

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Recommendation to Adopt the Proposed Ordinance Revising the Pinellas
County Code, Sections 22-14 and 22-15, Relating to the Provisions
of the Construction Licensing Board

DATE: December 14, 2010

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS ADOPT THE PROPOSED ORDINANCE REVISING THE PINELLAS COUNTY CODE, SECTION 22-14 AND SECTION 22-15 RELATING TO THE PROVISIONS OF THE CONSTRUCTION LICENSING BOARD.

DISCUSSION: The proposed ordinance intends to eliminate existing loopholes in the construction contracting advertising requirements and to provide greater authority to investigators for the Pinellas County Construction Licensing Board (PCCLB) for the purpose of enforcing the Pinellas County Code against unlicensed contractors.

Currently, PCCLB investigators are authorized to write citations of Pinellas County Code relating to unlicensed contracting. Under state law, the investigators are also able to begin an administrative action against licensed contractors who have advertising signs on business vehicles without including their contracting license number. Section 122-1, Pinellas County Code, requires that commercial vehicles in residential areas include signage. The PCCLB investigators currently have no authority to enforce this code section. By amending Section 22-11(b), authorizing the investigators to write citations for failure to include vehicle signage on commercial vehicles in residential areas, investigators will be able to further combat unlicensed construction contractors who have no vehicle signage, and therefore are not required to display their construction contracting license number.

Many unlicensed contractors have been avoiding detection from investigators by advertising without a business name. The advertisements typically include a telephone number and may also include a fabricated license number without identifying information. The telephone number may be a temporary cellular phone that requires no personal identification upon purchase and thus the owner cannot be identified. The revised Section 22-14(7) would require listing the business name in any construction contracting advertisement.

The revision to Section 22-14(8) is intended to clarify the law as it is currently being enforced. This revision specifically holds any licensed contractor responsible for hiring an unlicensed subcontractor. Currently, there is a prohibition against licensed contractors "aiding and abetting" unlicensed contractors. This revision keeps with the spirit of the current law but makes hiring an unlicensed subcontractor a specific prohibition.

State law allows investigators to audit construction companies use the power of subpoena to obtain telephone records. Although the PCCLB already has the power of subpoena, the change to Section 22-15 would make that authorization plain and not subject to debate.

A copy of the proposed ordinance, as well as a redlined version noting the changes, is attached for your reference.

JLB:JCE

Attachments

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ORDINANCE 10-____

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING THE PINELLAS COUNTY CODE; REVISING SECTION 22-14 RELATING TO CONSTRUCTION CONTRACTOR ADVERTISING AND SUBCONTRACTING; REVISING SECTION 22-15 RELATING TO POWERS OF THE EXECUTIVE DIRECTOR AND INVESTIGATORS OF THE CONSTRUCTION LICENSING BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AMENDMENTS THAT MAY ARISE AT PUBLIC HEARING.

WHEREAS, the Pinellas County Construction Licensing Board is charged with enforcing Chapter 22, Article 1, Pinellas County Code, entitled "Countywide Building Construction Industry Regulations and Construction Codes;" and

WHEREAS, section 22-14, Pinellas County Code, has not satisfactorily enumerated the scope of prohibited activities sufficient to protect the public from unlicensed contractors; and

WHEREAS, the Pinellas County Construction Licensing Board is authorized to enforce section 489.119(5)(c), Florida Statutes, requiring that a construction contractor's registration or certification number be displayed on a vehicle bearing the name of a contractor or any text or artwork leading a reasonable person to believe the vehicle is used for contracting; and

WHEREAS, section 122-1, Pinellas County Code, requires that commercial vehicles operating within Pinellas County exhibit appropriate identifying information; and

WHEREAS, the Pinellas County Construction Licensing Board has not been clearly identified as authorized to enforce the provisions of section 122-1, Pinellas County Code, in conjunction with its authority under section 489.119(5)(c), Florida Statutes; and

WHEREAS, the Pinellas County Construction Licensing Board's investigators have identified a method by which unlicensed contractors advertise by listing a phone number with a valid construction competency license number without authority to use said license number; and

WHEREAS, by requiring additional information in construction contracting advertisements, the Pinellas County Construction Licensing Board investigators may more easily identify those unlicensed persons or entities attempting to circumvent the licensing requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, in a meeting duly assembled this _____ day of _____, 2010, as follows:

SECTION 1. Section 22-11 of the Pinellas County Code is hereby amended to read as follows:

Sec. 22-11. Enforcement.

(a) The executive director and investigators of the Pinellas County Construction Licensing Board (PCCLB) are hereby charged with the enforcement responsibilities of this article.

(b) The PCCLB executive director and investigators are hereby authorized to enforce against any violation of F.S. § 489.127(1) or F.S. § 489.531(1), section 122-1 of this Code, and of this article. The investigator may issue a citation or notice to appear for any such violation when, based upon personal investigation, the investigator has reasonable and probable grounds to believe such violation has occurred.

(c) PCCLB investigators shall not have the power of physical arrest.

(d) Law enforcement officers are additionally authorized to enforce the provisions of this article.

(e) Municipalities within which this article is effective may, by interlocal agreement with the PCCLB and by ordinance, resolution, policy, or administrative order, authorize individual(s) to enforce the provisions of this article.

SECTION 2. Section 22-14 of the Pinellas County Code is hereby amended to read as follows:

Sec. 22-14. Acts prohibited.

It shall be a violation of this article for any person or entity to:

(1) Engage in the business of contracting in the construction trades regulated pursuant to F.S. ch. 489, pts. I and II (F.S. §§ 489.101 et seq. and 489.501 et seq.); Laws of Fla. ch. 75-489, as amended by Laws of Fla. chs. 78-594, 81-466, 85-490, 86-444, 89-504, 93-287, 2002-350, and 2003-319 (compiled in ch. 26, art. III, div. 2 of this Code) and as may be amended by special act hereafter; and any rules and regulations promulgated under F.S. ch. 489 and under Laws of Fla. ch. 75-489, as amended, without being in compliance with all of said statutes, said Laws of Florida, and any rules and regulations promulgated thereunder.

(2) Intentionally furnish any materially false, misleading, or misrepresentative information on an application for permit or license.

(3) Hold oneself out as being certified pursuant to said statute or said Laws of Florida when not so certified.

(4) Hold oneself out as being licensed or registered pursuant to said statute or said Laws of Florida when not so licensed or registered.

(5) Engage in any activity requiring a permit without having obtained the appropriate permits under the applicable edition or version of the Florida Building Code, the Standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58), the National Fire Protection Association Life Safety Code 101, or any other applicable construction related code.

(6) To advertise to the public in any publication, transmission, business card, pamphlet, telephone directory, or otherwise that he is a contractor, is qualified to engage in business as a contractor, or that he will perform work in a trade regulated by said statute or said Laws of Florida without being duly qualified to so act.

(7) Submit an advertisement to any publisher for placement in any publication which is primarily circulated, displayed, distributed or marketed within the county, which advertisement identifies a contractor offering services regulated by said statute or said Laws of Florida as they may be amended from time to time, unless the advertisement included the name of the contractor or business and the certification number issued by the state or by the county to that contractor, pursuant to section 26-81 as it has been or may be amended.

(8) Subcontract any work to any person, firm or business organization not holding an active certificate of competency for work involved in the subcontract.

SECTION 3. Section 22-15 of the Pinellas County Code is hereby amended to read as follows:

Sec. 22-15. Limitation on powers of investigators, director; inspections; subpoenas; telephone records.

(a) Nothing contained in this article shall be construed to authorize or permit the investigators or the construction licensing board executive director to perform any function or duty of a law enforcement officer other than as specified in this article.

(b) The construction licensing board executive director and investigators are authorized to inspect and audit the records of construction firms to determine compliance with this article, Laws of Fla. ch. 75-489, as amended, or F.S. ch. 489, based upon reasonable suspicion that a violation of any law or ordinance has occurred.

(c) The construction licensing board executive director and investigators are authorized to subpoena records, surveys, drawings, contracts or other documentary materials regarding activities regulated by this article, Laws of Fla. ch. 75-489, as amended, or F.S. ch. 489, based upon reasonable suspicion that a violation of any law or ordinance has occurred.

(d) The construction licensing board executive director and investigators are authorized to subpoena telephone company records regarding telephone numbers used in advertisements or listings regarding regulated activity pursuant to this article, Laws of Fla. ch. 75-489, as amended, or F.S. ch. 489, where address of the telephone number or name and address of the subscriber is unavailable to the investigator. The information obtained via subpoena shall be limited to the name of the person or entity who has obtained phone service, the mailing address of the person or entity who has obtained phone service, and the address where the phone line in question is located.

SECTION 4. Severability

If any section, sentence, clause, phrase, or word of this Ordinance is, for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance, and it shall be construed to be the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein.

SECTION 4. Effective Date

Pursuant to Section 125.66, 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. This Ordinance shall become effective when the acknowledgment is received from the Secretary of State that the Ordinance has been duly filed.

SECTION 5. Inclusion Clause

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

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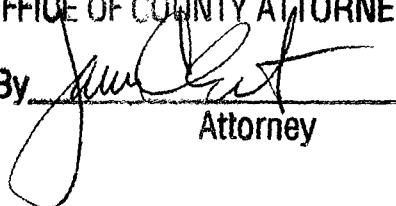
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APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By 
Attorney