

LEGAL MEMORANDUM  
(email)

TO: Scott Williams  
Bryan Holland

CC: Jonathan Lewis

FROM: Robert K. Robinson  
Sarah Blackwell

DATE: December 18, 2013

RE: Contractor licensing and enforcement  
Our NP General File No. 1294

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In reviewing the proposed changes to Chapter 14 of the City Code, we felt it prudent to answer the following question before proceeding further:

Can the City discipline or regulate state or locally licensed contractors without a regulation board?

State licensed contractors:

Regulation of state licensed contractors appears to be extremely limited where a city does not have a "local construction regulation board", which is defined in §489.105(12) as a board, composed of not fewer than three residents of a county or municipality, which the governing body of that county or municipality may create and appoint to maintain the proper standard of construction of that county or municipality. A state licensed contractor is known as a certificateholder in state statutes.

§489.113(4) provides:

(4)(a) When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he or she shall be required only to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area evidence of holding a current certificate and to pay the fee for the occupational license and building permit required of other persons.

(b) Notwithstanding the provisions of paragraph (a), a local construction regulation board may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining a permit or permits with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted

to the department within 15 days after the local construction regulation board decides to deny the permit.

(c) The local government may also deny issuance of, or may suspend, any outstanding building permit where a contractor fails or refuses to provide proof of public liability and property damage insurance coverage as required by s. 489.115(5) and workers' compensation insurance coverage as required by s. 489.114.

In *Snowman v. Contractor's Examining board*, the court determined that a state licensed contractor can only be disciplined by the local construction regulation board, which was defined in state statute. Monroe County had adopted such a board in its building code. The Contractor's Examining Board, however, was not the local construction regulation board, and despite the County's attempts to give it disciplining powers by ordinance, it had no authority to discipline the state licensed contractor. The court also interpreted the reference in 489.113(4)(c) to the "local government" to be a reference back to the local construction regulation board, although I do not believe that the statute implies that.

It appears that the statute is to be strictly complied with, and therefore, any entity other than a local construction regulation board cannot discipline a state licensed contractor. On that basis, I do not believe a building official can discipline a state licensed contractor, as the draft ordinance proposes.

#### Locally licensed contractors:

While it is true that the City has more leeway in regulating contractors who are not state licensed, Ch. 489 does limit the City's regulation authority.

§489.131 provides:

(7)(a) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance with state laws and local jurisdiction ordinances.

(b) The local governing body of a county or municipality, or its local enforcement body, is authorized to enforce the provisions of this part as well as its local ordinances against locally licensed or registered contractors, as appropriate. The local jurisdiction enforcement body may conduct disciplinary proceedings against a locally licensed or 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.

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(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.

It appears that although a municipality may regulate contractors through a local licensing program where such contractors are not state-licensed, a municipality may not regulate certain listed types of contracting where the municipality does not exercise disciplinary control and oversight. In order to discipline the listed types (§489.105(3)(a)-(o)) of locally licensed contractors, it appears that a local board/enforcement body must exist and be responsible for disciplining these contractors. For example, the City could not locally license a general contractor without having a local board to discipline them. I cannot find any case law addressing regulation of locally licensed contractors by other than a board. The "local jurisdiction enforcement body" is not a defined term under the statute, and there is no case law on it. Based on FAC 61G4-20.001, the local enforcement body must be identified by the jurisdiction, and preferably shall include individuals from five different listed professions, so the building official alone could not qualify.

Ch. 489 only governs those contractors defined in §§489.105 and 489.505, and therefore would only impact local ordinances that governed those types of contractors. The City could regulate those other areas, as it chose, providing for due process in any disciplinary procedure. It appears that the City would not have to exert disciplinary control over specialty contractors that are governed by Ch. 489. If disciplinary control was desired I believe an enforcement board would need to be designated.

As the City has proposed dissolving the Contractors Licensing and Advisory Board, it is our recommendation that the City rely on the licensing programs of the State and County, rather than pursue its own licensing scheme. A State or County license would be required for all work requiring a licensed contractor under State law or County code. Complaints involving licensed contractors can then be forwarded to the appropriate licensing jurisdiction.

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