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ORDINANCE NO. 83-1

An Ordinance to be entitled

AN ORDINANCE PROHIBITING ENVIRONMENTALLY HARMFUL ACTIVITIES; DEFINING ENVIRONMENTALLY PROHIBITED ACTIVITIES; PROVIDING FOR DEFINITIONS; PROVIDING FOR AN ENVIRONMENTAL HEALTH BOARD; PROVIDING FOR ISSUANCE OF PERMITS; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR HEARINGS; PROVIDING FOR JUDICIAL REVIEW; PROVIDING FOR CRIMINAL PENALTIES FOR VIOLATIONS; PROVIDING FOR CIVIL PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE LIBERTY COUNTY BOARD OF COUNTY
COMMISSIONERS AS FOLLOWS:

SECTION 1. SHORT TITLE

This Ordinance shall be known and be cited as the Liberty County Environmental Health Ordinance.

SECTION 2. DECLARATION OF LEGISLATIVE INTENT

The Board of County Commissioners of Liberty County finds and declares that the reasonable control of activities which are causing or may cause pollution or contamination of the environment is necessary for the protection and preservation of the public health, safety and general welfare.

Chapter 125.01, Florida Statutes, authorizes the County to provide environmental health programs and to perform other acts not inconsistent with general or special laws which are of common interest to the residents of Liberty County, Florida.

It is the intent and purpose of this Ordinance to authorize the Board of County Commissioners of Liberty County, sitting as the County Environmental Health Board, to provide and maintain for the citizens and visitors of said County standards which will insure sanitary practice and freedom of the environment from contaminants or synergistic agents injurious to human, plant or animal life, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business.

SECTION 3. DEFINITIONS

The following words as used in this Ordinance shall have the following meaning:

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and the cooperation of industrial and business enterprises and organizations.

F. Making periodic reports concerning the status of the environment in Liberty County and the enforcement of the provisions of this Ordinance and recommendations concerning the improvement of environmental control. Such reports shall be filed with the Board and be made available to other governmental agencies which may be interested.

G. Performing such other administrative duties as may be assigned by the Board.

SECTION 8. EXEMPTIONS

The provisions of this Ordinance do not apply to:

A. Agricultural operations in the growing, harvesting or processing of crops and the raising of fowls or animals.

B. Use of equipment in the performance of such agricultural operations.

C. Barbecue equipment or outdoor fireplaces used for non-commercial purposes.

D. Agricultural land clearing operations or agricultural land grading.

E. Incinerators and heating equipment in or used in connection with residences used exclusively as dwelling for not more than four (4) families.

F. Fires set or permitted by any public officer, board, council or commission when such fire is set or permission given in the performance of such duty of the officer for the purpose of weed abatement, the prevention or elimination of the fire hazard, or the instruction of employees in the methods of fire fighting which is, in the opinion of such officer, necessary; or from fires set pursuant to permit for purpose of instruction of employee of private industrial concerns in methods of fire fighting, or for civil defense instruction.

G. Odors emanating from agricultural operations in the growing, harvesting or processing of crops or raising of fowls or animals.

SECTION 9. PERMITS

A. Thirty (30) days following the effective date of this Ordinance, it shall be unlawful for any person, firm or corporation to operate an establishment over which the Department exercises regulatory authority without having first obtained a valid operating permit. Such permits shall be conspicuously displayed and shall remain valid unless and until revoked or suspended as herein specified, or until the ownership of such establishment changes, or until rendered invalid for non-payment of the assessment fee as prescribed in this Ordinance.

B. Establishments to be permitted shall include, but not be limited to:

- 1) Rendering Plants
- 2) Septic Tank Pump Trucks
- 3) Food Processing Plants
- 4) Battery Assembling Plants
- 5) Battery Disassembling Plants
- 6) Sewage Treatment Plants

C. No construction, extension or alterations of any regulated establishment shall take place until the owner or operator has prepared plans showing the existing and/or proposed layout, and has submitted said plans for review and received written approval from the Liberty County Health Department.

D. Any person who operates an establishment as specified in this Ordinance shall within thirty (30) days of the effective date of this Ordinance make application for a permit to operate such establishment.

E. Upon receipt of such application, the Health Officer shall:

- 1) Cause an inspection to be conducted for the purpose of determining whether the establishment is in substantial compliance with appropriate codes and regulations.
- 2) Upon receipt of written recommendation by an authorized representative of the Department, issue a permit to operate.

F. If an inspection shows an establishment not to be in

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substantial compliance with the appropriate codes, regulations or provisions of this Ordinance, issuance of the permit shall be denied. In such event, the owner or operator shall be notified in writing within seven (7) days of such denial by certified mail or personal delivery of a letter which shall enumerate the reason(s) for such denial. Upon request by the person denied a permit, the Department shall set up a prompt hearing before the Board. The decision of said Board shall be binding upon the Department.

SECTION 10. ENFORCEMENT PROCEDURES AGAINST PERMITTED ESTABLISHMENTS

A. The County Health Officer or his duly authorized representative shall have right of entry to and shall inspect all establishments and/or premises specified herein at reasonable times and frequencies to insure compliance with provisions of this Ordinance. Such inspections shall be in writing and notice of the results of such inspections shall be accomplished by presenting a copy of the official inspection report to the operator or owner of the establishment. Sufficient time for correction of the violation(s) shall be indicated on the inspection report. If warranted, a reinspection shall be scheduled to determine compliance.

B. If a reinspection discloses any violation(s) of this Ordinance to continue to exist, the Department may issue a formal notice to correct violation(s). Such notice shall be served upon the violator by personal service or by certified mail and shall briefly set forth the general nature of the violation(s) and specify a reasonable time within which the violation shall be rectified or stopped, commensurate with the circumstances. Reasonable time herein means the shortest practical time to rectify or abate the violation(s).

C. When the Department determines that any establishment as set forth in Section 9 of this Ordinance is not maintaining minimum compliance with applicable codes, regulations or the terms of this Ordinance, the Department may request a hearing before the Board for revocation of said permit. Notice of hearing shall be furnished the holder of said permit seven (7) days prior to the hearing and shall include a statement of finding that warrants

121 revocation. A decision of the Board shall be binding upon the Department.

D. Whenever a violator fails to comply with a formal notice to correct a violation, the Department shall forward to the Board a notice of non-compliance and the Board may summon the violator to appear before it to show cause why the violation has not been corrected.

E. Upon the recommendation of the Director and with the concurrence of the County Health Officer that an imminent threat to the public health, safety or welfare exists, and such threat cannot immediately be remedied or the owner or operator refuses to immediately remedy such condition, the Health Officer is hereby empowered to immediately close such establishment and/or order the offending property vacated until such time as the threat has been removed. The establishment shall remain closed and/or the property remain vacated until written approval for re-occupancy has been issued by the Health Officer.

F. In the Event a violator fails to comply with the provisions of Paragraph E above, the County Attorney shall file for a writ of injunction, requiring the violator to refrain from the particular act charged or institute other civil or criminal action as may be appropriate. Any violator shall pay all attorneys' fees and other expenses of enforcing the provisions of this Ordinance.

SECTION 11. HEARING

A. Time for notice of hearing: Within seven (7) days after filing with the Board of a notice of non-compliance, the Board shall notice a hearing to be held within forty-five (45) days of the filing date. Service of notice on all parties shall be completed fourteen (14) days before the hearing. Hearings may be continued from day-to-day until completed.

B. Service of notice: Service of Notice of Hearing may be made in person to all parties, may be served by certified mail or by publication as provided by law.

C. Content of notice: Notice of Hearing will specify date, time and exact place of hearing. Notice will specify the

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Rule(s) appealed from or alleged to have been violated and attached thereto shall be a copy of the Notice of Appeal, Notice of Non-Compliance or Petition.

D. Conduct of hearing before the Board:

- 1) All hearings of the Board shall be open to the public.
- 2) Evidence: A case may be presented by oral or documentary evidence. Oral evidence shall be taken only on oath or affirmation.
- 3) The Board shall give probative effect to evidence which would be admissible in civil proceedings in Courts of this State, but in receiving evidence, due regard shall be given to the technical and highly complicated subject matter and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect.

SECTION 12. JUDICIAL REVIEW

Any person aggrieved by any action or decision of the Board may seek appropriate judicial review, through a writ of certiorari to the Circuit Court or as provided by §120.68, Florida Statutes.

SECTION 13. ASSESSMENT OF FEES

The Department is hereby authorized to assess fees for the services and/or permits specified herein.

