

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Request Authorization to Advertise and Schedule a Public Hearing to Consider an Ordinance Amending Chapter 40, Part 2, Section 40.16, Seminole County Code

DEPARTMENT: Planning and Development **DIVISION:** Building & Fire Inspection

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Larry Goldman **EXT.** 7460
Kent Cichon **EXT.** 7126

Agenda Date 1 <u>0/22/02</u>	Regular <input type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Authorize Planning & Development Director to schedule and advertise a public hearing on November 26, 2002, to consider an amendment to the Seminole County Code (Chapter 40, Part 2, Section 40.16).

BACKGROUND:

Chapter 40, Part 2, Section 40.16 of the Seminole County Code currently states, "The following boards, each to be composed of five (5) licensed contractor members appointed by the Board of County Commissioners for terms of one year each and until their successors are appointed and qualified, are hereby established." This provision is not in compliance with Section 489.131(10), Florida Statutes which reads, "Each local board that licenses and disciplines contractors must have at least two consumer representatives on that board. If the board has seven or more members, at least three of those members must be consumer representatives."

Two (2) draft Ordinances (Option A and Option B) are attached to this memorandum:

Option A alters the composition of the board by reducing the current five (5) licensed contractor members to three (3) licensed contractor members, and creating two (2) consumer representatives;

Option B alters the composition of the board by reducing the current five (5) licensed contractor members to four (4) licensed contractor members, and creating three (3) consumer representatives.

Reviewed by:
Co Atty: <u>RCC</u>
DFS: _____
Other: _____
DCM: <u>SS</u>
CM: <u>AW</u>
File No. <u>cpdb01</u>

Each option also includes a provision for increasing the term of Board members and representatives from the current one (1) year term to staggered two (2) year terms.

STAFF RECOMMENDS:

The Board authorize staff to advertise and schedule a Public Hearing to consider the draft Ordinances.

- Attachments: Florida State Statute 489.131(10)
- Draft Ordinance (Option A) Amending Chapter 40, Part 2, Section 40.16
- Draft Ordinance (Option B) Amending Chapter 40, Part 2, Section 40.16
- Copy of Proposed Ad

er's statewide license shall be construed to waive any existing ordinance or resolution of county commission required to be performed

d to issue building or other permits, ascertain if the contractor is certified or is registered, and the action is to take place. A county may require the contractor pursuant to this part to perform within the scope of such

acting in the territorial area registered with the board,

agency that licenses contractors to the board a report against contractors and disciplinary action taken against a contractor including any cease and desist pursuant to s. 489.113(2) or s. 489.127(5).

to state that the purpose of the act is to protect the public by attaining compliance with law. Fines are levied in order to ensure compliance of fines and the imposition of fines is to be secondary to the compliance with state laws and it is the intent of the Legislature that the agency charged with enforcement shall issue a notice of violation to a minor violation in which it is reasonable to believe the contractor was unaware of such violation. A violation or violation" if it does not cause harm to a person's health, safety, or welfare, or such harm. A "notice of violation" by the local jurisdiction enforcing the ordinance, which is subject to the ordinance, shall not be accompanied by a civil penalty. It should identify the ordinance being violated, provide the violator to comply with the ordinance to take action within a set period of time without further disciplinary pro-

cedure of a county or municipal body, is authorized to take such part as well as its local jurisdiction or registered contractor. A local jurisdiction enforcement disciplinary proceeding against a registered contractor and

may require restitution, impose a suspension or revocation of his or her local license, or a fine not to exceed \$5,000, or a combination thereof, against the locally licensed or registered contractor, according to ordinances which a local jurisdiction may enact. In addition, the local jurisdiction may assess reasonable investigative and legal costs for the prosecution of the violation against the violator, according to such ordinances as the local jurisdiction may enact.

(c) In addition to any action the local jurisdiction enforcement body may take against the Individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, his or her rights to appeal, and the consequences should he or she decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

(d) The department, the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Construction Industry Licensing Board. A challenge shall be filed within 60 days after the issuance of the recommended penalty to the board. If challenged, there is a presumptive finding of probable cause and the case may proceed without the need for a probable cause hearing.

