

ORDINANCE NO. 3771

AN ORDINANCE ALLOWING CONTRACTORS IN THE CITY OF OSAWATOMIE TO LICENSE DIRECTLY WITH THE CITY OF OSAWATOMIE, TO MAINTAIN CERTAIN RECIPROCAL LICENSING OPTIONS, AND CREATING THE BUILDING CODE BOARD OF APPEALS; BY AMENDING CERTAIN SECTIONS AND ADDING CERTAIN SECTION TO ARTICLE 2 OF CHAPTER 4; AND BY ADDING A NEW ARTICLE 4 TO CHAPTER 4 OF THE CITY OF OSAWATOMIE MUNICIPAL CODE; AND REPEALING EXISTING PROVISIONS

WHEREAS, the City of Osawatomie would like to make it easier for licensed contractors to perform work within the City of Osawatomie; and

WHEREAS, the City must also ensure all work within Osawatomie is done by contractors registered with the City of Osawatomie building Official and performed in conformance with all applicable building codes adopted by the City;

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

SECTION ONE: EXISTING CODE AMENDED. Article Two of Chapter Four of the Municipal Code of the City of Osawatomie is amended by amending Sections 4-211, 4-212, 4-217, 4-218, 4-219, and 4-220 which shall read as follows:

4-211. Building permit required; application; approval.

(a) It shall be unlawful for any person to hereafter:

(1) Erect or cause to be erected within the city any building or structure of any kind or enlarge or add to the outside dimension thereof, or

(2) Relocate any building or structure already erected or which may hereafter be erected, or

(3) Remodel any building or structure within the city without a building permit being first obtained therefor from the chief building official or his or her appointee. The application for such permit shall be made and the permit obtained before work is commenced upon any building or structure or the foundation thereof, or before the removal of any building begins, or

(4) Build any fence, wall, slab, other permanent structure which abuts, attaches to, or creates water drainage onto the public right-of-way, private property, easement, or public means of conveyance, including but not limited to, sidewalk, street, or alley.

(b) Work Exempt From Permit. Permits shall not be required for the following. Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the jurisdiction's provisions.

(1) Building.

(A) Retaining walls that are not over three (3) feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

(B) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

(C) Prefabricated swimming pools that are less than twenty-four (24) inches (610 mm) deep and do not exceed five thousand (5,000) gallons (18,927 L).

(D) Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.

(E) Privately owned swings and other playground equipment installed at single-family or duplex structures.

(F) Movable cases, counters and partitions not over five (5) feet nine (9) inches (1,753 mm) in height.

(2) Electrical.

(A) Repairs and maintenance. A permit shall not be required for minor repair work, including the replacement of fixtures or the connection of approved portable electric equipment to approved permanently installed receptacles.

(B) Radio and television transmitting stations. The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but does apply to equipment and wiring for power supply and the installations of towers and antennas.

(C) Temporary testing systems. A permit shall not be required for the installation of any temporary systems required for the testing or servicing of electrical equipment or apparatus.

(3) Gas.

(A) Portable heating appliance.

(B) Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

(4) Mechanical.

(A) Portable heating appliance; cooking or clothes drying appliances.

(B) Portable ventilation appliances such as listed fans, space heaters or similar appliances.

(C) Portable cooling units.

(D) Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code that does not alter approval of equipment or makes such equipment unsafe.

(E) Replacement of any minor part that does not alter the approval of equipment or make such equipment unsafe.

(F) Portable evaporative cooler.

(G) Self-contained refrigeration systems containing five (5) pounds (2.27 kg) or less of refrigerant or that are actuated by motors of one (1) horsepower (746 W) or less unless the unit is of portable design.

(H) Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

(5) Plumbing.

(A) The stopping of leaks in drains, water, soil, waste or vent pipe; provided however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes

necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

(B) The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

4-212. Permit fees.

(a) Fees Schedule. The charges to be assessed and paid, and permits to be obtained by residents of the City of Osawatomie, in accordance with the adopted building code, shall be set by an annual fee resolution.

(b) Permit Fees. Where a code has been adopted by the City of Osawatomie for which no fee schedule is shown in the annual fee resolution, the fee required shall be in accordance with the schedule established by the International Building Code incorporated by reference in Section 4-202. The determination of value or valuation under any of the provisions of these codes shall be made by the Code Official. "Value" or "valuation," as applied to a building and/or its building service equipment for the purpose of establishing permit fees, shall be the estimated cost to replace the building and its building service equipment in kind, based on current replacement costs as established by the Building Valuation Data Unit Cost Table or any other method deemed acceptable by the Code Official. All fees shall be rounded off to the next whole dollar amount. Fees may be waived at the discretion of the City Manager during times of declared emergency.

(c) Plan Review Fees.

(1) When submittal documents are required by the building code, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be the amount charged by the City for its plan review subcontractor to do such review, or in cases where the Code Official, or other employee, is certified to do such review the amount charged will be determined by an hourly estimate at 175% of the reviewer's hourly wage. The Code Official may waive the plan review fee if it is determined that the work being performed is minor in nature and can be approved during field inspection of the work being performed.

(2) When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in the Building Code, additional plan review and permit fees may be charged.

(d) Work Commencing Before Permit Issuance. Whenever work for which a permit is required by the City has been commenced without first obtaining a permit, the permit may be continued, if all other circumstances and requirements are complete, by paying a fee established in the City's annual fee resolution.

(e) Reinspection Fees.

(1) A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete, when corrections called for are not made, when approved plans are not provided for inspections or when access is not provided when inspections have been requested.

(2) This Section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of the City Building Code, but as controlling the practice of calling for inspections before the job is ready for such inspection or reinspection.

(3) Reinspection fees may be assessed for the following conditions:

(A) When work for which an inspection was requested by the permittee or an agent of the permittee is not ready for inspection;

- (B) When corrections called for are not made;
- (C) Failure to provide access on the date for which inspection is requested;
- (D) Failure to provide the approved plans for the job when required for inspection purposes;
- (E) For deviating from approved plans requiring the approval of the Code Official;
- (F) For failure to post the address or identify the premises resulting in an inspector being unable to find the location of the requested inspection.

(4) To obtain a reinspection when a reinspection fee has been assessed, the applicant shall pay the reinspection fee in accordance with the fee schedule adopted by the City. In instances where reinspection fees have been assessed, additional inspection of the work will not be performed until the required fees have been paid. Work requiring approval shall not be concealed until approval has been obtained.

(f) Refunds.

(1) The Code Official may authorize refunding of a fee that was erroneously paid or collected.

(2) The Code Official may authorize refunding of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this Code.

(3) The Code Official may authorize refunding of not more than eighty percent (80%) of the plan review fee paid when an application for permit for which a plan review fee has been paid is withdrawn or canceled before any examination time has been expended.

(4) The Code Official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

(g) Related Fees. The payment of the fee for the construction, alteration, removal or demolition of work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

(h) Unpaid Fees. Unpaid fees that have been assessed and remain unpaid at the completion of a project shall be reported to the City Clerk, and the City Clerk shall, at the time of certifying other taxes, certify the unpaid fees and extend the same on the tax roll.

4-217. Builder's or building contractor's license required; building permits; unlawful acts.

(a) Each builder or building contractor shall before entering upon any building or construction work subject to regulation by city laws, apply to the city clerk for a builder's or building contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of a builder or building contractor in the city.

(b) No permit for any building or construction work shall be issued for any such work to be performed by a builder or building contractor, as defined, who has not first obtained a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of builder or building contractor herein, or to perform any work as a builder or building contractor or

any work under a contract for any work involving the construction, alteration, remodel, wrecking or moving of any building or structure requiring a building permit under this article, without first having obtained a builder's or building contractor's license issued by the city. It is further unlawful for any person issued a license to contract for any work other than specified by such license without first obtaining the required license to perform each separate trade.

(d) No building permit shall be issued to any contractor who has not first obtained a license or who is delinquent in payment of his/her annual license fee or whose certificate of insurance has expired or whose license has been suspended or revoked by action of the City Board of Appeals (CBOA).

4-218. Same; application; renewal; granting.

(a) Application for a builder's or building contractor's license shall be made upon a form to be supplied by the city which shall disclose the name of the applicant, his or her place of business in the city (and home office if a nonresident), the kind of contracting work engaged in the length of time engaged in such work and places where work has been performed within the past two years. The application shall be signed by the builder or building contractor or his or her authorized agent. Such license shall be issued by the chief building official or his or her designee, upon payment of the fees hereinafter provided.

(b) Application Form. The City of Osawatomie shall receive and process contractor license applications. All applicable fees as set forth in the annual fee resolution shall accompany each original application.

(c) Application and License Fees.

(1) Application for contractor's license, name change, organizational change or change of the qualified person shall include information as the City may prescribe and shall be accompanied by the applicable fee.

(2) Where required by Section 4-232, each application must list a qualified person. The qualified person is considered the applicant for a license and must have the ability to sign contracts that legally bind the individual, partnership or corporation. The qualified person shall be the individual, for an individual license; one (1) of the partners, for a partnership license; an officer or active member in the corporation for a corporate license.

(3) Upon approval of the application and verification of qualifications in accordance with this article, the Code Official shall issue the requested license upon payment of the annual fee required the annual fee resolution.

(4) Fees shall not be prorated because part of the year has elapsed.

(d) Renewal or Reinstatement of License.

(1) Every contractor license shall be issued on a calendar year basis to expire on December 31 of each year. License renewal fees shall be due on the 15th day of December. A license renewal application may be submitted to the City beginning on November 1 through and including December 15. Applications and payment received prior to end of business on December 15 shall receive a credit as established by the annual fee ordinance. Renewals received after January 31 shall be considered new contractors, and all applicable license requirements shall be presented at the time of application; the contractor shall pay a reinstatement fee as established in the annual fee ordinance.

(2) No permits will be issued to any contractor without a current contractor's license.

(3) When insurance coverage expires, the license shall be considered to expire by limitation, and notice will be sent to the license holder. The license will not be reinstated until an original certificate of insurance as required by this code has been submitted and the reinstatement fee is paid.

(4) Any construction permits that the license holder possesses shall be considered to be null and void when the holder of the license or one (1) of the designated contractors on the construction project authorized by a construction permit has expired or when insurance coverage has lapsed.

4-219. Same; license fees; licensing requirements; conditions; renewal; unlawful acts; exceptions.

(a) Documentation. Any contractor who applies for a license to perform work in the City of Osawatomie shall provide the following documentation as well as pay any relevant fees as may be required by the City Council under a separate action.

(1) Liability Insurance Requirements:

(A) General Aggregate: \$1,000,000

(B) Each Occurrence: \$500,000

(2) Bonding Requirements: The City has the discretion to require certain projects to be bonded.

(3) Licensing Requirements: Each contractor shall:

(A) apply for and obtain a license issued directly by the City of Osawatomie according to the provisions in this article, or

(B) apply for a reciprocal license by presenting a valid license issued by Miami County, Kansas, or the City of Osawatomie, Kansas, where the contractor City Building official is aware that any license issued from these jurisdictions requires International Code Council testing and eight continuing education units per year. The applicant shall only be permitted to perform such work within the City of Osawatomie as is permitted by the class of license issued under the licensing jurisdiction.

(b) Exceptions. Any individual who makes application for a permit to perform work on any residential or commercial structure that is owned by that individual shall not be required to register as a contractor with the City of Osawatomie to perform the permitted work.

4-220. License suspension; revocation; appeal; unlawful acts

(a) The license of any builder or building contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time, by the chief building official upon his or her own motion or upon a complaint of the city building inspector. Notice shall be given in writing to such builder or building contractor giving reasonable notice of a time of hearing of the complaint or the matter alleged against such builder or building contractor involving any one or more of the following:

(1) Misrepresentation of a material fact by applicant in obtaining a license;

(2) Use of license to obtain a building permit for another;

(3) Failure or neglect to observe conditions of permit authorizing encumbering of streets or sidewalks for safety of public;

(4) Performance of any building or construction work without a permit where one is required by law; or

(5) Willful disregard of any violation of the building and construction laws, or failure to comply with any lawful order of the city building inspector.

(b) Any licensee may within 15 days appeal in writing to the Building Code Board of Appeals (BCOA) from any order of the chief building official suspending his or her license for its final decision thereon. The Building Code Board of Appeals may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the builder or building contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any contractor's license.

(c) It shall be unlawful to engage in the occupation or trade of builder or building contractor during the time any license of such builder or building contractor has been suspended or revoked within the City of Osawatomie.

SECTION TWO: NEW SECTIONS. Article Two of Chapter Four of the Municipal Code of the City of Osawatomie is amended by adding Sections 4-230, 4-231, 4-232 and 4-233 which shall read as follows:

4-230. Direct Contractor Licensing; Application

(a) Multiple classes. There shall be separate classes of licenses authorized for contractors as provided in Section 4-231.

(1) A contractor may become licensed in any classification by submitting to the examination as set forth in Section 4-232 for the particular class involved and paying the fee required for the classification as set forth the City's annual fee resolution.

(2) A Class A, B or C general contractor may perform foundation, roofing or site utility installation work on projects for which they are the permit holder or are listed as the primary general contractor without being required to obtain the appropriate Class S, special trades license. No contractor shall undertake any electrical, plumbing or mechanical work for which a license is required without first obtaining the required license for each separate trade.

(3) Business entities. A corporation, limited liability company, partnership, joint venture or other legal entity or enterprise may obtain, in the entity's name, a building permit provided that such entity has in its regular employ a person who is licensed as a contractor under this Article and such individual is the signatory on the building permit on the entity's behalf. Only a contractor licensed under provisions of this Section may obtain a building permit on behalf of a corporation, partnership, limited liability company, joint venture or other business entity or enterprise. Every contractor by obtaining a building permit in the name of such corporation, partnership, limited liability company, joint venture or other business entity or enterprise shall certify that such contractor is the employee or principal of such business entity or enterprise.

4-231. Categories of Contractor Licenses — Types of Work Authorized.

(a) General Contractor—Classes.

(1) Class "A", General Contractor. A Class A license shall entitle the holder thereof to build, remodel, repair, move or demolish any structure without limitation of use, type of construction, height or area.

(2) Class "B", General Contractor. A Class B license shall entitle the holder thereof to build, remodel, repair, move or demolish all structures not exceeding three (3) stories in height. A Class B license holder shall also entitle the license holder to perform non-structural remodeling, tenant finish, repairs and demolition of any structure.

(3) Class "C", Residential General Contractor. A Class C license shall entitle the holder thereof to build, remodel, repair, move or demolish single-family or duplex residences and buildings accessory thereto.

(4) Class "D", General Contractor. A Class D license shall entitle the holder thereof to build, remodel, repair, move or demolish detached agricultural buildings, detached residential accessory buildings, residential swimming pools and minor ancillary structures associated with single-family dwellings.

(b) Electrical Contractor. An electrical contractor's license shall entitle the holder thereof to perform electrical contractor services in City of Osawatomie and the Community Growth Area Contractor Licensing Program administered under this code.

(c) Plumbing Contractor. A plumbing contractor's license shall entitle the holder thereof to perform plumbing contractor services in City of Osawatomie and the Community Growth Area Contractor Licensing Program administered under this code.

(d) Mechanical Contractor. A mechanical contractor's license shall entitle the holder thereof to perform mechanical contractor services in City of Osawatomie and the Community Growth Area Contractor Licensing Program administered under this code. E. Class S, Special Trades License. A Class S license shall entitle the holder thereof to act as either the primary contractor or a subcontractor in the following trades:

(1) Foundation and flatwork contractor. A foundation and flatwork contractor's license shall entitle the holder thereof to contract for and to install, repair and replace building foundations and/or concrete flatwork.

(2) Fire protection contractor. A fire protection contractor license shall entitle the holder thereof to install, maintain, repair, service, test and inspect fire alarms, automatic sprinkler, special suppression systems and standpipe systems for all structures, including all spray and deluge, carbon dioxide, foam, dry chemical and inert gas systems and all related lines, tanks, fire control systems and appurtenances to any of the foregoing. Such contractor shall be responsible for the training and oversight of all tradesmen in its employment as well as the means, method and manner of the fire protection installation including construction, improvement, renovation, repair and maintenance on a construction project.

(3) Roofing contractor. A roofing contractor's license shall entitle the holder thereof to contract for and to install, repair and replace roof coverings. Work may include roof deck and roof deck insulation, roof coating, painting, covering and may include use of sheet metal and installation of other sheet metal products incidental to roofing work or other material in connection therewith or any combination thereof.

(4) Site utility installer. A site utility installers contractor's license shall entitle the holder thereof to contract for and to install, repair and replace water service piping, conduit and conductors for electrical service laterals and underground gas piping on residential or agricultural property.

(5) Tower contractor. A tower contractor's license shall entitle the holder thereof to contract for and perform erection of towers for utilities and communications.

(6) Siding and windows contractor. A siding and windows contractor's license shall entitle the holder thereof to install, repair and replace siding and/or windows.

(7) Sign contractor. A sign contractor's license shall entitle the holder thereof to contract for and to install, repair or maintain outdoor advertising signage. If electrical wiring is associated with signage work, a licensed electrical contractor is required to perform such work.

(8) Excavation and landscape contractor. An excavation and landscape contractor's license shall entitle the holder thereof to contract for and to perform excavation and/or landscape design and installation.

4-232. Examinations — Contractor Qualifications.

Contractors making application for a license shall satisfy one (1) or more of the following provisions prior to a license being granted:

(a) Contractors making application for a new Class A, B or C general contractor license shall submit a certificate of competency from a qualified national testing service with their application, with the following exceptions:

(1) In lieu of a nationally administered certification for Class D general contractors and all Class S, special trades license classes, the Code Official may accept proof of factory training or other specialty training specific to their area of licensure.

(2) In lieu of the required certificate of competency, applicants for a Class A, B or C general contractor license may submit evidence of holding a bachelor's degree in engineering, architecture or construction science from an accredited college or university.

(b) Contractors making application or renewing an electrical contractor's license shall submit a master electrician certificate of competency from a qualified national testing service with their application, with the following exception.

(c) Contractors making application or renewing a plumbing contractor's license shall submit a master plumbing with gas certificate of competency with their application.

(d) Contractors making application or renewing a mechanical contractor's license shall submit a master mechanical contractor with gas certificate of competency with their application.

4-233. Continuing Education.

(a) The City of Osawatomie may establish continuing education requirements, rules and regulations for contractors licensed under this Article. Every contractor shall demonstrate compliance with such continuing education requirements prior to license renewal.

(b) Evidence of having completed a minimum of eight (8) hours of code-related continuing education that is approved by the City of Osawatomie shall be submitted with applications for contractor license. A minimum of four (4) hours of the required eight (8) hours of continuing education shall be directly related to the trade for which a contractor is licensed for electrical, plumbing and mechanical contractors. For contractors holding multiple trade licenses, four (4) hours of continuing education shall be obtained for each trade. It shall be the responsibility of a licensed contractor to attend a qualifying continuing education class and provide a copy of a certificate of attendance to the licensing authority. American Red Cross and American Heart Association basic first aid and CPR classes may be counted towards continuing education unit requirements. Any fees associated with attendance in continuing education is the responsibility of the contractor.

(c) The Codes Official shall keep a listing of approved educational classes and make it available to licensed contractors.

SECTION THREE: NEW ARTICLE. Chapter Four of the Municipal Code of the City of Osawatomie is amended by adding Article 4 which shall read as follows:

Article 4. Building Code Board of Appeals

4-401. Building Code Board of Appeals; membership; application; procedures.

(a) Membership of board. The City's planning commission shall serve as the building code board of appeals.

(b) Disqualification of a member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

(c) Secretary. The City Manager shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the codes official.

(d) Application. The application for appeal, other than matters related to license suspension or revocation, shall be filed on a form obtained from the building official within 20 days after the notice was served.

(e) Notice of meeting. The board shall meet upon notice from the chairperson within 20 days of the filing of an appeal or at stated periodic meetings.

(f) Open hearing. All hearings before the board shall be open to the public. The appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

(g) Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandated that only relevant information be received.

(h) Postponed hearing. When at least three board members are not present to hear an appeal, either the appellant or the applicant's representative shall have the right to request a postponement of the hearing.

(i) Board decisions. The board shall modify or reverse the decision of the building official by a concurring vote of at least two-thirds of its members present and voting.

SECTION FOUR: EXISTING SECTIONS OF CODE REPEALED. Sections 4-211, 4-212, 4-217, 4-218, 4-219, and 4-220 of the City of Osawatomie Municipal Code as adopted prior to the passage of this Ordinance is hereby repealed.

SECTION FIVE: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and one publication in the official City newspaper.

ADOPTED AND APPROVED by the Governing Body this 13th day of December 2018.

(SEAL)

L. Mark Govea, Mayor

ATTEST:

Tammy Seamands, City Clerk