

ORDINANCE NO. 5719

AN ORDINANCE REGULATING TRENCHING CONTRACTORS' LICENSES WITHIN THE CITY OF RAPID CITY BY AMENDING CHAPTER 13.10 OF THE RAPID CITY MUNICIPAL CODE.

WHEREAS, the City of Rapid City currently has ordinances regulating trenching contractors' licenses within the City; and

WHEREAS, the City's Utility Design Criteria Committee has reviewed Title 13 of the City Code and is recommending certain changes; and

WHEREAS, the changes being recommended include amending Chapter 13.10 and incorporating the City's new Infrastructure Criteria Manual; and

WHEREAS, the Rapid City Trenching Board is established by City Code to protect the public health, safety and welfare of the community in regard to the installation of public utilities and is recommending changes to the licensing process; and

WHEREAS, the Common Council of Rapid City deems it to be in the City's best interests to adopt the recommendations of the City's Utility Design Criteria Committee.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 13.10 of the Rapid City Municipal Code is hereby amended to read as follows:

13.10.010 Definitions.

The following words, terms and phrases are defined and shall be interpreted as such throughout this chapter. Terms not defined in this section shall have the meaning customarily assigned to them:

A. **CONTRACTOR.** A licensed sewer and water contractor or licensed trenching contractor as defined in this section.

B. **DIRECTOR.** City of Rapid City Director of Public Works.

C. **EMPLOYEE.** A person whose compensation for construction work is reported by the employer on an Internal Revenue Service W-2 form and is also otherwise considered an employee under applicable law.

D. **EXCAVATING.** Any operation in which earth, rock or other material in the ground is moved or otherwise displaced and/or replaced at a depth of 12 inches or greater below the surface by means of tools, equipment or explosives, and includes trenching, digging, ditching, drilling, tunneling and cable or pipe plowing for the purpose of installing cable, conduit or pipe other than water, sanitary sewer or storm sewer pipe. **EXCAVATING** shall not include grading or scraping for street construction or reconstruction, drilling or auguring for installation of utility

poles, light poles, sign posts, or mailboxes, or tilling of soil for landscaping purposes to a depth of 12 inches or less.

E. **PERSON.** A person or an organization including, but not limited to, a sole proprietorship, partnership, corporation or limited liability company.

F. **SEWER and WATER CONTRACTOR.** A sole proprietorship, partnership or corporation, who undertakes or offers to undertake sewer and water installations.

G. **SEWER and WATER INSTALLATION.** The new construction, alteration, repair or improvement of water mains and appurtenances, water service lines and appurtenances, water treatment plant piping and equipment; sewer mains and appurtenances, sanitary sewer services, sewer treatment plant piping and equipment; and storm sewers, and the placement of sewer and water pipe into a building sufficient distance to allow connection to the building plumbing. **SEWER and WATER INSTALLATION** does not include the minor adjustment of manhole castings, valve boxes and curb boxes to finish grade for street construction.

H. **SEWER and WATER JOURNEYMAN INSTALLER.** A person other than a contractor, who is engaged as an employee of, or is otherwise working under the direction of, a sewer and water contractor in sewer and water installation, and when present at a job site has direct supervision over work being performed.

I. **STANDARD SPECIFICATIONS.** City of Rapid City Standard Specifications for Public Works Construction, as adopted by the City.

J. **STATE LICENSE.** Either a sewer and water contractor's, installer's or plumbing installer's license issued by the State of South Dakota in accordance with the provisions of Administrative Rules of South Dakota Chapter 20:53:06, or, a plumber's license issued by the State of South Dakota in accordance with the provisions of SDCL Chapter 36-25.

K. **STORM SEWERS.** All pipes, culverts, catch basins, inlets, detention pond inlet and outlet piping, and storm sewer appurtenances which will become an integral part of the public storm sewer system, whether located in public right-of-way or drainage easements, except parking lot drainage pipes and appurtenances are not considered **STORM SEWERS** for purposes of this chapter.

L. **TRENCHING CONTRACTOR.** A person who undertakes or offers to undertake excavating in the public right-of-way (streets, alleys, or other public places) for any purpose.

M. **TRENCHING JOURNEYMAN.** A person other than a contractor, who is engaged as an employee of, or is otherwise working under the direction of a trenching contractor in excavating work, and when present at a job site, has direct supervision over work being performed.

13.10.020 License required.

A. *Sewer and water contractor.* It is unlawful for any person to conduct, carry on or engage in the business of sewer and water main installation, or to act in the capacity of a sewer and water contractor, without having first secured a City sewer and water contractor's license.

B. *Sewer and water ~~journeyman~~ installer.* It is unlawful for any person to act, or to give the appearance of acting as a sewer and water ~~journeyman~~ installer without having first secured a City sewer and water ~~journeyman's~~ installer's license.

C. *Trenching contractor.* It is unlawful for any person to, in any manner, engage in the business of excavating in the public right-of-way (streets, alleys or other public places), or in City infrastructure easements, or act or give the appearance of acting as a trenching contractor without having first secured a City trenching contractor's license. A licensed sewer and water contractor may also act as a trenching contractor.

D. *Trenching journeyman.* It is unlawful for any person to act or give the appearance of acting as a trenching journeyman without having first secured a City trenching journeyman's license. A licensed sewer and water installer ~~journeyman~~ may also act as a trenching journeyman.

13.10.030 License application.

A. *Public Works Department to administer provisions.* The Public Works Department shall administer the provisions of this chapter. Before a contractor's, installer's or journeyman's license may be issued, the applicant shall be required to complete an application form. The Board shall determine the applicant's eligibility to take the required exam based on the information provided on the application. The examination shall be given under the direction of the Trenching Board.

B. *Examination and reexamination.* Any applicant who fails to pass the examination may apply for reexamination after 30 days from the date of the previous examination without payment of an additional exam fee. Should any applicant fail to pass a second time, the Board may refuse to permit a third examination until after the expiration of 6 months. License fees shall not be refunded if an applicant fails to pass the examination. No reexamination will be permitted more than 1 year from the date of the first failed examination without a new application and payment of the full examination fee.

C. *State license required.* Applicants for both sewer and water contractor, and sewer and water ~~journeyman~~ installer licenses must possess a current state license of a class at least equal to the class of city license for which they have applied. Applicants for trenching contractor, and trenching journeyman licenses are not required to possess a state license.

13.10.040 License fees and renewal.

A. *Fee schedule.*

1. Every person making application for a license shall pay to the Finance Officer a nonrefundable fee as follows:

Applicant	Initial Fee	Renewal Fee
Sewer and W water C ontractor	\$200	\$50
Sewer and W water journeyman Installer	\$25	\$10
Trenching C ontractor	\$200	\$50
Trenching C ontractor (plumber's rider)	\$50	\$50
Trenching J ourneyman	\$25	\$10

2. ~~The specification book, City Standard Specifications for Public Works Construction,~~ shall be included with the initial contractor license fee only.

B. *License term renewal.* All licenses issued under this chapter shall expire on February 28 of the year following issuance. Any license not renewed within 30 days of February 28 shall be ineligible for renewal. In order to obtain a license after the 30 day grace period the applicant shall be required to complete the application requirements for a new license.

13.10.050 Requirements for issuance.

A. *Sewer and water contractor's license.* License may be issued only to a person who makes application therefore, pays the application fee, meets the requirements stated in this chapter, including passing the required examination, presenting to the City Finance Office a valid current state license, and the following additional requirements:

1. *Liability insurance.* Liability insurance shall be required of every contractor. Every applicant for a sewer and water contractor's license shall present to the City Finance Office for their review, a valid certificate of insurance at the time of application. It shall be the duty of every sewer and water contractor to continually maintain valid liability insurance. The minimum required general aggregate liability shall be ~~\$300,000~~ \$2,000,000, ~~with \$50,000 fire damage and \$300,000~~ \$1,000,000 each occurrence;

2. *Worker's compensation insurance.* In accordance with South Dakota State Law, proof of worker's compensation insurance shall be provided prior to the issuance of a contractor's license;

3. *Proof of excise tax number.* Applicants for contractor's license shall be required to supply their excise tax number.

4. Previous utility main installation experience. Applicants for sewer and water contractor's license shall be required to show at least one year of previous experience installing utility mains.

B. *Trenching contractor's license.* License may be issued only to a person who makes application therefore, pays the application fee, meets the requirements stated in this chapter, including passing the required examination, and the following additional requirements:

1. *Liability insurance.* Liability insurance shall be required of every contractor. Every applicant for a trenching contractor's license shall present to the City Finance Office for their review, a valid certificate of insurance at the time of application. It shall be the duty of every trenching contractor to continually maintain valid liability insurance. The minimum required general aggregate liability shall be ~~\$300,000~~ \$2,000,000, ~~with \$50,000 fire damage and \$300,000~~ \$1,000,000 each occurrence;

2. *Worker's compensation insurance.* In accordance with South Dakota state law, proof of worker's compensation insurance shall be provided prior to the issuance of a contractor's license;

3. *Proof of excise tax number.* Applicants for contractor's license shall be required to supply their excise tax number.

C. Installer and Journeyman license.

1. *Sewer and water ~~journeyman~~ installer.* License may be issued only to the person who meets the requirements in this chapter, including passing the required examination and presenting to the Trenching Board a valid current state license.

2. *Trenching journeyman.* License may be issued only to the person who meets the requirements in this chapter including passing the required examination.

D. *Age at time of application.* Applicants for any license issued under this chapter must have attained at least 18 years of age, at the time of making application therefore.

13.10.060 Limitations on licenses generally.

A. For the first 12 months after issuance of any license, or upon order of the Board pursuant to § 13.10.090, the holder of such a license shall be under a probationary status to allow both the City and the Trenching Board to review the performance of the ~~contractor~~ licensee.

B. During the 12-month probationary period, any water and sewer contractor or trenching contractor will be allowed to have 1 right-to-work permit active at any given time. Any other exception to this policy may be granted only after review by the City Council upon recommendation of the Trenching Board.

C. The probationary status may be extended if the Trenching Board determines that the licensee has not completed enough work to allow for proper evaluation.

D. Each person to whom a sewer and water contractor's license or trenching contractor's license is issued shall designate at least 1 individual employee who must take and pass the contractor's examination. Upon passage of the contractor's examination, the issued license shall be held jointly by the individual who passed the examination and the person to whom a sewer and water contractor's license or trenching contractor's license was issued. If the person designates only 1 individual, and the individual's employment is terminated or ends for any reason, the person holding the contractor's license must designate, within 60 days, another individual to take and pass the contractor's examination. No additional fee or application will be required for said individual. Failure to designate another individual to take and pass the contractor's examination within 60 days will result in automatic expiration of the contractor's license and no additional permits will be issued. Reactivation of the license will occur only upon the completion of a new application, payment of any applicable application fees, and the passage of the contractor's examination by a designated individual.

E. It is unlawful for any person to perform, or allow to be performed, any work for which they are licensed without having a licensed person present at the job site with direct supervision over all aspects of the work at all times when work is being performed. Permitted persons to exercise such supervision include:

1. The contractor;
2. A designated individual who has passed the contractor's examination; or
3. A licensed installer or journeyman who is an employee of the contractor.

F. No person to whom a license is issued shall allow any other person, or nondesignated individual, to operate thereunder.

G. A Sewer and Water Installer or Trenching Journeyman license shall be the property of person to whom the license is issued and shall not be transferable.

H. The following are exceptions:

1. Plumbing contractors licensed and permitted under [Chapter 15.24](#) of the Rapid City Municipal Code are not governed by this chapter, except when performing excavation in public right-of-way or performing new construction, alteration, repair or improvement of water or sewer mains and appurtenances. A plumbing contractor may excavate in the public right-of-way for the purposes of installing service lines only, provided he or she has secured a trenching contractor's license and paid an initial fee of \$50 for the license. (Trenching contractor-plumber's rider).

2. Private utility companies, or the City, when excavating in the public right-of-way for the purposes of repairing, altering or maintaining their facilities, are exempt from the licensing

requirements of this chapter. This exemption shall not apply to installation of new facilities or replacement of existing facilities.

13.10.070 Rapid City Infrastructure Criteria Manual

All work completed by a licensee must meet the criteria set out in the current adaptation of the Rapid City Infrastructure Criteria Manual.

13.10.070 13.10.080 Rapid City Trenching Board.

There is established the Rapid City Trenching Board. The Board shall consist of 6 members composed of Public Works Director, a registered professional engineer engaged in consulting business within the city, an employee of a nongovernmental utility company other than telecommunications having underground utilities within the city, representatives of 2 licensed contractors, and a representative from the telecommunications industry. Members shall be appointed for 2-year staggered terms by the Mayor subject to confirmation by the Council at its first regular meeting in January. The members of the Board, except for city staff, shall serve without compensation for the service. The Board shall be assisted by city staff as directed by the Director.

A. *Purpose of the Board.* The purpose of the Board is to protect the public health, safety and welfare, and to guard against unsafe, unstable or short-lived products or services related to installation of ~~sewer collection systems and water distribution utility~~ systems, and to excavating in the public right-of-way. The Board shall also insure new or small volume contractors are able to obtain a license without hardship.

B. *Powers and duties of the Board.*

1. The Board is authorized to adopt the rules and regulations as shall become necessary with the approval of the Council. The Board shall notify all license holders of the proposed rules and regulations within 30 days prior to the delivery of the rules and regulations to the Council.

2. The Board shall hold meetings as necessary for transaction of business; for examination of applicants, to determine the qualifications and fitness of all applicants; and to grant approval for licenses and renewals to applicants who show proper qualifications and documentation.

~~3. The Board shall annually review all license issued hereunder and make recommendations to the Council concerning renewal and issuance.~~

3. The Board shall have the power to review any license issued hereunder at any time.

4. The Board may hear appeals from determination of the Public Works Director on interpretation and application of licensing ordinances. All decisions of the Board shall be eligible for final review by the Council.

13.10.090 License – Revocation, suspension or probation. ~~C. Violations and penalties.~~

~~1A.~~ The Board, in its discretion, may revoke, suspend, or place on probation any license for reasons including, but not limited to the following: if the holder thereof is doing performance of work without a permit; ~~The Board may revoke any contractor's license if the Board determines the contractor's work has been performance of consistently substandard work;~~ the contractor has violated violation of any applicable federal, state or local statute, ordinance, rule or regulation; promulgated by the Board, violation of any provision of this chapter; or ~~the contractor has~~ demonstrated inability or unfitness to perform the work for which he or she has been licensed.

1. The penalty of license revocation shall continue for a period of one year from the date the revocation became effective. Once the period of revocation has ended a licensee upon which the penalty of revocation has been imposed may apply for a new license, subject to the probationary period set forth in § 13.10.060 A, B, and C.
2. The penalty of license suspension shall continue for a period not to exceed 30 days from the date the suspension became effective. Once the period of suspension has ended, the Board may, at its discretion, place the licensee on probation, as set forth in § 13.10.060 A, B, and C.
3. The penalty of license probation shall operate as set forth in § 13.10.060 A, B, and C.

B. The penalties of license revocation, suspension or probation shall be imposed only after licensee has had notice and an opportunity to be heard.

1. The notice of intent to impose penalty shall be sent by first class mail to the licensee's address of record on file with the Board. The Board shall mail the notice of intent to impose penalty no later than 14 days prior to the hearing date.
2. The penalty hearing will take place at a regular or special Board meeting, at the discretion of the Board, provided the notice of intent is mailed no later than 14 days prior to the meeting date. A vote of a majority of Board members present shall be required to impose penalty.
3. The Board shall provide written notice of its decision, to be sent by first class mail to the licensee's address of record on file with the Board. The effective date of any penalty imposed shall be 14 days from the date of mailing of the Board's written notice of decision.

C. ~~–2.–~~Should any applicant or licensee be aggrieved by a decision of the Board, he or she may, within 10 days, provide written notice to the Director of Public Works of his or her intent to appeal the decision to the Council. After the aggrieved applicant or licensee has provided written notice, he or she will have a hearing before the Council. The Council may affirm, modify or reverse the action of the Trenching Board. All decisions of the Council shall be final.

~~3.—Any person violating this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine, not to exceed \$100, or by imprisonment in the county jail, not to exceed 30 days, or by both fine and imprisonment. Each day shall be deemed to constitute a separate offense.~~

D. —4.—Any licensee subject to investigation by the Board shall cooperate fully with the Board. Failure to cooperate fully with the Board is a basis for license probation, revocation or suspension.

13.10.100 Criminal Penalty.

Any person violating this chapter shall be subject to the general penalty provision of § 1.12.010.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: