
Council Bill Number: 115487

Ordinance Number: 122036

AN ORDINANCE relating to the Side Sewer Code, amending various provisions of Chapter 21.16 of the Seattle Municipal Code, to revise the provisions for licensing of registered side sewer contractors, to change the Department authorized to administer and enforce the provisions, to extend the life a side sewer permit from 90 days to 18 months, to revise the standards for street restoration, and to update enforcement provisions including the establishment of civil penalties.

Status: Passed

Note: Fourth Quarter 2005 Salary Ordinance

Vote: 6-0 (Excused: Conlin, Della, McIver)

Date filed with the City Clerk: 2006/03/18

Date of Mayor's signature: 2006/03/14 ([about the signature date](#))

Date introduced/referred to committee: 2006/02/13

Committee: Environment, Emergency Management and Utilities

Sponsor: CONLIN

Committee Recommendation: Pass

Index Terms: SIDE-SEWERS, SANITARY-SEWERS, PUBLIC-REGULATIONS, LICENSES, LICENSING-AND-REGULATORY-AGENCIES

Fiscal Note: [Fiscal Note to Council Bill No. 115487](#)

Electronic Copy: [PDF scan of Ordinance No. 122036](#)

Reference: Related: Ord 104542; Res 23390

Text:

ORDINANCE _____

AN ORDINANCE relating to the Side Sewer Code, amending various provisions of Chapter 21.16 of the Seattle Municipal Code, to revise the provisions for licensing of registered side sewer contractors, to change the Department authorized to administer and enforce the provisions, to extend the life a side sewer permit from 90 days to 18 months, to revise the standards for street restoration, and to update enforcement provisions including the establishment of civil penalties.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection 23 of Section 21.16.030 of the Seattle Municipal Code, which was last amended by Ordinance 121276, is amended to read as follows:

21.16.030 Definitions.

Words and phrases used in this chapter, unless ~~the same shall be~~ they are contrary to or inconsistent with the context, shall mean as follows:

* * *

23. "Registered side sewer contractor" means a person approved and registered by the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development to construct or repair side sewers.

Section 2. A new section 21.16.055 is added to the Seattle Municipal Code as follows:

21.16.055 Work in a public place-registered contractor, supervision and permit required.

No work may be performed in a public place to construct or repair side sewers except by a registered side sewer contractor pursuant to a permit issued pursuant to Section 21.16.080. Direct onsite supervision shall be provided of all work to be performed in a public place by or on behalf of the registered side sewer contractor. The onsite supervision must be by a person 1) who has successfully completed the examination provided for in Section 21.16.060A2, and 2) who is listed on the roster required by Section 21.16.068 as the registered side sewer contractor or as a current employee of the registered side sewer contractor.

Section 3. Section 21.16.060 of the Seattle Municipal Code, which was last amended by Ordinance 120794, is amended to read as follows:

21.16.060 Registered side sewer contractor-Qualification-~~Registration-Insurance-Bond-Registration expiration and renewal.~~

A. To ~~obtain registration from the City~~ register as a registered side sewer contractor (RSSC), an each applicant must:

1. Pay a registration fee of \$200 to the Director of the Department of Planning and Development;

2. Successfully complete an oral and written examination administered by the Director of the Department of Planning and Development, or employ an individual who has successfully completed the examination. Each applicant for the oral and written exam must pay Pay to the City Director of Executive Administration Director of the Department of Planning and Development an examination fee of ~~Sixty Dollars (\$60.00)~~ \$100 for each individual who takes to take the examination required by this subsection;

~~23. Successfully complete or employ an individual who has successfully completed an oral and written examination administered by the Director of Seattle Public Utilities ; Provide to the Director of the Department of Planning and Development a roster of all individuals employed by the applicant who have passed the examination provided for in subsection A2 of this Section;~~

~~34. Possess Provide evidence to the Department of Planning and Development that the applicant possesses a current Washington State Contractor's license;~~

~~45. Possess Provide evidence to the Department of Planning and Development that the applicant possesses a current City Business and Occupation license issued pursuant to Section 5.55.030 of the Seattle Municipal Code;~~

~~56. File with the Director of Seattle Public Utilities Risk Management Division of the Department of Executive Administration a certificate of insurance that meets the standards of subsection B, and maintain the a certificate of insurance as required prescribed by subsection B; and~~

~~67. Post with the City Clerk and maintain in full force and effect a bond as required prescribed by subsection C of this section;~~

8. Agree in writing, to defend, indemnify and hold harmless the City from all claims, actions or damages of every kind and description, including reasonable attorney fees and necessary litigation expenses incurred by the City, that may accrue to or be suffered by any person arising out of any opening in any street, alley, avenue or other public place made by the registered contractor or those in the registered contractor's employ, in making any connection with any public or private sewer, or for any other purpose or object associated with side sewer construction and related activities, except

for such losses that directly result from the sole negligence of the City; and

9. Agree in writing to provide direct on-site supervision in compliance with Section 21.16.055 of all work located in a public place that is to be performed by or on behalf of the registered side sewer contractor, including without limitation all work relating to installation, alteration, extension, connection to or repair of the side sewer.

