



ORDINANCE NO. 1164

AN ORDINANCE OF THE CITY OF LYNN HAVEN, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES RELATED TO BUILDING CONTRACTORS EXAMINING BOARD; RENAMING THE BOARD; REVISING AND LIMITING THE DUTIES OF THE BOARD TO CONFORM WITH SECTION 489.113, FLORIDA STATUTES; PROVIDING FOR FILING FEES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2023 Florida Legislature amended Section 163.211, Florida Statutes, to preempt the local licensing of contractors; and

WHEREAS, the City Commission desires to amend the Lynn Haven Code of Ordinances to continue to comply with Florida Statutes.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF LYNN HAVEN IN BAY COUNTY, FLORIDA:

SECTION 1. Article VIII of Chapter 14—*Building Contractors Examining Board*, of the City of Lynn Haven Code of Ordinances is hereby amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

**ARTICLE VIII. - BUILDING CONTRACTORS EXAMINING BOARD OF CONSTRUCTION**

**Sec. 14-211. - Created.**

There is created the ~~building contractors examining board~~ **of construction** of the city.

**Sec. 14-212. - Members; appointment; terms.**

(a) The ~~building contractors examining board~~ **of construction** of the city shall consist of five members, as follows:

- (1) A master electrician who is engaged in the profession and who holds a valid ~~state master electrician's certificate in the city~~ **state master electrician's license and city occupational license**;
- (2) A master air conditioning mechanic who is engaged in the profession and who holds a valid ~~state master air conditioning mechanic's certificate in the city~~ **state master air conditioning mechanic's license and city occupational license**;
- (3) A master plumber who is engaged in the profession and who holds a ~~city master plumber's certificate in the city~~ **city occupational license**;
- (4) A member from the field of general construction; and
- (5) A qualified elector in the city, preferably not from the field of general construction or any profession regulated by this chapter.

(b) The board shall be appointed by the city commission as follows:

- (1) The first and second members shall be appointed for a term of three years for the first term;

- (2) The third and fourth members shall be appointed for a term of two years for the first term; and
- (3) The fifth member shall be appointed for a term of one year for the first term.
- (c) Terms shall expire and new appointments shall be effective on October 25, 1994, provided that all members shall serve until their successors are duly qualified and appointed. After the first term, all members shall be appointed for a term of three years.

**Sec. 14-213. - Chairman; secretary; quorum.**

- (a) The senior member of the ~~building contractors examining board~~ **of construction** shall act as chairman. The city manager-clerk, or his or her designated representative, shall serve as secretary to the board.
- (b) Any three members shall constitute a quorum with an elected chairman pro tem in the absence of the regular chairman.

**Sec. 14-214. - Meetings.**

Meetings of the ~~building contractors examining board~~ **of construction** shall be held at such times as the board may by rule, from time to time, establish. Special meetings of the board may be called by the chairman or three members of the board at other times and places.

**Sec. 14-215. - Records.**

~~From and after the effective date of this ordinance, t~~**From and after the effective date of this ordinance,** ~~t~~The ~~building contractors examining board~~ **of contractors** shall keep in the office of the **Building Services** department of development and planning a separate book for each trade or profession in which shall be recorded the names and addresses of each applicant **contractor against whom a grievance has been filed**, ~~for a certificate, the date of filing application, the final action of the board upon each application, the date of such action, whether the granting of a certificate was made with or without examination, date and action of the board in~~ **grievance** ~~revocation or suspension proceedings, and the signatures of the members of the board participating in any action.~~

**Sec. 14-216. - Powers and duties.**

The powers and duties of the ~~building contractors examining board~~ **of construction** shall include the following:

- (1) To prescribe forms for ~~applications for examinations, certificates of competency, permits, stationery, records,~~ **complaints for building code violations**, notices of violation, **notices of appeal** and such other documents as it shall deem necessary for the conduct of its business.
- ~~(2) To prepare, conduct and grade or designate written examinations of applicants for certificates of competency.~~
- ~~(3) To prepare or designate a basic written examination of homeowner applicants for permits and to establish a passing score of such examinations.~~
- (4) **(2)** To give notices of hearings and conduct hearings upon charges of violation of the provisions of this chapter by any person subject to the provisions of this chapter.
- ~~(5) (3)~~ To suspend or revoke **building permits or the ability to obtain building permits** ~~the certificate of competency~~ of any contractor, journeyman or other person found by the board to have violated any of the provisions of this chapter.
- ~~(6) (4)~~ To hear the appeal of any persons who may be aggrieved by any ruling or order of the chief building official or any inspector. Notice of appeal shall be filed with the secretary to the board within 30 days after the ruling or order from which the appeal is taken. The board shall as soon as may be practicable conduct a hearing at which the

