ORDINANCE 95-19

AN ORDINANCE REPLACING AND AMENDING ORDINANCE NUMBER 95-5 PROVIDING AN AMENDMENT TO REQUIRE BOTH TESTING AND PROOF OF EXPERIENCE FOR CONTRACTORS, PROVIDING SAME FOR ELECTRICAL AND PLUMBING CONTRACTORS; AND DELETING THE TESTING AND PROOF OF EXPERIENCE FOR SPECIALTY CONTRACTORS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA:

Section 1. **Authority and Purpose.** This Ordinance is adopted pursuant to the general laws of the State of Florida to protect the health, safety, and welfare of persons and property by requiring the certification of persons engaged in or desiring to engage in the business of construction contracting.

Section 2. **Short Title.** This Ordinance shall be known as "The Walton County Contractor Competency Ordinance."

Section 3. **Definitions.** As used in this Ordinance:

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

(B) **"Contractor"** means the person who is qualified for and responsible for the entire project contracted for and means, except as exempted herein, the person who, for compensation, undertakes to, submits a bid, 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.

(a) Contractors under this ordinance are sub-divided by trade and competency and are defined in Ordinance 93-12.

(C) **"Certificate"** means a certificate of competency issued by the Florida Department of Business & Professional Regulation.

(D) **"Certification"** means the act of obtaining or holding a certificate of competency from DBPR.

(E) **"Certified Contractor"** means any contractor who possesses a certificate of competency issued by DBPR, and who shall be allowed to contract in Walton County without fulfilling the competency requirements of the Board.

(F) **"Certificate of Competency"** means a local contractor's license issued as provided herein.

(G) **"Registration"** means a certificate of competency has been registered with DBPR.

(H) **"Registered Contractor"** means any contractor who has registered with DBPR pursuant to fulfilling competency requirements.

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

Section 4. **Establishment of the Walton County Contractor Competency Board.** The Walton County Contractor Competency Board is hereby established. The Board shall consist of nine (9) members who shall be appointed by the Board of County Commissioners of Walton County as follows: A General Contractor, a Building Contractor, a Residential Contractor, a Specialty Contractor, a Mechanical Contractor, a Plumbing Contractor, an Electrical Contractor, and 2 Lay Persons. The County Attorney shall be advisor to the Board. The County Building Official or his designee shall be the ex officio Secretary to the Board.

Members of the Board shall serve terns of three (3) years. Members may not serve consecutive terms, except that any member who shall have served less than a full term may serve the next term in his own right.

Terms of members shall be staggered so that terms of three positions expire each year.

Any member of the Board may be removed from office without cause by a majority vote of the Board of County Commissioners. Vacancies existing on the Board shall be filled for the balance of the vacated term by appointment by the Board of County Commissioners of an individual meeting the same qualifications of the original appointment

Section 5. **Organization.** The Board shall meet as the

need presents itself. The Board shall elect a chairman, and such other officers as it deems necessary, from its membership, whose term shall expire at the end of the County fiscal year in which he is elected to serve. A simple majority of the members of the Board shall constitute a quorum. The Board is authorized to adopt reasonable rules and regulations not in conflict with any County ordinance or with State law. Any member of the Board may administer oaths and take testimony about all matters within the jurisdiction of the Board. The Secretary shall keep, maintain, and preserve a current list of all persons certified by the Board and perform the normal duties of a Secretary and such other duties as the Board may reasonably require.

Section 6. **Duties of the Board.** It shall be the duty of the Board to:

(A) Accept applications for Certificate of Competency as a contractor.

(B) 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.

(C) Make an annual report and provide any other information as required by Chapter 489, Florida Statutes, 1989, and subsequent amendments thereto.

(D) The Board shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and establishes probable cause to believe a violation of the ordinance has occurred. A complaint establishes probable cause if it contains ultimate facts which appear to show that a violation of this Ordinance or any of the practice acts relating to the professions regulated by the Board has occurred. The Board may investigate or continue to investigate, and the Board may take appropriate final action on a complaint even though the original complainant withdraws his complaint or otherwise indicates his desire not to cause it to be investigated or prosecuted to completion. When an investigation

of any licensee is undertaken, the Board shall notify him of the investigation and inform him of the substance of any complaint filed against him. The Board shall expeditiously investigate complaints and take appropriate action on complaints on contractors whose Certificates of Competency were issued by the Board, pursuant to Section 7 and Section 8 of this Ordinance.

(E) Investigate violations of this Ordinance, or of Chapter 489 Florida Statutes, and those Construction Codes adopted by Walton County, upon due cause shown to the Board and to take appropriate action pursuant to Section 7 and Section 8 of this Ordinance.

Section 7. **Prohibitions; Violations.**

(A) It is unlawful for any person to engage in the business or act in the capacity of a contractor in Walton County without having been duly certified or registered as required under the provisions of this Ordinance. Nothing in this Ordinance shall prohibit owners of property when acting as their own contractor and providing all material supervision themselves, from building or improving farm outbuildings or one family or two family residences on such property for the occupancy or use of such owners and not offered for sale or lease; or building or improving commercial buildings at a cost of under $25,000.00 on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of more than one such structure by the owner-builder within 1 year after completion of same is prima facie evidence that the construction was undertaken for purposes of sale or lease.

(B) It is a violation of this Ordinance for any person in Walton 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 any municipalities, cities or counties thereof.

(2) Aiding or abetting any uncertified or un-registered 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 said 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, or as later changed as provided for in this Ordinance.

(5) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when as 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 cause 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 contractor; 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 30 days after the date the job is abandoned.

(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, as 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 Florida 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) Abandonment of a construction project in which

the contractor is engaged under contract as a contractor. A project is to be considered abandoned after ninety (90) days if the contractor terminates said project without notification to the prospective owner and without just cause.

(9) 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.

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

(11) 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.

(12) 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.

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

(14) Violating any provision of this Ordinance.

(15) Upon proof that a Certificate of Competency has been obtained by fraud, or misrepresentation.

Section 8. **Disciplinary Proceedings.**

(A) The Board may revoke, suspend, or deny the issuance or renewal of the certificate of competency of a contractor, place a contractor on probation, or reprimand or censure a contractor if the contractor, or if the business entity or any general partner, officer, director, trustee, or member of a business entity for which the contractor is a qualifying agent is found guilty of any of the acts as outlined in this Ordinance.

(B) The Board shall provide a licensee written notice of intent to consider suspensions or revocation of certificate of competency, and shall allow the licensee to respond and present argument and/or evidence for consideration of the Board, in accordance with applicable concepts of due process of law set forth in the "Hearing Procedures" included in the rules and regulations of the Board.

(C) No suspension imposed by the Board shall be for a period exceeding one year in duration. The revocation of a Contractor's Certificate of Competency shall be for a period not less than one year nor more than five years, except as provided in Subsection (d) below. Any contractor whose Certificate of Competency has been revoked as provided for in this subsection, in order to gain reinstatement shall have to take the appropriate examination and meet all the same requirements as a person who is seeking to receive a Certificate of Competency for the first time.

(D) When the Board is presented with a case or conduct constituting flagrant circumstances whereby the Board is convinced that the safety of the public demands permanent revocation, then the Board may permanently revoke a contractor's certification of competency by unanimous vote at a meeting with not less than two-thirds (2/3) of the Board membership in attendance.

(E) Any person who violates any provision of this Ordinance shall be prosecuted in the same manner as provided in Florida Statutes 489.127.

Section 9. **Requirements of Certification.**

(A) Certificates of competency issued to persons by the Walton County Building Department shall be valid (unless revoked) until their natural expiration and may be renewed pursuant to this Ordinance. Persons holding such certificates shall be governed by this Ordinance.

All exemptions enumerated in Section 489.103, Florida Statutes 1989 and subsequent amendments thereto; are hereby incorporated into this Ordinance by reference and this Ordinance does not apply to the extent of those exemptions.

(B) Except as provided in subsection (a), all persons engaged in contracting in Walton County who are not certified or has not passed the Block Test shall be required to obtain certificates from the Contractor's Competency Board.

(C) **Certification by Examination.** Certification by examination shall be as follows:

(1) Proof of passing grade on Block and Associates Test in the category being licensed and:

(2) Residential Contractor...four years proven experience in the construction of residential structures.

(3) Building Contractor...four years proven experience in the construction of structure in the category being licensed.

(4) General Contractor...four years proven experience in the construction of structures in the category being licensed. One year of this proven experience must be as a supervisor.

(5) Specialty Structure Contractor..four years proven experience in the construction of specialty structures, as described in Section 3.(C)(4) of this Ordinance.

(6) Air Conditioning Contractor A, B, and C...four years of proven experience in the field that they desire to be tested in.

(7) Mechanical Contractor...four years of proven experience in the field that they desire to be tested in.

(8) Sheet Metal Contractor...four years of proven experience with nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge.

(9) Commercial, Residential, Pool/Spa Servicing Contractor...four years of proven experience in the field that they desire to be tested in.

(10) Electrical Contractor - four years experience in the trade in which they desire to be tested in.

(11) Plumbing - four years experience in the trade in which they desire to be tested in.

Section 10. Individual Certification. When an individual proposes to do business in his own name, certification shall be issued only to that individual. Certificates of competency are not transferable.

Section 11. **Business Certification.**

A Certification of competency shall only be issued to a person who is qualified, and has applied for a certificate of competency. No certificate of competency should be issued to a business entity or a group of **"INDIVIDUALS".** If a licensed qualified contractor desires to become a "qualifying agent" for a business entity, the license should be issued in the licensed contractor's name, and the name of the business entity should be included on the license to indicate the business is qualified to perform contracting.

