

ORDINANCE NO. 09-23

AN ORDINANCE OF MARION COUNTY, FLORIDA, RELATING TO THE MARION COUNTY BUILDING CODE; AMENDING CHAPTER 5.5, ARTICLE II, SUBSECTION 5.5-33 (d); PROVIDING FOR CHANGE OF OCCUPANCY; AMENDING CHAPTER 5.5, ARTICLE III OF THE MARION COUNTY CODE; PROVIDING FOR DEFINITIONS; PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR EXAMINATION AND CERTIFICATION OF CONTRACTORS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, recent changes by the State of Florida to the Florida Building Code regarding the regulation of building contractors require updating of the Marion County Building Code; and

WHEREAS, the Marion County Building Department has recommended changes to the Marion County building code to the Board of County Commissioners of Marion County, Florida; and

WHEREAS, the Board of County Commissioners desires to amend the Marion County Building Code.

BE IT ORDAINED by the Board of County Commissioners of Marion County, Florida:

SECTION 1. Chapter 5.5, Article II, Subsection 5.5-33 (d), of the Marion County Code is hereby amended to read:

(d) *(FBC 105.3.9) Change of occupancy.* When there is an event of a change of ~~the occupant~~ or occupancy of any commercial structure, a new certificate of occupancy shall be required.

SECTION 2. Chapter 5.5., Article III of the Marion County Code is hereby amended to read:

Sec. 5.5-61. Licenses generally.

Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. For purposes of this article, the definition of "Contractor" in F.S. §§ 489.105(3) and 489.505, including all subsections thereof shall apply. In the event of any question regarding particular types of work, the common practice in the industry shall prevail.

- ~~(1) Sign installation contractor~~ means a contractor whose services are limited to the installation, repairing, altering, adding to, or changing of any electrical wires, apparatus, raceways, conduit, or any part thereof on electrical signs. A sign installation contractor may connect to an existing sign circuit for the erection of signs.
- ~~(2) (1) Concrete contractor~~ means a contractor whose services are limited to the batching and mixing of aggregates, cement, and water to agreed specifications, construction of forms and framework for the casting and shaping of concrete to place miscellaneous imbedded steel, the pouring, placement and finishing of concrete. concrete work, including formwork, placement of steel reinforcement, batching, mixing, delivery, placing, finishing, and curing.
- ~~(3) (2) Masonry w/concrete contractor~~ means a contractor whose services are limited to the selection, cutting and laying of brick, ~~concrete block or any other unit of masonry products, rough cut and dressing stone, pre cast blocks, structural glass, brick, or block,~~ and the pouring and finishing of concrete where same is an integral part of the masonry work. stone, and masonry products. This includes structural glass brick or block, insulated concrete units, and the placement of reinforcing steel, including concrete forming and placing incorporated into the masonry work.
- ~~(4) (3) Carpentry contractor~~ means a contractor whose services are limited to any decorative type of wood work both inside and outside of a structure, and the installation of any wood or metal products for the framing of the inside or outside of any building. light and heavy carpentry, rough framing, trusses, sheathing, metal framing, paneling, trim, cabinetry, doors, windows, stairs, and incidental hardware.
- ~~(5) (4) Aluminum contractor~~ means a contractor whose services are limited to fabrication installation, repair, alteration, extension and erection of aluminum carports, utility rooms, screen rooms, pool enclosures, vinyl rooms, soffit and siding, and other aluminum installation. Aluminum contractors may perform the above described work for residential use only. Aluminum contractors are not authorized to perform electrical, mechanical, plumbing or roofing work (except for aluminum roofs) and shall subcontract all such work. Aluminum contractor is divided into two (2) classes as follows:
- a. *Aluminum A* is authorized to perform ~~foundation and slab~~ limited concrete work incidental to the construction being performed these structures for footings and slabs.
- b. *Aluminum B* is not authorized to perform any foundation and or slab work incidental to the construction being performed.
- ~~(6) (5) Irrigation contractor~~ means a contractor who has the knowledge ~~to install, maintain, repair, alter, or extend all piping and sprinkler heads for the irrigation of lawns, including the connection to a water pump.~~ of the installation, repair, and maintenance of irrigation systems, including excavation, trenching, boring, backfilling, grading, and those electrical control panels and apparatus that are an integral part of the irrigation system.
- ~~(7) (6) Garage door contractor~~ means a contractor who has the knowledge to install, maintain, and repair garage doors. Garage door contractors are not authorized to perform electrical, and shall subcontract such work.
- ~~(8) (7) Window installation Siding, Windows and Doors contractor~~ means a contractor who has the knowledge ~~to install, maintain, repair, and replace windows with no structural change.~~ of siding, window and door installation including vinyl, wood or

aluminum siding, soffit, fascia, gutters and all types of windows and doors. This includes the work necessary to prepare or repair the substrate to accomplish proper installation. Does not include any structural alterations.

~~(9) Marine contractor means a contractor whose services are limited to the installation and erection of docks, boat houses, seawalls and similar structures.~~

(8) Demolition contractor means a contractor who is qualified to demolish and remove structures over fifty (50) feet in height.

Sec. 5.5-62. Contractor registration.

Every contractor doing business in Marion County shall register with the Marion County Building Official and demonstrate competency in accordance with the provisions of this article.

- (1) If a contractor proposes to engage in business as a partnership, corporation, business trust, or other legal entity, the contractor shall register with the building official the name of the partnership and its partners, or the name of the corporation and its officers and directors, and furnish evidence of statutory compliance if a fictitious name is used. Such registration shall show that the contractor is legally qualified to act for the business organization in all matters connected with its contracting business; and that he will be responsible for supervision of all construction undertaken by such business organization. At least one principal member of the business organization shall be qualified as a Contractor in the trade in which the organization engages in order for the business to be registered with Marion County. A person qualifying an organization may not simultaneously qualify another organization. If the qualified member of the business ceases to be affiliated with such business organization, he shall inform the building official within thirty (30) days thereafter, and the business organization shall have a period of sixty (60) days from the date of termination within which the business organization will be permitted to continue work on all jobs under construction. Should any information on file with the building official change or become incorrect, the contractor shall promptly notify the building official. It is the intent of this ordinance that the burden be placed upon each contractor to keep the information on file with the building official complete, accurate and up-to-date. Failure to do so may result in suspension of work in progress by the building official until the correct information is provided.
- (2) The building official shall investigate all timely filed applications and make a recommendation to the license review board (LRB). The LRB shall, upon determining that the applicant meets the requirements of this ordinance, instruct the building official to issue a certificate of competency in the trade or specialty applied for. The board's findings and determinations shall be in written form. If the applicant is not present at the time of the determination, and the applicant is rejected by the board, a copy of the board's written decision shall be furnished to applicant by certified mail, return receipt requested. Any interested party may appeal the LRB's decision to the board of county commissioners by filing a written notice of appeal with the building official within ten (10) days after the applicant's receipt of the written determination. The building official shall schedule the matter on the next available agenda of the board of county

commissioners and provide notice of the date thereof to all interested parties. The board of county commissioners may affirm or reverse the decision of the LRB.

~~(3) No Marion County occupational license shall be issued or renewed, for contractor categories listed in this ordinance, except upon proof of a current, valid Marion County certificate of competency, or State of Florida Certified Contractor License. The county building official is authorized to remove any contractor from the list of registered contractors and to halt work by such contractor should the contractor fail to possess a current, valid occupational license. When a certificate holder (state certified contractor) desires to engage in contracting in Marion County, as a prerequisite therefore, he or she shall be required only to exhibit to the local building official in charge of the issuance of licenses and building permits, evidence of holding a current state certificate, and to pay the fee for the occupational license liability insurance and workers compensation coverage and building permit required of other persons.~~

(4) Specialty trades that may contract for and obtain permits are the following: ~~sign installation, aluminum "A" and "B", demolition, and irrigation contractors, garage door, siding, windows, and door installation, window installation, marine, natural gas, concrete, masonry, and carpentry.~~

(5) Permit requirements: It may be a violation of this part for any contractor to engage in contracting without being listed on the building permit duly issued for the project. Violation of this provision shall be punishable by citation.

Sec. 5.5-63. Examination and certification of contractors.

(a) All persons desiring to engage in the business of contracting and to enter into contracts to perform work as a general, building, residential building, sheet metal, solar heater installation, mechanical, roofing, electrical, plumbing, residential pool or commercial pool, underground utility and excavation air condition "A" or air condition "B", or gypsum drywall specialty ~~contractor~~, marine specialty are required to establish their competency pursuant to F.S. Ch. 489, or, by maintaining a valid certificate of competency issued by the Marion County Building Department prior to the effective date of this ordinance, or by obtaining a Marion County Certificate of Competency through reciprocity.

All persons desiring to engage in the business of and entering into contracts to perform work as an aluminum "A" and "B", ~~sign installation, concrete, masonry, carpentry, demolition, garage door, irrigation, window installation, or marine or siding, windows and door~~ contractor are required to establish their competency by meeting experience requirements as defined in F.S. Ch. 489, and by successfully passing the required examinations for such trade administered by a testing agency approved by the county. A score of seventy-five (75) percent is the minimum passing grade.

~~All persons desiring to engage in the business of and entering into contracts to perform work as a natural gas contractor, unless certified as a mechanical or plumbing contractor pursuant to F.S. Ch. 489, are required to establish their competency pursuant to F.S. Ch. 527 and successfully passing an examination administered by a testing agency approved by the County. A score of seventy five (75) percent is the minimum passing grade.~~

Applicants must pass the competency examinations, one in the technical trade, and one in business and law.

(b) Any person who desires to take the examination shall apply in writing to the building department. The applicant shall be entitled to take the examination when the LRB, upon review of the application, determines that the applicant:

- (1) Is eighteen (18) years of age; and
- (2) Is of good moral character; and
- (3) Meets all other eligibility requirements.

(c) The LRB may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

- (1) There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of the applicable category of contractor applied for; and
- (2) The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(3) When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(d) A certificate of competency in the trade tested shall be issued upon passing the competency examination and proof of insurance as specified herein. Certificates must be renewed upon payment of a renewal fee established by resolution of the board of county commissioners. Failure to renew a certificate shall automatically place the certificate in an inactive status. Each certificate shall be renewed for a period of two (2) years.

(e) The county building official is authorized to issue a letter of reciprocity advising other jurisdictions of the class(es) of competency that a contractor possesses.

(f) The applicant must show proof of insurance showing liability coverage in the minimum amount of fifty thousand dollars (\$50,000.00) per occurrence for property damage, and one hundred thousand dollars (\$100,000.00) per occurrence for personal injury. The insurance certificate must show Marion County as the certificate holder and must contain the licensee's name, a DBA if applicable and the licensee's Marion County Competency Card number or the state certified contractor number. The applicant must show proof of workers' compensation insurance or present a valid exemption form.

(g) Inactive status.

(1) A contractor may request that his certificate be placed in an inactive status by making application to the building official and by paying any applicable fees.

(2) A certificate which has been inactive for less than two (2) years may be renewed upon payment of the renewal fee, plus a late renewal fee per year of inactivity.

(3) A certificate which is delinquent or has been inactive for more than two (2) years may be reactivated upon application to the building official and payment of the applicable fee. The contractor shall demonstrate compliance with continuing education requirements as a condition of reactivating a certificate. The continuing education requirements for reactivating a certificate shall be seven (7) classroom hours for each year the certificate was inactive and in no event shall they exceed seventy (70) classroom hours for all years in which the certificate was inactive. In lieu of the classroom hours a

certificate may be reactivated upon submittal of documentation to the building official of employment in the particular trade.

Sec. 5.5-64. Hiring unregistered contractors.

No contractor shall hire, use, or otherwise employ any contractor required to be registered hereunder who is not registered in accordance with this article. Violation of this section may result in the building official stopping work on the project and may subject the violator to suspension or revocation proceedings before the license review board.

Sec. 5.5-65. License review board.

(a) *Creation.*

- (1) There is hereby created the Marion County License Review Board (the LRB).
- (2) The current members of the existing Marion County LRB created by Ordinance No. 99-6 shall constitute the members of the LRB created hereby, and shall serve the remainder of their terms. Any previous action of the LRB shall remain in full force and effect, it being the intent of the board of county commissioners to continue the existing LRB without interruption.

(b) *Composition.*

- (1) The LRB shall be composed of eleven (11) members and three (3) alternates. Whenever possible, the membership shall consist of at least one general contractor and one contractor from each of the following areas, whenever possible: building, plumbing, electrical, mechanical, aluminum, air conditioning, and roofing. At least three (3) of the members shall be consumer representatives as defined in F.S. § 489.131.
- (2) The Marion County Building Official or his designee shall be a permanent ex-officio member of the LRB and shall serve as secretary.
- (3) A member of the county attorney's office shall serve as attorney to the LRB.
- (4) All members of the LRB shall be appointed by and serve at the pleasure of the board of county commissioners. Members shall serve four-year terms.
- (5) The LRB may adopt such procedures as are necessary for the proper performance of its duties.

(c) *Procedures.*

(1) *Investigative powers.*

- a. Upon a sworn complaint of an aggrieved party or the Marion County Building Official, the LRB is empowered to investigate and conduct hearings upon charges relating to the contractor's competency, performance, negligence, conduct of work in violation of codes, misrepresentation, dishonest trade practices, allowing the contractor's certificate to be used by any other person, firm or corporation, or any other matter relating to the contractor's fitness and competency.
- b. The LRB shall give notice to any contractor charged under this article by certified mail at least ten (10) days prior to the hearing at the contractor's last known address.
- c. The LRB shall hear testimony under oath, however the rules of evidence shall not be strictly applied. The LRB shall issue findings of fact and conclusions of law within a reasonable time after conclusion of the hearing.

d. The LRB may suspend or revoke the contractors certificate of competency, issue a letter of reprimand, authorize the Marion County Building Official to withhold the issuance of any building permits on the contractors license, require restitution, impose a fine not to exceed five thousand dollars (\$5,000.00) or any combination thereof. In determining any penalty or discipline the LRB shall consider the following factors:

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

(2) *Interpretation of code.*

a. Any person aggrieved by the decision of the Marion County Building Official regarding an interpretation of the Florida Building Code, or this ordinance which does not involve alternate materials or methods, has the right to file an appeal to the LRB. The appeal must be in writing and be filed within thirty (30) days after the building official's written decision.

b. The LRB shall schedule a hearing as soon as practicable after receipt of the appeal.

c. The hearing before the LRB shall be informal and the rules of evidence shall not be strictly applied. The LRB shall render a written decision setting forth its findings and conclusions.

(3) *Rehearings of the LRB.*

a. Either party may petition to rehear a decision of the LRB relating to contractor discipline. Rehearings of decisions interpreting the Florida Building Code or this article are not permitted.

1. The petition must be received by the Marion County Building Department on a form provided by said department by 5:00 p.m. on the tenth calendar day after the date of the decision.

2. The petition must specify the grounds for the rehearing.

3. The license review board shall decide whether or not to rehear the case.

4. The LRB shall notice the opposing party by certified mail at least ten (10) days prior to the date of the rehearing at the opposing party's last known address.

b. The rehearing before the LRB shall be informal and the rules of evidence shall not be strictly applied. The LRB shall render a written decision setting forth its findings and conclusions.

(4) *Reinstatement of a contractor's certificate of competency or contractor's ability to be issued building permits.*

a. A contractor may petition the LRB to reinstate his certificate of competency or his ability to be issued building permits one year after the date of the LRB's original decision. The petition must specify the grounds for the reinstatement.

b. The reinstatement hearing before the LRB shall be informal and the rules of evidence shall not be strictly applied. The LRB shall render a written decision setting forth its findings and conclusions.

c. A contractor is limited to one petition for a reinstatement hearing per year.

(5) *Appeals.* LRB decisions may be appealed, by writ of certiorari, to the Circuit Court in and for Marion County, within thirty (30) days after the date of the decision. Only decisions of the LRB relating to contractor discipline shall be stayed pending the conclusion of any appeal.

(6) *Compliance review board.* When authorized by interlocal agreement, the license review board may constitute the compliance review board required by F.S. § 553.73.

Sec. 5.5-66. Citations and violations.

(a) *Authorization.* Marion County is hereby authorized to enforce codes and ordinances pursuant to F.S. § 489.127.

(b) *Violations.* It shall be unlawful for any person to:

(1) Falsely hold himself or herself or a business organization out as a licensee, certificate holder or registrant.

(2) Falsely impersonate a certificate holder or registrant.

(3) Present as his or her own the certificate, registration, or certificate of authority of another.

(4) Knowingly give false or forged evidence to the board or a member thereof.

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

(6) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority.

(7) Operate a business organization engaged in contracting after sixty (60) days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in F.S. § 489.1195.

(8) Commence or perform work for which a building permit is required pursuant to F.S. Ch. 553, part VII, without such building permit being in effect.