(e) Failure of the department, the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the time period set forth in this subsection shall constitute a waiver of the right to a hearing before the board. A waiver of the right to a hearing before the board shall be deemed an admission of the violation, and the penalty recommended shall become a final order according to procedures developed by board rule without further board action. The disciplined contractor may appeal this board action to the district court.

(f) 1. The department may investigate any complaint which is made with the department. However, the department may not initiate or pursue any complaint against a registered contractor who is not also a certified contractor where a local jurisdiction enforcement body has jurisdiction over the complaint, unless summary Procedures are initiated by the secretary pursuant to s. 455.225(8), or unless the local jurisdiction enforcement body has failed to investigate and prosecute a complaint, or make a finding of no violation, within 6 months of receiving the complaint. The department shall refer the complaint to the local jurisdiction enforcement body for investigation, and if appropriate, prosecution. However, the department may investigate such complaints to the extent necessary to determine whether summary procedures should be initiated.

2. Upon a recommendation by the department, the board may make conditional, suspend, or rescind its determination of the adequacy of the local government enforcement body's disciplinary procedures granted under s. 489.117(2).

(g) Nothing in this subsection shall be construed to allow local jurisdictions to exercise disciplinary authority over certified contractors.

(8) A local enforcement board may petition the secretary of the department for issuance of a summary order against a certificateholder or registrant for any violation of this part.

(9) The right to create local boards in the future by any municipality or county is preserved.

(10) No municipal or county government may issue any certificate of competency or license for any contractor defined in s. 489.105(3)(a)-(o) after July 1, 1993, unless such local government exercises disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in subsection (7). Each local board that licenses and disciplines contractors must have at least two consumer representatives on that board. If the board has seven or more members, at least three of those members must be consumer representatives. The consumer representative may be any resident of the local jurisdiction 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.

(11) Any municipal or county government which enters or has in place a reciprocal agreement which accepts a certificate of competency or license issued by another municipal or county government in lieu of its own certificate of competency or license allowing contractors defined in s. 489.105(3)(a)-(o), shall file a certified copy of such agreement with the board not later than 60 days after July 1, 1993, or 30 days after the effective date of such agreement.

(12) Unless specifically provided, the provisions of this part shall not be construed to create a civil cause of action.

History.—ss. 10, 17, ch. 79-200; s. 372, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 87-152; ss. 15, 20, 21, ch. 88-156; s. 30, ch. 89-289; s. 35, ch. 89-374; s. 40, ch. 91-137; s. 4, ch. 91-429; s. 6, ch. 92-55; ss. 64, 70, ch. 92-149; s. 19, ch. 93-166; s. 265, ch. 94-119; s. 4, ch. 95-240; s. 10, ch. 96-298; s. 73, ch. 96-388; s. 51, ch. 97-98; s. 1130, ch. 97-103; s. 13, ch. 97-228; s. 24, ch. 98-287; s. 10, ch. 98-419; s. 125, ch. 2000-141; s. 36, ch. 2000-154; s. 35, ch. 2001-186.

489.132 Prohibited acts by unlicensed principals; investigation; hearing; penalties.

(1) No uncertified or unregistered person associated with a contracting firm qualified by the licensee under this chapter shall:

(a) Conceal or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;

(b) Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;

(c) Knowingly cause any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision; or

DRAFT ORDINANCE A

ORDINANCE NO. 2002 -

SEMINOLE COUNTY, FLORIDA

AN ORDINANCE AMENDING CHAPTER 40, SEMINOLE COUNTY CODE; PROVIDING FOR THE ADDITION OF CONSUMER REPRESENTATIVES TO THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR STAGGERED TERMS OF THE MEMBERS OF THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 489.131(10), Florida Statutes requires the appointment of consumer representatives to the various contractor licensing boards of Seminole County; and

WHEREAS, the Board of County Commissioners deem it necessary to stagger the terms of members of the various Seminole County contractor licensing boards so that newly appointed members will serve with more experienced members and therefore efficient functioning of these boards will be promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

SECTION 1. Amendment to Section 40.16, Seminole County Code.

Section 40.16, Seminole County Code, is hereby amended to read as follows:

Sec. 40.16 Generally.

(a) The following boards, ~~each to be composed of five (5) licensed contractor members appointed by the Board of County~~

~~Commissioners for terms of one year each and until their successors are appointed and qualified,~~ are hereby established:

(1) The board of building contractor examiners, which shall perform all functions delegated herein to a board which relate to building contractors or to any of the provisions of Part 4.

(2) The board of electrical examiners, which shall perform all functions delegated herein to a board which relate to electrical contractors or to master, journeymen, maintenance or apprentice electricians or to any of the provisions of Part 5.

(3) The board of examiners of mechanical contractors, which shall perform all functions delegated herein to which relate to mechanical contractors or to any of the provisions of Part 6.

(4) The board of examiners of plumbers, which shall perform all functions delegated herein to a board which relate to plumbing contractors or master, journeymen, maintenance or apprentice plumbers or to any of the provisions of Part 8.

(5) The board of examiners of swimming pool contractors, which shall perform all functions delegated herein to a board which related to swimming pool contractors or to any of the provisions of Part 9.

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(6) The board of well drilling and pump installation or repair contractor examiners, which shall perform all functions delegated herein to a board which relate to pump installers or well drillers, pump installation or repair contractors or to any of the provisions of Part 10.

(b) Each board shall be composed of three (3) licensed contractor members and two (2) consumer representatives, all appointed by the Board of County Commissioners. Each member shall serve on their board for a term of two (2) years.

Notwithstanding the foregoing, two (2) members of each board who are appointed to serve a membership term commencing on January 1, 2003 shall serve a one (1) year term during that appointment.

(c) An individual may serve concurrently on more than one of ~~such~~ the above-named boards.

~~(bd)~~ The ~~provisions of subsection (a) notwithstanding,~~ the building official or his designee shall be an ex officio, nonvoting member of all ~~such~~ of the above-named boards.

~~(ee)~~ The members of the above-referenced boards ~~created herein~~ shall receive no salaries for their services, but may receive travel and other expenses in accordance with the provisions of Section 112.061, Florida Statutes, as amended, when they are on official business outside the county, if funds are available for this purpose and such expenses are approved by the Board of County Commissioners.

(df) Each member of ~~such~~ the above-referenced boards shall, before entering upon the discharge of his/her duties of office, prepare and file with the county clerk an oath in writing to perform properly the duties of the office as a member of the board and to uphold the laws of the County, the constitution and laws of the State, and the constitution and laws of the United States.

(eg) Any member of the above-referenced ~~such a~~ boards may be removed from office for failure to hold or attend meetings of ~~said~~ their appointed board without just cause, or for any other cause, by a three-fifths vote of the Board of County Commissioners after a hearing by the Board of County Commissioners.

(fh) Any vacancy on one of the above-referenced ~~such a~~ boards occurring in an unexpired term shall be filled by the Board of County Commissioners for the remainder of the term within thirty (30) days after the vacancy occurs.

(gi) The membership of the boards as composed on the effective date of this Section shall continue in office until their current terms expire and a reappointment is made pursuant to this Section.

SECTION 2. CODIFICATION. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Seminole County Code and.

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the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; providing, however, that Sections 2, 3 and 4 shall not be codified.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners.

ENACTED this _____ day of _____, 2002.

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
DARYL G. MCLAIN, Chairman



DRAFT ORDINANCE B

ORDINANCE NO. 2002 -

SEMINOLE COUNTY, FLORIDA

AN ORDINANCE AMENDING CHAPTER 40, SEMINOLE COUNTY CODE; PROVIDING FOR THE ADDITION OF CONSUMER REPRESENTATIVES TO THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR STAGGERED TERMS OF THE MEMBERS OF THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 489.131(10), Florida Statutes requires the appointment of consumer representatives to the various contractor licensing boards of Seminole County; and

WHEREAS, the Board of County Commissioners deem it necessary to stagger the terms of members of the various Seminole County contractor licensing boards so that newly appointed members will serve with more experienced members and therefore efficient functioning of these boards will be promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

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(3) The board of examiners of mechanical contractors, which shall perform all functions delegated herein to which relate to mechanical contractors or to any of the provisions of Part 6.

