to waive his or her rights to this hearing and pay the costs as determined by the Board.

(D) If the building inspector has reason to believe a violation or the condition causing the violation presents a serious threat to public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the building inspector shall make a reasonable effort to notify the contractor and immediately notify the Board and request a hearing.

(E) If the owner of the property which is subject to an enforcement proceeding before the Board transfers ownership of such property between the time the initial complaint was served and the time of the hearing, such owner shall: (1) disclose in writing the existence and the nature of the proceeding to the prospective transferee; (2) deliver to the prospective transferee a copy of the pleadings, notices and other materials relating to the enforcement proceeding received by the owner; (3) disclose in writing to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the enforcement proceeding; (4) file a notice with the Board of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

SECTION 7 Section 6-113 is created to read:

Section 6-113 CONDUCT OF HEARING

(A) Upon request of the building inspector, or at such other times as may be necessary, the chair may call a hearing of the Board; a hearing may also be called by written notice signed by at least four (4) members of the Board. Minutes shall be kept of all hearings by the Board, and all hearings and proceedings shall be open to the public. The Walton County Board of County Commissioners shall provide clerical and administrative personnel as may be reasonably required by the Board for the proper performance of its duties.

(B) Each case before the Board shall be presented by a member of the Walton County Building Department. If the building department prevails in prosecuting a case before the Board, it shall be entitled to recover all costs incurred in prosecuting the case before the Board and such costs may be included in the lien authorized under §162.09(3) *Florida Statutes* (2002), as amended.

(C) The Board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Hearing shall be conducted as quasi-judicial hearings.

(D) At the conclusion of the hearing, the Board shall issue findings of fact, based on evidence of record and conclusions of law, and issue an order affording the proper relief consistent with the powers granted in this ordinance. The finding shall be by motion approved by a majority of those members present and voting, except that at least five members of the board must vote in order for the action to be official.

(E) Orders imposing disciplinary action against a contractor shall contain the following:

1) A clear statement of the violations charged;

2) A clear statement of the factual basis for the charges;

3) Evidence that the contractor was given notice of the charges, and of an opportunity to appear and present evidence and testimony regarding the charges;

4) Findings of fact made by the disciplinary authority;

5) Conclusions of law which demonstrate that the facts alleged constitute

violations of §489.129(1), Florida Statutes or of this ordinance;

6) A statement of the penalty and any reasonable investigative and legal cost imposed against the local license or certificate of competency;

7) A recommendation by the Board to the Construction Industry Licensing Board for action to be taken against the state registration;

8) A clear statement informing the contractor of the right to appeal the action against the local license to the circuit court and of the right of the contractor to challenge the recommendation to the Construction Industry Licensing Board.

(F) Any contractor or adversely affected person who appeared before the Competency Board under the provisions of this Code and asserted a position on the merits in a capacity other than as a disinterested witness, may seek review of the final decision reached by the Board in the proceeding by filing a petition for certiorari with a court of appropriate jurisdiction within thirty (30) days after the date of the Board's decision.

SECTION 8 Section 6-114 is created to read:

Section 6-114 PROHIBITIONS/VIOLATIONS

(A) It is unlawful for any person to engage in the business or act in the capacity of a contractor in the county without having been duly certified or registered as required under the provisions of this division. Nothing in this division shall apply to owners of property acting as their own contractor as provided in Section 487.103(7) Florida Statutes as amended.

(B) It is a violation of this ordinance for any person in the county to:

(1) Falsely hold himself out as one duly certified as required by the provisions of this ordinance;

(2) Falsely impersonate one duly certified as required by the provisions of this ordinance;

(3) Present as his own the certificate or registration of another;

(4) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a certificate or registration; or

(5) Use or attempt to use a certificate or registration which has been suspended or revoked.

(C) It is a violation of this ordinance for any person to commit any act which may be cause for warning, reprimand, suspension or revocation of a certificate of competency or which may be cause for disciplinary action. The acts or circumstances which constitute cause for warning or suspension or revocation of a certificate of competency are as follows:

(1) Disregard of and/or failure to correct violations of the applicable building codes or laws of the state or county.

(2) Aiding or abetting any uncertified or unregistered person to evade any provision of this ordinance.

(3) Knowingly combining or conspiring with an uncertified person by allowing one's certificate to be used by any uncertified person with intent to evade the provisions of this ordinance. When a certificate holder or registrant allows his certificate to be used by one or more companies without having active participation in the operations, management or control of such companies, such an act constitutes prima facie evidence of an intent to evade the provisions of this ordinance.

(4) Acting in the capacity of a contractor under any certificate issued hereunder, except in the name of the certificate holder or registrant as set forth on the issued certificate or in accordance with the personnel of the certificate holder or registrant as set forth in the application for the certificate.

(5) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when as a result of the diversion the contractor is or will be unable to fulfill the terms of his obligations or contract.

(6) Financial mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs 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 by bond within 30 days after the date of such liens.

b. 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 materials which results in a financial loss to the owner, purchaser or subcontractor; or falsely indicating that workers' compensation and public liability insurance is provided.

c. 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 thirty (30) days after the date the job is abandoned. A project is to be considered abandoned after ninety (90) days if the contractor terminates such project without notification to the prospective owner and without just cause.

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

(7)The revocation or suspension of a certificate holder's registration with the state construction industry licensing board or of a certificate holder's certificate of competency from some other jurisdiction may be considered by the Board as just cause for suspension or revocation of the certificate of competency.

(8) Aiding and abetting a homeowner or other building owner to obtain a building permit for the purpose of avoiding his responsibilities as a contractor and without advising the homeowner of the legal responsibility he assumes on taking out a permit.

(9) Failing to complete contracts in a reasonable time.

(10) 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.

(11) No contractor shall allow his name, certificate, registration or license to be used by another contractor or by any other person, either for the purpose of obtaining permits, or for doing business or work under his licenses. Also, no contractor shall contract with, or work for any company, business or person that indicates that they are authorized to contract, but are in fact unlicensed.

(12) Proof that the licensee is guilty of fraud, deceit, incompetency, misconduct or gross negligence, in the practice of contracting.

(13) Violating any provision of this ordinance.

(14)Proof that a certificate of competency has been obtained by fraud or misrepresentation.

SECTION 9 Section 6-115 is created to read:

Section 6-115 PENALTY RANGES

The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances:

(A) Obtaining license through fraud or misrepresentation. Revocation and/or $5,000.00 fine.

(B) Convicted or found guilty of a crime relating to contracting. Use penalty for violation most closely resembling the act underlying the convictions; repeat violation, revocation and $1,000 to $5,000.00 fine.

(C) Fraud, deceit, misleading or untrue representations. First violation $1,000.00 to $3,000.00 fine and suspension or revocation; repeat violation, revocation and $5,000.00 fine.

(D) Improperly interfering with an investigation or disciplinary action. $1,000.00 to $5,000.00 fine and suspension or revocation.

(E) Violation of state or local building codes or laws. First violation $500.00 to $1,250.00; repeat violation $1250.00 to $5,000.00 fine and suspension or revocation.

(F) Assisting unlicensed persons to evade provisions of this ordinance or Chapter 489, Florida Statutes. First violation $500.00 to $2,500.00 fine; repeat violation,

$2,500.00 to 5,000.00 fine and suspension or revocation.

(G) Combining and conspiring with unlicensed person or entity to evade provisions of Chapter 489 Florida Statutes (2002), as amended. First violation, $500.00 to $2,500.00 fine; repeat violation $2,500.00 to $5,000.00 fine and suspension or revocation.

(H) Failure to qualify a firm and/or acting under a name not on license. Repeat violation $750.00 to $1,500.00 fine.

(I) Mismanagement or misconduct causing financial harm to the customer. First violation $750.00 to $1,500.00 fine and/or probation; repeat violation $1,500.00 to $5,000.00 fine and suspension or revocation.

(J) Contracting in a city or county where the contractor is not licensed. First violation $500.00 fine where the jurisdiction is not adjacent to one where contractor is properly licensed or practice outside the geographical scope of the license was willful. Repeat violation under any circumstances, $500.00 to $1,500.00 fine and suspension or revocation.

(K) Contracting beyond scope and practice allowed by license, no safety hazard. First violation $500.00 fine; repeat violation $500.00 to $2,500.00 fine and suspension or revocation.

(L) Contracting with delinquent license. Repeat violation $1,000.00 to $2,500.00 fine and suspension or revocation. Any violation, respondent must pay all fees and costs required to place license in current inactive status, in addition to fines specified herein.

(M) Contracting beyond scope of license, safety hazard is created. First violation $1,000.00 to $2,500.00 fine; repeat violation $2,500.00 to $5,000.00 fine, suspension or revocation.

(N) License number not appearing in advertisement. First violation $100.00; repeat violation, reprimand and $250.00 to $1,000.00 fine.

(0) Failure to keep business and financial records as required. First violation $100.00 to $1,000.00 fine and/or reprimand to probation; repeat violation $500.00 to $5,000.00 fine and/or probation or suspension.

(P) Contracting with an inactive license. First violation $250.00 to $500.00 fine; repeat violation $500.00 to $1,000.00 fine and suspension or revocation.

(Q) Failure to supervise construction activities. First violation $250.00 to $1,000.00 fine and/or probation; repeat violation $1,000.00 to $5,000.00 fine and suspension or revocation.

(R) Failure to register qualified business organization. Repeat violation $500.00 to $1,000.00 fine and suspension or revocation.

(S) Failure to notify residential property owner of recovery fund. First violation $100.00 to $500.00 fine; repeat violation $1,000.00.

(1) Abandonment. First violation $500.00 to $2,000.00 fine; repeat violation revocation and $5,000.00 fine.

(U) False payment statements and false statement of insurance coverage. First violation $500.00 to $3,000.00 fine and suspension or revocation; repeat violation $1,500.00 to $5,000.00 fine and suspension or revocation.

(V) Committing fraud or deceit in the practice of contracting in which no monetary harm is sustained by the customer and no physical harm to any person. First violation $500.00 to $1,000.00 fine; repeat violation $1,000.00 to $1,500.00 fine and suspension or revocation. In the event monetary or other harm is caused to the customer or physical harm to any person for the first violation $500.00 to $2,000.00 fine and suspension or revocation; repeat violation $2,000.00 to $5,000.00 fine and suspension or revocation.

(W)Failure to honor warranty. First violation $500.00 to $1,000.00 fine; repeat violation $1,000.00 to $2,000.00 fine and suspension or revocation.

(X) Any other form of misconduct or incompetency. First violation $250.00 to $1,000.00 fine and/or probation; repeat violation $1,000.00 to $5,000.00 fine, suspension or revocation.

The absence of any violation from this ordinance shall be viewed as an oversight, and shall not be construed as an indication that no penalty is to be assessed. The guideline penalties for the offense most closely resembling the admitted violation shall apply.

SECTION 10 Section 6-116 is created to read:

Section 6-116 AGGRAVATING AND MITIGATING CIRCUMSTANCES

Circumstances which may be considered for the purpose of litigation or aggravation of penalties shall include but are not limited to the following:

(1) Monetary or other damage to the contractor's customer, in any way associated with the violation, which damage the contractor has not relieved, as of the time the penalty is to be assessed.

(2) Actual job-site violations of building codes or conditions exhibiting fraud, deceit, incompetency, misconduct or gross negligence by the contractor, which have not been corrected as of the time the penalty is being assessed.

Section 11. Severability

Should any word, phrase, sentence, or section of this ordinance be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then such shall be severed from this ordinance and the remainder of the ordinance shall remain in full force and effect.

Section 12. Effective Date

This ordinance shall take effect as provided by law.

ADOPTED this 14th day of October, 2003.

BOARD OF COUNTY COMMISSIONERS
WALTON COUNTY, FLORIDA

Attest:

Martha Ingle
Clerk of Court.

By: _____
Larry D. Jones, Chair