

ORDINANCE NO. 5184

AN ORDINANCE AMENDING SECTION 13.10.010, SECTION 13.10.020, SECTION 13.10.030, SECTION 13.10.040, SECTION 13.10.050, AND SECTION 13.10.060 OF CHAPTER 13.10 RELATING TO TRENCHING CONTRACTOR'S LICENSES.

WHEREAS, the City of Rapid City has previously adopted an ordinance that regulates trenching contractor's licenses; and

WHEREAS, the City Council deems that it is in the City's best interest to amend certain language in Chapter 13.10 relating to trenching contractor's licenses.

NOW, THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 13.10.010 of the Rapid City Municipal Code be and hereby is 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, ~~engineering utilities.~~

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 twelve 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 ~~natural~~ person or an organization including, but not limited to, a sole proprietorship, partnership, corporation or limited liability company.

F. ~~**SEWER and WATER APPRENTICE.** A person other than contractor or journeyman who is engaged in working as an employee of a sewer and water contractor and is under the direct immediate supervision of either a sewer and water contractor or a sewer and water journeyman for the purpose of learning and assisting in sewer and water installations.~~

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

H. **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.

I. **SEWER and WATER JOURNEYMAN.** A person other than a contractor, who ~~as his or her principal occupation~~ 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.

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

K. **STATE LICENSE.** Either a sewer and water 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.

L. **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.

M. **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.

N. **TRENCHING JOURNEYMAN.** A person other than a contractor, who ~~as his or her principal occupation~~ 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.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 13.10.020 of the Rapid City Municipal Code be and hereby is amended to read as follows:

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

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 journeyman may also act as a trenching journeyman.

~~E. *Sewer and water apprentice.* Any person may engage as an apprentice without a license. However, an apprentice license as provided for herein may be secured to establish the requisite experience for subsequent licenses.~~

BE IT FURTHER ORDAINED by the City of Rapid City that Section 13.10.030 of the Rapid City Municipal Code be and hereby is amended to read as follows:

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 or journeyman's license may be issued, the applicant shall be required to ~~submit to and pass an examination as to their qualifications and fitness to perform the work for which he or she wishes to be licensed~~ 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 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 ~~and sewer and water apprentice~~ licenses are not required to possess a state license.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 13.10.040 of the Rapid City Municipal Code be and hereby is amended to read as follows:

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:

<i>Applicant</i>	<i>Initial Fee</i>	<i>Renewal Fee</i>
Sewer and water contractor	\$200	\$50
Sewer and water journeyman	\$25	\$10
Sewer and water apprentice	\$10	\$5
Trenching contractor	\$200	\$50
Trenching contractor (plumber's rider)	\$50	\$50
Trenching journeyman	\$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. be renewed on or before February 28 of each year. Any license not renewed within 30 days of February 28 of expiration shall be ineligible for renewal.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 13.10.050 of the Rapid City Municipal Code be and hereby is amended to read as follows:

13.10.050 Requirements for issuance.

A. *Sewer and water contractor's license.* License may be issued only to a person who makes application therefor, pays the application fee, meets the requirements stated in this chapter, including passing the required examination, presenting to the ~~Trenching Board~~ 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 ~~Building Official~~ City Finance Office for ~~his or her~~ 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, with \$50,000 fire damage and \$300,000 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.

B. *Trenching contractor's license.* License may be issued only to a person who makes application therefor, 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 ~~building official~~ City Finance Office for ~~his or her~~ 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, with \$50,000 fire damage and \$300,00 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. *Journeyman license.*

1. *Sewer and water journeyman.* 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 maybe 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 therefor.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 13.10.060 of the Rapid City Municipal Code be and hereby is amended to read as follows:

13.10.060 Limitations on licenses generally.

A. For the first 12 months after issuance of any license, 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.

B. During the 12-month probationary period, any water and sewer contractor or trenching contractor will be allowed to have ~~only one (1)~~ right-to-work permit active at ~~any given one (1)~~ time. Any other exception to this policy may be granted only after review ~~of the licensee's performance~~ by the City Council and 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 ~~shall~~ 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 ~~took~~ 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 ~~whatever~~ any reason, the person holding the contractor's license must designate, within 60 days, another individual ~~within 60 days who shall~~ 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 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 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.

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.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: