

(Summary Published in *The McPherson Sentinel*, _____, 2018 once)

ORDINANCE NO. 3283

AN ORDINANCE OF THE CITY OF MCPHERSON, KANSAS AMENDING SECTIONS 107 THROUGH 122 INCLUSIVE, BUT EXCLUDING SECTIONS 113 AND 117, OF ARTICLE III, CHAPTER 18 OF THE CODE OF THE CITY OF MCPHERSON, KANSAS CONCERNING CONTRACTORS, PROVIDING FOR THE LICENSING AND REGULATION THEREOF.

WHEREAS, City Staff has gained experience with contractor licensing and recommends changes to the existing City Code would be warranted; and

WHEREAS, the governing body believes it is in the public's best interest to accept staff recommendations.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS:

SECTION 1. Amendment to Code. From and after the effective date of this Ordinance, the following sections 18-107 to 18-122, inclusive but excluding Sections 113 and 117, shall be deleted in their entirety and in their place, the following shall be inserted:

Section 18-107. General Contractor Licensing. These sections are referred to as the "Contractor Licensing Ordinance." All definitions in this section shall apply to the Contractor Licensing Ordinance.

- (a) **"Agent"** shall mean an individual that has the authority to act on behalf of another.
- (b) **"Building Official"** shall mean the City designated authority charged with the administration and enforcement of building codes of any kind or nature or the building official's duly authorized representative.
- (c) **"Building"** shall mean any structure used or intended for supporting or sheltering any use or occupancy.
- (d) **"Board" or "Construction Advisory Board of Trades and Board of Appeals (Board)"** shall have the meaning provided in Code section 18-31 *et. seq.*
- (e) **"Contractor"** shall mean any person, firm, partnership, corporation, association, or other entity or any combination thereof, who for compensation (1) undertakes within the City, to build, construct, alter, remodel, repair, any building or any portion thereof, for which a permit from the City is required including general contractors, building contractors, residential contractors, concrete contractors and framing contractors. Unless specifically provided otherwise by this Contractor Licensing

Ordinance, only a contractor licensed herein may obtain, directly or indirectly, a building permit.

- (f) **“Contractor Licensing Ordinance”** shall mean Article III, Chapter 18 Sections 18-107 et. seq of the Code of the City of McPherson, Kansas as amended from time to time.
- (g) **“Designated Representative”** shall mean an individual that may obtain a license on behalf of a firm and will be the qualifying party of the firm if the individual meets the minimum requirements defined herein.
- (h) **“Qualifying experience”** shall require an individual to have worked within the specific license category for the requisite time period. Individuals must be experienced workers fully qualified and able to perform the trade without supervision. All experience claims must be verifiable by a qualified and responsible person, such as a contractor, a building official, an architect or an engineer.
- (i) **“Qualifying Party”** shall mean the individual who meets the experience and examination requirements for a license. Every license must have a qualifying party.
- (j) **“Structure”** shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.
- (k) **“Contact training hours”** shall mean actual verifiable hours of training that pertains directly to city building codes or construction industry related topics and taught by a qualified professional in their area of expertise. Training receiving 0.1 CEU shall equal 1 Contact training hour.
- (l) **“Certificate of Competency”** shall mean the successful completion with a score of 75 percent or higher on class specific contractor license exam published and supported by the International Code Council of a cycle year at or newer than the current adopted code cycle for the City.

Section 18-108. License Required. Unless specifically exempted, no building permit shall be issued to any contractor who has not first obtained a license or who is delinquent in payment of his annual license fee, or whose license has been suspended or revoked by action of the Board. It is further unlawful for any person to enter into a contract with another so as to bring himself under the classification of a contractor as defined in this Article, or to perform any work as a contractor, or any work under a contract, without having first obtained a contractor’s license. Further, it is unlawful for any person issued a license as required by this Article to contract to perform any work other than specified by such license. Contractor applicants shall be licensed by satisfying the requirements in either 18-111 or 18-112. A license will be granted once all information as submitted is verified.

Section 18-109. Exclusions. The following persons are not “contractors” within the meaning of this Contractor Licensing Ordinance.

- (a) An employee or agent working for and under the supervision of a contractor licensed under this Article for the type of construction, alteration, repair or demolition being undertaken; and
- (b) A homeowner who personally occupies or will occupy and undertakes the construction, alteration, repair or maintenance of such homeowner's single-family residence or an accessory structure thereto. Notwithstanding the foregoing, for purposes of this section, any homeowner who undertakes the construction of a new residence for such homeowner's personal occupancy more than three times in any four year period shall be deemed to be a "contractor" under this Article. Notwithstanding anything to the contrary, all subcontractors working under a homeowners permit must be licensed.

Section 18-110. Contractor responsible for all work. Upon issuance of a building permit to a contractor, such contractor shall be responsible to the City for all work undertaken pursuant to such building permit, including work done by the contractor's employees, agents, and subcontractors. Notwithstanding the above, nothing in this Contractor Licensing Ordinance shall be used to establish a standard of care or negligence involving any civil litigation between private parties.

Section 18-111. Contractor Licenses. There are four (4) separate classes of licenses for contractors in this section.

Class A Commercial: A "Class A Commercial" license shall entitle the holder thereof to construct, remodel, repair, demolish any structure and perform work described in Class D, Building Specialties of framing and concrete. A Class A Commercial license requires six (6) years of qualifying experience within the commercial construction industry. The holder thereof must also have a Certificate of Competency or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the Governing Body. Renewals will also require six (6) contact training hours (0.6 CEU) of continuing education.

Class B Commercial: A "Class B Commercial" license shall entitle the holder thereof to construct, remodel, repair, demolish any structures not exceeding three (3) stories in height and perform work described in Class D, Building Specialties of framing and concrete. A Class B Commercial License will also entitle the holder to perform non-structural remodeling, tenant finish, and repairs of all structures. A Class B Commercial license requires four (4) years of qualifying experience within the commercial construction industry. The holder thereof must also have a Certificate of Competency; or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the Governing Body and will also require six (6) contact training hours (0.6 CEU) of continuing education.

Class C Residential: A "Class C Residential" license shall entitle the holder thereof to construct, remodel, repair, and demolish single family or duplex residences, buildings accessory thereto and perform work described as Class D, Building Specialties of framing and concrete. A Class C Residential license requires four (4) years of experience within the industry. The holder thereof

must also have a Certificate of Competency or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the Governing Body. Renewals will require four (4) contact training hours (0.4 CEU) of continuing education.

Class D Specialties: “Class D Specialty” licenses shall entitle the holder to perform one or more of the services below as shown on their license:

- (a) **Framing Contractor:** A Framing Contractor license shall entitle the holder thereof to frame a structure or building, including bearing walls and non-bearing walls, and including repair to any of the above. A Framing Contractor license requires a minimum of three (3) years qualifying experience within the construction industry.
- (b) **Concrete Contractor:** A Concrete Contractor license shall entitle the holder thereof to perform general concrete work to include the placing and erecting of steel bars for the reinforcing of foundations, pavement, flat and other concrete work. A Concrete Contractor license requires a minimum of three (3) years of concrete placing, erecting, and foundation experience within the construction industry.
- (c) **Swimming Pool Contractor:** A Swimming Pool Contractor license shall entitle the holder thereof to install and repair permanent in-ground and above-ground pools. A swimming Pool License requires a minimum of three (3) years qualifying experience working within the swimming pool industry. The holder thereof must also have a score of 75% or higher on the Prometric Unlimited Swimming Pool test.

Section 18-112. Local licensing. There are two (2) separate classes of licenses for contractors in this section.

Local Commercial: A “Local Commercial” license requires a minimum of six (6) years in commercial construction of a commercial construction company performing various tasks common to the construction industry to include a minimum of two (2) years management at a level of foreman or above. Renewals will require three (3) contact training hours (0.3 CEU) of continuing education. The Local Commercial license may not allow for reciprocating licensing in other jurisdictions without further testing. Special building limitations to the Local Commercial license will be: No new structure/building project to be over a single story; No commercial addition to a structure/building project to be over a single story; and structural alterations to buildings over a single story will not be allowed.

Local Residential: A “Local Residential” license requires a minimum of six (6) years in commercial or residential construction as an employee of a commercial or residential construction company performing various tasks common to the construction industry to include a minimum of two (2) years management at a level of foreman or above. Renewals will require three (3) contact training hours (0.3 CEU) of continuing education. Local Residential license may not allow for reciprocating licensing in other jurisdictions without further testing.

Section 18-114. Application Form. The City shall receive and process contractor license applications on forms provided by the City. License fees shall be paid without proration. No contractor license may be transferred or assigned.

Section 18-115. Contractor insurance. Every contractor shall keep in force a policy of general liability insurance including completed operations coverage.

- (a) Class A, B and C Contractors.** Every building contractor shall keep in force a policy of commercial general liability insurance including completed operations/products coverage. Such insurance policy shall be written with an insurance company licensed in the State of Kansas. The contractor shall maintain general liability coverage in an amount not less than \$1,000,000 per occurrence single limit for bodily injury and property damage. At the time of licensing, the contractor shall provide the City of McPherson with an original certificate of insurance verifying the insurance coverage required under this section. The City shall be added as an additional insured to the insurance policy by the insurance company issuing the certificate of insurance, requiring the insurance company to notify the City in writing of any change in coverage or cancellation of such policy at least ten (10) days prior to such changes.
- (b) Class D Contractors.** Every specialty contractor shall keep in force a policy of commercial general liability insurance including completed operations/products coverage. Such insurance policy shall be written with an insurance company licensed in the State of Kansas. The contractor shall maintain general liability coverage in an amount not less than \$500,000 per occurrence single limit for bodily injury and property damage. At the time of licensing, the contractor shall provide the City with an original certificate of insurance verifying the insurance coverage required under this section. The City shall be added as an additional insured to the insurance policy by the insurance company issuing the certificate of insurance, requiring the insurance company to notify the City in writing of any change in coverage or cancellation of such policy at least ten (10) days prior to such changes.
- (c) Local Commercial and Local Residential Licensing.** Every building contractor shall keep in force a policy of commercial general liability insurance including completed operations/products coverage. Such insurance policy shall be written with an insurance company licensed in the State of Kansas. The contractor shall maintain general liability coverage in an amount not less than \$1,000,000 per occurrence single limit for bodily injury and property damage. At the time of licensing, the contractor shall provide the City of McPherson with an original certificate of insurance verifying the insurance coverage required under this section. The City shall be added as an additional insured to the insurance policy by the insurance company issuing the certificate of insurance, requiring the insurance company to notify the City in writing

of any change in coverage or cancellation of such policy at least ten (10) days prior to such changes.

Section 18-116. Renewal or reinstatement of a license.

- (a) Every contractor license shall be issued on a calendar year basis to expire on December 31st of each year. A contractor shall be entitled to renew such contractor's license upon satisfaction of requirements of the Contractor Licensing Ordinance as then in effect. A license renewal application may be submitted to the City beginning on December 1st through and including the last day of January without a late fee. Thereafter, the cost to renew will be the original license fee. Unless an expired license is renewed within one year of its expiration, the contractor shall be required to make a new application and satisfy all the then-existing contractor licensing requirements. Electronic license renewal notices may be sent by the City of McPherson no later than November 1st of each year to every licensed contractor at the address provided by the contractor. The license renewal applications will be available on the city website or available at the City office. The failure to receive an application shall not excuse untimely license renewal.
- (b) Any contractor whose license is suspended must show to the reasonable satisfaction of the Board that the violation has been corrected in accordance with the applicable Code within a reasonable period of time set by the Board. Failure to provide such evidence may result in the revocation of the contractor's license.
- (c) When a contractor's license is revoked, a new license shall not be granted until the contractor has taken the necessary corrective action to the reasonable satisfaction of the Board.
- (d) Any contractor with delinquent fees shall make full payment to the City of McPherson prior to the issuance of renewal of a contractor license.
- (e) All license and renewal fees shall be as set by resolution of the Governing Body from time to time. Renewals will require the specified contact training hours of continuing education.

Section 18-118. Firms/qualifying party. Under this Article, a corporation, limited liability company, partnership or other legal entity ("firm") may obtain, in the firm's name, a contractor's license provided that such firm has at least one full-time employee who is designated by the firm as its qualifying party. Whenever a building permit is issued in the name of a firm, the firm shall be subject to these regulations and the jurisdiction of the Board. The qualifying party shall be the legal representative for the contractor relative to the provisions of this Article. The designated qualifying party shall satisfy the requirements of this Contractor Licensing Ordinance. A designated qualifying party shall not be a qualifying party for more than one firm, unless the firms have a majority of the ownership in common. When the qualifying party terminates employment with the licensee, the City shall be notified by the qualifying party

in writing within thirty days of the disassociation and another qualifying party must qualify within sixty days.

A contractor, including firms, may appoint one or more individuals who shall be authorized to obtain building permits on behalf of the contractor. Such individuals are not required to be a licensed contractor.

Section 18-119. Contractor discipline. The Board shall have the authority to discipline, any contractor holding any contractor's license issued by the City as detailed in Section 18-120. The Board may take such disciplinary action if the Board concludes by a preponderance of the evidence, following a hearing, which the contractor's action or inaction is:

- (a) A serious or repeated violation of the provisions of this Article, any applicable Code, or the failure to comply within a reasonable time to any lawful written order of a building code official. In determining the seriousness of a violation the Board shall consider the risk to the life, health or safety of an individual or the community or the risk to property;
- (b) A knowing and intentional misrepresentation of a material fact made in connection with obtaining a contractor's license or a building permit;
- (c) A failure to obtain a building permit or to obtain a required inspection of an ongoing project as required by any applicable Code;
- (d) A failure to timely obtain a Certificate of Occupancy or Required Final Inspection for a completed structure as required by the applicable code;
- (e) A failure to hire a licensed Building Specialty, electrical, plumbing, or HVAC contractor to supervise any electrical, plumbing, HVAC or specialty work on the job site for which the contractor obtained a building permit; or
- (f) A failure to pay any required application or licensing fees for a building permit, contractor license, or inspection fee;

The Board shall mail to the contractor, at the address on the license, at least fourteen (14) days prior to the hearing date a written notice listing the reasons for the possible discipline, but the Board shall not be limited to such list of reasons if evidence is developed at the hearing showing other or additional reasons for discipline. The City shall have the burden of proof by a preponderance of the evidence. The Board may adopt such rules and procedures deemed reasonably necessary to conduct such hearing. The building code official shall have the discretion, but not the duty, to issue verbal and/or written warnings without waiving any potential violation.

Section 18-120. Board action. Upon finding by a majority of the members present at the hearing that a contractor has violated one or more of the provisions of Section 18-119, the Board may admonish, reprimand, or take other appropriate disciplinary action against such contractor including, but not limited to:

- (a) Admonish or reprimand the Contractor.
- (b) Restrict the allowable scope of work allowed by the Contractor for a fixed period not to exceed 90 days.
- (c) Suspension of the contractor's license for a fixed period not to exceed 90 days.
- (d) Suspension of the contractor's license for a fixed period up to 180 days, provided, however, the contractor shall have the right to have the suspension and the terms thereof reconsidered by the Board at the expiration of the first 90 days to determine if just cause exists to modify or terminate the suspension. Such reconsideration may, at the Board's option, include a hearing.
- (e) Revocation of the contractor's license for a period not less than 12 months from the date of revocation. A contractor's license shall be revoked if the contractor has been suspended two times during any 36 month period.

Any decision of the Board shall be made in writing stating the reasons for the decision and mailed to the contractor. A contractor whose license is the subject of a Board action may appeal any decision of the Board to the City's Governing Body by filing a notice of appeal with the Board within 30 days following the third day after the Board's written decision was mailed to the contractor as evidenced by a certificate of mailing which shall be included with the decision. When an appeal is filed, the secretary of the Board shall forward the appeal and the Board's decision to the City Commission, together with the Board's record. Appeals to the Governing Body shall be *de novo* and no action shall be taken by the Board during a pending appeal.

Section 18-121. Safe harbor provisions. A contractor shall not be found in violation of this Article, nor disciplined by the Board for a violation of an applicable building safety code provision if the contractor performs the work in accordance with and reliance upon duly certified plans and specifications prepared or approved by an architect or engineer licensed in Kansas without actual knowledge by the contractor that such plans and specifications, or pertinent parts thereof, are in violation of applicable codes.

Section 18-122. Rules and regulations. The Board may adopt rules, regulation, and procedures consistent with the provisions of this Contractor's Licensing Ordinance.

SECTION 2. Repeal. All or parts of the Code conflicting with the provisions of this Ordinance are hereby repealed.

SECTION 3. Publication and Effective Date. This ordinance shall be in full force and effect after its passage by the governing body, signature by the Mayor and publication of a summary of this ordinance in the official city newspaper and posting of the full text of the ordinance on the City's website in compliance with K.S.A. 12-3007(b), but shall not be enforced until November 1, 2018.

Passed by the Governing Body _____.

CITY OF MCPHERSON, KANSAS

Thomas A. Brown, Mayor

(SEAL)

ATTEST:

Tamra K. Seely, City Clerk

(Summary Published in *The McPherson Sentinel*, _____, 2018 once)

Ordinance No. 3283, Summary

On _____, 2018, the City of McPherson, Kansas adopted Ordinance No. 3283 amending Sections to the Code of the City of McPherson, Kansas concerning contractors, providing for the licensing and regulation thereof. A complete copy of this Ordinance is available at www.mcpcity.com or at the Municipal Center, 400 E. Kansas, McPherson, Kansas. Jeffrey A. Houston, City Attorney, certified this summary.