

## **ORDINANCE NO. 845(17)**

AN ORDINANCE AMENDING PART 14 OF THE MOORE MUNICIPAL CODE BY CREATING NEW CHAPTER 3, SECTIONS 14-301 THROUGH SECTION 14-324, CONSTRUCTION WITHIN CITY OWNED RIGHTS-OF-WAY, PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION; ESTABLISHING CITY POWERS; PROVIDING FOR CRIMINAL HISTORY BACKGROUND CHECKS; ESTABLISHING CERTIFICATE LIMITATIONS; ESTABLISHING A FEE; ESTABLISHING REQUIREMENTS FOR ISSUE OR DENIAL; ESTABLISHING CHANGE OF NAME REQUIREMENTS; ESTABLISHING RENEWAL REQUIREMENTS; ESTABLISHING APPLICATION REQUIREMENTS; PROVIDING FOR EMERGENCY CONDITIONS; EXCEPTING CITY PLAN ERRORS; RESERVING RIGHT TO STOP CONSTRUCTION; PROVIDING FOR EXPIRATION; PROVIDING FOR INSPECTIONS; PROVIDING FOR REIMBURSEMENT OR COST OF REPAIR; PROVIDING AN EXEMPTION FOR CITY CONTRACTS; PROVIDING FOR REVOCATION; AND ESTABLISHING A PENALTY.

BE IT ORDAINED BY THIS COUNCIL OF THE CITY OF MOORE, OKLAHOMA THAT PART 14, CHAPTER 3, SECTION 14-301 THROUGH SECTION 14-324 IS HEREBY CREATED AND READS AS FOLLOWS:

### **PART 14 – STREETS AND SIDEWALKS**

#### **CHAPTER 3- CONSTRUCTION WITHIN CITY OWNED RIGHTS-OF-WAY**

##### **SECTION 14-301 - DEFINITIONS.**

A. Private Utilities are defined as any and all electric, heating gas, telephone and television signal, or wireless carrier facilities or any other utilities not owned by the City of Moore, the State of Oklahoma, or any other Federal Agency.

B. City Utilities are defined as any and all facilities conveying water, sanitary sewage, storm waters, or vehicular and pedestrian traffic or any other utilities that are owned by the City of Moore, the State of Oklahoma, or any other Federal Agency.

C. Facilities are defined as sidewalks, roadways, sod, streetscapes, lines, conduits, ducts, poles, wires, cables, receivers, pipes, culverts, mains, crossarms, and other devices used, operated, or maintained for movement of liquids, gasses, people, or information

##### **SECTION 14-302 - REGISTRATION REQUIRED.**

Any contractor or sub-contractor whose activities are within or upon any City owned Rights-of-Way or Easement is hereby required to register with the city before engaging in such activities.

## **SECTION 14-303 - REGISTRATION - FINE**

A. A person may not engage in the business nor act in the capacity of a contractor or sub-contractor within this city nor may that person bring or maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor or sub-contractor without a valid registration as provided in this chapter.

B. A person who fails to obtain a valid registration prior to acting as a contractor or sub-contractor as defined in this chapter, a person who acts as a contractor or sub-contractor while his or her registration is suspended or revoked, or a person who violates any provision of this chapter shall be guilty of a violation, upon conviction, punishable by a fine not to exceed five hundred dollars (\$500.00).

## **SECTION 14-304- POWERS**

A. The City of Moore is authorized to employ personnel and procure such supplies and equipment as may be necessary to carry out and implement the provisions of this chapter, subject to budgetary limitations and funding. The City of Moore may promulgate forms to implement the provisions of this chapter. The City of Moore may administer any provision of this act through use of the Internet or other technology as deemed necessary or appropriate.

## **SECTION 14-305 - OBTAINING A RIGHTS-OF-WAY CONTRACTOR/SUB-CONTRACTOR REGISTRATION-REFUSAL OF REGISTRATION**

A. To obtain a contractor registration under this chapter, an applicant who is eighteen (18) years of age or older shall submit, on forms the city prescribes, an application for registration. A copy of the contractor's certificate of liability insurance shall be filed with the application and shall be not less than five hundred thousand dollars (\$500,000.00). Any insurance company issuing a liability policy to a contractor pursuant to the provisions of this chapter shall be required to notify the city in the event such liability policy is cancelled for any reason or lapses for nonpayment of premiums. In addition, the contractor shall submit proof that the contractor has secured workers' compensation coverage satisfactory under the Workers' Compensation Act, or an affidavit of exemption or self-insurance as authorized pursuant to the Workers' Compensation Act. If the city deems it appropriate or

necessary, the city may also require other information to be included on the application form to assist the city in registering the person as a contractor. The application shall contain statements that the applicant desires the issuance of a contractor registration certificate; that the applicant will comply with the provisions of this act; that the applicant will comply with state laws and local ordinances relating to standards and permits; that the applicant has or has not been registered or licensed as a contractor in another state and whether any disciplinary action was taken against such registration or license or whether it is still in good standing; and that the nonresident applicant appoints the Secretary of State as legal service agent for all lawful process to be served upon the applicant for work performed in this state or as otherwise provided in this act.

B. The city shall refuse to register any person if the city determines:

1. The application contains false, misleading, or incomplete information;
2. The applicant fails or refuses to provide any information requested by the city;
3. The applicant fails or refuses to pay the required fees;
4. The applicant is ineligible for registration due to a suspended or revoked registration in this state;
5. The nonresident applicant has a revoked or suspended registration or license required by law for contractors in another state; or
6. The applicant has failed or refuses to submit any taxes due in this state.

C. The city shall notify the applicant in writing if the city denies a registration or renewal certificate, and shall provide the applicant an opportunity to respond to or cure any defect in the written application or renewal for a period of ten (10) days from the date of the written notification. An applicant aggrieved by a decision of the city denying a registration or renewal may appeal the decision to the city manager for the City of Moore as provided in the Administrative Procedures Act, or the applicant may reapply after a ninety-day waiting period, if otherwise eligible in the provisions of this chapter. The application and renewal fees shall not be refundable.

D. The city shall classify as not in good standing the registration of any contractor who fails to:

1. Maintain liability insurance coverage;

2. Maintain workers' compensation coverage satisfactory under the Workers' Compensation Act, or provide an affidavit of exemption or self-insurance as authorized pursuant to the Workers' Compensation Act;
3. File, renew, or properly amend any fictitious name certificate;
4. Maintain an active status of a corporation or registration as a foreign corporation, a limited liability company or registration as a foreign limited liability company, a limited liability partnership registration or foreign limited liability partnership registration, or a limited partnership certificate or limited partnership or foreign limited partnership certificate of authority, with the Office of the Secretary of State;
5. File or renew a trade name registration;
6. Maintain or renew a contractor registration as provided in this chapter;
7. Notify the city of a change in name, address, legal business entity, legal service agent.
8. Maintain a registration as required by law in another state while registered in this state as a nonresident contractor; or
9. File and pay all taxes when due in this state.

E. The city shall send a written notice to the person when his or her registration is not in good standing. Any contractor who has been notified by the city that his or her registration is not in good standing shall cease soliciting or entering new services and projects as of the date of such notification; however, the contractor shall be allowed to complete projects where actual physical work has begun prior to the date of issuance of the notice that his or her registration is not in good standing. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty (30) days of the date of the notice, or if the contractor solicits or enters into new services contracts or projects while the contractor's registration is not in good standing, or while such registration is suspended or revoked, the contractor shall be in violation of the provisions of this act. Any registration that remains not in good standing for a sixty-day period shall be suspended on the sixtieth day from the date of issuance of the notice to the contractor that his or her registration is not in good standing. Any registration that remains not in good standing, and is suspended for such cause, shall be revoked on the ninetieth day from the date of issuance of the notice to the contractor that his or her registration is not in good

standing. The city shall notify the contractor upon suspension or revocation of his or her registration for failure to comply in bringing such registration into good standing as required by law. The contractor may reinstate his or her registration to good standing by paying the required fees provided in Section 14-308 of this act and complying with all other requirements for issuance of a registration in good standing. Any person aggrieved by the decision of the city to suspend or revoke a registration pursuant to this section may appeal such decision to the city manager's office.

#### **SECTION 14-306 - CRIMINAL HISTORY RECORDS SEARCH OR BACKGROUND CHECK**

A. When deemed appropriate, the city may conduct a criminal history records search or background check on any applicant or registered contractor and may investigate the information submitted on a contractor application or renewal form; provided, no adverse action may be taken against the person until the person has been notified and given an opportunity to respond in writing.

B. The city, its agents, employees and assigns shall not be liable and are granted immunity for the acts or omissions of any registered contractor or its employees, or for any person's failure or omission to properly disclose any information on an application or renewal form, including, but not limited to, pending criminal charges, arrests or prior criminal history records, disclosure of his or her contractor registration status, or his or her qualifications to perform or act as a contractor.

#### **SECTION 14-307 - CONTRACTOR SUB-CONTRACTOR REGISTRATION CERTIFICATE – BUSINESS LIMITATIONS**

A. The holder of a contractor registration certificate governed by this chapter is entitled to engage in the business within this city's Rights-of-Way or Easements pursuant to the provisions of this chapter, and subject to the following limitations:

1. A contractor's registration certificate number shall be valid and in good standing at the time of soliciting a project and during subsequent job performance;
2. A contractor's registration certificate number shall be submitted when applying for any permit issued by the state, or any of its political subdivisions, for projects within

the Rights-of-Way or Easement services or projects, if a permit is required by such authority, and shall be written upon each permit issued;

3. A contractor's registration certificate cannot be shared or used by any other individual or business entity; provided, however, a business firm, partnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit may be granted a single registration certificate number for use by designated contractors acting as agents for the business entity when the application for registration contained sufficient information on each member, partner, officer and agent.

4. Upon any change to the name, address, business entity, or legal service agent of a contractor shall be notified in writing;

5. A contractor shall comply with state laws and local ordinances relating to standards and permits for Right-of-Way or Easement services and projects; and

6. A contractor must pay taxes due in this state.

#### **SECTION 14-308 - REGISTRATION FEE**

A. At the time of making application for a contractor registration certificate pursuant to this act, the applicant shall pay to the city a fee to be set by the city in the City of Moore Schedule of Fees.

B. All monies collected by the city for a contractor registration applications, renewals and other fee assessments shall be deposited by the city into the general fund.

C. The fee to be submitted with an application for a contractor registration may be prorated as set by the city. Unless prorated at the time of initial registration, fees shall be paid in the amount stated in subsection A. of this section and such registration certificates shall expire June 30 each year.

D. A renewal fee for a contractor registration shall be set by the city in the City of Moore Schedule of Fees.

#### **SECTION 14-309- APPLICABILITY OF CONTRACTOR/SUBCONTRACTOR REGISTRATION**

This does not apply to any work performed for the city under municipal contract.

#### **SECTION 14-310 - ISSUANCE OR DENIAL OF REGISTRATION**

Within twenty-five (25) calendar days from the date of application, the city shall either issue or deny the contractor registration. No registration shall be issued to an applicant until the city receives all documentation and fees necessary to obtain a registration certificate in good standing. The registration certificate issued on an original application entitles the person to act as a contractor within this city's Rights-of-way or Easements subject to the limitations of this chapter, until the expiration of the then current fiscal year ending June 30, except that an initial registration issued in May or June is valid until June 30 of the subsequent year. On the effective date of this chapter, a prorated registration certificate issued between January 1, 2011, and April 30, 2011, shall be valid until June 30, 2011.

#### **SECTION 14-311 - CHANGE IN CONTRACTOR'S NAME, ADDRESS, LEGAL SERVICE AGENT, OR CEASE OF BUSINESS - NOTIFICATION**

No later than ten (10) days after the date of a change in a contractor's name, address, or legal service agent, or upon a registered contractor ceasing business as a contractor, the person shall notify the city of the change on a form provided by the city. A name, address, or legal service agent change shall be accompanied by a fee not exceeding one hundred thirty-five dollars (\$135.00) to be set by the city. A person may not change his or her name under an active registration certificate if the change is associated with a change in the legal status of the business entity other than a change in marital status. Doing business under a new business name or change in legal status of a business requires issuance of a new registration certificate. When a registered contractor ceases to be active as a contractor, the city shall suspend the registration certificate of such contractor.

#### **SECTION 14-312 - CERTIFICATE OF RENEWAL**

A. Any contractor registration certificate issued under this chapter may be renewed for each successive fiscal year by obtaining from the city a certificate of renewal. To obtain a certificate of renewal, the person shall file with the city a renewal application by June 30 and pay the renewal fee. The application for renewal shall require statements under oath

that the applicant has properly submitted income and employment taxes due in this state; whether or not the applicant has been convicted of any felony offense, and the nature of such offense, since issuance of the prior registration. The applicant shall include with the renewal application a copy of certificate of liability insurance, unless the registrar has a current valid certificate of liability insurance on file, proof of workers' compensation coverage, unless exempt under the Workers' Compensation Act. The renewal application need not be notarized.

B. The city shall refuse to renew a contractor's registration certificate for any reason stated in Section 14-305 of this chapter. The city shall notify the applicant in writing if the city denies the renewal as provided in Section 14-310 of this chapter.

C. If any contractor fails to file a renewal application by the June 30 deadline that contractor's registration shall be not in good standing. A contractor has a thirty-day grace period after June 30 to renew the registration certificate without a late fee. The late fee shall be set by the city in the City of Moore Schedule of Fees. A contractor registration certificate not renewed by August 30 shall be suspended for failure to renew, and on January 1, if a contractor's registration certificate still has not been renewed, it shall be revoked for failure to renew.

D. 1. A contractor desiring to renew a registration certificate that has been suspended for any cause provided in this chapter shall be assessed a fee equal to twice the amount of the fee established as a renewal amount.

2. The city shall assess a reinstatement fee to be set by the city in the City of Moore Schedule of Fees plus the fee established by Section 14-308 of this chapter for any registration that has been revoked for any cause provided in this act.

3. A contractor submitting an application for registration after suspension or revocation of that contractor's registration certificate must be otherwise eligible for registration under this chapter.

E. The city shall include a registration status notation in a contractor's record if the status of registration changes from an active and valid registration to not in good standing, denied, suspended or revoked.



## **SECTION 14-313 – PERMITS REQUIRED**

A permit is required for the construction, alteration, modification, or repair of any or all private utilities where city facilities may be disturbed on or under the City's Rights-of-Way. The work shall not be made in any place other than the location specified on the permit.

Cross Reference: Section 14-201 Street Cuts

## **SECTION 14-314 – APPLICATIONS**

Upon receipt of all required fees and application forms provided by the city, a Rights-of-Way permit may be issued and granted by the Director of Community Development or their designee, to a private utility service provider or designee, provided that:

1. Applications for such permits shall be filed with the City a minimum of 5 days prior to date anticipated commencement of construction.
2. A description of the Private Utility services that the applicant will or does offer
3. A description of Private Utilities and/or Facilities the applicant will or proposes to place in, on or over the Rights-of-Way
4. A description of Public Utilities and Facilities that the applicant proposes to remove and replace, cross-over, tie into, or encounter in any manner in the Rights-of-Way
5. Two (2) sets of plans, specifications, and a network map of the facilities to be located within the City Rights-Of-Way, if applicable.
6. The schedule and date of beginning shall be approved by the Director of Community Development or their designee.
7. Additional extensions, repairs, or modifications to permitted facilities during the life of the Rights-of-Way permit shall be subject to separate review, approval, and collection of fees prior to amending the permit for such addition work.

## **SECTION 14-315 – EMERGENCY CONDITIONS**

In the event of an emergency occurring during non-office hours, and starting of a project is necessary for the protection of public or private property, said person must contact the Police and Fire Department; an application for a permit as provided in this chapter shall be made on the next succeeding business day whether or not the emergency work has been completed.

