BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 21, 2006 Division: County Attorney

Bulk Item: Yes X No ____ Department: County Attorney

AGENDA ITEM WORDING:
Approval to advertise a public hearing for an ordinance amending Sec. 6-68 of the Monroe County Code relating to unlicensed contractors.

ITEM BACKGROUND:
Upon staff review, several sections of Section 6-68 were found to be inconsistent with Florida Statute 489, which governs the regulation of construction contracting. As a result, Section 6-68 was amended to conform with chapter 489.

PREVIOUS RELEVANT BOCC ACTION:
Last amended by *Ordinance 8-1998.*

CONTRACT/AGREEMENT CHANGES:
NA

STAFF RECOMMENDATIONS:
Approval to advertise.

TOTAL COST: N/A **BUDGETED:** Yes ____ No ___

COST TO COUNTY: _____ **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes ___ No ___ **AMOUNT PER MONTH**____ **Year** ____

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL: 6/6/06
SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included ___ To Follow_____ Not Required_____

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 2/27/01

ORDINDANCE NO._____-2006

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA AMENDING CHAPTER 6 OF THE MONROE COUNTY CODE ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING SEC. 6-68 PROVIDING FOR ADMINSTRATIVE FINES NOT LESS THAN THE AMOUNT SET FORTH IN THE CITATION BUT NOT MORE THAN $1,000 PER DAY FOR UNLICENSED CONTRACTORS AND $5,000 PER DAY FOR LICENSED CONTRACTORS; PROVIDING FOR THE IMPOSITION OF RESTITUTION; PROVIDING FOR ADMINISTRATIVE FEES FOR ALL COSTS INCURRED BY THE MONROE COUNTY BUILDING DEPARTMENT AND THE COUNTY ATTORNEYS OFFICE IN INVESTIGATING AND RESOLVING THE COMPLAINT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners finds it necessary to regulate building construction practices to further the public health, safety, and welfare of the citizens of Monroe County; and

WHEREAS, Florida Statutes Sec. 489.127 authorizes local governments to enforce codes and ordinances regulating contractors; and

WHEREAS, Florida Statutes 489.127 authorizes local governments to establish a schedule of penalties;

NOW, THERFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. Section 6-68 of the Monroe County Code shall be amended as follow*:

Sec. 6-68. Disciplinary proceedings.
(a) The secretary of the examining board may, upon his own motion, or shall, upon a sworn complaint in writing of any person, investigate or cause to be investigated by a special investigator appointed by the board, the charges against any unlicensed contractor or any licensed contractor qualified hereunder, and, upon finding probable cause to believe that an alleged violation did occur, issue subpoenas to the contractor and any witnesses to appear before the examining board and answer charges. If a qualified contractor fails to keep in force the insurance policy required in section 6-61 of this article, the secretary of the board shall immediately suspend the local certificate of competency and report the matter to the examining board for revocation action. All disciplinary actions under this article shall be initiated within four (4) years of the occurrence of the event complained of or be forever barred.

(b) The secretary shall send, by registered mail, a subpoena to the ~~qualified~~ contractor at his last known address, as shown by the board's records, setting out the name of the complainant, the time of commission of the alleged offense, and the section of this article alleged to be violated, and notifying the ~~qualified~~ contractor to appear before the Board to answer the charges, or waive his right to appear before the Board, at a time and place fixed, not sooner than twenty (20) days from the mailing of the registered letter and, in the case of a licensed contractor, to show cause why his certificate of competency should not be suspended or revoked or why his permit pulling privileges should not be suspended or revoked.

(c) The administrative hearing provided for above shall be open to the public.

(1) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript. For purposes of administrative hearings only the building official shall present the case before the contractors examining board, and the building official shall designate an employee of his department to act as secretary for the board during the hearing and the subsequent retention of exhibits. The county attorney, or designee, shall provide legal counsel to the contractors examining board. All testimony shall be under oath.

(2) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the board finds it competent and reliable, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(3) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness, regardless of which party first called him to testify; and to rebut the evidence against him.

(d) A decision shall be made by the examining board by a majority of the ~~entire~~ board within five (5) days after the close of the hearing and delivered to the contractor. For licensed contractors, the decision shall be one or more of the following:

(1) Not guilty.

(2) Finding of violation; suspension of certificate of competency, stating time.

(3) Finding of violation; revocation of certificate of competency, naming effective date.

(4) Finding of violation; a letter of reprimand stating the nature of the offense and any action required for correction. A copy of the letter shall also be retained by the building department in an active file pertaining to the party for a period of three (3) years. When three (3) years have elapsed with no further disciplinary actions, a letter of reprimand shall be removed from a contractor's active file and placed in an inactive file.

(5) Finding of violation; Imposition of an administrative fine ~~up to but not to exceed five hundred dollars ($500.00) for a first violation or~~ not less than the amount set forth in the citation but not more than Five Thousand Dollars ($5000.00) for ~~a repeat violation on~~ each of the charges upon which a certificate holder has been found in violation by the board. This penalty may be imposed separately or in addition to the penalties of suspension, revocation and reprimand authorized in paragraphs (2), (3) and (4) above.

The payment of such fines shall be made to the Monroe County Building Department within a time specified by the board, but no less than seven (7) days and no more than thirty (30) days from the date of imposition. If a certificate holder fails to pay the fine as assessed by the board, the certificate or such person or firm shall be administratively suspended until the fine has been paid; and the certificate holder, the Department of Professional Regulation for the State of Florida and all municipalities within the county shall be so notified; and a certified copy of the order issuing the fine shall be filed in the public records of Monroe County, thereby creating a lien.

(6) Finding of violation; imposition of restitution.

(~~6~~) (7) Imposition of an administrative ~~fine~~ fee for all costs incurred by the Monroe County Building Department and the county attorney's office in investigating and resolving the complaint or complaints which gave rise to the disciplinary proceedings, which administrative fee shall be ten (10) percent of the administrative fine or one hundred dollars ($100.00), whichever is greater.

(e) A decision shall be made by the examining board by a majority of the board within five (5) days after the close of the hearing and delivered to the contractor. For unlicensed contractors, the decision shall be one or more of the following:

(1) Not guilty.

(2) Finding of violation; imposition of a civil penalty not less than the amount set forth in the citation but not more than One Thousand Dollars ($1000.00) for each of the charges upon which a certificate holder has been found in violation by the board. The payment of such fines shall be made to the Monroe County Building Department within a time specified by the board, but no less than seven (7) days and no more than thirty (30) days from the date of imposition. If the violator fails to pay the fine as assessed by the board, the Department of Professional Regulation for the State of Florida and all municipalities within the county shall be so notified; and a certified copy of the order issuing the fine shall be filed in the public records of Monroe County, thereby creating a lien.

(3) Imposition of an administrative fee for all costs incurred by the Monroe County Building Department and the county attorney's office in investigating and resolving the complaint or complaints which gave rise to the disciplinary proceedings, which administrative fee shall be ten (10) percent of civil penalty or one hundred dollars ($100.00), whichever is greater.

(f) Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this section.

(~~e~~) (g) An appeal from the decision of the board may be made by the contractor involved, to the circuit court of the sixteenth judicial circuit in and for Monroe County, Florida, within thirty (30) days, but not thereafter.

(~~f~~) (h) Imposition of penalties pursuant to this section shall be based upon consideration of guidelines duly adopted by the contractor's examining board, or upon guidelines established by the state construction industry licensing board.

(Ord. No. 16-1975, § 7; Ord. No. 14-1990, § 1; Ord. No. 12-1992, § 2; Ord. No. 5-1993, § 1; Ord. No. 15-1993, §§ 1, 2; Ord. No. 32-1993, § 2; Ord. No. 33-1993, § 1; Ord. No. 20-1996, § 3; Ord. No. 56-1996, § 1; Ord. No. 8-1998, § 1)

and no more than five thousand dollars ($5,000.00) for each offense. The court shall award to the board all costs as a result of this violation, including investigation costs, filing fees, court costs, and reasonable attorney's fees.

The provisions of this section shall only apply to the provisions of the code administered by the board and the building department, and this section constitutes the exclusive statement of the board's authority and jurisdiction.

(Ord. No. 16-1975, § 6(H); Ord. No. 21-1986, § 42; Ord. No. 46-1988, § 3; Ord. No. 23-1991, § 1; Ord. No. 32-1993, § 1; Ord. No. 20-1996, § 5; Ord. No. 58-1997, §§ 1, 2; Ord. No. 8-1998, § 2; Ord. No. 25-1998, § 5; Ord. No. 23-1999, § 1; Ord. No. 023-2003, §§ 1--3)

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the _____ day of _____, 2006

Mayor Charles "Sonny" McCoy ____
Mayor Pro Tem Dixie M. Spehar ____
Commissioner George Neugent ____
Commissioner Glenn Patton ____
Commissioner David Rice ____

Attest: DANNY L. KOLHAGE, Clerk

By:_____
Deputy Clerk

Dated_____

BOARD OF COUNTY COMISSIONERS
OF MONROE COUNTY

By:_____
Mayor Charles "Sonny" McCoy