city official and the aggrieved party shall be entitled to present evidence and cross examine witnesses. Either party may be represented by an attorney at law. The aggrieved party shall carry the burden of establishing by greater weight of the evidence that the ruling and order of the chief building official was arbitrary, unauthorized or otherwise unfounded. The hearing shall be conducted in a manner to provide the aggrieved party due process to challenge the ruling or order, and the decision of the board shall be contingent upon evidence and argument presented at the hearing. The rules of evidence shall not apply and any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons rely in the conduct of serious affairs. A record of the hearing shall be made by electronic recording or otherwise. The examining board shall recommend to the city council **commission** affirmation, reversal or modification of the ruling or order. The city council **commission** shall either approve the recommendation or either remand it to the examining board for further consideration. The city council **commission** shall not be authorized to modify the recommendation without the consent of the appellants. The aggrieved party shall be entitled to review the final decision of the city council **commission** by certiorari in the circuit court for the county. Notwithstanding any provisions of any building code, life safety code or other code adopted in this chapter by reference now or hereafter, the foregoing shall constitute the uniform and exclusive method of appeal in this chapter.

~~(7) To satisfy itself as to character and integrity of each applicant for a certificate of competency, by requiring such pertinent information as it may deem necessary.~~

~~(8) (5) To enforce provisions of this chapter wherever required or authorized.~~

**Sec. 14-217. Revocation, suspension of building permits certificates of competency.**

(a) ~~The building contractors examining board~~ **of construction** shall suspend or revoke any contractor's **building permits, or ability to obtain them**, ~~master's, or journeyman's certificate of competency~~, if one or more of the following grounds shall exist:

- (1) Misrepresentation of any material fact in the application for a ~~certificate or for~~ a permit;
- (2) Performance of work in a negligent, incompetent or unworkmanlike manner;
- (3) Contracting in a name other than registered with the general building inspector;
- (4) Abandonment of any contract for the performance of work without legal grounds;
- (5) Diversion of property or funds received pursuant to contract for work;
- (6) Departure from the plans and specifications of any contract for work or accompanying application for permit without the consent of the party for whom the work is being performed;
- (7) Misrepresenting the requirements of this chapter regulating work in order to obtain or increase the scope of the work in any contract of construction work;
- (8) Failing to report to the general building inspector or his assistants or attempting to conceal the violation of any provision of this chapter;
- (9) Failing to report to the general building inspector or his assistants or attempting to conceal the violation of any provision of this chapter by any contractor;
- (10) Pledging or loaning his certificate to any person when not actively associated with that person in the performance of the work authorized by the certificate;
- (11) Default in payment either for labor or materials resulting in a lien being placed against a piece of property in question and the lien remaining unsatisfied for a period of 60 days or more; or

(12) Default in payment either for labor or materials resulting in a judgment being obtained or filed against the building, general or residential contractor and the judgment remaining unsatisfied for a period of 60 days or more.

(13) Violation of any applicable provision of F.S. § 489.129.

(14) Violation of any applicable provision of F.S. § 455.227.

(b) Any contractor, ~~master or journeyman~~ who shall violate, or assist in violating, any of the provisions of this article, may, upon conviction thereof, have his **building permits, or ability to be issued building permits,** ~~certificate of competency~~ suspended for not less than 30 days for the first offense, and for repeated offenses, may have his **building permits, or ability to be issued building permits,** ~~certificate of competency~~ suspended for a longer period than 30 days or have the same canceled or revoked by the board of examiners upon the recommendation of the building official.

(c) Any time the building official or his assistants shall ascertain any of the grounds for revocation or suspension exist or there is filed with the board of examiners the complaint of any person alleging the existence of any such grounds, it shall be his or their duty to make a full, fact-gathering investigation and file, within 60 days of such complaint or assertion, with the board of examiners a written report thereof, together with a statement as to the existence of probable cause for suspension or revocation, and if the board ascertains that such probable cause exists, the board shall conduct a hearing thereon, after notice.

(d) At any time the report of the building official or his assistants shall show the existence of probable cause for suspension or revocation, the building official or his assistants shall serve upon the alleged violator a notice of the alleged grounds for suspension or revocation and the time, date and place of a hearing before the board thereupon. The notice shall be served not less than ten nor more than 30 days prior to such hearing. The alleged violator shall have the right to appear at the hearing, be represented by counsel, produce evidence and cross-examine witnesses. A record shall be kept of the hearing.

(e) Each case before the ~~examining~~ board shall be presented by the building official or his designee. The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses but fundamental due process shall govern the proceedings. Any relevant evidence shall be admitted if the board finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary. The board may take testimony from the general building inspector and the alleged violator. Each party shall have the right to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness; and rebut the evidence against him.

(f) The board shall make findings of facts based on evidence of record. The fact-finding determination of the board shall be limited to whether the violation alleged did occur, and if so, whether the person named in the notice is responsible for that violation. If, after the hearing, the board of examiners shall determine that one or more of the noticed grounds for suspension or revocation exist, it shall enter a written order signed by the chairman suspending or revoking the ~~certificate of competency~~ **building permit** of the violator. Such order shall, at a minimum, contain the following:

(1) A clear statement of the violations charged;

(2) A clear statement of the factual basis for the charges;

(3) Evidence that the violator was given notice of the charges, and of an opportunity to appear and present evidence and testimony regarding the charges;

(4) Findings of fact made by the board of examiners;

- (5) Conclusions of law which demonstrate that the facts alleged constitute violations of F.S. §§ 489.129 or 455.227 or of this section;
  - (6) A statement of the penalty imposed against the violator ~~'s certificate of competency~~;
  - (7) A recommendation to the construction industry licensing board for action to be taken against the state registration;
  - (8) A clear statement informing the violator of the right to appeal the action against him or her ~~certificate of competency~~, and of the right of the violator to challenge the recommendation to the construction industry licensing board.
- (g) Any order suspending or revoking a **building permit, or the ability to be issued a building permit**, ~~certificate of competency~~ may also assess against such violator the reasonable investigative and legal costs for the prosecution of the violation which shall bear interest at the rate provided for judgments in the circuit court and may be enforced as provided by law.
- (h) A copy of such order shall be forwarded to the construction industry licensing board.
- ~~(i) After such a revocation, a new certificate of competency may not be issued to any such violator for a period of up to one year, at the discretion of the board of examiners.~~
- ~~(j) After such a revocation, a new certificate of competency shall be issued only after the applicant passes the required examination and all investigative and legal costs assessed against the violator plus interest are paid in full.~~
- (k) Regardless of the term of any such suspension stated in the order, the suspension shall continue until all investigative and legal costs assessed against the violator plus interest are paid in full. ~~In event any certificate of competency remains suspended for more than 365 days, it shall be deemed revoked and a new certificate shall be issued only after the applicant passes the required examination and all investigative and legal costs assessed against the violator plus interest are paid in full.~~

**Sec. 14-218. - Appeals.**

Any person aggrieved by the action of the ~~building contractors examining board of construction~~ in refusing to grant a **building permit, or granting a building permit with conditions**, ~~certificate of competency issued pursuant hereto~~ or in suspending or revoking any **right to obtain building permits** ~~certificate of competency issued pursuant hereto~~, may appeal to the construction industry licensing board. Any such appeal shall be filed within 60 days from the date of issuance of the examining boards' recommended penalty to the construction industry licensing board. Failure to challenge the examining board's recommended penalty within the time period set forth in this section shall constitute a waiver of the right to a hearing before the construction industry licensing board, and shall be deemed an admission of the violation.

**Sec. 14-219. – Filing Fees.**

**Any person filing a complaint with the board of construction related to residential work shall pay a filing fee to the City in the amount of \$150.00. Any person filing a complaint with the board of contractors related to commercial work shall pay a filing fee to the City in the amount of \$300.00.**

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict. If any phrase, clause, sentence, paragraph, section, or subsection of this Ordinance shall be declared unconstitutional or invalid by a court of competent

jurisdiction, such unconstitutionality or invalidity shall not affect the remaining phrases, clauses, sentences, paragraphs, sections or subsections of this Ordinance.

**SECTION 3.** It is the intention of the Commission that the provisions of this Ordinance shall become a part of the City's Code of Ordinances. The provisions of this Ordinance may be renumbered or re-lettered with cross-references corrected and the word "ordinance" may be changed to "section," "article", "division" or other appropriate word to accomplish such intention.

**SECTION 4.** This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Commission of the City of Lynn Haven, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF LYNN HAVEN, FLORIDA

\_\_\_\_\_  
Jesse Nelson, Mayor

ATTEST:

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Vickie Gainer, City Manager-Clerk