(9) Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

(c) *Enforcement.*

(1) The county administrator may designate one or more code enforcement officers as defined in F.S. Ch. 162 to enforce the provisions of F.S. §§ 489.127(1) and 489.132(1).

(2) A code enforcement officer may issue a citation for any violation of F.S. § 489.127(1) or F.S. § 489.132(1) whenever, based upon personal investigation, the code enforcement officer has reasonable and probable grounds to believe that such a violation has occurred.

a. A citation issued by a code enforcement officer shall be in a form prescribed by Marion County and shall state:

1. The time and date of issuance.

2. The name and address of the person to whom the citation is issued.

3. The time and date of the violation.

4. A brief description of the violation and the facts constituting reasonable cause.

5. The name of the code enforcement officer.

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.
- (3) The act for which the citation is issued shall be ceased 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 (10) days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing to appeal the issuance of the citation by the code enforcement officer.
 - a. Hearings shall be held before an enforcement board or licensing board or designated special master as established by F.S. § 162.03(2), and such hearings shall be conducted pursuant to the requirements of F.S. §§ 162.07 and 162.08.
 - b. Failure of a violator to appeal the decision of the code enforcement officer within the time period set forth in this section 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.
 - c. If the person issued the citation, or his designated representative, shows that the citation is invalid or that the violation has been corrected prior to appearing before the enforcement board or licensing board or designated special master, the enforcement board or licensing board or designated special master shall dismiss the citation unless the violation is irreparable or irreversible.
 1. Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this subsection.
 - d. A person cited for a violation pursuant to this subsection is deemed to be charged with a non-criminal infraction.
 - e. If the enforcement or licensing board finds that a violation exists, such board may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than five hundred dollars (\$500.00) per day for each violation. In determining the amount of the penalty, the enforcement board shall consider the following factors:
 1. The gravity of the violation.
 2. Any actions taken by the violator to correct the violation.
 3. Any previous violations committed by the violator.
 - f. Upon written notification by the code enforcement officer that a violator had not contested the citation or paid the civil penalty within the time frame allowed on the citation, or if a violation has not been corrected within the time frame set forth on the notice of violation, the enforcement or licensing board shall enter an order ordering the violator to pay the civil penalty set forth on the citation or notice of violation, and a hearing shall not be necessary for the issuance of such order.
 - g. A certified copy of an order imposing a civil penalty against an uncertified contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including a levy against personal property; however, such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this part shall continue to accrue until the violator comes into compliance or

until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three (3) months from the filing of any such lien which remains unpaid, the board of county commissioners may authorize the county attorney to foreclose on the lien. No lien created pursuant to the provision of this part may be foreclosed on real property which is a homestead under section 4, Article X of the State Constitution.

h. This subsection does not authorize or permit a code enforcement officer to perform any function or duty of a law enforcement officer other than a function or duty that is authorized in this subsection.

i. An aggrieved party, including Marion County, may appeal a final administrative order of an enforcement board 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 before the enforcement or licensing board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

j. All notices required by this subsection shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer or code enforcement officer; by leaving the notice at the violator's usual place of residence with some person of his family above fifteen (15) years of age and informing such person of the contents of the notice; or by including a hearing date within the citation.

k. Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer commits a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or F.S. § 775.083.

l. Nothing contained herein shall prohibit Marion County from enforcing its codes or ordinances by any other means.

SECTION 3. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Marion County that if any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 4. REPEAL. All ordinances, or parts of ordinances in conflict with this ordinance are to the extent of such conflict hereby repealed.

SECTION 5. INCLUSION IN CODE. It is the intention of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Marion County, Florida; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article" or other appropriate designation.

SECTION 6. EFFECTIVE DATE. A certified copy of this Ordinance shall be filed with the Department of State by the Clerk within ten days after enactment by the Board, and shall take effect upon receipt of official acknowledgment of filing as provided in Section 125.66(2), Florida Statutes.

DULY ADOPTED this 4th day of August, 2009.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA



JAMES T. PAYTON, JR., CHAIRMAN

ATTEST:


DAVID R. ELLSPERMANN, CLERK

RECEIVED NOTICE FROM SECRETARY
OF STATE ON AUGUST 17, 2009 THAT
ORDINANCE WAS FILED ON AUGUST 11,
2009.