(4) The board of examiners of plumbers, which shall perform all functions delegated herein to a board which relate to plumbing contractors or master, journeymen, maintenance or apprentice plumbers or to any of the provisions of Part 8.

(5) The board of examiners of swimming pool contractors, which shall perform all functions delegated herein to a board which related to swimming pool contractors or to any of the provisions of Part 9.

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(6) The board of well drilling and pump installation or repair contractor examiners, which shall perform all functions delegated herein to a board which relate to pump installers or well drillers, pump installation or repair contractors or to any of the provisions of Part 10.

(b) Each board shall be composed of four (4) licensed contractor members and three (3) consumer representatives, all appointed by the Board of County Commissioners. Each member shall serve on their board for a term of two (2) years. Notwithstanding the foregoing, three (3) members of each board who are appointed to serve a membership term commencing on
--January 1, 2003 shall serve a one (1) year term during that appointment.

(c) An individual may serve concurrently on more than one of ~~such~~ the above-named boards.

(~~bd~~) The ~~provisions of subsection (a) notwithstanding,~~ ~~the~~ building official or his designee shall be an ex officio, nonvoting member of all ~~such~~ of the above-named boards.

(~~ee~~) The members of the above-referenced boards ~~created~~ ~~herein~~ shall receive no salaries for their services, but may receive travel and other expenses in accordance with the provisions of Section 112.061, Florida Statutes, as amended, when they are on official business outside the county, if funds

are available for this purpose and such expenses are approved by the Board of County Commissioners.

(df) Each member of ~~such~~ the above-referenced boards shall, before entering upon the discharge of his/her duties of office, prepare and file with the county clerk an oath in writing to perform properly the duties of the office as a member of the board and to uphold the laws of the County, the constitution and laws of the State, and the constitution and laws of the United States.

(eg) Any member of the above-referenced ~~such a~~ boards may be removed from office for failure to hold or attend ~~---~~meetings of ~~said~~ their appointed board without just cause, or for any other cause, by a three-fifths vote of the Board of County Commissioners after a hearing by the Board of County Commissioners.

(fh) Any vacancy on one of the above-referenced ~~such a~~ boards occurring in an unexpired term shall be filled by the Board of County Commissioners for the remainder of the term ~~..~~ within thirty (30) days after the vacancy occurs.

(gi) The membership of the boards as composed on the effective date of this Section shall continue in office until their current terms expire and a reappointment is made pursuant to this Section.

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SECTION 2. CODIFICATION. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Seminole County Code and the word "ordinance" may be changed to "section," "article," or other appropriate word or phase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; providing, however, that Sections 2, 3 and 4 shall not be codified.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners.

ENACTED this _____ day of _____, 2002.

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
DARYL G. MCLAIN, Chairman

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NOTICE

NOTICE is hereby given that the Board of County Commissioners of Seminole County, Florida, intends to hold a public hearing to consider the enactment of an ordinance entitled:

AN ORDINANCE AMENDING CHAPTER 40, SEMINOLE COUNTY CODE;
PROVIDING FOR THE ADDITION OF CONSUMER REPRESENTATIVES TO THE
SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR
STAGGERED TERMS OF THE MEMBERS OF THE SEMINOLE COUNTY
CONTRACTOR LICENSING BOARDS; PROVIDING FOR SEVERABILITY;
PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

at 1:30 p.m., or as soon thereafter as possible, at its regular meeting on the 26th day of November, 2002, at the Seminole County Services Building, 1101 East First Street, BCC Chambers, Sanford, Florida. The proposed ordinance may be inspected by the public at the office of the Clerk of the Board of County Commissioners, Room 2204, Seminole County Services Building. Interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and, for such purpose, they may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

For additional information regarding this notice contact Kent Cichon at (407)665-7126.

Persons with disabilities needing assistance to participate in any of these proceedings should contact the Employee Relations Department ADA Coordinator 48 hours in advance of the meeting at (407) 665-7941.

Kent Cichon, Financial Manager
Planning & Development

Publish: **November 14, 2002**

Invoice & Proof of Publication to: Planning & Development
Jodi Doyle, Administration
1101 East First Street
Sanford, FL 32771
(407) 665-7369

Contact Person and Phone Number: Kent Cichon, Financial Manager
Planning and Development
(407)665-7126