A. Annual fees shall be assessed the establishments which are permitted in accordance with the terms of Section 9 of this Ordinance. The owner or operator of each such permitted facility shall be mailed a bill on or before June 15 of each year which bill shall be due and payable on July 1st of that year. Fees not remitted on or before July 31st of that year shall be re-assessed by a second mailing and shall contain a warning statement that failure to remit payment on or before August 31st will result in automatic invalidation of the operating permit in accordance with Paragraph B of this Section.

B. Failure to remit the fee assessment by any permitted establishment on or before August 31st of each year will automat-

ically invalidate said permit as of 12:01 A.M. the following day.

SECTION 14. ADDITIONAL DUTIES AND POWERS OF THE ENVIRONMENTAL HEALTH BOARD

The Board shall have the following duties, functions, powers and responsibilities:

A. To hear appeals by persons aggrieved by actions or decisions of the Environmental Health Officer not already referred to the State Attorney for criminal prosecution. Consider the facts material to such appeals, and render a decision promptly. Such decision may affirm, reverse or modify the action or decision appealed from, provided that such decision shall not be in conflict with the provisions of this act.

B. To conduct due process hearings into the merits of alleged violations of this act.

C. To issue, after due process hearing, injunctive orders, including orders providing for affirmative relief, against persons found in violation of this act.

D. After due public hearing upholding a violation, to reach a decision setting forth such findings of fact and conclusions of law as are required in view of the issues presented. The decision shall contain an order which may be framed in the manner of a writ of injunction requiring the violator to conform with either or both of the following requirements:

- 1) To refrain from committing, creating, maintaining or permitting the violations.
- 2) To take such affirmative action as the Board deems necessary and reasonable under the circumstances to correct such violations.

E. To issue orders imposing civil penalties of up to \$500.00 for each day of violation against persons found to have violated this act.

F. To issue subpoenas to command the appearance of any person before a hearing at a specified time and place to be examined as a witness. Such subpoenas may require such person to produce all books, papers and documents in his possession or under his control, material to such hearings.

G. To administer oaths to any or all persons who are to testify before the Board.

H. To adopt rules for the conduct of its hearings not inconsistent with the provisions of this act.

SECTION 15. APPEALS FROM ACTION OR DECISIONS OF ENVIRONMENTAL HEALTH OFFICER; PROCEDURE

Any persons aggrieved by an action or decision of the Environmental Health Officer not already referred to the State Attorney for criminal prosecution may appeal to the Board by filing within ten (10) days after the date of the action or decision complained of, a written Notice of Appeal which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. The Board shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant and the Environmental Health Office.

SECTION 16. CRIMINAL PENALTIES

Violations of this Ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State in a Court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500.00 or by imprisonment in the County Jail not to exceed sixty (60) days or by both such fine and imprisonment.

SECTION 17. SEVERABILITY

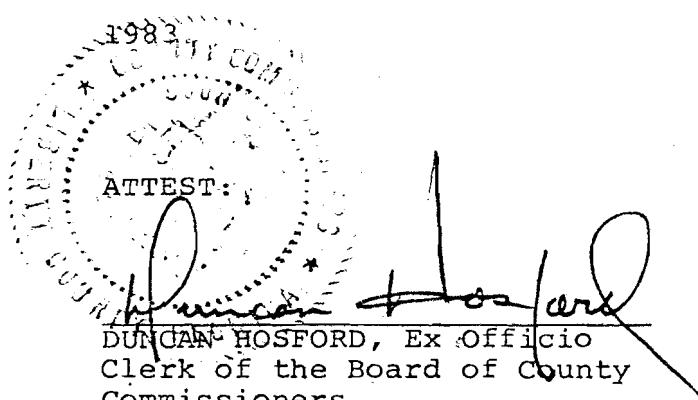
It is declared to be the intent of the Board of County Commissioners that if any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional by a Court of competent jurisdiction, that such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 18. EFFECTIVE DATE

This Ordinance shall take effect on March 15, 1983.

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PASSED in open regular session this 8th day of March,



ATTEST:

Duncan Hosford
DUNCAN HOSFORD, Ex Officio
Clerk of the Board of County
Commissioners

BOARD OF COUNTY COMMISSIONERS
LIBERTY COUNTY, FLORIDA

BY:

James E. Johnson
JAMES E. JOHNSON, Chairman

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