

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES OF
THE CITY OF BROOKINGS AND PERTAINING TO STREETS, SIDEWALKS AND OTHER
PUBLIC PLACES.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BROOKINGS, STATE
OF SOUTH DAKOTA, AS FOLLOWS:

THAT CHAPTER 74, ARTICLE IV. of the Code of Ordinances and pertaining to Work within the
Right-Of-Way is hereby amended to read as follows:

Sec. 74-141. Permit required.

No person shall make or cause to be made any ~~excavation~~Work to be completed in or upon any ~~street, sidewalk, alley~~City Right-Of-Way or public ground in the city; nor shall any person remove soil, paving, gravel or any material from any ~~street, sidewalk, alley~~City Right-Of-Way or public ground without first having obtained a Right-Of-Way Work permit ~~therefor~~ from the ~~city engineer~~Public Works - Engineering Division at least two (2) business days in advance of any work. Exceptions may be made for ~~work~~Work that is contracted directly with the ~~city~~City or for emergency ~~work~~Work. For emergency ~~work~~Work, a contractor must immediately notify the ~~city engineer~~Public Works - Engineering Division (or ~~police department~~Police Department if after hours) and obtain a permit the next business day. Right-Of-Way Work Permits will not be issued from November 15th thru April 15th unless circumstances are deemed an emergency. If weather conditions allow, the Public Works - Engineering Division may make an exception and approve a permit during this time frame.

(Code 1996, § 33-90; Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-142 Definitions.

The following words and phrases shall have the meanings provided below.

Permit Holder. Means the person or entity, in possession of a valid Excavator License, applying for a Right-Of-Way work permit.

Right-of-way: A strip of land occupied by a street, railroad, pedestrian walkway or other special use. The use of the term right-of-way for platting purposes shall mean that every right-of-way hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or area of such lots or parcels.

Work. Means any excavation, construction, repair, or maintenance of utilities, pavement, curb and gutter, or other things located in, on, above, under or across a Right-Of-Way.

Sec. 74-143. Exceptions.

The following types of work in the Right-Of-Way are exceptions to this section of code.

- a. Landscaping and irrigation.
- b. Driveway approaches. (Section 74-3)
- c. Sidewalk repairs. (Section 74-181)

Sec. 74-144. Specifications.

All ~~work~~Work performed under the provisions of this article shall conform to the specifications, rules and regulations on file in the ~~office of the city engineer~~Public Works - Engineering Division.

(Code 1996, § 33-91; Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-143. Trenches generally.

~~Trenches for all sewer and water service lines, sewer and water mains or other excavations for any purpose between the curblines of any street must be backfilled and compacted with suitable engineered fill in accordance with standards and procedures established by the city engineer. In any case, frozen or organic material shall not be used as trench backfill.~~

~~(Code 1996, § 33-92; Ord. No. 28-12, § I, 12-18-2012)~~

Sec. 74-144. Cutting pavements.

~~Where pavement is cut in making any street excavation, such pavement shall be replaced by the contractor and the contractor or person making such excavation shall pay for and be liable for the cost of such replacement. If the contractor fails to repair the pavement within the dates, times or duration stated on the permit, the city shall arrange to repair the pavement and the contractor must reimburse the city for the cost of the repair.~~

~~(Code 1996, § 33-93; Ord. No. 28-12, § I, 12-18-2012)~~

Sec. 74-145. Protection of public.

Any person performing ~~excavations~~Work within any street, alley, sidewalk or public ground shall, during the progress and continuance of the ~~work~~Work, erect, keep and maintain about and around the ~~excavation~~Work during both day and night, suitable guards, fences, warning lights and signals as described in the latest version of the Manual of Uniform Traffic Control Devices published by the Federal Highway Administration and specifications, rules and regulations on file in the Public Works - Engineering Division, to prevent injury to persons, animals or vehicles as a result of such ~~excavations~~. Any person making such excavation shall, when the excavation is completed, promptly and without delay, ~~backfill the excavation in accordance with the standards and procedures established by the city engineer~~Work.

(Code 1996, § 33-94; Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-146. ~~Excavator's~~ Permit Holder responsibility.

The ~~excavator~~ Permit Holder shall coordinate with the ~~city~~ City for street or alley construction, rebuilding, resurfacing and repair to minimize multiple disturbances of the same area. The ~~excavator~~ Permit Holder shall leave ~~city~~ City property and ~~right-of-way~~ Right-Of-Way in as good and safe condition as it was before the commencement of ~~work~~ Work by the ~~excavator~~ Permit Holder, its agents and contractors, and shall repair and restore any ~~city~~ City property or ~~right-of-way~~ Right-Of-Way which is disturbed, damaged ~~or injured~~ by construction, maintenance or operations of the ~~excavator~~ Permit Holder. The ~~city~~ City shall determine whether adequate repair and restoration has been completed by the ~~excavator~~ Permit Holder. In the event the ~~excavator~~ Permit Holder fails to repair or restore affected ~~city~~ City property or ~~right-of-way~~ Right-Of-Way in a manner acceptable to the ~~city~~ City, the ~~city~~ City may, after allowing the ~~excavator~~ Permit Holder a reasonable period to complete the repair and restoration, make such repairs and restoration and the ~~excavator~~ Permit Holder shall pay the costs incurred by the ~~city~~ City for such repairs and restoration.

(Code 1996, § 33-95; Ord. No. 26-06, § I, 7-25-2006; Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-147. Duration of street or alley closures.

The dates, times and duration of any street or alley closures shall be stated on the permit and will be subject to approval by the ~~city~~ City Engineer. Requests for changes to such dates, times, or duration of street or alley closures stated on the permit must be made in writing to the ~~city engineer~~ Public Works - Engineering Division prior to expiration of the permit.

(Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-148. Warranty.

The ~~excavator~~ Permit Holder is responsible for workmanship, materials, trench settlement or any other deficiencies caused by their ~~work~~ Work during the corrective period of ~~five~~ three (3) years following ~~excavation, and the contractor~~ Work. The ~~Permit Holder~~ shall repair and/or replace all deficiencies during the corrective period at no cost to the ~~city~~ City. Any surface restoration costs incurred because of the repairing and/or replacing of deficiencies shall be borne by the ~~excavator~~ Permit Holder. The ~~city~~ City shall determine whether adequate repair and restoration has been completed by the ~~excavator~~ Permit Holder. In the event that the ~~excavator~~ Permit Holder fails to repair or restore affected ~~city~~ City property or ~~right-of-way~~ Right-Of-Way in a manner acceptable to the ~~city~~ City, the ~~city~~ City may, after allowing the ~~excavator~~ Permit Holder a reasonable period to complete the repair and restoration, make such repairs and restoration and the ~~excavator~~ Permit Holder shall pay the costs incurred by the ~~city~~ City for such repairs and restoration.

(Ord. No. 28-12, § I, 12-18-2012)

Sec. 74-149. Violations and enforcement.

(a) ~~(a)~~ — Violations. A violation of any provision of this article shall be punishable as provided in ~~chapter 1~~ the current schedule of ~~this Code~~ fees as adopted by City Council.

(b) ~~(b)~~ — In case any ~~excavation~~ Work occurs in violation of this article, the appropriate authorities of the ~~city~~ City, may, in addition to other remedies, institute injunction or other

appropriate actions or proceedings to prevent such ~~unlawful excavation or construction~~ Work, and may also correct or abate such violation at the expense of the Permit Holder.

(Ord. No. 28-12, § I, 12-18-2012)

~~Secs~~**Sec. 74-150—****Excavator License Required.**

1. It is unlawful for any person or persons representing or operating as a sole proprietorship, partnership, firm, limited liability company or corporation, to conduct, carry on or engage in the business of excavation or acting in the capacity of an excavator without having first been issued a valid Excavator License by the City. For the purposes of this section, any Right-Of-Way Work performed within the licensing jurisdiction of the City that requires a Right-Of-Way Work Permit will also require an Excavator License.
2. The following are exempt from licensing requirements:
 - a. Contractors performing work under direct contract with the City.
 - b. City owned utility companies.

Sec. 74-180. Reserved**151. License Application Procedure and Requirements.**

An Excavator License shall be issued to every sole proprietorship, partnership, firm, limited liability company or corporation who makes application for the license and meets the requirements as stated in this chapter. The Public Works - Engineering Division is authorized to issue an Excavator License provided the provisions of this chapter are satisfied. The City Engineer may refer any licensing issues to the City Manager for review prior to approval or rejection.

- (a) Person or persons responsible for license. Each license issued to a sole proprietorship, partnership, firm, limited liability company or corporation shall be the responsibility of the owner or manager of the sole proprietorship, partnership, firm, limited liability company or corporation.
- (b) License use restricted. No licensed excavation contractor shall knowingly allow their name to be used by any person directly or indirectly, either to obtain an Excavator License or to perform work which is not conducted by the licensed excavation contractor or under the supervision of the licensed excavation contractor.
- (c) License term renewal. All licenses issued under the provisions of this chapter shall expire on December 31 of every year.
- (d) Liability Insurance. Liability insurance shall be required. Every applicant for an Excavator License shall present to the Public Works - Engineering Division for their review a valid certificate of insurance at the time of application. It shall be the duty of applicant to continually maintain valid liability insurance. The minimum required general liability insurance shall be \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate. The City of Brookings shall be named as the additional insured.
- (e) Worker's compensation insurance. Proof of worker's compensation insurance shall be verified prior to issuance of an Excavator License.
- (f) Proof of bond. Surety bond in the amount of \$10,000.00, related to the Work performed by the company, in favor of the City of Brookings, stating the owner/agent will indemnify and safe harmless the City, its employees and its agenda and the

owner of the premises against all damages, costs, expenses, outlays and claims arising out of unskillfulness or negligence on his part in connection with such work. Such bond shall remain in force for the term of the license.

Sec. 74-152. Application.

Application for a permit or license required by this article shall be made on suitable forms provided by the Public Works - Engineering Division. The application shall be accompanied by fees in accordance with the schedule of fees established by the City as provided in section 74-153.

Sec. 74-153. Schedule of Fees.

The schedule of fees to be charged for the issuance of permits and licenses under this article shall be established by City Council on a regular basis. Work performed by municipally owned utility companies will be exempt from permit fees but will be required to obtain a permit.