Section 12. **Qualifying Individual.**

(A) At least one member or supervising employee of such business organization shall be certified under this Ordinance in order for the business organization to hold a current certification in the category of the business conducted for which the member or supervising employee is qualified. If any individual so qualified on behalf of such business organization ceases to be affiliated with the business organization, he shall promptly inform the Board. In addition, if such individual is the only qualified individual affiliated with the business organization, he shall promptly inform the Board. In addition, if such individual is the only qualified individual affiliated with the business organization, the business organization shall notify the Board of the termination of the individual and shall have a period of sixty (60) days from the termination of the individual's affiliation with the business organization in which to qualify another person under the provisions of the Ordinance.

The business organization may not engage in contracting until a qualified agent is employed.

(B) The individual shall also inform the Board in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization; and he or such new business organization shall supply the same information to the Board as required of new applications.

(C) If an incomplete contract exists at the time of death of a certified contractor, the contract may be completed by any person even though not certified or registered. Such person shall notify the Board within thirty (30) days after the death of the contractor of his name and address. For purposes of this subsection, an incomplete contract is one which has been awarded to, or entered into by, the contractor before his death or on which he was the low bidder and the contract is subsequently awarded to him regardless of whether any actual work has commenced under the contract before his death.

Section 13. **Certificate of Competency.**

(A) Expiration of Certificates of Competency. Certificates of Competency shall be as provided in Ordinance 93-12.

(B) Inactive Certification.

(1) A person who holds a valid certificate of competency from the Board may go on inactive status during which he shall not engage in contracting. Inactive contractors shall pay an inactive status fee established pursuant to Ordinance 93-12.

Section 14. **Certification and Renewal Fee.** Fee shall be as provided as set forth in Ordinance 93-12.

Section 15. **Appeals.** Any person aggrieved by any decision or action of the Walton County Contractor Competency Board may petition the Board of County Commissioners of Walton County for review of such decision or action by the Board. A petition setting forth the action of the Board sought to be reviewed, together with a statement of facts establishing

petitioner's grievance shall be filed with the Clerk to the Board of County Commissioners within twenty (20) days of the final action or decision for which review is sought. Upon the filing of the petition, any action taken by the Competency Board against the certification will be stayed, until the appeal is heard and decided by the Board of County Commissioners, and the contractor's ability to draw permits shall not be impaired by reason of the Competency Board's action, unless it appears that the contractor's ability to draw permits will cause irreparable harm to the public at large or unless good cause is shown establishing that the contractor's ability to draw permits should be prohibited until the appeal is heard. Within twenty (20) days of the filing of the petition, the Board of County Commissioners shall issue an order providing for a notice and time of hearing on the claim of petitioner before the Board of County Commissioners at its next regular meeting. Decisions of the Board of County Commissioners pursuant to this procedure shall be binding on the Board and the aggrieved party; provided, however, that the rights of any aggrieved person to seek legal redress in a court of competent jurisdiction shall not be infringed.

At least twenty-four hours prior to the date set for the appeal, the Competency Board shall furnish the Board of County Commissioners with a record of the Competency Board hearing in question. The Competency Board shall appoint one of its members to represent it, and the petitioner may appear in his own behalf or may be represented by an attorney.

Section 16. **Applicability.**

(A) This Ordinance shall apply to all contractors as defined in Ordinance 93-12. However, a state certified contractor shall obtain a county license by providing proof of state certification and proof of general liability and workmen compensation insurance. State certified contractors are subject to disciplinary action of the Walton County Contractor Competency Board on complaints filed with the Board for alleged violation of local and state codes and laws relevant to this Ordinance.

(B) This Ordinance does not apply to those exempted

under the provisions of Chapter 489, Florida Statutes (1989), and subsequent amendments thereto.

Section 17. **Severability.** If any section, subsection, paragraph, clause, sentence, phrase, or portion of this Ordinance is for any reason found invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as separate, distinct and independent provisions and such holding shall not affect the validity of the remaining portions hereof.

Section 18. **Repeal of Prior Ordinance.** This Ordinance shall supersede any ordinance or other applicable law adopted by the Board of County Commissioners of Walton County, Florida, that is in conflict with any provisions of this Ordinance, and said Ordinance or applicable law is hereby repealed to the extent that it is in conflict with the foregoing.

Section 19. **Effective Date.** In accordance with Section 125.66(2), Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment, and this Ordinance shall take effect upon receipt of official acknowledgment that said Ordinance has been filed.

PASSED AND ADOPTED by the Board of County Commissioners of Walton County, Florida this 23rd day of October, 1995.

BOARD OF COUNTY COMMISSIONERS
WALTON COUNTY, FLORIDA

Gordon Porter
Chairman

ATTEST: Martha Ingle
D. Clerk

(SEAL)