

**AN ORDINANCE TO AMEND AND CLARIFY PROVISIONS
CONCERNING TRENCHING CONTRACTOR’S LICENSES BY AMENDING
CHAPTER 13.24 OF THE RAPID CITY MUNICIPAL CODE**

WHEREAS, the City of Rapid City has adopted provisions governing trenching contractors, sewer and water contractors, and installers in Chapter 13.24 of the Rapid City Municipal Code; and

WHEREAS, R.C.M.C. 13.24.080 establishes the Rapid City Trenching Board to oversee these licenses; and

WHEREAS, the Rapid City Trenching Board is recommending updates to R.C.M.C. Chapter 13.24 to update provisions concerning the optional probationary status of some licenses, to clarify who may obtain licenses, to allow for the Board to order a retest when the applicable guidelines change, and to make other clarifications to the ordinances; and

WHEREAS, to the degree that the State of South Dakota also regulates trenching and utility installation, the City wishes to align its definitions and procedures for these licenses with the State’s protocols; and

WHEREAS, the City wishes to remove the fees from the ordinance in favor of adopting them in the Council’s regular fee resolution; and

WHEREAS, the Common Council believes it to be in the best interest of the City and its citizens to amend R.C.M.C. Chapter 13.24 governing trenching contractor’s licenses.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 13.24 of the Rapid City Municipal Code be and is hereby amended to read in its entirety as follows:

CHAPTER 13.24: TRENCHING CONTRACTOR’S LICENSES

Section

- 13.24.010 Definitions.
- 13.24.020 License required.
- 13.24.030 License application.
- 13.24.040 License fees and renewal.
- 13.24.050 Requirements for issuance.
- 13.24.060 Limitations on licenses generally.
- 13.24.070 City of Rapid City Infrastructure Design Criteria Manual.
- 13.24.080 Rapid City Trenching Board.
- 13.24.090 License—Revocation, suspension or probation.
- 13.24.100 Criminal penalty.

13.24.010 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:

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

DIRECTOR. City of Rapid City ~~Director of Public Works~~ Director.

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.

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.

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

PLUMBER'S RIDER. A plumbing contractor licensed and permitted under Chapter 15.24 of the Rapid City Municipal Code that has secured a trenching contractor's license and paid the applicable fees for such license.

SEWER and WATER CONTRACTOR. A person who engages in the trade or business of selling and setting up sewer and water installations~~sole proprietorship, partnership or corporation, who undertakes or offers to undertake sewer and water installations.~~

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.

SEWER and WATER 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.

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

STATE LICENSE. Either a sewer and water contractor's, installer's or plumbing 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.

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 eChapter.

TRENCHING BOARD. The Rapid City Trenching Board, as established in Section 13.24.080. Also referred to in this Chapter as Board.

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.

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.

(Ord. 5794 (part), 2012)

13.24.020 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 eCity sewer and water contractor's license.

B. *Sewer and water installer.* It is unlawful for any person to act, or to give the appearance of acting as a sewer and water installer without having first secured a eCity sewer and water 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 eCity infrastructure easements, or act or give the appearance of acting as a trenching contractor without having first secured a eCity 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 eCity trenching journeyman’s license. A licensed sewer and water installer may also act as a trenching journeyman.

(Ord. 5794 (part), 2012)

13.24.030 License application.

A. *Public Works Department to administer provisions.* The Public Works Department shall administer the provisions of this eChapter. 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 installer licenses must possess a current state license of a class at least equal to the class of eCity license for which they have applied. Applicants for trenching contractor, and trenching journeyman licenses are not required to possess a state license.

(Ord. 5794 (part), 2012)

13.24.040 License fees and renewal.

A. *Fee schedule.*

—1. Every person making application for a license shall pay to the Finance Officer all nonrefundable fees as set by resolution of the Common Council follows:

Applicant	Initial Fee	Renewal Fee
Sewer and Water Contractor	\$200	\$100
Sewer and Water Installer	\$40	\$20
Trenching Contractor	\$200	\$100
Trenching Contractor (plumber’s rider)	\$200	\$100
Trenching Journeyman	\$40	\$20

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

B. *License term and renewal.* All licenses issued under this eChapter shall expire February 28 of the next even-numbered year following its issuance. Any license not renewed by the last business day in March in such even-numbered year shall be ineligible for renewal. In order to obtain a license after the grace period, the applicant shall be required to complete the application requirements for a new license. If an applicant applies for an initial license within 4 months of the time for renewals, the license issued shall be issued for a term extending to February 28 of the second even-numbered year following its issuance.

(Ord. 5923 (part), 2013; Ord. 5794 (part), 2012)

13.24.050 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 eChapter, including passing the required examination, presenting to the eCity 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 eCity 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 \$2,000,000, with \$50,000 fire damage and \$1,000,000 each occurrence;

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

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

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 therefor, pays the application fee, meets the requirements stated in this eChapter, 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 eCity 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, with \$50,000 fire damage and \$300,000 each occurrence;

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

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

C. *Installer and journeyman license.*

1. *Sewer and water installer.* License may be issued only to the person who meets the requirements in this ~~e~~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 ~~e~~Chapter, including passing the required examination.

D. *Age at time of application.* Applicants for any license issued under this ~~e~~Chapter must have attained at least 18 years of age; at the time of making application therefor.

(Ord. 5794 (part), 2012)

13.24.060 Limitations on licenses generally.

A. At the time of issuance of any license, the Board may elect to place any licensee on probation for up to 12 months to allow the City and the Trenching Board to review the performance of the licensee. ~~For the first 12 months after issuance of any license, or upon order of the Board pursuant to § 13.24.090, 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 licensee.~~

~~B. During the 12-month probationary period, any water and sewer contractor or trenching contractor will be allowed to have only 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 sole proprietorship, partnership or corporation who performs work as discussed in this Chapter shall employ at least one contractor licensed to perform the work. ~~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 employment of the licensed contractor person designates only 1 individual, and the individual's employment is terminated or ends for any reason, the entity shall immediately notify the City. The entity shall ensure that, within 60 days of the end of employment of the licensed contractor, it employs a licensed contractor in accordance with this Chapter. If an entity fails to provide timely notice of a change in employment of a contractor and/or fails to employ a licensed contractor in accordance with this Section, the City may refuse to issue any permits until the entity is in compliance and/or may seek criminal penalties pursuant to Section 13.24.100. 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.~~

~~EC.~~ 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 licensed contractor; or
- ~~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.~~

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

~~GE.~~ Licenses 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.

~~HF.~~ 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 ~~e~~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 as set by resolution of the Common Council for a trenching contractor (plumbers rider) license. (~~Trenching contractor plumber's rider~~).

2. Private utility companies, or the ~~e~~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 ~~e~~Chapter. This exemption shall not apply to installation of new facilities or replacement of existing facilities.

(Ord. 5794 (part), 2012)

13.24.065 Retest for License Renewal

Upon the City's adoption of changes to the Standard Specifications for Public Improvements or the Infrastructure Design Criteria Manual, the Trenching Board may require that each licensee, as applicable, retake and pass a contractor's examination based upon the updated specifications and criteria. If the Trenching Board imposes such a requirement, the Board shall provide written notice to existing licensees affected by the requirement.

13.24.070 City of Rapid City Infrastructure Design Criteria Manual.

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

(Ord. 5794 (part), 2012)

13.24.080 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 eCity, an employee of a nongovernmental utility company other than telecommunications having underground utilities within the eCity, ~~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 eCity staff, shall serve without compensation for the service. The Board shall be assisted by eCity 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 utility systems, and to excavating in the public right-of-way. The Board shall also ~~insure~~ensure 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 have the power to review any license issued hereunder at any time.

4. The Board may hear appeals from determinations of the Public Works Director on interpretation and application of licensing ordinances. The decisions of the Board on all such

appeals are final. All decisions of the Board with regard to licenses denied, issued, revoked, suspended, or placed on probation shall be eligible for final review by the Council.

(Ord. 5794 (part), 2012)

13.24.090 License—Revocation, suspension or probation.

A. The Board, in its discretion, may revoke, suspend, or place on probation any license for reasons including, but not limited to, the following: performance of work without a permit; performance of consistently substandard work; violation of any applicable federal, state or local statute, ordinance, rule or regulation; violation of any provision of this ~~e~~Chapter; or demonstrated inability or unfitness to perform the work for which he or she has been licensed.

1. ~~The penalty of~~The Board may revoke any license revocation shall continue for a period of 1 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 any~~ probationary period set forth in § 13.24.060A., B., and C. ~~imposed by the Board as part of its issuance of the license.~~

2. ~~The penalty of~~The Board may suspend any 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 ~~below~~§ 13.24.060A., B., and C.

3. ~~The penalty of~~The Board may elect to place any licensee on probation for up to 12 months to allow the City and the Trenching Board to review the performance of the licensee. During any probationary period, a licensee any water and sewer contractor or trenching contractor will be allowed to have only 1 right to work permit active at any given time. shall operate as set forth in § 13.24.060A., B., and C. During any probationary period, any water and sewer contractor or trenching contractor will be allowed to have only 1 right-to-work permit active at any given time. If the Trenching Board determines that the licensee has not completed enough work to allow for proper evaluation, the Board may extend a licensee's probationary status for up to six months without an additional hearing under this Section.

4. The Board may elect to impose any combination of suspension, revocation, and/or probation under this Section, or it may impose a probationary period upon any license issued after suspension or revocation, in accordance with Section 13.24.060.

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~~ take any action on the license.

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~~ action shall be 14 days from the date of mailing of the Board's written notice of decision, unless the Board finds that immediate imposition of any action is necessary to protect the health and safety of the public.

C. 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~~ Director 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.

D. 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.

(Ord. 5794 (part), 2012)

13.24.100 Criminal penalty.

Any person violating this ~~e~~Chapter shall be subject to the general penalty provision of §Section 1.12.010.

(Ord. 5794 (part), 2012)

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Director

(seal)

First Reading:
Second Reading:
Published:
Effective: