



1015 Cultural Park Blvd.
Cape Coral, FL

CAPE CORAL CONSTRUCTION REGULATION BOARD

January 26, 2023	6:00 PM	Council Chambers
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1. Meeting Called to Order

A. Chair Costa

2. Roll Call

A. Blot, Costa, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Sinclair, and Zuk

3. Review of License Applications as presented for approval or rejection

4. Approval of Minutes

A. Meeting Minutes - November 17, 2022

5. Comments from the Public

6. New Business

A. Discussion on Ordinance 10-23

7. Old Business

8. Comments from Assistant City Attorney

9. Comments from Attorney for the Board

10. Date and Time of Next Meeting

A. Should Ordinance 10-23 be approved by City Council on February 1, 2023 the existing meeting dates will be canceled.

11. Adjournment

In accordance with the Americans with Disabilities Act and Florida Statutes 286.26,

persons needing a special accommodation to participate in this proceeding should contact the Office of the City Clerk whose office is located at City Hall, 1015 Cultural Park Boulevard, Florida; telephone number is 1-239-574-0411, at least forty-eight (48) hours prior to the meeting for assistance. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8700 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

Item Number: 4.A.
Meeting Date: 1/26/2023
Item Type: Approval of Minutes

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Meeting Minutes - November 17, 2022

SUMMARY:

Meeting minutes for review and approval.

ADDITIONAL INFORMATION:

Betty Castillo
Assistant City Clerk
1-239-242-3243

ATTACHMENTS:

Description	Type
1. Meeting Minutes - November 17, 2022	Backup Material

**MINUTES OF THE CAPE CORAL
CONSTRUCTION REGULATION BOARD REGULAR MEETING**

THURSDAY, NOVEMBER 17, 2022

Council Chambers

6:00 p.m.

Meeting called to order by Vice Chair Greco at 6:04 p.m.

ROLL CALL

Roll Call: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair were present. Chair Costa and Board Member Zuk were not present.

Also Present: Hal Eskin, Attorney for the Board
John Naclerio, Assistant City Attorney
Brian Kenney, Code Compliance Supervisor
Carol Rall, Customer Service Supervisor
Diane Oliver, Customer Service Representative

Board Attendance Review

Vice Chair Greco asked for a motion to excuse Chair Costa and Member Zuk from the November 17, 2022, meeting.

Board Member DeCere moved, seconded by Board Member Rinko, to excuse both Costa and Zuk from the November 17, 2022 meeting.

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted "aye." Nine "ayes." Motion carried 9-0.

**REVIEW OF LICENSE APPLICATIONS AS PRESENTED
FOR APPROVAL OR REJECTION**

Vice Chair Greco performed the roll call of all the applicants and stated that the Board will identify which applicants would be further questioned.

APPLICANT	COMPANY NAME	CATEGORY
Robert Meeks	Meeks Drywall LLC	Plastering Contractor

Board Member Prince moved, seconded by Board Member DeCere, to approve the license for Robert Meeks (Meeks Drywall LLC).

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted "aye." Nine "ayes." Motion carried 9-0.

Vice Chair Greco informed the above-mentioned applicant that his license was approved and instructed him to obtain his license on the following day.

Board Member Blot stated he had questions for the following applicant, and he was interviewed as follows:

APPLICANT	COMPANY NAME	CATEGORY
Alvin Herzberg	Owl Aluminum Inc	Aluminum Structural

Applicant Alvin Herzberg was present and sworn in by Assistant City Attorney Naclerio.

Discussion held regarding the missing information under Section 7 of the application.

Board Member DeCere moved, seconded by Board Member Blot, to conditionally approve the license for Alvin Herzberg (Owl Aluminum Inc.) pending the completion of Section 7 in the application within 30 days, which would make his license permanent.

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted “aye.” Nine “ayes.” Motion carried 9-0.

Vice Chair Greco informed the above-mentioned applicant that his license was approved on a probationary basis until Section 7 is completed and instructed him to meet with Staff for further information.

OLD BUSINESS

Probationary Specialty Contractor's License Review:
Thorsten Schulz – Sun Solutions Florida

At the January 27, 2022 CRB Meeting, applicant was approved for a probationary license, to return and appear before the Board in six months, to present a new credit report, both business and personal.

Applicant Representative was present and sworn in by Attorney for the Board Eskin.

Discussion held regarding:

- Applicant traveling to US
- Status of credit report
- Immigration Process
- 30-60 days and Board follow-up with applicant
- Options: (1) approve with credit “as-is”; (2) extend probationary license until next meeting (3) withdrawal of motion

Board Member Rinko moved, seconded by Board Member Sinclair, to extend the probationary period another three months for Thorsten Schulz – Sun Solutions Florida.

Discussion held regarding:

- Time of extension
- Obtaining work visa
- Ready to start working towards building credit history
- Three months would not change credit history
- Three months not long enough to fulfill projects
- Immigration process
- Approve without contingencies

Motion withdrawn, second agreed.

Board Member Dungan moved, seconded by Board Member Rinko, to approve the license for Thorsten Schulz – Sun Solutions Florida with no further probationary measures.

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted “aye.” Nine “ayes.” Motion carried 9-0.

Vice Chair Greco informed the above-mentioned applicant's representative that the license was approved and instructed his representative to obtain the license on the following day.

APPROVAL OF MINUTES

Meeting Minutes – May 26, 2022

Board Member Prince moved, seconded by Board Member Dungan, to approve the May 26, 2022 regular meeting minutes, as presented. Voice Poll: All “ayes.” Motion Carried.

COMMENTS FROM THE PUBLIC

James Van Gundy appeared as he has a fencing company in Sarasota and has a national customer that has awarded him for 200+ homes which fall under the Cape Coral area. He explained the process of the application submission with Cape Coral Licensing Department. He stated that he did not have the required test results and requested obtaining his license.

Board Member Sinclair inquired if any other counties required the test.

Mr. Van Gundy stated that there were some counties that required the testing.

Assistant City Attorney Naclerio stated that if the test was conducted in the past five (5) years, the results may be reciprocal if the results were 75%. He suggested getting the test completed by a third party.

Discussion held regarding:

- Third Party testing – Gainesville Independent Testing Company
- Upcoming State licensing changes
- Suggestion to meet with Staff and review available options
- Presenting the reciprocal test results for consideration
- City of Cape Coral requires an examination.

Attorney for the Board Eskin suggested that the applicant obtain his prior test results and have Licensing review or to contact an independent testing company.

NEW BUSINESS

Contractors and Construction Regulation

Code Compliance Supervisor Kenney presented the following displayed slides:

- Phase Out of Occupational Licenses and Construction Licensing Board (presented at the COW 9/14/22)
- Executive Summary
- Background
- Local Contractor Licenses
- Phase Out Plan – Construction Licensing Board

Discussion held regarding:

- Prior applicants
- Anything that is not regulated by the State would not need to obtain a City license
- Most disciplinary actions have been with the State approved licenses
- Permit requirements should remain
- Specialty Licensing requirements changing
- Insurance, Liability, registering for Business License (BTR)
- Only license that the City would issue are the ones issued by the State
- Specialty Licenses would not be required
- Who would be watching over contractors?
- Previously Board could discipline non-compliant State contractors
- Board does not have the ability anymore to discipline State or Specialty Licenses
- Unlicensed Contractors would be disciplined by the City
- If license required by the State, then the State would discipline the contractor
- State decision and wanting uniformity
- Council would provide direction on how the Board would move forward
- Possible scenarios and other legislative processes

Discussion on Authority to Cancel Meetings

Assistant City Clerk Castillo explained the Suggested Action #1: Give permission in an official vote to the Chair to cancel meetings in the following situations:

1. No quorum established in writing
2. No business to transact by the day before the regular meeting day

Discussion held regarding:

- Special Magistrate Code Compliance Violations
- Disciplinary action might be over for the Board

Board Member Dungan moved, seconded by Board Member Prince, to give permission in an official vote to the Chair to cancel meetings in the following situations: 1) No quorum established in writing and 2) No business to transact by the day before the regular meeting day.

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted "aye." Nine "ayes." Motion carried 9-0.

Approval of 2023 Meetings Schedule

Assistant City Clerk Castillo explained the item to the Board and discussed the following:

- Proposed 2023 Meetings Schedule
- 3 meetings listed: January 26, March 23, May 25*
*Final Meeting pursuant to Florida Legislature adoption of HB 735 pre-empted all occupational licensing to the State, with all local license that expires on July 1, 2023. At the September 14, 2022, COW, Staff presented to City Council the phase out of local contractor licensing consistent with HB 735 authorizing City Staff to proceed with the necessary revisions to the Cape Coral Code of Ordinance Chapter 6-Contractors and Construction Regulation Board, Article 1- General Provision draft amendments and public hearing forthcoming.
- Special and additional meetings can be scheduled as needed

Board Member Sinclair moved, seconded by Board Member Dungan, to approve the 2023 Meetings Schedule, as presented.

Discussion held regarding:

- Process of litigation between homeowners and contractors for failure to obtain permit for required services
- Unlicensed Contractors – City Staff ability to cite contractors
- Different scenarios requiring licensing
- No permits pulled and expired permits process and scenarios

Board polled as follows: Blot, Curtis, DeCere, Dungan, Greco, Prince, Pukala, Rinko, and Sinclair voted "aye." Nine "ayes." Motion carried 9-0.

OLD BUSINESS
(moved up under Licensing)

Probationary Specialty Contractor's License Review:
Thorsten Schulz – Sun Solutions Florida

COMMENTS FROM ASSISTANT CITY ATTORNEY

None.

COMMENTS FROM ATTORNEY FOR THE BOARD

None.

DATE AND TIME OF NEXT MEETING

The next Construction Regulation Board meeting was scheduled for Thursday, January 26, 2023, at 6:00 p.m. in Council Chambers.

Vice Chair Greco inquired about the outside contractors assisting with Hurricane Ian debris removal.

Supervisor Kenney discussed scenario with outside contractors using false permits. He explained the County fines and process in place.

Discussion held regarding:

- Concerns with homeowners losing deposit for services contracted from an unlicensed contractor
- Different scenarios and circumstances
- Unlicensed contractor not able to finish project
- Cases where homeowners not obligated to honor contract

ADJOURNMENT

There being no further business, the meeting adjourned at 7:07 p.m.

Submitted by,

Betty Castillo
Assistant City Clerk

Item Number: 6.A.
Meeting Date: 1/26/2023
Item Type: New Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Discussion on Ordinance 10-23

SUMMARY:

ADDITIONAL INFORMATION:

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	1. Ordinance 10-23	Backup Material
<input type="checkbox"/>	2. Revised Ordinance 10-23 (Effective date was updated to reflect 2/1/2023)	Backup Material

AN ORDINANCE AMENDING THE CAPE CORAL CODE OF ORDINANCES, BY REPEALING CHAPTER 2, "ADMINISTRATION," ARTICLE V, "BOARDS AND COMMISSIONS," DIVISION 6, "CAPE CORAL CONSTRUCTION REGULATION BOARD," SECTIONS 2-120.3 THROUGH 2-120.11, IN ITS ENTIRETY, REGARDING ABOLISHING THE CAPE CORAL CONSTRUCTION REGULATION BOARD; AND BY AMENDING CHAPTER 6, "CONTRACTORS AND CONSTRUCTION REGULATION BOARD," REGARDING CONTRACTORS PERFORMING WORK IN THE CITY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, "Administration," Article V, "Boards and Commissions," Division 6, "Cape Coral Construction Regulation Board," Sections 2-120.3 through 2-120.11, is hereby repealed in its entirety as follows:

DIVISION 6. CAPE CORAL CONSTRUCTION REGULATION BOARD RESERVED.

§ 2-120.3 Creation and purpose.

~~To carry out the provisions and intent of Chapter 6 of this code, there is hereby created a Cape Coral Construction Regulation Board.~~

§ 2-120.4 Board composition and appointments.

~~(a) The Board shall consist of 12 active members, all of whom shall be residents of the city or have their principal place of business within the city.~~

~~(b) Membership shall be only after qualification as provided herein and appointment by a majority vote of City Council who shall by letter notify the member of the appointment or reappointment and effective date thereof.~~

~~(c) The Board's composition shall, whenever possible, include the following:~~

~~(1) Two licensed contractors possessing a valid "B" certificate or higher;~~

~~(2) One licensed architect or licensed engineer;~~

~~(3) One licensed master electrical contractor;~~

~~(4) One licensed master plumbing contractor;~~

~~(5) One licensed pool contractor with "B" license or higher;~~

~~(6) One mechanical contractor or class "A" air conditioning contractor;~~

~~(7) One roofing contractor;~~

~~(8) One member who is any of the above classifications; and~~

~~(9) Three consumer representatives.~~

~~(d) The consumer representative may be any resident of Cape Coral who is not, and has never been, a member or practitioner of a profession regulated by the board or a member of any closely related profession.~~

~~(e) Upon the adoption of Ordinance 70-13, the Contractors' Regulatory Board shall cease to exist. All members of the Contractors' Regulatory Board shall automatically become members of the Cape Coral Construction Regulation Board with the same terms and expiration dates of their respective terms when appointed to the Contractors' Regulatory Board.~~

~~§ 2-120.5 Terms of office, forfeiture of appointment and filling of vacancies.~~

~~(a) All appointments to the Board shall be made for a term of two years.~~

~~(b) Board members shall forfeit their appointment as provided in § 2-58 above or as otherwise provided herein except that members may be excused from attending meetings with prior approval of the Chairperson or by the majority vote of the Board.~~

~~(c) Any vacancy on the Board shall be filled for the unexpired portion of the term in the same manner as the original appointment.~~

~~§ 2-120.6 Organization, Board Attorney, administration and compensation.~~

~~(a) The Board shall elect from its members a Chairperson and a Vice Chairperson who shall then serve in that capacity for one year.~~

~~(b) The City Council shall provide an attorney as legal counsel to the Board.~~

~~(c) In addition to the city provided attorney the Board may have its own attorney selected by the Board, but paid for by the city.~~

~~(d) The City Clerk shall provide clerical and administrative personnel as may reasonably be required by the Board for the proper performance of its duties.~~

~~(e) Members shall serve without compensation, but may be reimbursed for the travel, mileage and per diem expenses as may be authorized by the City Council.~~

~~(f) The Department of Community Development shall take applications for contractor licenses, send out renewal notices, and assist the Board in carrying out its functions. The Department of Community Development shall have the authority to create forms approved by the Board including but not limited to application forms, insurance proof renewals, etc.~~

~~§ 2-120.7 Meetings, records and quorum.~~

~~(a) The Board shall regularly convene at least once every two months, but may convene more often as the agenda demands. All regular and special meetings, hearings and records of all the Board's transactions and deliberations shall be open to the public.~~

~~(b) — (1) Seven members of the Board shall constitute a quorum at any meeting, and a majority vote of those present shall be required to make any decision; however, in no case shall any decision be made with less than four concurring votes.~~

~~(2) Except that only when considering the issuance of contractors' licenses, five members shall constitute a quorum, and any decision as to whether or not a license shall be issued must be made with at least three concurring votes.~~

~~§ 2-120.8 Disqualification of Board member.~~

~~A member may be disqualified to act in a particular proceeding by reason of bias, prejudice or a significant personal interest in the matter involved.~~

~~§ 2-120.9 Jurisdiction of Board.~~

~~The Board has jurisdiction over all those matters provided by the provisions of this article and the Cape Coral Code of Ordinances.~~

~~§ 2-120.10 Powers of the Board.~~

~~The Board shall have the following powers:~~

~~(a) To develop and adopt minimum standards for licensure of contractors that are to be kept and made available through the Department of Community Development;~~

~~(b) To determine the qualifications of applicants for the various types of registered contractors' licenses and approve or deny the issuance thereof;~~

~~(c) To promulgate rules and procedures for the conduct of its meetings and hearings and take sworn testimony therein;~~

~~(d) To hold and conduct hearings in an effort to determine the validity of alleged violations brought by the city against licensed contractors;~~

~~(e) To issue subpoenas only upon the specific request of a party to compel the attendance of witnesses and documents before the Board;~~

~~(f) To discipline a registered contractor found in violation of this code or any requirements hereunder by:~~

~~(1) Revoking, suspending or denying the issuance or renewal of his or her license;~~

~~(2) Imposing an administrative fine not to exceed \$5,000;~~

~~(3) Revoking or suspending his or her permit pulling privileges;~~

~~(4) Reprimanding;~~

~~(5) Requiring re-examination;~~

~~(6) Require restitution; or~~

~~(7) Providing any combination of the above.~~

~~(g) To discipline a certified contractor found guilty of a fraud or a willful building code violation by denying the issuance of a building permit or permits.~~

~~§ 2-120.10.5 Criteria for application review.~~

~~(a) In the Board's review of an application for any of the various types of contractors' licenses, the Board shall consider and weigh all information presented concerning the application and applicant including, but not limited to, experience, financial responsibility and legal entity of applicant.~~

~~(b) During review of each application, the Board will consider the following:~~

~~(1) Whether the application is complete; an incomplete application will not be accepted by the Board.~~

~~(2) Whether the application verifies the appropriate amount of trade experience. (Education or classroom time used to verify experience can not exceed 50% of the actual trade experience required.) Letters of experience verification cannot come from family members.~~

~~(3) The number of business entities the applicant seeks to qualify. (One individual can qualify up to two business entities.)~~

~~(4) The applicant's business reputation.~~

~~(5) Whether the applicant exhibits good moral character.~~

~~(6) Whether the applicant has shown financial responsibility with respect to personal and business finances.~~

~~a. FINANCIAL RESPONSIBILITY refers to the ability to safeguard that the public will not sustain economic loss resulting from a contractor's inability to pay his lawful obligations under the contract. The grounds upon which the Board may deny a certificate of competency for lack of proof as to financial responsibility include the following:~~

~~1. Failure to submit the required credit reports.~~

~~2. Failure to answer the application questions truthfully and completely.~~

~~3. Evidence that the applicant has filed voluntary or involuntary bankruptcy within the five years preceding the application resulting in a loss to consumers.~~

~~4. The existence, within the ten years preceding the application, of an unsatisfied court judgment rendered against the applicant based upon the applicant's failure to pay just obligations to parties with whom the applicant conducted business as a contractor.~~

~~5. An unfavorable credit report or history as indicated by any of the documents submitted.~~

~~6. A determination by the Board that the applicant lacks the financial stability necessary to assure compliance with the standard set forth in this section. As guidelines for the determination of financial responsibility the Board will consider the applicant's response to the questions set forth in the application.~~

~~(c) After its review of a submitted application, the Board may:~~

~~(1) Grant a permanent license, a probationary license, or a restricted license; or~~

~~(2) Deny the license, upon a finding that the applicant fails to meet one or more of the qualifications necessary for issuance of a contractor's license.~~

~~(d) The types of licenses available are as follows:~~

~~(1) Permanent license. The Board may grant a permanent license when it finds that the applicant has met all requirements. Granting a permanent license is within the sole discretion of the Board. The license is "permanent" only in the sense review of the current application is not necessary. The applicant must pay biennial renewal fees and otherwise comply with the requirements of this ordinance in order to maintain a permanent license.~~

~~(2) Probationary license. The Board may grant a probationary license when it finds that the applicant does not meet one or more of the requirements or qualifications for the issuance of a permanent license. The granting of a probationary license is within the sole discretion of the Board. If the Board grants a probationary license, it must state the deficiency in the application and indicate the action and evidence necessary for the applicant to correct the deficiency and ultimately obtain a permanent license. The length of the probationary period and the frequency of review intervals is determined by the Board. However, the probationary period cannot be less than 30 days. The Board has the discretion to grant successive probationary licenses. The applicant must pay appropriate fees and otherwise comply with the requirements of this article in order to maintain a probationary license.~~

~~(3) Restricted license. The Board may grant a permanent or probationary restricted specialty license if the Board finds the applicant qualifies to contract with respect to certain aspects of a license offered by the city but does not qualify to contract with respect to all aspects of a specialty license. If the Board grants a restricted specialty license it must:~~

~~a. Clearly indicate the scope of work allowed under the restricted specialty license; and~~

~~b. Specifically state the qualifications applicable to the restricted specialty license in a manner that will provide meaningful guidance to applicants desiring the same restricted specialty license in the future.~~

~~(e) Requirements for license issuance. The Department of Community Development will issue an appropriate license upon proof as to all of the following:~~

~~(1) Board approval for a specific license.~~

~~(2) Proof of liability insurance. All active contractors must carry public liability and property damage insurance. (Registered contractors must also comply with state insurance requirements.) Acceptable proof of insurance consists of a certificate from the insuring company indicating:~~

- a. ~~The name, address and phone number of the insuring company and the insurance agent.~~
- b. ~~The name and address of the insured. All insurance policies must reflect the exact name of the entity qualified by the applicant.~~
- c. ~~The insurance policy number.~~
- d. ~~The effective dates of the insurance policy. All contractors holding an active license must maintain current insurance.~~
- e. ~~The coverage amount is at least \$50,000 per person/\$100,000 per incident for liability and \$5,000 per incident for property damages.~~
- f. ~~The City of Cape Coral, as certificate holder, will receive a written notice 30 days prior to cancellation.~~
- g. ~~The certificate must be prepared by a bonafide insurance agent.~~

~~(3) Proof of workers' compensation coverage. All active contractors must obtain workers' compensation insurance or provide proof of a valid exemption in accordance with F.S. Ch. 440. Acceptable proof of insurance consists of a certificate from the division of employment and workers' compensation indicating compliance with F.S. Ch. 440. Workers' compensation insurance or an appropriate exemption must be in effect at all times the contractor maintains an active certificate of competency.~~

~~(4) Valid state registration, if applicable.~~

~~(5) Business tax receipt. Submit proof of payment of business tax receipt for office location; any change of business address must be submitted with written notice within 30 days of any change to the Department of Community Development.~~

~~(6) Identification. Submit with application a clear photocopy of contractor's driver's license or other acceptable identification clearly showing signature to be kept on file.~~

~~(f) Reporting requirements for change in business status.~~

~~(1) All locally licensed contractors must provide the Department of Community Development with written notice within 30 days of any change in business status concerning:~~

- a. ~~The name of the business entity or the name under which the business is contracting.~~
- b. ~~The business address.~~
- c. ~~The person qualifying the business.~~
- d. ~~The removal or resignation of a person qualifying the business.~~
- e. ~~The resident agent for purposes of service.~~

~~(2) Board approval for a change in business status is required.~~

~~§ 2-120.11 Appeal of Board denial for a license.~~

~~(a) An applicant may appeal the Board's denial of a license by petition for writ of certiorari to the circuit court. The petition must be filed not later than 30 days after the date of the Board's oral decision. The applicant must provide the Department of Community Development and the City Attorney's Office a copy of the petition filed with the circuit court.~~

~~(b) An applicant whose application is denied may request in writing that the Board reexamine his application based upon new evidence not available to the Board at the initial hearing. The request must be made no later than 30 days after the Board's decision to deny the application and include a copy of or a statement setting forth the new evidence. Rehearings are granted at the Board's discretion.~~

~~(e) For purposes of this section, new evidence means evidence or documentation not considered at the time of the initial hearing that will substantially add to or clarify the application.~~

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 6, "Contractors and Construction Regulation Board," is hereby amended to read as follows:

CHAPTER 6: UNLICENSED CONTRACTORS AND CONSTRUCTION REGULATION BOARD

ARTICLE I: GENERAL PROVISIONS

~~§ 6-1 Intent.~~

~~In recognition that contractors are daily performing tasks which touch upon and directly impact the public health, safety and welfare and, in an effort to protect the citizens from harm or abuses occasioned by incompetent or dishonest contractors, it is necessary to regulate the quality and character of work performed by the various contractors conducting business within the city.~~

~~§ 6-2 Applicability.~~

~~This chapter applies to any contractor, including specialty contractors, performing work within the city limits of Cape Coral. All requirements of this chapter are in addition to and are intended to supplement existing state laws regulating the construction industry.~~

~~§ 6-3 Exemptions.~~

~~This chapter shall not apply to those exemptions listed in F.S. § 489.103 and any other statutes as they may be amended from time to time that exempts a person or entity from having to obtain a State of Florida contractor's license.~~

~~§ 6-4 Definitions.~~

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~**ALARM SYSTEM CONTRACTOR.** Any person whose business includes the execution of contracts requiring the ability, experience, science, knowledge and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems for compensation.~~

~~**ALARM SYSTEM CONTRACTOR I.** An alarm system contractor whose business includes all types of alarm systems for all purposes.~~

~~**ALARM SYSTEM CONTRACTOR II.** Any alarm system contractor whose business includes all types of alarm systems other than fire, for all purposes, except as otherwise provided in F.S. §§ 489.501 et seq.~~

~~**BOARD.** The Cape Coral Construction Regulation Board.~~

~~**BUILDING CONTRACTOR.** A contractor whose services are limited to construction of commercial buildings and single dwelling or multiple dwelling residential buildings, neither to exceed three stories in height, and accessory use structures in connection therewith, or a contractor whose services are limited to remodeling, repair or improvement of any size building if the services do not affect the structural members of the building.~~

~~**CERTIFICATE.** A certificate of competency as issued by the Department of Professional Regulation of the State of Florida.~~

~~**CERTIFIED CONTRACTOR.** Any contractor who possesses a certificate of competency issued by the Department of Professional Regulation and who shall be allowed to contract in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.~~

~~**CLASS A AIR CONDITIONING CONTRACTOR.** A contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge and skill to install, maintain,~~

~~repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters or electrical power wiring on the line side of the disconnect switch.~~

~~**CLASS B AIR CONDITIONING CONTRACTOR.** A contractor whose services are limited to 25 tons of cooling and 500,000 BTU of heating in any one system in the execution of contracts requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system being installed under this classification; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping and insulation of pipes, vessels and ducts; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring on the line side of the disconnect switch.~~

~~**CLASS C AIR CONDITIONING CONTRACTOR.** A contractor whose business is limited to the servicing of air conditioning, heating or refrigeration systems, including duct alterations in connection with those systems he or she is servicing, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. No person not previously registered or certified as a Class C air conditioning contractor shall be so registered or certified after October 1, 1988.~~

~~**CONTRACTING.** Engaging in business as a contractor and performing acts attributable to a contractor. The attempt to sell contracting services and the negotiation or bid for contract services also constitutes contracting. If the construction services offered require licensure or agent qualification, then the offer, negotiation for a bid, or attempt to sell these services requires the corresponding licensure.~~

~~**CONTRACTOR.** Any person, except those exempted in § 6-3 herein, who is state certified or registered and for compensation, undertakes to, or submits a bid to, or does himself or herself 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, however, a contractor shall subcontract the electrical, mechanical, plumbing, roofing, sheet metal, commercial swimming pool and air conditioning work, for which a state certificate of competency or a license of the respective trade category is required. A general, building or residential contractor shall not be required to subcontract the installation of wood shingles, wood shakes or asphalt or fiberglass shingle roofing materials on a new building of his or her own construction, and a general contractor shall not be required to subcontract structural swimming pool work.~~

~~**ELECTRICAL CONTRACTOR or UNLIMITED ELECTRICAL.** A contractor who conducts business in the electrical trade field and who has the experience, knowledge and skill to install, repair, alter, add to or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit or any part thereof, which generates, transmits, transforms or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, alarm systems and lightening protection systems, all in compliance with applicable plans, specifications, codes, laws and regulations. The term means any person, firm or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.~~

~~**ELECTRICAL OUTDOOR SIGN CONTRACTOR.** Any contractor whose services are limited to the installation, alteration, repair, service or erection of outdoor electrical signs and outline lighting. The scope of the certification shall not include the provision of, or any work beyond, the last disconnecting means or terminal point. However, a contractor certified under this section may provide the electrical entrance requirements for metering and main disconnect of remote billboards or signs which are independent of any structure or building and which require no more than 25 kilowatts at 250 volts maximum.~~

~~**ELECTRICAL SIGN CONTRACTOR.** Any contractor who is qualified to install, repair, alter, add to or change any electrical wires, apparatus, raceways, conduit or any part thereof on electrical signs and is qualified to erect signs. The contractor may contract for, and take out building permits for the erection of signs.~~

~~**FIRE SPRINKLER CONTRACTOR.** Any contractor who is certified by the state Fire Marshal's Office and is qualified to install, maintain, alter, repair or extend any fire sprinkler device or system.~~

~~**GENERAL CONTRACTOR.** A contractor whose services are unlimited as to the type of work which he or she may do, except as provided by state law and this chapter.~~

~~**MECHANICAL CONTRACTOR.** A contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping and all appurtenances, apparatus or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines and natural gas fuel lines within buildings; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters or electrical power wiring.~~

~~**PLUMBING CONTRACTOR.** A contractor whose business consists of the execution of contracts requiring the experience, financial means, knowledge and skill to install, maintain, repair, alter, extend or, when not prohibited by law, design plumbing. A **PLUMBING CONTRACTOR** may install, maintain, repair, alter, extend or when not prohibited by law, design the following without obtaining any additional local regulatory license, certificate or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas (excluding liquid petroleum gases), and storm and sanitary sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, when not prohibited by law, and installation, maintenance, repair, alteration or extension of air piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers to the extent authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in such a manner as to comply with all plans, specifications, codes, laws and regulations applicable. The scope of work of the plumbing contractor shall apply to private property and public property, shall include any excavation work incidental thereto, and shall include the work of the specialty plumbing contractor. The contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified herein as being the work of a trade other than that of a plumbing contractor. Nothing in this definition shall be construed to limit the scope of work of any specialty contractor certified pursuant to F.S. § 489.113(6). Nothing in this definition shall be construed to require certification or registration, under this part, of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission, when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.~~

~~**POOL CONTRACTORS.**~~

~~(1) **COMMERCIAL POOL/SPA CONTRACTOR.** A contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any swimming pool, or hot tub or spa, whether public, private or otherwise, regardless of use. The scope of the work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, construction of equipment rooms or housing for pool equipment, and installation of package pool heaters. However, the scope of the work does not include direct connections to a sanitary sewer system or to potable waterlines.~~

~~(2) **RESIDENTIAL POOL/SPA CONTRACTOR.** A contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment and servicing of any residential swimming pool, or hot tub or spa, regardless of use. The scope of the work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tiles and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, installation of housing for pool equipment and installation of package pool heaters. However, the scope of the work does not include direct connections to a sanitary sewer system or to potable waterlines.~~

~~(3) **SWIMMING POOL/SPA SERVICING CONTRACTOR.** A contractor whose scope of work involves the servicing, repair, water treatment, including, but not limited to, the direct infusion of chlorine gas, and maintenance of any swimming pool or hot tub or spa, whether public or private. The scope of the work may include any necessary piping and repairs, replacement and repair of existing equipment or installation of new additional equipment as necessary. The scope of the work includes the reinstallation of tile and coping, repair and replacement of all piping, filter equipment and chemical feeders of any type, replastering, repouring of decks and reinstallation or addition of pool heaters.~~

~~**QUALIFYING AGENT OR QUALIFIER.** A person who possesses the requisite, skill, knowledge, experience, and responsibility to supervise, direct, manage, and control the contracting activities as well as the financial aspects on a job for which he has obtained a building permit; and whose technical and personal qualifications are verified by application, examination, and licensure.~~

~~**REGISTERED CONTRACTOR.** Any contractor who does not possess a valid certificate of competency but fulfills the local competency requirements as established by the Board and who has registered with the Florida Department of Professional Regulation in accordance with F.S. § 489.105.~~

~~**RESIDENTIAL CONTRACTOR.** A contractor whose services are limited to construction, remodeling, repair or improvement of one-family, two-family or three-family residences not exceeding two stories in height and accessory use structures in connection therewith.~~

~~**RESTRICTED SPECIALTY CONTRACTOR.** An applicant whose experience is limited to only a particular phase of construction included in one of the established categories of Cape Coral specialty contractor license category. At the time the restricted specialty license is granted, the Board will specify the requirements necessary for any future applicant to obtain a similar certificate.~~

~~**ROOFING CONTRACTOR.** A contractor whose services are unlimited in the roofing trade and who has the experience, knowledge and skill to install, maintain, repair, alter, extend or design when not prohibited by law, and use materials and items used in the installation, maintenance, extension and alteration of all kinds of roofing, waterproofing and coating, except when coating is not represented to protect, repair, waterproof, stop leaks or extend the life of the roof.~~

~~**SPECIALTY STRUCTURE CONTRACTOR.** Those who have the knowledge and skill necessary for the fabrication, assembling, handling, erection, installation, dismantling, adjustment, alteration, repair, servicing and design work, of aluminum, metal, vinyl and fiberglass screening material. The scope of work shall include and be limited to screen porches, screened enclosures, pool enclosures, pre-formed panel post and beam roofs, mobile home panel roof overs, residential glass window enclosures, vinyl panel window enclosures, single story self-contained aluminum utility storage structures (not exceeding 500 square feet), siding, soffit, fascia and gutters. The scope of work also includes masonry concrete work limited to foundations, slabs and block knee walls incidental to the aluminum and allied materials construction work. **SPECIALTY STRUCTURE CONTRACTORS** are not permitted to perform any work that alters the structural integrity of the building including, but not limited to, roof trusses, lintels, load bearing walls and foundations.~~

SHEET METAL CONTRACTOR. A contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing or design when not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air handling systems including the setting of air handling equipment and reinforcement of same and including the balancing of air handling systems.

SPECIALTY CONTRACTOR. A contractor whose operations consist of the performance of construction work requiring special skills and whose principal contracting business involves the use of specialized building trades and crafts, usually a minor part of the complete structure. The Construction Regulation Board may approve a competency license for a specialty contractor not classified herein; provided the applicant has passed the appropriate block exam or exams for the particular specialty contractor classification applied for and has otherwise complied with the requirements of this chapter. **SPECIALTY CONTRACTORS** shall be classified and defined as follows:

(1) **ALUMINUM NON-STRUCTURAL.** Those who are qualified to fabricate, assemble, erect, install, dismantle, adjust, alter, repair, service and design gutters, downspouts, shutters, soffit, fascia and vinyl and aluminum siding and other non structural aluminum. In addition, the holder of this class of license, provided he or she is otherwise qualified, may handle, erect, install, adjust, repair, alter and replace screens in windows, doors, screened porches, screened enclosures and pool enclosures in both residential and commercial structures. This license does not allow for the erection, construction or repair of any structural component of any of the foregoing. Notwithstanding anything to the contrary herein, those current license holders of an aluminum non structural specialty license that have been and currently are erecting and installing pool enclosures may continue to do so with an aluminum non structural license as long as such license is renewed and kept current. If the license holder changes, is not renewed or is allowed to lapse for any reason, the privilege of erecting and installing pool enclosures by that individual or entity shall immediately cease and those individuals or entities desiring to perform such work must obtain an aluminum structural specialty license. Any individual or entity not currently performing installation or erection of pool enclosures with an aluminum non structural specialty license must obtain an aluminum structural specialty license to perform this type of work. The Department of Community Development shall have the right to require evidence of any person or entity who is claiming the benefits of this section that they actually have been and currently are installing or erecting pool enclosures.

(2) **ALUMINUM STRUCTURAL.** Any person who is qualified to fabricate, assemble, handle, erect, install, dismantle, adjust, alter, repair, service and design, if not prohibited by law and in accordance with accepted engineering data and manufacturer specifications, screened porches, screened enclosures, pool enclosures, preformed panel post, beam roofs, mobile home panel roof overs, residential glass window and door enclosures, vinyl panel window enclosures, single story self-contained aluminum utility storage structures (not to exceed 500 square feet) siding, soffit, fascia, gutters, shutters, wood work incidental to the aluminum construction work (limited to the construction of wood framing for the walls of uninhabitable utility storage structures, raised wood decks for enclosures, repair or replacement of wood incidental to the installation of glass windows and doors, siding, soffit, fascia, gutters, preformed panel post and beam roofs).

(3) **ASPHALT COATING AND SEALING.** Those who are qualified to coat and seal asphalt on roads, driveways and parking lots. This license category may not apply asphalt or any other type of paving material.

(4) **CABINET AND MILLWORK INSTALLATION CONTRACTOR.** Any person who is qualified to manufacture, assemble, install, dismantle, maintain, adjust, alter, extend and design, when not prohibited by law, cabinets and millwork. The scope of permitted work shall include, but not be limited to kitchen cabinets, bathroom vanities, accessory cabinets, countertops, office furniture and millwork items which have been manufactured for installation on job site locations.

(5) **CARPENTRY.** Any person who is qualified to install any wood products or metal framing in a structure of building including rough framing, door, window (including metal), structural and non structural trusses, sheathing, paneling, trim, cabinets, siding, soffit and fascia.

~~(6) CONCRETE COATINGS.~~ Those who have the knowledge and skill to apply decorative coating to the top of existing concrete slabs. The coating, including aggregate and latex type coating, cannot exceed 3/4 of an inch in thickness. The scope of work does not include the installation of concrete slabs.

~~(7) CONCRETE FORMING AND PLACING CONTRACTOR.~~ Those who are qualified to batch and mix aggregates, cement and water to agreed specifications, to construct forms and framework for the casting and shaping of concrete, to place miscellaneous embedded steel and to pour, place and finish concrete.

~~(8) CONCRETE PLACING AND FINISHING CONTRACTOR.~~ Those who are qualified to pour, place and finish concrete flatwork (including but not limited to floors, slab on grade, sidewalks) including placement of mesh reinforcement, plastic vapor barriers and edge forms incidental thereto.

~~(9) DEMOLITION CONTRACTOR (WRECKING).~~ Those who are qualified to demolish and remove structures, such as dwellings, commercial buildings and foundations. (Now state certified)

~~(10) EXCAVATION CONTRACTOR.~~ Any person who is qualified to excavate, to obtain or remove materials such as rock, gravel, and sand, to construct or to excavate canals, lakes, and levees including the clearing of land of surface debris and vegetation, including the grubbing of roots, the removal of debris and leveling of the surface land incidental and necessary thereto in compliance with all environmental laws.

~~(11) FENCE ERECTION CONTRACTOR.~~ Any person who is qualified to install, maintain or repair fencing on grade, including pre-cast concrete and pre-fabricated fences which meet all applicable safety, zoning and building codes.

~~(12) FINISH CARPENTRY.~~ Any person who has the knowledge and skill to install finished wood products including paneling, trim, flooring, cabinetry, doors, windows (including metal) and all incidental hardware.

~~(13) GARAGE DOOR.~~ Those who are qualified to install, maintain, repair or alter horizontal and vertical type garage doors, including all hardware and operating devices, provided a licensed electrical contractor does any of the necessary electrical installation.

~~(14) GLASS AND GLAZING CONTRACTOR.~~ Any person who is qualified to select, cut, assemble and install any type of glass or glass work, and to execute the glazing frames, panels, sashes, doors, ornamental decorations, mirrors, tub and shower enclosures and any metal framing which holds any of the items listed above. (Now state certified)

~~(15) HURRICANE PROTECTION.~~ Those who are qualified to install, maintain, repair and replace storm shutters in both residential and commercial facilities, including both manually and mechanically operated shutters, provided a licensed electrical contractor does any of the necessary electrical installation.

~~(16) INSULATION CONTRACTOR, ALL TYPES.~~ Those who are qualified to install, maintain, repair, alter or extend any insulation primarily installed to prevent loss or gain of heat from internal or external sources in pipes, vessels, ducts or built-up refrigerated boxes or rooms, or acoustical materials.

~~(17) IRRIGATION SPRINKLER CONTRACTOR (LAWN SPRINKLER).~~ Those who are qualified to install, maintain, repair, alter or extend piping and sprinkler heads for irrigation of lawns, including the connection to a water pump. (Now state certified)

~~(18) MASONRY CONTRACTOR.~~ Those who are qualified to select, cut and lay brick and concrete block or any other unit masonry products, lay brick and other baked clay products, rough cut and dress stone, artificial stone and precast blocks, structural glass brick or block, but shall not pour or finish concrete.

~~(19) NON-ELECTRICAL SIGN INSTALLATION CONTRACTOR.~~ Any person who is qualified to erect, repair, install, alter, extend or change any non-electrical sign, not to exceed a height of ten feet above existing grade, to the top of the sign and a maximum size of 40 square

~~feet or a non-electrical sign structure that does not exceed 20 feet above existing grade which is attached to an existing wall or structure.~~

~~(20) **PAINTING CONTRACTOR.** Those who are qualified to use spraying equipment as well as hand tools to finish both exterior and interior work. Also pertains to faux or other types of finishes to surfaces or paint, mural or any artwork applied to a surface. A **PAINT CONTRACTOR** may do paperhanging, sandblasting and waterproofing.~~

~~(21) **PAVER BLOCK.** Any person who is qualified to lay brick, block or paver block for flat work only. The bricks are set in sand or other loose or packed material. Blocks may not be set in place by any aggregate that hardens such as concrete or mortar.~~

~~(22) **PAVING CONTRACTOR, COMMERCIAL OR UNLIMITED.** Those who are qualified with the experience and skill to construct roads, airport runways and aprons, parking lots, sidewalks, curbs and gutters, property line walls, storm drainage facilities and to perform the excavating, clearing and grading incidental thereto.~~

~~(23) **PLASTERING CONTRACTOR (LATH, PLASTER AND STUCCO).** Those who are qualified to coat surfaces with a mixture of sand or other aggregate gypsum plaster, portland cement or quicklime and water, or any combination of such material as to create a permanent surface coating. The contractor may perform the work of the lathing contractor.~~

~~(24) **SIGN CONTRACTOR, ELECTRICAL.** Those who are qualified to erect, install, alter or extend signs, not to exceed a height of 24 feet above existing grade, at the top of the sign, and a maximum size of 40 square feet, or a sign structure that does not exceed 20 feet above existing grade which is attached to an existing wall or structure. The scope of work also includes the repair of all signs, regardless of height and size, however, electrical work is limited to internal wiring of the signs, and does not include work on the electrical supply wiring.~~

~~(25) **TILE, TERRAZZO AND MARBLE CONTRACTOR.** Those who are qualified to mix, prepare the base and finish terrazzo, set tile and marble.~~

~~(26) **UNDERGROUND UTILITY CONTRACTOR.** A contractor whose services are limited to construction, installation and repair on public or private property, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems or storm sewer collection systems at storm sewer structures. An **UNDERGROUND UTILITY CONTRACTOR** shall not install any piping that is an integral part of a fire protection system, as defined in F.S. § 633.021(9) beginning at the point where the piping is used exclusively for the system.~~

§ 6-4.1 Registered contractors.

~~After January 1, 2010, no person or entity licensed as a registered contractor will be issued a Cape Coral specialty contractor's license based solely on registration. Each such person or entity on or after January 1, 2010, must meet the requirements of and be licensed in the appropriate City of Cape Coral specialty contractor category, or be licensed in the appropriate Florida Department of Business and Professional Regulation (DPBR) specialty license category. Notwithstanding the foregoing, any registered contractor issued a City of Cape Coral specialty license on or before January 1, 2010, may continue to renew the City of Cape Coral specialty license as long as application for renewal is timely made. Failure to make timely application will result in the irrevocable lapse of such specialty license that was issued because the contractor initially was registered, and the contractor will have to meet the then-current requirements by the city or DPBR for such specialty license. An expired specialty license obtained through registration may not be reinstated by the Construction Regulation Board under any circumstances.~~

§ 6-4.2 Grandfathering of specialty contractors.

~~After January 1, 2010 no person or entity will be able to apply for or receive a Cape Coral specialty contractor's license in any specialty category for any specialty that is licensed by the Florida Department of Business and Professional Regulation (DPBR) irrespective of when DPBR begins to issue licenses for such specialty contractor category. However notwithstanding the foregoing, any~~

person or entity already licensed in a specialty license category now licensed by the DPBR may continue to renew the City of Cape Coral specialty license as long as application for renewal and fees are timely made and paid. Failure to make timely application or payment will result in the irrevocable lapse of such specialty license and the contractor will have to meet the then-current requirements for licensure by the DPBR. An expired, grandfathered specialty license may not be reinstated by the Construction Regulation Board under any circumstances.

~~§ 6-4.2.1 Elimination of registered contractors and grandfathering.~~

~~Upon the effective date of this section, no person or entity will be eligible to apply for or receive a registered contractor's license, apply for registration, or qualify in any category or trade as a registered contractor in the City of Cape Coral. A contractor that is registered with the State of Florida or any other local government may not perform contracting work in Cape Coral unless the contractor possesses either a valid City of Cape Coral specialty contractor's license, or a certificate or license in any category, except that in a registered contractor category, trade or specialty currently or in the future regulated or licensed by the Florida Department of Business and Professional Regulation (DPBR). However, notwithstanding the foregoing, any person or entity currently registered or licensed as a registered contractor with the City of Cape Coral in any trade or category may continue to renew the City of Cape Coral registration or registered license as long as application for renewal is timely made. Failure to make timely application will result in the irrevocable lapse of such registration or registered license, and the contractor will have to meet the then-current requirements for licensure by the DPBR. An expired, grandfathered registration or registered license may not be reinstated by the Construction Regulation Board under any circumstances. This provision is not intended to change the status or affect the rights of any person or entity governed by or in compliance with the provisions of § 6-4.1 or § 6-4.2 of the Cape Coral Code as these sections currently exist or may be amended.~~

~~§ 6-4.3 Recognition of Lee County specialty contractor categories.~~

~~Those portions of any Lee County ordinance or Administrative Code provision that adds or deletes a contractor category requiring a Lee County certificate of competency which provides criteria for any contractor category, including but not limited to, experience, examination(s), and scope of work, shall be considered to be adopted and enforceable by the City of Cape Coral including the imposition of the appropriate city penalty for any violation, unless the city by ordinance declines to adopt the Lee County provisions or adopts the provision with modifications; then the Lee County provision will not be adopted or enforced or stand adopted with modifications as the case may be.~~

~~§ 6-5 Unlawful to act as contractor without a license, presumption.~~

~~It shall be unlawful for any person or firm to engage in the business or act in the capacity of a contractor or subcontractor, within the city limits without first possessing a valid and appropriate contractor's license. Any person not possessing a valid contractor's license while holding himself or herself out to be a contractor shall be subject to the provisions and penalties of this code, and the representations shall be considered prima facie evidence that the person or firm purported to have the authority capacity to act as a contractor. Furthermore, it shall be unlawful for any person or firm to advertise themselves as available to engage in the business or act in the capacity of a contractor within the city limits without first possessing a valid and appropriate contractor's license. Contracts entered into by unlicensed contractors may as a matter of public policy be unenforceable in law or equity.~~

~~§ 6-6 Reserved.~~

~~§ 6-7 Contractor's license; required method for obtaining.~~

~~(a) Any person requesting or desiring to be licensed as a contractor shall make application on a form prescribed by the Board at the office of the Department of Community Development. The application shall be retained by the Department of Community Development together with all supporting papers.~~

~~(1) All residential, building and general contractors must be state certified. However, no residential, building or general contractor holding a registered license approved by Board before May 1, 1987, shall be required to be state swimming pool-spa contractors shall be required to provide a letter of bond ability, a letter of credit or a compliance bond in the amount of \$25,000 established to reimburse persons damaged due to diversion of funds, abandonment or any other violation of this chapter which results in financial loss to a consumer, provided, however that any such contractor who held a city license approved by the Board on or before October 24,~~

~~1994, shall not be required to provide any letter of bond ability, letter of credit or compliance bond.~~

~~(2) All registered contractors within the City of Cape Coral must register with the Department of Professional Regulation in accordance with F.S. § 489.117.~~

~~(3) The registration or certification number of a contractor, or the city license number of a specialty contractor, shall appear in any newspaper, airwave transmission, phone directory, vehicle sign or other advertising medium used by the contractor.~~

~~(4) An advertisement shall include any announcement, listing, contract, job estimate, warranty, business card, letterhead stationery of the business organization and any other written or oral statement of whatever kind or nature.~~

~~(5) All registered, certified or specialty contractors shall display their registration or certification number, or if not required to be registered or certified, the city license number on any vehicle used for business purposes, in letters no smaller than two inches in height.~~

~~(6) When appearing in advertisements or other written form, the contractor's registration or certification number or, if not required to be registered or certified, the city license number, shall be no smaller than ten point type.~~

~~(b) Examination requirements.~~

~~(1) All applicants must take and pass an appropriate examination. The city hereby adopts and incorporates the Lee County requirements, as they may be amended from time to time, for the appropriate examination. If for any specialty contractor category for which an examination is given by Lee County a question arises as to which exam is appropriate, and Lee County has a rule, regulation or decision regarding the issue, the Lee County decision will be adopted. However, the City of Cape Coral Building Official will make the final determination as to the appropriate examination for any specialty contractor category.~~

~~(2) The applicant must receive a passing grade of 75% or better on the appropriate examination. An examination administered in or by another jurisdiction is acceptable with a passing grade of 75% provided the examination is the same or comparable to the one that would have been administered or approved by Lee County, and the date of the test or grade has been taken or provided no more than five years before the date of the applicant's application for a license.~~

~~(3) For application purposes, exam scores are valid for five years. An exemption from this requirement is applicable if:~~

~~a. The applicant is actively providing the type of services covered by the certificate of competency sought;~~

~~b. The applicant has been engaged in providing these services for at least two years prior to application; and~~

~~c. The applicant can prove that he took and passed an appropriate exam that is five years old or older.~~

~~(c) Any contractor may name an authorized agent to act on his or her behalf showing his or her authority:~~

~~(1) To act for the contractor in all matters in any manner connected with the contracting business; and~~

~~(2) To supervise the construction under the license issued to the contractor.~~

~~(d) Qualifying agent for business organization.~~

~~(1) If an applicant proposes to engage in contracting as a business organization, or in any name other than the applicant's legal name (or a fictitious name where the applicant is doing business as a sole proprietorship), the business organization must apply for a license through a qualifying agent.~~

~~(2) The application for qualifying agent must include an affidavit attesting that the applicant has final approval authority for all construction work performed in the city and final authority on all business matters, including contracts, specifications, checks, drafts, payments, regardless of the form of payment made by the entity.~~

~~(3) No person shall act as a qualifying agent for more than two business entities.~~

~~(4) When a contractor acting as qualifying agent for a business entity ceases affiliation with the business entity, he must notify the Department of Community Development immediately. If this qualifying agent is the only licensed individual affiliated with the business entity, then the business entity must employ another qualifying agent within 60 days after the qualifying agent terminates the affiliation. Under no circumstances can a business entity contract without a qualifying agent. However, the financially responsible officer, president, sole proprietor, partner, or general partner (in the case of a limited partnership), who assumes all responsibilities of a primary qualifying agent, may apply to the building official for a 60-day temporary nonrenewable certificate to proceed with completion of any outstanding contracts identified to the Department of Community Development in writing at the time of the request for the temporary certificate. Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for a predecessor's actions, but is responsible, even after a change in status, for matters that occurred while he was acting as qualifying agent.~~

~~(e) No application shall be considered unless the applicant provides all information required on the form.~~

~~(f) Specialty license holder's privileges and responsibilities. A Cape Coral specialty contractor's license provides a license holder with the following privileges and responsibilities:~~

~~(1) A license holder or an employee of the license holder can contract only in the name of the business entity or individual indicated on the certificate. The Department of Community Development will issue a license approved by the Board to the individual or entity indicated on the application reviewed by the Board.~~

~~(2) The license holder must notify the city as to any change in business status.~~

~~(3) A license holder can contract for and perform work in the area covered by the license classification or category.~~

~~(4) A license holder is responsible for the action of his employees and must supervise employees or individuals working under his regulations.~~

~~(5) A license holder must assure that bills are paid and work is done in accordance with the contract and all applicable codes and regulations.~~

~~(6) A license holder must renew his certificate biennially by paying the required fees in order to remain active.~~

~~(7) An active license holder must maintain current public liability insurance in accordance with this article.~~

~~(8) An active license holder must maintain current workers' compensation insurance in accordance with this article.~~

~~(9) A license holder who receives money, as an initial payment, totaling more than 10% of the contract price for repair, restoration, improvement or construction to residential real property must:~~

~~a. Apply for permits necessary to do the work within 30 days after the date the payment is made, and before any work requiring a permit commences, except where the work does not require a permit under the applicable codes or regulations; and~~

~~b. Start work within 90 days after the date all necessary permits for work are issued, unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both.~~

§ 6-7.2 Insurance requirements.

~~(a) All applicants for a City of Cape Coral specialty contractor's license must present proof of liability and workers' compensation insurance coverage as indicated herein reasonably satisfactory to city. Applicants must provide proof of workers' compensation insurance pursuant to F.S. Ch. 440 or evidence that the applicant is exempt from such requirements. Applicants must provide proof of liability insurance in the amount of \$50,000 for one person and coverage of \$100,000 if two or more persons are involved. Coverage for property damage in the amount of \$5,000 is also required. The applicant must present a certificate of insurance with the following information:~~

~~(1) Date that certificate of insurance was issued.~~

~~(2) Name of insurance agent.~~

~~(3) Name of insurance company.~~

~~(4) Policy number must be on the certificate.~~

~~(5) Effective date of policy.~~

~~(6) Expiration date of policy.~~

~~(7) Certificate holder will be the City of Cape Coral, or if a certified or other class of contractor regulated by the state, the certificate holder shall be as specified by statute or administrative rule.~~

~~(8) The agent's signature.~~

~~(b) The insurance shall at all times be carried in the name of the licensee.~~

~~§ 6-8 Biennial renewal fees.~~

~~(a) Persons licensed under this chapter shall biennially pay a renewal fee, established by resolution approved and adopted by City Council. Such resolution may be changed or modified by Council from time to time. Biennial license renewals shall go into effect for the 2014 license renewal cycle.~~

~~(b) A license which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee, if the application for renewal is made within 90 days after September 30. If the application for renewal is not made within the 90 day period, the license is automatically lapsed. Except as otherwise provided herein, a contractor with a lapsed license may not pull permits or perform any contracting work under the lapsed license. A lapsed license may only be restored by appearing in person before the Board and providing an explanation of why the license was allowed to lapse and why it should be restored by the Board. For good and sufficient reason the Board may deny the restoration of the lapsed license. The fee for restoration of a lapsed license shall be up to \$500 plus the cost for the renewal.~~

~~(c) A person who fails to renew a license by the expiration date shall pay a penalty of 10% of the renewal fee for the month of October, plus an additional 5% penalty for each month of delinquency thereafter until paid. In no instance shall the penalty exceed 25% of the required annual fee.~~

~~(d) Where a license has been revoked or has expired or lapsed for any reason, the Board may require complete re-examination and application before a license is renewed or reinstated.~~

~~(e) A person licensed under this chapter may go on inactive status during which time he or she shall not engage in contracting, but may retain the license upon payment of an annual \$25 fee. The license may be activated by the Board upon applicant's presentation of current credit report, satisfactory proof of required insurance coverage together with the balance of the required fee.~~

~~(f) When applying for the renewal of any contractor's license, applicant shall present proof of insurance as specified in § 6-7(2)(a).~~

~~(g) The lapse of insurance coverage at any time after license renewal will result in an automatic administrative suspension of the contractor's license, permit pulling privileges and right to perform any work that would normally be allowed to be performed by a licensed contractor. A contractor performing work while the contractor's license is administratively suspended will be considered an unlicensed contractor and subject to all penalties pertaining to performing work as an unlicensed contractor. The~~

~~contractor's license will not be reinstated until the contractor provides proof of compliance with the insurance requirements of the City Code.~~

~~(h) Any contractor aggrieved by administrative suspension of its license, may appeal such suspension or other action to the Construction Regulation Board (Board) within ten days of administrative suspension or other action. The time to file the notice of appeal is jurisdictional and the time may not be extended. The Board shall hold a hearing to consider such appeal within 30 days of receipt of the notice of appeal. The Board may extend the time in which to hear the appeal beyond 30 days for good cause. Formal rules of evidence shall not apply at any hearing. After considering relevant testimony and the evidence presented, the Board may affirm, modify or reverse the decision or action of the Department of Community Development. The Board's decision will be final. Any appeal of the Board's decision will be to the Circuit Court by filing a writ of certiorari.~~

~~§ 6-9 Prohibited acts and penalties.~~

~~The following acts are hereby declared unlawful, the violation of which will subject the violator to those sanctions, as provided in Chapter 2, Article V, Division 6, of the City of Cape Coral Code of Ordinances.~~

~~(a) (1) Applying or obtaining a permit for construction work prior to entering into a contract to make improvements to, or perform contracting at, the real property specified in the application or permit. (This section does not prohibit a contractor from applying for and obtaining permits to allow the contractor to perform work for another person without compensation or to perform work on property owned by the contractor).~~

~~(2) Committing fraud or deceit in the practice of contracting. An inference of the intent to defraud occurs upon proof of the following:~~

~~a. A contractor received money for the repair, restoration, addition, improvement or construction of residential real property; and~~

~~b. The amount received exceeds the value of the work performed by the contractor; and~~

~~c. The contractor failed to perform any of the work for which he contracted during any 60-day period; and~~

~~d. The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or material breach of the contract by the owner; and~~

~~e. The contractor's failure to perform the contracted work continued for an additional 30-day period after the property owner mailed a certified letter to the contractor stating that:~~

~~1. The contractor failed to perform any work for a 60-day period; and~~

~~2. That the failure was not due to a material breach or termination of the contract by the owner; and~~

~~3. That the contractor must recommence construction within 30 days of the date the letter was mailed.~~

~~(3) Committing incompetency or misconduct in the practice of contracting;~~

~~(4) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life of property;~~

~~(5) Proceeding on any job without obtaining the required building permits and inspections;~~

~~(6) Intimidating, threatening, coercing or otherwise discouraging the service of a notice to the owner or contractor regarding the intent to seek a lien on the subject property;~~

~~(7) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against a licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession;~~

- ~~(8) To make misleading, deceptive, untrue or fraudulent representation in the practice of his or her contracting profession;~~
- ~~(9) Obtaining a certificate or registration through fraud or misrepresentation;~~
- ~~(10) Violating F.S. Ch. 455;~~
- ~~(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) Willfully or deliberately disregarding and violating the applicable building codes or laws of the state or of any municipalities or counties thereof;~~
- ~~(13) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificate holder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered;~~
- ~~(14) Knowingly combining or conspiring with an uncertified or unregistered person by allowing certificate or registration to be used by the uncertified or unregistered person with intent to evade the provisions of this code. When a certificate holder or registrant allows his or her certificate or registration to be used by one or more business organizations without having any active participation in the operations, management or control of the business organizations, the act constitutes prima facie evidence of an intent to evade the provisions of the code;~~
- ~~(15) 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 or her obligation or contract;~~
- ~~(16) Committing 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 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 the liens.~~
 - ~~b. 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 the funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned.~~
 - ~~c. 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, unless the 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;~~
- ~~(17) Failing in any material respect to comply with the provisions of the code;~~
- ~~(18) Abandoning of a construction project in which the contractor is engaged or under contract as a contractor. A project is to be considered abandoned after 90 days if the contractor terminates the project without notification to the prospective owner and the city and without just cause;~~
- ~~(19) 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 are provided;~~
- ~~(20) Being disciplined by any municipality, county, or state for an act or violation of rules, regulations, codes, ordinances, or statutes similar to those contained in this article or F.S. Ch. 489;~~

~~(21) To contract or do any work outside of the scope of operations as set out in the definition of the particular type of contractor for which he or she is licensed;~~

~~(22) To depart from or disregard in any material respect the plans or specification of a construction job without the written consent of the owner or his or her duly authorized representative and the Department of Community Development or any successor department thereto;~~

~~(23) To make misleading, deceptive, untrue, or fraudulent statements on a permit application.~~

~~(b) Penalties — Locally licensed and state registered contractors. One or combination of the following penalties can be imposed against the contractor as part of the disciplinary process:~~

~~(1) Probation.~~

~~(2) Restitution.~~

~~(3) Reprimand.~~

~~(4) Suspension.~~

~~(5) Revocation.~~

~~(6) Fine of up to \$5,000.~~

~~(7) Assessment of legal and investigation costs incurred by the city to prosecute the case.~~

~~(c) Penalties — State certified contractors. One or a combination of the following penalties can be imposed against a state certified contractor as part of the disciplinary process:~~

~~(1) Suspension of Cape Coral permit pulling privileges.~~

~~(2) Revocation of Cape Coral permit pulling privileges.~~

~~(3) Recommendation to the state construction industry licensing board for further action that may be taken based upon evidence obtained through the local disciplinary process indicating a violation of F.S. Ch 489.~~

~~(d) Disposition of funds collected. Any funds collected as a result of the enforcement of contractor or unlicensed contractor violations, whether through the court or local Board, shall be retained by the Code Compliance Division in a separate fund to support future code enforcement licensing activities.~~

~~§ 6-10 Complaints.~~

~~(a) After an initial investigation of a contractor, Code Compliance may meet informally with a contractor to informally resolve any outstanding complaints, violations or disciplinary issues. Mediation may also be used by code enforcement in any of the above situations. The resolution of any informal action shall be a written agreement addressing the issues where each parties' duties, terms and conditions are set forth. The Board shall be informed of any mediation agreement that has been reached between Code Compliance and a contractor.~~

~~(b) Notwithstanding anything to the contrary, the City will follow the procedures prescribed by F.S. § 489.131 as it may be amended from time to time for disciplining contractors for minor violations of the city's codes regulating contractors.~~

~~§ 6-10.1 Disciplinary proceedings.~~

~~(a) Complaint.~~

~~(1) All complaints involving a violation of this article are to be filed with the Code Compliance Division ("Division") on the appropriate form. The Division is responsible for the investigation of a complaint only if it is in writing and legally sufficient.~~

~~(2) A complaint is legally sufficient if it contains the necessary facts to indicate a probable violation of this article. During review for legal sufficiency, the Division may request additional documentation or information from the complainant. If there is a question as to whether the complaint is legally sufficient, the final determination will be made by the building official and the City Attorney's office.~~

~~(3) The Division may investigate an anonymous complaint if:~~

- ~~a. The complaint is in writing;~~
- ~~b. Legally sufficient;~~
- ~~c. The alleged violation is substantial; and~~
- ~~d. The Division has reason to believe, after preliminary inquiry, that the violation alleged in the complaint is true.~~

~~(4) Notwithstanding the foregoing, the Division may initiate an investigation if there is reason to believe that a licensee or a group of licensees has committed a violation of this article.~~

~~(b) Investigation.~~

~~(1) The Division must investigate all complaints that are in writing, signed by the complainant and found legally sufficient.~~

~~(2) The Division must promptly furnish the subject contractor with a copy of the complaint or document that results in the initiation of an investigation.~~

~~(3) The subject contractor may submit a written response to the Division concerning the information contained in the complaint or document within 20 days after service of notice to the contractor regarding the complaint. The contractor's written response, if any, will be included in any documentation presented to the Board as part of any formal disciplinary hearing. The Division may request that the subject contractor meet with the Division regarding a complaint that is found to be legally sufficient.~~

~~(c) Mediation.~~

~~(1) After the initial investigation, the Division may schedule a meeting with complainant and contractor. This meeting will be considered an informal mediation session.~~

~~(2) The Division's role at this meeting is to explain the nature of the violation(s), offer possible methods of achieving abatement, and act as mediator.~~

~~(3) The objective of this mediation session is to obtain an agreement identifying the action that will be taken to abate the violation(s). This agreement will be reduced to written form within five days after the meeting and become effective upon execution by all parties.~~

~~(4) If the agreement is not executed within 30 days after the mediation session, the Division may present the complaint to the Board as a formal disciplinary hearing.~~

~~(5) Once the agreement is executed, the parties are required to comply with its written terms. If the contractor fails to comply with the terms of the agreement, the Division may present the complaint to the Board as a formal disciplinary hearing.~~

~~(6) The Division will retain a copy of the mediation agreement in the contractor's file.~~

~~(7) Mediation agreements that are fully complied with prior to a formal disciplinary hearing may still be presented to the Board at a formal disciplinary hearing. In such event, the Board may consider such mediation compliance when imposing penalties, if any, against the contractor.~~

~~(8) Mediation is not mandatory. It is intended only as a means to obtain compliance on an expedited basis.~~

~~(d) Formal disciplinary hearing process.~~

~~(1) After the Division conducts its investigation and the facts indicate a probable violation of this article, the Division may schedule a formal disciplinary hearing before the Board. Any formal disciplinary hearing will be scheduled for the next regularly scheduled meeting of the Board, or as soon thereafter as possible.~~

~~(2) Upon the request of the Division or the contractor, the Chairperson has the discretion to delay or continue the hearing date for good cause. A contractor's request for continuance must be delivered to the Division in writing and it must state the specific reasons for the request.~~

~~(3) All parties must be given ten days notice prior to a formal disciplinary hearing unless otherwise agreed by the parties.~~

~~(4) The notice of formal disciplinary hearing must include the following:~~

~~a. A statement of the time, place and nature of the hearing;~~

~~b. A statement of the legal authority and jurisdiction under which the hearing is to be held; and~~

~~c. A copy of the complaint.~~

~~(5) During the hearing all parties will have an opportunity to present evidence and argument, to conduct cross-examination, and submit rebuttal evidence.~~

~~(6) All testimony must be under oath.~~

~~(7) A representative of the City Attorney's office will represent the Division in the disciplinary proceedings against the contractor.~~

~~(8) The standard of proof applicable to these hearings is "clear and convincing evidence." Florida case law indicates that "clear and convincing evidence" requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.~~

~~(9) Irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs will be admissible, whether or not the evidence would be admissible in civil court. Any part of the evidence may be received in written form.~~

~~(10) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.~~

~~(11) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original.~~

~~(12) All pleadings, motions or other papers filed in the proceedings must be signed by a party, the party's attorney or the party's qualified representative.~~

~~(13) At the conclusion of the hearing the Board will render an oral decision. The decision becomes final upon execution of the final order. However, if the Board decision includes suspension or revocation of permit pulling privileges, this portion of the decision will go into effect at the start of business on the day following the hearing.~~

~~(e) Final orders:~~

~~(1) Within 14 days after the formal disciplinary hearing, the parties may submit a proposed recommended order to the Board attorney. The submitting party will also provide a copy to the opposing party.~~

- ~~(2) Within 30 days after the conclusion of the hearing, the Board's attorney will prepare and submit a recommended order to the Division that reflects the Board's determination. Any order imposing disciplinary action against a contractor must contain, at minimum, the following:~~
- ~~a. A clear statement of the violation charged and the factual basis for the charge;~~
 - ~~b. Evidence that the contractor was given notice of the charges and an opportunity to appear and present evidence and testimony regarding the charges;~~
 - ~~c. Findings of fact based exclusively on evidence of record and matters officially recognized by the Board. The findings of fact cannot merely track statutory language, unless the order contains a concise and explicit statement of the underlying facts used to support findings;~~
 - ~~d. Conclusions of law demonstrating that the facts alleged constitute a violation of state or local regulations;~~
 - ~~e. A statement of the penalty imposed against the contractor;~~
 - ~~f. A recommended penalty to the construction industry licensing board for further action against the registered contractor or state-certified contractor, if appropriate; and~~
 - ~~g. A clear statement concerning the right to appeal the Board's decision or challenge the recommendation to the construction industry licensing board.~~
- ~~(3) The Division will provide each Board member, the subject contractor, and the city attorney's office with a copy of the recommended order. The Board will consider the recommended order at its next regular meeting.~~
- ~~(4) The Board may adopt the recommended order as the final order or make any amendments it deems necessary.~~
- ~~(5) The Board's attorney will prepare the final order. The final order must be in writing and signed by the Chairperson, or the Vice Chairperson in the Chairperson's absence, within 10 days after the meeting which the Board considered the recommended order.~~
- ~~(6) A copy of any order rendered by the Board will be provided to the parties, including the complainant, by regular U.S. mail.~~
- ~~(7) The Board's order is final upon execution by the Chairperson, or the Vice Chairperson in the Chairperson's absence.~~
- ~~(f) Recommendation to state construction industry licensing board.~~
- ~~(1) If the disciplinary proceedings involve a registered or certified contractor, the Board must issue a recommended penalty for construction industry licensing board action. The Board's recommendation will be made part of the final order. The recommended penalty may include a recommendation for no further action, suspension, revocation, restitution, or restriction of the registration or a fine to be levied by the construction industry licensing board or a combination of these actions.~~
- ~~(2) As part of the final order, the Board must inform the subject contractor and the complainant of the local penalty imposed, the recommendation to the construction industry licensing board, the contractor's right to appeal and the consequences should the contractor choose not to appeal.~~
- ~~(3) The Board must inform the construction industry board of the action taken by the Board against any contractor, including the penalty imposed, within three days of the Board's final action. Sending a copy of the Board's final order to the construction industry~~
- ~~(g) Record of the proceedings.~~
- ~~(1) The record of these proceedings will consist of the following:~~
- ~~a. All notices, pleadings, motions and orders.~~

~~b. All evidence received or considered by the Board.~~

~~c. All staff memoranda or data submitted to the Board during the hearing or prior to its disposition except communications by advisory staff.~~

~~d. All matters placed on the record after ex parte communication.~~

~~e. The official transcript. The official transcript is the audio recording made during the hearing.~~

~~(2) The Division is responsible for preservation of the record. Upon written request, the Division must make a full or partial transcript of the proceedings available at no more than actual cost. However, the Division is not responsible for payment of transcription costs unless the city is the requesting party.~~

~~(h) Challenge by a contractor of Board recommendation to construction industry licensing board. In accordance with F.S. § 489.131(7), the Department of Business and Professional Regulation, a complainant or contractor can challenge a recommendation of the Board to the construction industry licensing board. A challenge must be filed with the construction industry licensing board within 60 days after the Construction Regulation Board executes its final order. Failure to file a challenge with the construction industry licensing board constitutes a waiver of the right to a hearing before the construction industry licensing board. Under F.S. Ch. 489, a waiver is deemed an admission of the violation and the recommended order becomes the final order of the construction industry licensing board without further action. A final order of the construction industry licensing board is appealable to the district court.~~

~~(i) Ex parte communications.~~

~~(1) Ex parte communication is prohibited. No ex parte communication relative to the merits of a case under Board jurisdiction may be made to a member of the Board by:~~

~~a. Any city employee officially involved in prosecuting the matter under consideration.~~

~~b. A party to the proceeding, including an authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed action.~~

~~(2) A Board member who is involved in the decision process that receives an ex parte communication must place on the record of the proceedings all written communication received or a memorandum stating the substance of all oral communications received and all oral responses made, and must also advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so. A request for rebuttal must be made within ten days after notice of the communication is received. The Board member may withdraw from participation in the decision if he deems it necessary to eliminate the effect of the ex parte communication.~~

~~(j) Appeals. The violator or the City may appeal a decision of the Board by petition for writ of certiorari to the circuit court. The petition shall be filed no later than 30 days after the date of the decision of the Board.~~

ARTICLE II: UNLICENSED CONTRACTING

§ 6-11 - Intent and purpose.

It is the intent and purpose of this chapter to promote the health, safety and welfare of the citizens of the City of Cape Coral by prohibiting the practice of unlicensed contracting, by establishing a Special Magistrate for the purpose of deciding cases of alleged violations of this chapter and by imposing administrative fines and other noncriminal penalties against persons found to be guilty of violating this chapter.

§ 6-12 - Applicability.

This chapter shall be applicable to any unlicensed contractor, as defined by this chapter, who is performing construction work within the city limits of Cape Coral. The regulations contained in this

chapter are in addition to and are intended to supplement existing state laws regulating the construction industry.

...

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective on June 30, 2023.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2023.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	_____	CUMMINGS	_____
STEINKE	_____	WELSH	_____
SHEPPARD	_____	LONG	_____
HAYDEN	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2023.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:


JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
Ord/Repeal Contractors Regulatory Bd

ORDINANCE 10 - 23

AN ORDINANCE AMENDING THE CAPE CORAL CODE OF ORDINANCES, BY REPEALING CHAPTER 2, "ADMINISTRATION," ARTICLE V, "BOARDS AND COMMISSIONS," DIVISION 6, "CAPE CORAL CONSTRUCTION REGULATION BOARD," SECTIONS 2-120.3 THROUGH 2-120.11, IN ITS ENTIRETY, REGARDING ABOLISHING THE CAPE CORAL CONSTRUCTION REGULATION BOARD; AND BY AMENDING CHAPTER 6, "CONTRACTORS AND CONSTRUCTION REGULATION BOARD," REGARDING CONTRACTORS PERFORMING WORK IN THE CITY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, "Administration," Article V, "Boards and Commissions," Division 6, "Cape Coral Construction Regulation Board," Sections 2-120.3 through 2-120.11, is hereby repealed in its entirety as follows:

DIVISION 6. CAPE CORAL CONSTRUCTION REGULATION BOARD RESERVED.

§ 2-120.3 Creation and purpose.

~~To carry out the provisions and intent of Chapter 6 of this code, there is hereby created a Cape Coral Construction Regulation Board.~~

§ 2-120.4 Board composition and appointments.

~~(a) The Board shall consist of 12 active members, all of whom shall be residents of the city or have their principal place of business within the city.~~

~~(b) Membership shall be only after qualification as provided herein and appointment by a majority vote of City Council who shall by letter notify the member of the appointment or reappointment and effective date thereof.~~

~~(c) The Board's composition shall, whenever possible, include the following:~~

~~(1) Two licensed contractors possessing a valid "B" certificate or higher;~~

~~(2) One licensed architect or licensed engineer;~~

~~(3) One licensed master electrical contractor;~~

~~(4) One licensed master plumbing contractor;~~

~~(5) One licensed pool contractor with "B" license or higher;~~

~~(6) One mechanical contractor or class "A" air conditioning contractor;~~

~~(7) One roofing contractor;~~

~~(8) One member who is any of the above classifications; and~~

~~(9) Three consumer representatives.~~

~~(d) The consumer representative may be any resident of Cape Coral who is not, and has never been, a member or practitioner of a profession regulated by the board or a member of any closely related profession.~~

~~(e) Upon the adoption of Ordinance 70-13, the Contractors' Regulatory Board shall cease to exist. All members of the Contractors' Regulatory Board shall automatically become members of the Cape Coral Construction Regulation Board with the same terms and expiration dates of their respective terms when appointed to the Contractors' Regulatory Board.~~

~~§ 2-120.5 Terms of office, forfeiture of appointment and filling of vacancies.~~

~~(a) All appointments to the Board shall be made for a term of two years.~~

~~(b) Board members shall forfeit their appointment as provided in § 2-58 above or as otherwise provided herein except that members may be excused from attending meetings with prior approval of the Chairperson or by the majority vote of the Board.~~

~~(c) Any vacancy on the Board shall be filled for the unexpired portion of the term in the same manner as the original appointment.~~

~~§ 2-120.6 Organization, Board Attorney, administration and compensation.~~

~~(a) The Board shall elect from its members a Chairperson and a Vice Chairperson who shall then serve in that capacity for one year.~~

~~(b) The City Council shall provide an attorney as legal counsel to the Board.~~

~~(c) In addition to the city provided attorney the Board may have its own attorney selected by the Board, but paid for by the city.~~

~~(d) The City Clerk shall provide clerical and administrative personnel as may reasonably be required by the Board for the proper performance of its duties.~~

~~(e) Members shall serve without compensation, but may be reimbursed for the travel, mileage and per diem expenses as may be authorized by the City Council.~~

~~(f) The Department of Community Development shall take applications for contractor licenses, send out renewal notices, and assist the Board in carrying out its functions. The Department of Community Development shall have the authority to create forms approved by the Board including but not limited to application forms, insurance proof renewals, etc.~~

~~§ 2-120.7 Meetings, records and quorum.~~

~~(a) The Board shall regularly convene at least once every two months, but may convene more often as the agenda demands. All regular and special meetings, hearings and records of all the Board's transactions and deliberations shall be open to the public.~~

~~(b) — (1) Seven members of the Board shall constitute a quorum at any meeting, and a majority vote of those present shall be required to make any decision; however, in no case shall any decision be made with less than four concurring votes.~~

~~(2) Except that only when considering the issuance of contractors' licenses, five members shall constitute a quorum, and any decision as to whether or not a license shall be issued must be made with at least three concurring votes.~~

~~§ 2-120.8 Disqualification of Board member.~~

~~A member may be disqualified to act in a particular proceeding by reason of bias, prejudice or a significant personal interest in the matter involved.~~

~~§ 2-120.9 Jurisdiction of Board.~~

~~The Board has jurisdiction over all those matters provided by the provisions of this article and the Cape Coral Code of Ordinances.~~

~~§ 2-120.10 Powers of the Board.~~

~~The Board shall have the following powers:~~

~~(a) To develop and adopt minimum standards for licensure of contractors that are to be kept and made available through the Department of Community Development;~~

~~(b) To determine the qualifications of applicants for the various types of registered contractors' licenses and approve or deny the issuance thereof;~~

~~(c) To promulgate rules and procedures for the conduct of its meetings and hearings and take sworn testimony therein;~~

~~(d) To hold and conduct hearings in an effort to determine the validity of alleged violations brought by the city against licensed contractors;~~

~~(e) To issue subpoenas only upon the specific request of a party to compel the attendance of witnesses and documents before the Board;~~

~~(f) To discipline a registered contractor found in violation of this code or any requirements hereunder by:~~

~~(1) Revoking, suspending or denying the issuance or renewal of his or her license;~~

~~(2) Imposing an administrative fine not to exceed \$5,000;~~

~~(3) Revoking or suspending his or her permit pulling privileges;~~

~~(4) Reprimanding;~~

~~(5) Requiring re-examination;~~

~~(6) Require restitution; or~~

~~(7) Providing any combination of the above.~~

~~(g) To discipline a certified contractor found guilty of a fraud or a willful building code violation by denying the issuance of a building permit or permits.~~

§ 2-120.10.5 Criteria for application review.

~~(a) In the Board's review of an application for any of the various types of contractors' licenses, the Board shall consider and weigh all information presented concerning the application and applicant including, but not limited to, experience, financial responsibility and legal entity of applicant.~~

~~(b) During review of each application, the Board will consider the following:~~

~~(1) Whether the application is complete; an incomplete application will not be accepted by the Board.~~

~~(2) Whether the application verifies the appropriate amount of trade experience. (Education or classroom time used to verify experience can not exceed 50% of the actual trade experience required.) Letters of experience verification cannot come from family members.~~

~~(3) The number of business entities the applicant seeks to qualify. (One individual can qualify up to two business entities.)~~

~~(4) The applicant's business reputation.~~

~~(5) Whether the applicant exhibits good moral character.~~

~~(6) Whether the applicant has shown financial responsibility with respect to personal and business finances.~~

~~a. FINANCIAL RESPONSIBILITY refers to the ability to safeguard that the public will not sustain economic loss resulting from a contractor's inability to pay his lawful obligations under the contract. The grounds upon which the Board may deny a certificate of competency for lack of proof as to financial responsibility include the following:~~

~~1. Failure to submit the required credit reports.~~

~~2. Failure to answer the application questions truthfully and completely.~~

~~3. Evidence that the applicant has filed voluntary or involuntary bankruptcy within the five years preceding the application resulting in a loss to consumers.~~

~~4. The existence, within the ten years preceding the application, of an unsatisfied court judgment rendered against the applicant based upon the applicant's failure to pay just obligations to parties with whom the applicant conducted business as a contractor.~~

~~5. An unfavorable credit report or history as indicated by any of the documents submitted.~~

~~6. A determination by the Board that the applicant lacks the financial stability necessary to assure compliance with the standard set forth in this section. As guidelines for the determination of financial responsibility the Board will consider the applicant's response to the questions set forth in the application.~~

~~(c) After its review of a submitted application, the Board may:~~

~~(1) Grant a permanent license, a probationary license, or a restricted license; or~~

~~(2) Deny the license, upon a finding that the applicant fails to meet one or more of the qualifications necessary for issuance of a contractor's license.~~

~~(d) The types of licenses available are as follows:~~

~~(1) Permanent license. The Board may grant a permanent license when it finds that the applicant has met all requirements. Granting a permanent license is within the sole discretion of the Board. The license is "permanent" only in the sense review of the current application is not necessary. The applicant must pay biennial renewal fees and otherwise comply with the requirements of this ordinance in order to maintain a permanent license.~~

~~(2) Probationary license. The Board may grant a probationary license when it finds that the applicant does not meet one or more of the requirements or qualifications for the issuance of a permanent license. The granting of a probationary license is within the sole discretion of the Board. If the Board grants a probationary license, it must state the deficiency in the application and indicate the action and evidence necessary for the applicant to correct the deficiency and ultimately obtain a permanent license. The length of the probationary period and the frequency of review intervals is determined by the Board. However, the probationary period cannot be less than 30 days. The Board has the discretion to grant successive probationary licenses. The applicant must pay appropriate fees and otherwise comply with the requirements of this article in order to maintain a probationary license.~~

~~(3) Restricted license. The Board may grant a permanent or probationary restricted specialty license if the Board finds the applicant qualifies to contract with respect to certain aspects of a license offered by the city but does not qualify to contract with respect to all aspects of a specialty license. If the Board grants a restricted specialty license it must:~~

~~a. Clearly indicate the scope of work allowed under the restricted specialty license; and~~

~~b. Specifically state the qualifications applicable to the restricted specialty license in a manner that will provide meaningful guidance to applicants desiring the same restricted specialty license in the future.~~

~~(e) Requirements for license issuance. The Department of Community Development will issue an appropriate license upon proof as to all of the following:~~

~~(1) Board approval for a specific license.~~

~~(2) Proof of liability insurance. All active contractors must carry public liability and property damage insurance. (Registered contractors must also comply with state insurance requirements.) Acceptable proof of insurance consists of a certificate from the insuring company indicating:~~

- ~~a. The name, address and phone number of the insuring company and the insurance agent.~~
- ~~b. The name and address of the insured. All insurance policies must reflect the exact name of the entity qualified by the applicant.~~
- ~~c. The insurance policy number.~~
- ~~d. The effective dates of the insurance policy. All contractors holding an active license must maintain current insurance.~~
- ~~e. The coverage amount is at least \$50,000 per person/\$100,000 per incident for liability and \$5,000 per incident for property damages.~~
- ~~f. The City of Cape Coral, as certificate holder, will receive a written notice 30 days prior to cancellation.~~
- ~~g. The certificate must be prepared by a bonafide insurance agent.~~

~~(3) Proof of workers' compensation coverage. All active contractors must obtain workers' compensation insurance or provide proof of a valid exemption in accordance with F.S. Ch. 440. Acceptable proof of insurance consists of a certificate from the division of employment and workers' compensation indicating compliance with F.S. Ch. 440. Workers' compensation insurance or an appropriate exemption must be in effect at all times the contractor maintains an active certificate of competency.~~

~~(4) Valid state registration, if applicable.~~

~~(5) Business tax receipt. Submit proof of payment of business tax receipt for office location; any change of business address must be submitted with written notice within 30 days of any change to the Department of Community Development.~~

~~(6) Identification. Submit with application a clear photocopy of contractor's driver's license or other acceptable identification clearly showing signature to be kept on file.~~

~~(f) Reporting requirements for change in business status.~~

~~(1) All locally licensed contractors must provide the Department of Community Development with written notice within 30 days of any change in business status concerning:~~

- ~~a. The name of the business entity or the name under which the business is contracting.~~
- ~~b. The business address.~~
- ~~c. The person qualifying the business.~~
- ~~d. The removal or resignation of a person qualifying the business.~~
- ~~e. The resident agent for purposes of service.~~

~~(2) Board approval for a change in business status is required.~~

~~§ 2-120.11 Appeal of Board denial for a license.~~

~~(a) An applicant may appeal the Board's denial of a license by petition for writ of certiorari to the circuit court. The petition must be filed not later than 30 days after the date of the Board's oral decision. The applicant must provide the Department of Community Development and the City Attorney's Office a copy of the petition filed with the circuit court.~~

~~(b) An applicant whose application is denied may request in writing that the Board reexamine his application based upon new evidence not available to the Board at the initial hearing. The request must be made no later than 30 days after the Board's decision to deny the application and include a copy of or a statement setting forth the new evidence. Rehearings are granted at the Board's discretion.~~

~~(c) For purposes of this section, new evidence means evidence or documentation not considered at the time of the initial hearing that will substantially add to or clarify the application.~~

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 6, "Contractors and Construction Regulation Board," is hereby amended to read as follows:

CHAPTER 6: UNLICENSED CONTRACTORS AND CONSTRUCTION REGULATION BOARD

ARTICLE I: GENERAL PROVISIONS

§ 6-1 Intent.

~~In recognition that contractors are daily performing tasks which touch upon and directly impact the public health, safety and welfare and, in an effort to protect the citizens from harm or abuses occasioned by incompetent or dishonest contractors, it is necessary to regulate the quality and character of work performed by the various contractors conducting business within the city.~~

§ 6-2 Applicability.

~~This chapter applies to any contractor, including specialty contractors, performing work within the city limits of Cape Coral. All requirements of this chapter are in addition to and are intended to supplement existing state laws regulating the construction industry.~~

§ 6-3 Exemptions.

~~This chapter shall not apply to those exemptions listed in F.S. § 489.103 and any other statutes as they may be amended from time to time that exempts a person or entity from having to obtain a State of Florida contractor's license.~~

§ 6-4 Definitions.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~**ALARM SYSTEM CONTRACTOR.** Any person whose business includes the execution of contracts requiring the ability, experience, science, knowledge and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems for compensation.~~

~~**ALARM SYSTEM CONTRACTOR I.** An alarm system contractor whose business includes all types of alarm systems for all purposes.~~

~~**ALARM SYSTEM CONTRACTOR II.** Any alarm system contractor whose business includes all types of alarm systems other than fire, for all purposes, except as otherwise provided in F.S. §§ 489.501 et seq.~~

~~**BOARD.** The Cape Coral Construction Regulation Board.~~

~~**BUILDING CONTRACTOR.** A contractor whose services are limited to construction of commercial buildings and single dwelling or multiple dwelling residential buildings, neither to exceed three stories in height, and accessory use structures in connection therewith, or a contractor whose services are limited to remodeling, repair or improvement of any size building if the services do not affect the structural members of the building.~~

~~**CERTIFICATE.** A certificate of competency as issued by the Department of Professional Regulation of the State of Florida.~~

~~**CERTIFIED CONTRACTOR.** Any contractor who possesses a certificate of competency issued by the Department of Professional Regulation and who shall be allowed to contract in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.~~

~~**CLASS A AIR CONDITIONING CONTRACTOR.** A contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge and skill to install, maintain,~~

~~repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters or electrical power wiring on the line side of the disconnect switch.~~

~~**CLASS B AIR CONDITIONING CONTRACTOR.** A contractor whose services are limited to 25 tons of cooling and 500,000 BTU of heating in any one system in the execution of contracts requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system being installed under this classification; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping and insulation of pipes, vessels and ducts; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring on the line side of the disconnect switch.~~

~~**CLASS C AIR CONDITIONING CONTRACTOR.** A contractor whose business is limited to the servicing of air conditioning, heating or refrigeration systems, including duct alterations in connection with those systems he or she is servicing, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. No person not previously registered or certified as a Class C air conditioning contractor shall be so registered or certified after October 1, 1988.~~

~~**CONTRACTING.** Engaging in business as a contractor and performing acts attributable to a contractor. The attempt to sell contracting services and the negotiation or bid for contract services also constitutes contracting. If the construction services offered require licensure or agent qualification, then the offer, negotiation for a bid, or attempt to sell these services requires the corresponding licensure.~~

~~**CONTRACTOR.** Any person, except those exempted in § 6-3 herein, who is state certified or registered and for compensation, undertakes to, or submits a bid to, or does himself or herself 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, however, a contractor shall subcontract the electrical, mechanical, plumbing, roofing, sheet metal, commercial swimming pool and air conditioning work, for which a state certificate of competency or a license of the respective trade category is required. A general, building or residential contractor shall not be required to subcontract the installation of wood shingles, wood shakes or asphalt or fiberglass shingle roofing materials on a new building of his or her own construction, and a general contractor shall not be required to subcontract structural swimming pool work.~~

~~**ELECTRICAL CONTRACTOR or UNLIMITED ELECTRICAL.** A contractor who conducts business in the electrical trade field and who has the experience, knowledge and skill to install, repair, alter, add to or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduit or any part thereof, which generates, transmits, transforms or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, alarm systems and lightening protection systems, all in compliance with applicable plans, specifications, codes, laws and regulations. The term means any person, firm or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.~~

~~ELECTRICAL OUTDOOR SIGN CONTRACTOR.~~ Any contractor whose services are limited to the installation, alteration, repair, service or erection of outdoor electrical signs and outline lighting. The scope of the certification shall not include the provision of, or any work beyond, the last disconnecting means or terminal point. However, a contractor certified under this section may provide the electrical entrance requirements for metering and main disconnect of remote billboards or signs which are independent of any structure or building and which require no more than 25 kilowatts at 250 volts maximum.

~~ELECTRICAL SIGN CONTRACTOR.~~ Any contractor who is qualified to install, repair, alter, add to or change any electrical wires, apparatus, raceways, conduit or any part thereof on electrical signs and is qualified to erect signs. The contractor may contract for, and take out building permits for the erection of signs.

~~FIRE SPRINKLER CONTRACTOR.~~ Any contractor who is certified by the state Fire Marshal's Office and is qualified to install, maintain, alter, repair or extend any fire sprinkler device or system.

~~GENERAL CONTRACTOR.~~ A contractor whose services are unlimited as to the type of work which he or she may do, except as provided by state law and this chapter.

~~MECHANICAL CONTRACTOR.~~ A contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge and skill to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, central air conditioning, refrigeration, heating and ventilating systems, including duct work in connection with a complete system only to the extent the duct work is performed by the contractor as is necessary to make complete an air distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping and all appurtenances, apparatus or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines and natural gas fuel lines within buildings; to disconnect or reconnect power wiring on the load side of the disconnect switch and low voltage heating, ventilating and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for the contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum gas fuel lines within buildings, potable waterlines or connections thereto, sanitary sewer lines, swimming pool piping and filters or electrical power wiring.

~~PLUMBING CONTRACTOR.~~ A contractor whose business consists of the execution of contracts requiring the experience, financial means, knowledge and skill to install, maintain, repair, alter, extend or, when not prohibited by law, design plumbing. A **PLUMBING CONTRACTOR** may install, maintain, repair, alter, extend or when not prohibited by law, design the following without obtaining any additional local regulatory license, certificate or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas (excluding liquid petroleum gases), and storm and sanitary sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, when not prohibited by law, and installation, maintenance, repair, alteration or extension of air piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers to the extent authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in such a manner as to comply with all plans, specifications, codes, laws and regulations applicable. The scope of work of the plumbing contractor shall apply to private property and public property, shall include any excavation work incidental thereto, and shall include the work of the specialty plumbing contractor. The contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified herein as being the work of a trade other than that of a plumbing contractor. Nothing in this definition shall be construed to limit the scope of work of any specialty contractor certified pursuant to F.S. § 489.113(6). Nothing in this definition shall be construed to require certification or registration, under this part, of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission, when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

POOL CONTRACTORS.

~~(1) **COMMERCIAL POOL/SPA CONTRACTOR.** A contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any swimming pool, or hot tub or spa, whether public, private or otherwise, regardless of use. The scope of the work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, construction of equipment rooms or housing for pool equipment, and installation of package pool heaters. However, the scope of the work does not include direct connections to a sanitary sewer system or to potable waterlines.~~

~~(2) **RESIDENTIAL POOL/SPA CONTRACTOR.** A contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment and servicing of any residential swimming pool, or hot tub or spa, regardless of use. The scope of the work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, pouring of floors, guniting, fiberglassing, installation of tiles and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, pouring of decks, installation of housing for pool equipment and installation of package pool heaters. However, the scope of the work does not include direct connections to a sanitary sewer system or to potable waterlines.~~

~~(3) **SWIMMING POOL/SPA SERVICING CONTRACTOR.** A contractor whose scope of work involves the servicing, repair, water treatment, including, but not limited to, the direct infusion of chlorine gas, and maintenance of any swimming pool or hot tub or spa, whether public or private. The scope of the work may include any necessary piping and repairs, replacement and repair of existing equipment or installation of new additional equipment as necessary. The scope of the work includes the reinstallation of tile and coping, repair and replacement of all piping, filter equipment and chemical feeders of any type, replastering, repouring of decks and reinstallation or addition of pool heaters.~~

~~**QUALIFYING AGENT OR QUALIFIER.** A person who possesses the requisite, skill, knowledge, experience, and responsibility to supervise, direct, manage, and control the contracting activities as well as the financial aspects on a job for which he has obtained a building permit, and whose technical and personal qualifications are verified by application, examination, and licensure.~~

~~**REGISTERED CONTRACTOR.** Any contractor who does not possess a valid certificate of competency but fulfills the local competency requirements as established by the Board and who has registered with the Florida Department of Professional Regulation in accordance with F.S. § 489.105.~~

~~**RESIDENTIAL CONTRACTOR.** A contractor whose services are limited to construction, remodeling, repair or improvement of one-family, two-family or three-family residences not exceeding two stories in height and accessory use structures in connection therewith.~~

~~**RESTRICTED SPECIALTY CONTRACTOR.** An applicant whose experience is limited to only a particular phase of construction included in one of the established categories of Cape Coral specialty contractor license category. At the time the restricted specialty license is granted, the Board will specify the requirements necessary for any future applicant to obtain a similar certificate.~~

~~**ROOFING CONTRACTOR.** A contractor whose services are unlimited in the roofing trade and who has the experience, knowledge and skill to install, maintain, repair, alter, extend or design when not prohibited by law, and use materials and items used in the installation, maintenance, extension and alteration of all kinds of roofing, waterproofing and coating, except when coating is not represented to protect, repair, waterproof, stop leaks or extend the life of the roof.~~

~~**SPECIALTY STRUCTURE CONTRACTOR.** Those who have the knowledge and skill necessary for the fabrication, assembling, handling, erection, installation, dismantling, adjustment, alteration, repair, servicing and design work, of aluminum, metal, vinyl and fiberglass screening material. The scope of work shall include and be limited to screen porches, screened enclosures, pool enclosures, pre-formed panel post and beam roofs, mobile home panel roof-overs, residential glass window enclosures, vinyl panel window enclosures, single story self-contained aluminum utility storage structures (not exceeding 500 square feet), siding, soffit, fascia and gutters. The scope of work also includes masonry concrete work limited to foundations, slabs and block knee walls incidental to the aluminum and allied materials construction work. **SPECIALTY STRUCTURE CONTRACTORS** are not permitted to perform any work that alters the structural integrity of the building including, but not limited to, roof trusses, lintels, load bearing walls and foundations.~~

SHEET METAL CONTRACTOR. A contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing or design when not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air handling systems including the setting of air handling equipment and reinforcement of same and including the balancing of air handling systems.

SPECIALTY CONTRACTOR. A contractor whose operations consist of the performance of construction work requiring special skills and whose principal contracting business involves the use of specialized building trades and crafts, usually a minor part of the complete structure. The Construction Regulation Board may approve a competency license for a specialty contractor not classified herein; provided the applicant has passed the appropriate block exam or exams for the particular specialty contractor classification applied for and has otherwise complied with the requirements of this chapter. **SPECIALTY CONTRACTORS** shall be classified and defined as follows:

(1) **ALUMINUM NON-STRUCTURAL.** Those who are qualified to fabricate, assemble, erect, install, dismantle, adjust, alter, repair, service and design gutters, downspouts, shutters, soffit, fascia and vinyl and aluminum siding and other non structural aluminum. In addition, the holder of this class of license, provided he or she is otherwise qualified, may handle, erect, install, adjust, repair, alter and replace screens in windows, doors, screened porches, screened enclosures and pool enclosures in both residential and commercial structures. This license does not allow for the erection, construction or repair of any structural component of any of the foregoing. Notwithstanding anything to the contrary herein, those current license holders of an aluminum non structural specialty license that have been and currently are erecting and installing pool enclosures may continue to do so with an aluminum non structural license as long as such license is renewed and kept current. If the license holder changes, is not renewed or is allowed to lapse for any reason, the privilege of erecting and installing pool enclosures by that individual or entity shall immediately cease and those individuals or entities desiring to perform such work must obtain an aluminum structural specialty license. Any individual or entity not currently performing installation or erection of pool enclosures with an aluminum non structural specialty license must obtain an aluminum structural specialty license to perform this type of work. The Department of Community Development shall have the right to require evidence of any person or entity who is claiming the benefits of this section that they actually have been and currently are installing or erecting pool enclosures.

(2) **ALUMINUM STRUCTURAL.** Any person who is qualified to fabricate, assemble, handle, erect, install, dismantle, adjust, alter, repair, service and design, if not prohibited by law and in accordance with accepted engineering data and manufacturer specifications, screened porches, screened enclosures, pool enclosures, preformed panel post, beam roofs, mobile home panel roof overs, residential glass window and door enclosures, vinyl panel window enclosures, single story self-contained aluminum utility storage structures (not to exceed 500 square feet) siding, soffit, fascia, gutters, shutters, wood work incidental to the aluminum construction work (limited to the construction of wood framing for the walls of uninhabitable utility storage structures, raised wood decks for enclosures, repair or replacement of wood incidental to the installation of glass windows and doors, siding, soffit, fascia, gutters, preformed panel post and beam roofs).

(3) **ASPHALT COATING AND SEALING.** Those who are qualified to coat and seal asphalt on roads, driveways and parking lots. This license category may not apply asphalt or any other type of paving material.

(4) **CABINET AND MILLWORK INSTALLATION CONTRACTOR.** Any person who is qualified to manufacture, assemble, install, dismantle, maintain, adjust, alter, extend and design, when not prohibited by law, cabinets and millwork. The scope of permitted work shall include, but not be limited to kitchen cabinets, bathroom vanities, accessory cabinets, countertops, office furniture and millwork items which have been manufactured for installation on job site locations.

(5) **CARPENTRY.** Any person who is qualified to install any wood products or metal framing in a structure of building including rough framing, door, window (including metal), structural and non structural trusses, sheathing, paneling, trim, cabinets, siding, soffit and fascia.

~~(6) CONCRETE COATINGS.~~ Those who have the knowledge and skill to apply decorative coating to the top of existing concrete slabs. The coating, including aggregate and latex type coating, cannot exceed 3/4 of an inch in thickness. The scope of work does not include the installation of concrete slabs.

~~(7) CONCRETE FORMING AND PLACING CONTRACTOR.~~ Those who are qualified to batch and mix aggregates, cement and water to agreed specifications, to construct forms and framework for the casting and shaping of concrete, to place miscellaneous embedded steel and to pour, place and finish concrete.

~~(8) CONCRETE PLACING AND FINISHING CONTRACTOR.~~ Those who are qualified to pour, place and finish concrete flatwork (including but not limited to floors, slab on grade, sidewalks) including placement of mesh reinforcement, plastic vapor barriers and edge forms incidental thereto.

~~(9) DEMOLITION CONTRACTOR (WRECKING).~~ Those who are qualified to demolish and remove structures, such as dwellings, commercial buildings and foundations. (Now state certified)

~~(10) EXCAVATION CONTRACTOR.~~ Any person who is qualified to excavate, to obtain or remove materials such as rock, gravel, and sand, to construct or to excavate canals, lakes, and levees including the clearing of land of surface debris and vegetation, including the grubbing of roots, the removal of debris and leveling of the surface land incidental and necessary thereto in compliance with all environmental laws.

~~(11) FENCE ERECTION CONTRACTOR.~~ Any person who is qualified to install, maintain or repair fencing on grade, including pre-cast concrete and pre-fabricated fences which meet all applicable safety, zoning and building codes.

~~(12) FINISH CARPENTRY.~~ Any person who has the knowledge and skill to install finished wood products including paneling, trim, flooring, cabinetry, doors, windows (including metal) and all incidental hardware.