## **SECTION 14-316 – ERRORS WITHIN CITY PLANS**

Neither the City of Moore nor any employee or agent thereof shall be held responsible for the accuracy or any error appearing in any map.

## **SECTION 14-317 – VALIDITY OF PERMIT**

The issuance of a permit based upon approved plans, specifications, and other data shall not prevent the Director of Community Development or their designee from thereafter requiring the correction of errors in said plans, specifications, and other data or from preventing construction being carried on thereunder when in violation of this chapter or any other ordinance or standard of the City

## **SECTION 14-318 – EXPIRATION OF PERMITS**

Every permit issued by the Director of Community Development or their designee, under the provisions of this chapter shall expire by limitation and become null and void if the construction authorized by such a permit is not commenced within one-hundred eighty (180) days from the date of such permit, or if the construction authorized by such permit is suspended at any time after the work is commenced for a period of 180 days. Before such construction can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half (1/2) the amount required for a new permit for such work; provided, no changes have been made or will be made in the original plans and specifications for such work; and provided, that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permit fee shall be a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which he may commence work under that permit when he is unable to commence work within the

time required by this section for good and satisfactory reasons. The Director of Community Development or their designee may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

#### **SECTION 14-319 – INSPECTION**

Upon the date of completion, or when notified by the applicant of the project's completion if earlier than the stated date of completion, the Director of Community Development, or their designee, shall make an inspection to determine if city facilities or properties have been restored without damage. If the Community Development Director or their designee determines that the project has not been satisfactorily completed, then the applicant will be given written instructions describing the work which needs completion. Additionally, depending on the nature and scope of the work performed under the permit, the Director or their designee may require that a set of engineer certified "as-built" plans be submitted when work is accepted by the city.

#### **SECTION 14-320 - REIMBURSEMENT-COST OF COMPLETION**

If the applicant has still not completed the work identified pursuant to this chapter, by agreed upon date, or within such other period that may be prescribed by the Director of Community Development or their designee, the city may will give notice to the applicant to complete project within 48 hours. If the applicant fails to meet such deadline, the city, at its sole option, may elect to complete or contract to complete the project to city standards and/or restore city utilities and facilities, and bill the applicant for time and material costs, plus twenty percent for overhead.

#### **SECTION 14-321 - REIMBURSEMENT-COST OF REPAIR**

At any time that a city-owned facility is damaged and the city is called upon to make repairs, the applicant will be billed for time and material costs, plus twenty percent for overhead.

## SECTION 14-322 - EXEMPTION

This chapter does not apply to any work performed for the city under municipal contract.

## SECTION 14-323 - REVOCATION

They city shall have the right to revoke the permit of any applicant for violations of this chapter.

## SECTION 14-324 - VIOLATION- PENALTY

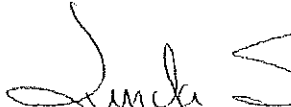
Any person who shall engage in any business, trade, or vocation for which a license, permit, certificate, or registration is required by this part, without having a valid license, permit, certificate, or certificate of registration as required, or who shall fail to do anything required by this part or by any code adopted by this part, or who shall otherwise violate any provision of this part or of any code adopted by this part, or who shall violate any lawful regulation or order made by any of the officers provided for in this part, shall be guilty of an offense, and upon conviction thereof, shall be subject to punishment as provided in Section 1-108 of this code.

**SEVERABILITY:** If any of the provisions of this ordinance are determined to be unconstitutional or unlawful by any court of competent jurisdiction, the remainder shall be several and unaffected.

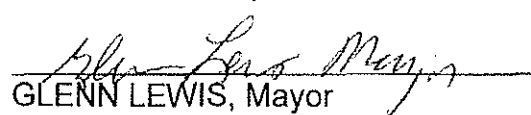
**REPEALER:** Any ordinance or parts thereof in conflict with this section are hereby repealed.

PASSED AND APPROVED this 17<sup>th</sup> day of January, 2017.

ATTEST: (Seal)

  
LINDA STEWART, City Clerk



  
GLENN LEWIS, Mayor

APPROVED AS TO FORM & LEGALITY:

  
RANDY BRINK, City Attorney