



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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### MEMORANDUM

TO: Rapid City Trenching Board

FROM: Carla Cushman, Assistant City Attorney *CCushman*

DATE: March 23, 2021

RE: Summary of Proposed Changes to Trenching Contractors' Licenses Ordinances and Trenching Board Bylaws

For more than a year, City staff have been working with the Trenching Board to update two documents: (1) Rapid City Municipal Code Chapter 13.24, which governs Trenching Contractor's Licenses and the Trenching Board, and (2) the Operating Manual for Rapid City Trenching Board. Below I summarize the proposed changes to these documents.

The Board will consider the changes to both documents at its May 20, 2021 meeting. Pursuant to the Board's Operating Procedures, current license holders have been notified of the proposed changes. If the Board approves either document on May 20, staff will place the item on the Council agenda for its June 7, 2021 meeting. No change is final unless and until Council approves it.

#### **RCMC Chapter 13.24 Trenching Contractor's Licenses**

A summary of the proposed changes:

- R.C.M.C. 13.24.010 – Align definitions with South Dakota Administrative Rules.
- R.C.M.C. 13.24.040 – Removed the fees from the ordinance, as part of the City's efforts to adopt a fee resolution that sets all City fees. The City's most recent fee resolution is available at [www.rcgov.org/departments/finance.html](http://www.rcgov.org/departments/finance.html).

- R.C.M.C. 13.24.060
  - Currently, ordinance requires that the first 12 months of any new license be under a probationary status, where the licensee may obtain only one permit active at any time. Currently, only Council could make an exception to this requirement. The ordinance amendment for R.C.M.C. 13.24.060.A would make the probationary period optional at the discretion of the Board.
  - The changes to R.C.M.C. 13.24.060.B reflect that a licensed contractor is an individual, not a business. Currently, the ordinance reads that a contractor's license is "held jointly" by the individual who passed the examination and the business. The ordinance would be amended to provide the license is held only by the individual person who takes and passes the license exam. Businesses who perform work under this Chapter must employ at least one licensed contractor to oversee the work.
  - R.C.M.C. 3.24.060.B is also amended to state that a business shall immediately notify the City if its licensed contractor terminates his/her employment for any reason. The business then has 60 days to employ a licensed contractor (either by hiring someone new or having an employee pass the applicable exam).
- R.C.M.C. 13.24.065 was added to permit the Board to require current licensees to retake and pass a new examination, if the City updates its Standard Specifications or Infrastructure Design Criteria Manual. If the Board exercises this option, it must provide written notice to all licensees.
- Changes to R.C.M.C. 13.24.080.B.4 clarify that decisions by the Trenching Board about the interpretation and application of licensing ordinances are final, and that Board decisions to deny, issue, revoke, suspend, or place on probation any license may be appealed to the City Council for a final decision.
- R.C.M.C. 13.04.090
  - Section A.3 gives the Board the option to place any licensee on probation for up to 12 months to permit the City and Board to review the licensee's performance, in addition to its other options for disciplinary action.
  - The other changes to R.C.M.C. 13.04.090 are meant to ensure the Board's flexibility to address disciplinary situations with licensees when they arise.

## **Operating Manual for Rapid City Trenching Board**

A summary of the proposed changes:

- Several changes were made to align the Operating Manual with the ordinances in R.C.M.C. Chapter 13.24. See, e.g., Section 1.2.2, Section 6.2.2, etc.
- Updated Section 2 with the current version of Rapid City Municipal Code Chapter 13.24 as proposed.
- Removed language from Section 3.2.2 concerning application of the trenching rules in the City's three-mile platting jurisdiction outside City limits.
- Aligned the Board Membership provisions in Section 5.1 with R.C.M.C. Chapter 13.24 and current practice.
- Updated the Meeting rules in Section 5.3 to match current practice.
- Removed requirement of publication of change to bylaws in the Rapid City Journal in 5.4.1.4. This step of publication is not required by state law or City ordinance, and it is unusual to publish bylaw changes in the newspaper.
- Clarified the timing of the notice to license holders of proposed amendments to the bylaws.
- Added language in Section 6.2.1, Subsection 2.2 that applicants cannot take any electronic device, including a cell phone, into the testing room when taking the licensing exam.
- Incorporated the Board's option to draft and require a reexamination of licensees if the Standard Specifications and/or IDCM are updated in Section 6.2.1, Subsection 3.4.
- Updated the Discipline of Licensed Persons procedure in Section 6.2.2 in the following ways:
  - Clarified the violations which may warrant discipline and aligned these with those found in R.C.M.C. Chapter 13.24, Subsection 1.
  - Previously, the disciplinary actions in Subsection 2 implied that the Board would take a multi-step approach based on the number of offenses. This has been amended so that the Board has several options for which actions it may take for any violation, and the Board has flexibility to utilize the disciplinary action that is appropriate for the situation.
  - Updated Subsection 3 Procedures for Show Cause Hearing to align with R.C.M.C. Chapter 13.24.

- Removed the Penalties provision in Subsection 4. If violations occur, the options for disciplinary actions are in Subsection 3. The Board does not have the authority to impose monetary penalties, so that was removed.
- Updated Subsection 4 Appeals of Disciplinary Actions to align with R.C.M.C. 13.24.080.B.4.

If you have any questions about the proposed changes, please contact me at 605.394.4140 or [carla.cushman@rcgov.org](mailto:carla.cushman@rcgov.org).