~~(13) GARAGE DOOR.~~ Those who are qualified to install, maintain, repair or alter horizontal and vertical type garage doors, including all hardware and operating devices, provided a licensed electrical contractor does any of the necessary electrical installation.

~~(14) GLASS AND GLAZING CONTRACTOR.~~ Any person who is qualified to select, cut, assemble and install any type of glass or glass work, and to execute the glazing frames, panels, sashes, doors, ornamental decorations, mirrors, tub and shower enclosures and any metal framing which holds any of the items listed above. (Now state certified)

~~(15) HURRICANE PROTECTION.~~ Those who are qualified to install, maintain, repair and replace storm shutters in both residential and commercial facilities, including both manually and mechanically operated shutters, provided a licensed electrical contractor does any of the necessary electrical installation.

~~(16) INSULATION CONTRACTOR, ALL TYPES.~~ Those who are qualified to install, maintain, repair, alter or extend any insulation primarily installed to prevent loss or gain of heat from internal or external sources in pipes, vessels, ducts or built-up refrigerated boxes or rooms, or acoustical materials.

~~(17) IRRIGATION SPRINKLER CONTRACTOR (LAWN SPRINKLER).~~ Those who are qualified to install, maintain, repair, alter or extend piping and sprinkler heads for irrigation of lawns, including the connection to a water pump. (Now state certified)

~~(18) MASONRY CONTRACTOR.~~ Those who are qualified to select, cut and lay brick and concrete block or any other unit masonry products, lay brick and other baked clay products, rough cut and dress stone, artificial stone and precast blocks, structural glass brick or block, but shall not pour or finish concrete.

~~(19) NON-ELECTRICAL SIGN INSTALLATION CONTRACTOR.~~ Any person who is qualified to erect, repair, install, alter, extend or change any non-electrical sign, not to exceed a height of ten feet above existing grade, to the top of the sign and a maximum size of 40 square

feet or a non-electrical sign structure that does not exceed 20 feet above existing grade which is attached to an existing wall or structure.

~~(20) PAINTING CONTRACTOR.~~ Those who are qualified to use spraying equipment as well as hand tools to finish both exterior and interior work. Also pertains to faux or other types of finishes to surfaces or paint, mural or any artwork applied to a surface. A **PAINT CONTRACTOR** may do paperhanging, sandblasting and waterproofing.

~~(21) PAVER BLOCK.~~ Any person who is qualified to lay brick, block or paver block for flat work only. The bricks are set in sand or other loose or packed material. Blocks may not be set in place by any aggregate that hardens such as concrete or mortar.

~~(22) PAVING CONTRACTOR, COMMERCIAL OR UNLIMITED.~~ Those who are qualified with the experience and skill to construct roads, airport runways and aprons, parking lots, sidewalks, curbs and gutters, property line walls, storm drainage facilities and to perform the excavating, clearing and grading incidental thereto.

~~(23) PLASTERING CONTRACTOR (LATH, PLASTER AND STUCCO).~~ Those who are qualified to coat surfaces with a mixture of sand or other aggregate gypsum plaster, portland cement or quicklime and water, or any combination of such material as to create a permanent surface coating. The contractor may perform the work of the lathing contractor.

~~(24) SIGN CONTRACTOR, ELECTRICAL.~~ Those who are qualified to erect, install, alter or extend signs, not to exceed a height of 24 feet above existing grade, at the top of the sign, and a maximum size of 40 square feet, or a sign structure that does not exceed 20 feet above existing grade which is attached to an existing wall or structure. The scope of work also includes the repair of all signs, regardless of height and size, however, electrical work is limited to internal wiring of the signs, and does not include work on the electrical supply wiring.

~~(25) TILE, TERRAZZO AND MARBLE CONTRACTOR.~~ Those who are qualified to mix, prepare the base and finish terrazzo, set tile and marble.

~~(26) UNDERGROUND UTILITY CONTRACTOR.~~ A contractor whose services are limited to construction, installation and repair on public or private property, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems or storm sewer collection systems at storm sewer structures. An **UNDERGROUND UTILITY CONTRACTOR** shall not install any piping that is an integral part of a fire protection system, as defined in F.S. § 633.021(9) beginning at the point where the piping is used exclusively for the system.

§ 6-4.1 Registered contractors.

After January 1, 2010, no person or entity licensed as a registered contractor will be issued a Cape Coral specialty contractor's license based solely on registration. Each such person or entity on or after January 1, 2010, must meet the requirements of and be licensed in the appropriate City of Cape Coral specialty contractor category, or be licensed in the appropriate Florida Department of Business and Professional Regulation (DPBR) specialty license category. Notwithstanding the foregoing, any registered contractor issued a City of Cape Coral specialty license on or before January 1, 2010, may continue to renew the City of Cape Coral specialty license as long as application for renewal is timely made. Failure to make timely application will result in the irrevocable lapse of such specialty license that was issued because the contractor initially was registered, and the contractor will have to meet the then-current requirements by the city or DPBR for such specialty license. An expired specialty license obtained through registration may not be reinstated by the Construction Regulation Board under any circumstances.

§ 6-4.2 Grandfathering of specialty contractors.

After January 1, 2010 no person or entity will be able to apply for or receive a Cape Coral specialty contractor's license in any specialty category for any specialty that is licensed by the Florida Department of Business and Professional Regulation (DPBR) irrespective of when DPBR begins to issue licenses for such specialty contractor category. However notwithstanding the foregoing, any

person or entity already licensed in a specialty license category now licensed by the DPBR may continue to renew the City of Cape Coral specialty license as long as application for renewal and fees are timely made and paid. Failure to make timely application or payment will result in the irrevocable lapse of such specialty license and the contractor will have to meet the then current requirements for licensure by the DPBR. An expired, grandfathered specialty license may not be reinstated by the Construction Regulation Board under any circumstances.

~~§ 6-4.2.1 Elimination of registered contractors and grandfathering.~~

~~Upon the effective date of this section, no person or entity will be eligible to apply for or receive a registered contractor's license, apply for registration, or qualify in any category or trade as a registered contractor in the City of Cape Coral. A contractor that is registered with the State of Florida or any other local government may not perform contracting work in Cape Coral unless the contractor possesses either a valid City of Cape Coral specialty contractor's license, or a certificate or license in any category, except that in a registered contractor category, trade or specialty currently or in the future regulated or licensed by the Florida Department of Business and Professional Regulation (DPBR). However, notwithstanding the foregoing, any person or entity currently registered or licensed as a registered contractor with the City of Cape Coral in any trade or category may continue to renew the City of Cape Coral registration or registered license as long as application for renewal is timely made. Failure to make timely application will result in the irrevocable lapse of such registration or registered license, and the contractor will have to meet the then current requirements for licensure by the DPBR. An expired, grandfathered registration or registered license may not be reinstated by the Construction Regulation Board under any circumstances. This provision is not intended to change the status or affect the rights of any person or entity governed by or in compliance with the provisions of § 6-4.1 or § 6-4.2 of the Cape Coral Code as these sections currently exist or may be amended.~~

~~§ 6-4.3 Recognition of Lee County specialty contractor categories.~~

~~Those portions of any Lee County ordinance or Administrative Code provision that adds or deletes a contractor category requiring a Lee County certificate of competency which provides criteria for any contractor category, including but not limited to, experience, examination(s), and scope of work, shall be considered to be adopted and enforceable by the City of Cape Coral including the imposition of the appropriate city penalty for any violation, unless the city by ordinance declines to adopt the Lee County provisions or adopts the provision with modifications; then the Lee County provision will not be adopted or enforced or stand adopted with modifications as the case may be.~~

~~§ 6-5 Unlawful to act as contractor without a license, presumption.~~

~~It shall be unlawful for any person or firm to engage in the business or act in the capacity of a contractor or subcontractor, within the city limits without first possessing a valid and appropriate contractor's license. Any person not possessing a valid contractor's license while holding himself or herself out to be a contractor shall be subject to the provisions and penalties of this code, and the representations shall be considered prima facie evidence that the person or firm purported to have the authority capacity to act as a contractor. Furthermore, it shall be unlawful for any person or firm to advertise themselves as available to engage in the business or act in the capacity of a contractor within the city limits without first possessing a valid and appropriate contractor's license. Contracts entered into by unlicensed contractors may as a matter of public policy be unenforceable in law or equity.~~

~~§ 6-6 Reserved.~~

~~§ 6-7 Contractor's license; required method for obtaining.~~

~~(a) Any person requesting or desiring to be licensed as a contractor shall make application on a form prescribed by the Board at the office of the Department of Community Development. The application shall be retained by the Department of Community Development together with all supporting papers.~~

~~(1) All residential, building and general contractors must be state certified. However, no residential, building or general contractor holding a registered license approved by Board before May 1, 1987, shall be required to be state swimming pool-spa contractors shall be required to provide a letter of bond ability, a letter of credit or a compliance bond in the amount of \$25,000 established to reimburse persons damaged due to diversion of funds, abandonment or any other violation of this chapter which results in financial loss to a consumer, provided, however that any such contractor who held a city license approved by the Board on or before October 24,~~

~~1994, shall not be required to provide any letter of bond ability, letter of credit or compliance bond.~~

~~(2) All registered contractors within the City of Cape Coral must register with the Department of Professional Regulation in accordance with F.S. § 489.117.~~

~~(3) The registration or certification number of a contractor, or the city license number of a specialty contractor, shall appear in any newspaper, airwave transmission, phone directory, vehicle sign or other advertising medium used by the contractor.~~

~~(4) An advertisement shall include any announcement, listing, contract, job estimate, warranty, business card, letterhead stationery of the business organization and any other written or oral statement of whatever kind or nature.~~

~~(5) All registered, certified or specialty contractors shall display their registration or certification number, or if not required to be registered or certified, the city license number on any vehicle used for business purposes, in letters no smaller than two inches in height.~~

~~(6) When appearing in advertisements or other written form, the contractor's registration or certification number or, if not required to be registered or certified, the city license number, shall be no smaller than ten point type.~~

~~(b) Examination requirements.~~

~~(1) All applicants must take and pass an appropriate examination. The city hereby adopts and incorporates the Lee County requirements, as they may be amended from time to time, for the appropriate examination. If for any specialty contractor category for which an examination is given by Lee County a question arises as to which exam is appropriate, and Lee County has a rule, regulation or decision regarding the issue, the Lee County decision will be adopted. However, the City of Cape Coral Building Official will make the final determination as to the appropriate examination for any specialty contractor category.~~

~~(2) The applicant must receive a passing grade of 75% or better on the appropriate examination. An examination administered in or by another jurisdiction is acceptable with a passing grade of 75% provided the examination is the same or comparable to the one that would have been administered or approved by Lee County, and the date of the test or grade has been taken or provided no more than five years before the date of the applicant's application for a license.~~

~~(3) For application purposes, exam scores are valid for five years. An exemption from this requirement is applicable if:~~

~~a. The applicant is actively providing the type of services covered by the certificate of competency sought;~~

~~b. The applicant has been engaged in providing these services for at least two years prior to application; and~~

~~c. The applicant can prove that he took and passed an appropriate exam that is five years old or older.~~

~~(c) Any contractor may name an authorized agent to act on his or her behalf showing his or her authority:~~

~~(1) To act for the contractor in all matters in any manner connected with the contracting business; and~~

~~(2) To supervise the construction under the license issued to the contractor.~~

~~(d) Qualifying agent for business organization.~~

~~(1) If an applicant proposes to engage in contracting as a business organization, or in any name other than the applicant's legal name (or a fictitious name where the applicant is doing business as a sole proprietorship), the business organization must apply for a license through a qualifying agent.~~

~~(2) The application for qualifying agent must include an affidavit attesting that the applicant has final approval authority for all construction work performed in the city and final authority on all business matters, including contracts, specifications, checks, drafts, payments, regardless of the form of payment made by the entity.~~

~~(3) No person shall act as a qualifying agent for more than two business entities.~~

~~(4) When a contractor acting as qualifying agent for a business entity ceases affiliation with the business entity, he must notify the Department of Community Development immediately. If this qualifying agent is the only licensed individual affiliated with the business entity, then the business entity must employ another qualifying agent within 60 days after the qualifying agent terminates the affiliation. Under no circumstances can a business entity contract without a qualifying agent. However, the financially responsible officer, president, sole proprietor, partner, or general partner (in the case of a limited partnership), who assumes all responsibilities of a primary qualifying agent, may apply to the building official for a 60-day temporary nonrenewable certificate to proceed with completion of any outstanding contracts identified to the Department of Community Development in writing at the time of the request for the temporary certificate. Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for a predecessor's actions, but is responsible, even after a change in status, for matters that occurred while he was acting as qualifying agent.~~

~~(e) No application shall be considered unless the applicant provides all information required on the form.~~

~~(f) Specialty license holder's privileges and responsibilities. A Cape Coral specialty contractor's license provides a license holder with the following privileges and responsibilities:~~

~~(1) A license holder or an employee of the license holder can contract only in the name of the business entity or individual indicated on the certificate. The Department of Community Development will issue a license approved by the Board to the individual or entity indicated on the application reviewed by the Board.~~

~~(2) The license holder must notify the city as to any change in business status.~~

~~(3) A license holder can contract for and perform work in the area covered by the license classification or category.~~

~~(4) A license holder is responsible for the action of his employees and must supervise employees or individuals working under his regulations.~~

~~(5) A license holder must assure that bills are paid and work is done in accordance with the contract and all applicable codes and regulations.~~

~~(6) A license holder must renew his certificate biennially by paying the required fees in order to remain active.~~

~~(7) An active license holder must maintain current public liability insurance in accordance with this article.~~

~~(8) An active license holder must maintain current workers' compensation insurance in accordance with this article.~~

~~(9) A license holder who receives money, as an initial payment, totaling more than 10% of the contract price for repair, restoration, improvement or construction to residential real property must:~~

~~a. Apply for permits necessary to do the work within 30 days after the date the payment is made, and before any work requiring a permit commences, except where the work does not require a permit under the applicable codes or regulations; and~~

~~b. Start work within 90 days after the date all necessary permits for work are issued, unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both.~~

§ 6-7.2 Insurance requirements.

~~(a) All applicants for a City of Cape Coral specialty contractor's license must present proof of liability and workers' compensation insurance coverage as indicated herein reasonably satisfactory to city. Applicants must provide proof of workers' compensation insurance pursuant to F.S. Ch. 440 or evidence that the applicant is exempt from such requirements. Applicants must provide proof of liability insurance in the amount of \$50,000 for one person and coverage of \$100,000 if two or more persons are involved. Coverage for property damage in the amount of \$5,000 is also required. The applicant must present a certificate of insurance with the following information:~~

~~(1) Date that certificate of insurance was issued.~~

~~(2) Name of insurance agent.~~

~~(3) Name of insurance company.~~

~~(4) Policy number must be on the certificate.~~

~~(5) Effective date of policy.~~

~~(6) Expiration date of policy.~~

~~(7) Certificate holder will be the City of Cape Coral, or if a certified or other class of contractor regulated by the state, the certificate holder shall be as specified by statute or administrative rule.~~

~~(8) The agent's signature.~~

~~(b) The insurance shall at all times be carried in the name of the licensee.~~

~~§ 6-8 Biennial renewal fees.~~

~~(a) Persons licensed under this chapter shall biennially pay a renewal fee, established by resolution approved and adopted by City Council. Such resolution may be changed or modified by Council from time to time. Biennial license renewals shall go into effect for the 2014 license renewal cycle.~~

~~(b) A license which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee, if the application for renewal is made within 90 days after September 30. If the application for renewal is not made within the 90 day period, the license is automatically lapsed. Except as otherwise provided herein, a contractor with a lapsed license may not pull permits or perform any contracting work under the lapsed license. A lapsed license may only be restored by appearing in person before the Board and providing an explanation of why the license was allowed to lapse and why it should be restored by the Board. For good and sufficient reason the Board may deny the restoration of the lapsed license. The fee for restoration of a lapsed license shall be up to \$500 plus the cost for the renewal.~~

~~(c) A person who fails to renew a license by the expiration date shall pay a penalty of 10% of the renewal fee for the month of October, plus an additional 5% penalty for each month of delinquency thereafter until paid. In no instance shall the penalty exceed 25% of the required annual fee.~~

~~(d) Where a license has been revoked or has expired or lapsed for any reason, the Board may require complete re-examination and application before a license is renewed or reinstated.~~

~~(e) A person licensed under this chapter may go on inactive status during which time he or she shall not engage in contracting, but may retain the license upon payment of an annual \$25 fee. The license may be activated by the Board upon applicant's presentation of current credit report, satisfactory proof of required insurance coverage together with the balance of the required fee.~~

~~(f) When applying for the renewal of any contractor's license, applicant shall present proof of insurance as specified in § 6-7(2)(a).~~

~~(g) The lapse of insurance coverage at any time after license renewal will result in an automatic administrative suspension of the contractor's license, permit pulling privileges and right to perform any work that would normally be allowed to be performed by a licensed contractor. A contractor performing work while the contractor's license is administratively suspended will be considered an unlicensed contractor and subject to all penalties pertaining to performing work as an unlicensed contractor. The~~

~~contractor's license will not be reinstated until the contractor provides proof of compliance with the insurance requirements of the City Code.~~

~~(h) Any contractor aggrieved by administrative suspension of its license, may appeal such suspension or other action to the Construction Regulation Board (Board) within ten days of administrative suspension or other action. The time to file the notice of appeal is jurisdictional and the time may not be extended. The Board shall hold a hearing to consider such appeal within 30 days of receipt of the notice of appeal. The Board may extend the time in which to hear the appeal beyond 30 days for good cause. Formal rules of evidence shall not apply at any hearing. After considering relevant testimony and the evidence presented, the Board may affirm, modify or reverse the decision or action of the Department of Community Development. The Board's decision will be final. Any appeal of the Board's decision will be to the Circuit Court by filing a writ of certiorari.~~

~~§ 6-9 Prohibited acts and penalties.~~

~~The following acts are hereby declared unlawful, the violation of which will subject the violator to those sanctions, as provided in Chapter 2, Article V, Division 6, of the City of Cape Coral Code of Ordinances.~~

~~(a) (1) Applying or obtaining a permit for construction work prior to entering into a contract to make improvements to, or perform contracting at, the real property specified in the application or permit. (This section does not prohibit a contractor from applying for and obtaining permits to allow the contractor to perform work for another person without compensation or to perform work on property owned by the contractor).~~

~~(2) Committing fraud or deceit in the practice of contracting. An inference of the intent to defraud occurs upon proof of the following:~~

~~a. A contractor received money for the repair, restoration, addition, improvement or construction of residential real property; and~~

~~b. The amount received exceeds the value of the work performed by the contractor; and~~

~~c. The contractor failed to perform any of the work for which he contracted during any 60-day period; and~~

~~d. The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or material breach of the contract by the owner; and~~

~~e. The contractor's failure to perform the contracted work continued for an additional 30-day period after the property owner mailed a certified letter to the contractor stating that:~~

~~1. The contractor failed to perform any work for a 60-day period; and~~

~~2. That the failure was not due to a material breach or termination of the contract by the owner; and~~

~~3. That the contractor must recommence construction within 30 days of the date the letter was mailed.~~

~~(3) Committing incompetency or misconduct in the practice of contracting;~~

~~(4) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life of property;~~

~~(5) Proceeding on any job without obtaining the required building permits and inspections;~~

~~(6) Intimidating, threatening, coercing or otherwise discouraging the service of a notice to the owner or contractor regarding the intent to seek a lien on the subject property;~~

~~(7) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against a licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession;~~

- ~~(8) To make misleading, deceptive, untrue or fraudulent representation in the practice of his or her contracting profession;~~
- ~~(9) Obtaining a certificate or registration through fraud or misrepresentation;~~
- ~~(10) Violating F.S. Ch. 455;~~
- ~~(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) Willfully or deliberately disregarding and violating the applicable building codes or laws of the state or of any municipalities or counties thereof;~~
- ~~(13) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificate holder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered;~~
- ~~(14) Knowingly combining or conspiring with an uncertified or unregistered person by allowing certificate or registration to be used by the uncertified or unregistered person with intent to evade the provisions of this code. When a certificate holder or registrant allows his or her certificate or registration to be used by one or more business organizations without having any active participation in the operations, management or control of the business organizations, the act constitutes prima facie evidence of an intent to evade the provisions of the code;~~
- ~~(15) 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 or her obligation or contract;~~
- ~~(16) Committing 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 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 the liens.~~
 - ~~b. 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 the funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned.~~
 - ~~c. 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, unless the 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;~~
- ~~(17) Failing in any material respect to comply with the provisions of the code;~~
- ~~(18) Abandoning of a construction project in which the contractor is engaged or under contract as a contractor. A project is to be considered abandoned after 90 days if the contractor terminates the project without notification to the prospective owner and the city and without just cause;~~
- ~~(19) 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 are provided;~~
- ~~(20) Being disciplined by any municipality, county, or state for an act or violation of rules, regulations, codes, ordinances, or statutes similar to those contained in this article or F.S. Ch. 489;~~

~~(21) To contract or do any work outside of the scope of operations as set out in the definition of the particular type of contractor for which he or she is licensed;~~

~~(22) To depart from or disregard in any material respect the plans or specification of a construction job without the written consent of the owner or his or her duly authorized representative and the Department of Community Development or any successor department thereto;~~

~~(23) To make misleading, deceptive, untrue, or fraudulent statements on a permit application.~~

~~(b) Penalties — Locally licensed and state registered contractors. One or combination of the following penalties can be imposed against the contractor as part of the disciplinary process:~~

~~(1) Probation.~~

~~(2) Restitution.~~

~~(3) Reprimand.~~

~~(4) Suspension.~~

~~(5) Revocation.~~

~~(6) Fine of up to \$5,000.~~

~~(7) Assessment of legal and investigation costs incurred by the city to prosecute the case.~~

~~(c) Penalties — State certified contractors. One or a combination of the following penalties can be imposed against a state certified contractor as part of the disciplinary process:~~

~~(1) Suspension of Cape Coral permit pulling privileges.~~

~~(2) Revocation of Cape Coral permit pulling privileges.~~

~~(3) Recommendation to the state construction industry licensing board for further action that may be taken based upon evidence obtained through the local disciplinary process indicating a violation of F.S. Ch 489.~~

~~(d) Disposition of funds collected. Any funds collected as a result of the enforcement of contractor or unlicensed contractor violations, whether through the court or local Board, shall be retained by the Code Compliance Division in a separate fund to support future code enforcement licensing activities.~~

~~§ 6-10 Complaints.~~

~~(a) After an initial investigation of a contractor, Code Compliance may meet informally with a contractor to informally resolve any outstanding complaints, violations or disciplinary issues. Mediation may also be used by code enforcement in any of the above situations. The resolution of any informal action shall be a written agreement addressing the issues where each parties' duties, terms and conditions are set forth. The Board shall be informed of any mediation agreement that has been reached between Code Compliance and a contractor.~~

~~(b) Notwithstanding anything to the contrary, the City will follow the procedures prescribed by F.S. § 489.131 as it may be amended from time to time for disciplining contractors for minor violations of the city's codes regulating contractors.~~

~~§ 6-10.1 Disciplinary proceedings.~~

~~(a) Complaint.~~

~~(1) All complaints involving a violation of this article are to be filed with the Code Compliance Division ("Division") on the appropriate form. The Division is responsible for the investigation of a complaint only if it is in writing and legally sufficient.~~

~~(2) A complaint is legally sufficient if it contains the necessary facts to indicate a probable violation of this article. During review for legal sufficiency, the Division may request additional documentation or information from the complainant. If there is a question as to whether the complaint is legally sufficient, the final determination will be made by the building official and the City Attorney's office.~~

~~(3) The Division may investigate an anonymous complaint if:~~

- ~~a. The complaint is in writing;~~
- ~~b. Legally sufficient;~~
- ~~c. The alleged violation is substantial; and~~
- ~~d. The Division has reason to believe, after preliminary inquiry, that the violation alleged in the complaint is true.~~

~~(4) Notwithstanding the foregoing, the Division may initiate an investigation if there is reason to believe that a licensee or a group of licensees has committed a violation of this article.~~

~~(b) Investigation:~~

~~(1) The Division must investigate all complaints that are in writing, signed by the complainant and found legally sufficient.~~

~~(2) The Division must promptly furnish the subject contractor with a copy of the complaint or document that results in the initiation of an investigation.~~

~~(3) The subject contractor may submit a written response to the Division concerning the information contained in the complaint or document within 20 days after service of notice to the contractor regarding the complaint. The contractor's written response, if any, will be included in any documentation presented to the Board as part of any formal disciplinary hearing. The Division may request that the subject contractor meet with the Division regarding a complaint that is found to be legally sufficient.~~

~~(c) Mediation:~~

~~(1) After the initial investigation, the Division may schedule a meeting with complainant and contractor. This meeting will be considered an informal mediation session.~~

~~(2) The Division's role at this meeting is to explain the nature of the violation(s), offer possible methods of achieving abatement, and act as mediator.~~

~~(3) The objective of this mediation session is to obtain an agreement identifying the action that will be taken to abate the violation(s). This agreement will be reduced to written form within five days after the meeting and become effective upon execution by all parties.~~

~~(4) If the agreement is not executed within 30 days after the mediation session, the Division may present the complaint to the Board as a formal disciplinary hearing.~~

~~(5) Once the agreement is executed, the parties are required to comply with its written terms. If the contractor fails to comply with the terms of the agreement, the Division may present the complaint to the Board as a formal disciplinary hearing.~~

~~(6) The Division will retain a copy of the mediation agreement in the contractor's file.~~

~~(7) Mediation agreements that are fully complied with prior to a formal disciplinary hearing may still be presented to the Board at a formal disciplinary hearing. In such event, the Board may consider such mediation compliance when imposing penalties, if any, against the contractor.~~

~~(8) Mediation is not mandatory. It is intended only as a means to obtain compliance on an expedited basis.~~

~~(d) Formal disciplinary hearing process:~~

~~(1) After the Division conducts its investigation and the facts indicate a probable violation of this article, the Division may schedule a formal disciplinary hearing before the Board. Any formal disciplinary hearing will be scheduled for the next regularly scheduled meeting of the Board, or as soon thereafter as possible.~~

~~(2) Upon the request of the Division or the contractor, the Chairperson has the discretion to delay or continue the hearing date for good cause. A contractor's request for continuance must be delivered to the Division in writing and it must state the specific reasons for the request.~~

~~(3) All parties must be given ten days notice prior to a formal disciplinary hearing unless otherwise agreed by the parties.~~

~~(4) The notice of formal disciplinary hearing must include the following:~~

~~a. A statement of the time, place and nature of the hearing;~~

~~b. A statement of the legal authority and jurisdiction under which the hearing is to be held; and~~

~~c. A copy of the complaint.~~

~~(5) During the hearing all parties will have an opportunity to present evidence and argument, to conduct cross-examination, and submit rebuttal evidence.~~

~~(6) All testimony must be under oath.~~

~~(7) A representative of the City Attorney's office will represent the Division in the disciplinary proceedings against the contractor.~~

~~(8) The standard of proof applicable to these hearings is "clear and convincing evidence." Florida case law indicates that "clear and convincing evidence" requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.~~

~~(9) Irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs will be admissible, whether or not the evidence would be admissible in civil court. Any part of the evidence may be received in written form.~~

~~(10) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.~~

~~(11) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original.~~

~~(12) All pleadings, motions or other papers filed in the proceedings must be signed by a party, the party's attorney or the party's qualified representative.~~

~~(13) At the conclusion of the hearing the Board will render an oral decision. The decision becomes final upon execution of the final order. However, if the Board decision includes suspension or revocation of permit pulling privileges, this portion of the decision will go into effect at the start of business on the day following the hearing.~~

~~(e) Final orders:~~

~~(1) Within 14 days after the formal disciplinary hearing, the parties may submit a proposed recommended order to the Board attorney. The submitting party will also provide a copy to the opposing party.~~

- ~~(2) Within 30 days after the conclusion of the hearing, the Board's attorney will prepare and submit a recommended order to the Division that reflects the Board's determination. Any order imposing disciplinary action against a contractor must contain, at minimum, the following:~~
- ~~a. A clear statement of the violation charged and the factual basis for the charge;~~
 - ~~b. Evidence that the contractor was given notice of the charges and an opportunity to appear and present evidence and testimony regarding the charges;~~
 - ~~c. Findings of fact based exclusively on evidence of record and matters officially recognized by the Board. The findings of fact cannot merely track statutory language, unless the order contains a concise and explicit statement of the underlying facts used to support findings;~~
 - ~~d. Conclusions of law demonstrating that the facts alleged constitute a violation of state or local regulations;~~
 - ~~e. A statement of the penalty imposed against the contractor;~~
 - ~~f. A recommended penalty to the construction industry licensing board for further action against the registered contractor or state-certified contractor, if appropriate; and~~
 - ~~g. A clear statement concerning the right to appeal the Board's decision or challenge the recommendation to the construction industry licensing board.~~
- ~~(3) The Division will provide each Board member, the subject contractor, and the city attorney's office with a copy of the recommended order. The Board will consider the recommended order at its next regular meeting.~~
- ~~(4) The Board may adopt the recommended order as the final order or make any amendments it deems necessary.~~
- ~~(5) The Board's attorney will prepare the final order. The final order must be in writing and signed by the Chairperson, or the Vice Chairperson in the Chairperson's absence, within 10 days after the meeting which the Board considered the recommended order.~~
- ~~(6) A copy of any order rendered by the Board will be provided to the parties, including the complainant, by regular U.S. mail.~~
- ~~(7) The Board's order is final upon execution by the Chairperson, or the Vice Chairperson in the Chairperson's absence.~~
- ~~(f) Recommendation to state construction industry licensing board.~~
- ~~(1) If the disciplinary proceedings involve a registered or certified contractor, the Board must issue a recommended penalty for construction industry licensing board action. The Board's recommendation will be made part of the final order. The recommended penalty may include a recommendation for no further action, suspension, revocation, restitution, or restriction of the registration or a fine to be levied by the construction industry licensing board or a combination of these actions.~~
- ~~(2) As part of the final order, the Board must inform the subject contractor and the complainant of the local penalty imposed, the recommendation to the construction industry licensing board, the contractor's right to appeal and the consequences should the contractor choose not to appeal.~~
- ~~(3) The Board must inform the construction industry board of the action taken by the Board against any contractor, including the penalty imposed, within three days of the Board's final action. Sending a copy of the Board's final order to the construction industry~~
- ~~(g) Record of the proceedings.~~
- ~~(1) The record of these proceedings will consist of the following:~~
- ~~a. All notices, pleadings, motions and orders.~~

~~b. All evidence received or considered by the Board.~~

~~c. All staff memoranda or data submitted to the Board during the hearing or prior to its disposition except communications by advisory staff.~~

~~d. All matters placed on the record after ex parte communication.~~

~~e. The official transcript. The official transcript is the audio recording made during the hearing.~~

~~(2) The Division is responsible for preservation of the record. Upon written request, the Division must make a full or partial transcript of the proceedings available at no more than actual cost. However, the Division is not responsible for payment of transcription costs unless the city is the requesting party.~~

~~(h) Challenge by a contractor of Board recommendation to construction industry licensing board. In accordance with F.S. § 489.131(7), the Department of Business and Professional Regulation, a complainant or contractor can challenge a recommendation of the Board to the construction industry licensing board. A challenge must be filed with the construction industry licensing board within 60 days after the Construction Regulation Board executes its final order. Failure to file a challenge with the construction industry licensing board constitutes a waiver of the right to a hearing before the construction industry licensing board. Under F.S. Ch. 489, a waiver is deemed an admission of the violation and the recommended order becomes the final order of the construction industry licensing board without further action. A final order of the construction industry licensing board is appealable to the district court.~~

~~(i) Ex parte communications:~~

~~(1) Ex parte communication is prohibited. No ex parte communication relative to the merits of a case under Board jurisdiction may be made to a member of the Board by:~~

~~a. Any city employee officially involved in prosecuting the matter under consideration.~~

~~b. A party to the proceeding, including an authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed action.~~

~~(2) A Board member who is involved in the decision process that receives an ex parte communication must place on the record of the proceedings all written communication received or a memorandum stating the substance of all oral communications received and all oral responses made, and must also advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so. A request for rebuttal must be made within ten days after notice of the communication is received. The Board member may withdraw from participation in the decision if he deems it necessary to eliminate the effect of the ex parte communication.~~

~~(j) Appeals. The violator or the City may appeal a decision of the Board by petition for writ of certiorari to the circuit court. The petition shall be filed no later than 30 days after the date of the decision of the Board.~~

ARTICLE II: UNLICENSED CONTRACTING

§ 6-11 - Intent and purpose.

It is the intent and purpose of this chapter to promote the health, safety and welfare of the citizens of the City of Cape Coral by prohibiting the practice of unlicensed contracting, by establishing a Special Magistrate for the purpose of deciding cases of alleged violations of this chapter and by imposing administrative fines and other noncriminal penalties against persons found to be guilty of violating this chapter.

§ 6-12 - Applicability.

This chapter shall be applicable to any unlicensed contractor, as defined by this chapter, who is performing construction work within the city limits of Cape Coral. The regulations contained in this

chapter are in addition to and are intended to supplement existing state laws regulating the construction industry.

...

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective on February 1, 2023.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION
THIS _____ DAY OF _____, 2023.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER _____
STEINKE _____
SHEPPARD _____
HAYDEN _____

CUMMINGS _____
WELSH _____
LONG _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2023.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:


JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
Ord/Repeal Contractors Regulatory Bd