B. Insurance. Each applicant for registered side sewer contractor registration shall file with the Director of Seattle Public Utilities Risk Management Division of the Department of Executive Administration a certificate certification of insurance, and each registered side sewer contractor shall maintain in full force and effect a policy of insurance from insurers an insurance company licensed to do business in The State of Washington acceptable to the Risk Management Division of the Department of Executive Administration. The certificate certification shall state that the applicant/contractor carries comprehensive general liability insurance with bodily injury limits of not less than Three Hundred Thousand Dollars (\$300,000.00) for any one (1) person killed or injured in any one (1) accident or occurrence, and \$1,000,000.00 for each occurrence combined single limit bodily injury and property damage for more than one (1) person killed or injured in any one (1) accident or occurrence and with property damage liability limits of at least One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of injury to or destruction of property. Such policy shall contain an endorsement or policy wording naming the City as an additional insured or, in lieu of naming the City as an additional insured, insuring the obligation described in subsection A8 above to indemnify the City, and providing for not less than ten (10) 30 days' days prior written notice to the City of any change, cancellation or expiration of such policy. The Director of Seattle Public Utilities shall, upon notice, cancel the contractor's registration if such insurance shall cease to be of full force and effect.

C. Each registered side sewer contractor shall post with the City Clerk and maintain in full force and effect a bond in the sum of Fifteen Thousand Dollars (\$15,000.00) \$30,000.00 conditioned that the applicant shall indemnify and save harmless the City from all claims, actions, or damages of every kind or description which may accrue to or be suffered by any person by reason of any opening in any street, alley, avenue or other public place made by the contractor or those in the contractor's employ, in making any connection with any public or private sewer, or for any other purpose or object whatever, and that the contractor shall also replace and restore such street, alley, avenue or other public place as required by SMC 21.16.280 to as good a state and condition as at the time of commencement of said work, and maintain the same in good order, and that the contractor shall comply with all of the provisions of this subtitle and any other ordinance of the City, relating to the business of side sewer contracting. If a claim is made on the bond, the registered side sewer contractor shall immediately post with the City Clerk a new bond with the same terms and conditions.

D. Expiration of Registration. All registrations issued under this chapter automatically expire on January 31 of each year and must be renewed pursuant to the provisions of subsection E.

E. Renewal of Registration. In order to renew a registration, the contractor shall:

1. Pay a renewal fee of \$150.00.

2. Provide proof of compliance with the requirements of subsections 21.16.060A(2) through (9).

3. Provide the name(s) of the person or persons who have successfully passed the oral and written examination required by Subsection A(2) and who are currently employed by the side sewer contractor applying for renewal.

F. Failure to Renew. A contractor seeking to renew a side sewer contractor registration more than one year after its expiration must provide proof of compliance with all of the initial registration requirements of Subsection A.

Section 6. Section 21.16.065 of the Seattle Municipal Code, which was last amended by Ordinance 118396, is amended as follows:

21.16.065 Cancellation, suspension or denial Suspension of registration.

A. In addition to other penalties provided by law, the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development may ~~cancel or~~ suspend the registration of a registered side sewer contractor, ~~or may deny an application for registration,~~ for any of the following causes:

1. Failure to successfully complete the examination or to employ an individual who has successfully completed the examination required by Section 21.16.060;
2. Failure to maintain the ~~comprehensive general liability~~ insurance or bond required by Section 21.16.060;
3. Failure to comply with the provisions of this title chapter of the Seattle Municipal Code or ~~the~~ any rules and regulations issued by the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development under this chapter governing the construction and laying of side sewers;
4. Fraud or misrepresentation in registering as a side sewer contractor; or
5. ~~Failure to pay for labor or material used in the construction of a side sewer;~~
6. ~~Fraud or misrepresentation to the owner or occupant of a building for the purpose of obtaining a contract for the construction of a side sewer;~~
7. ~~Nonpayment for work performed by the City for which the side sewer contractor is liable; or,~~
8. ~~Construction or other performance showing dissatisfactory work by the side sewer contractor.~~

B. Upon information and belief that a registered side sewer contractor's registration should be suspended ~~or cancelled, or an application for registration denied,~~ for any of the causes enumerated in subsection A of this section, the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development shall send notice ~~by certified mail~~ to the contractor that the contractor's registration ~~as a side sewer contractor may be suspended or cancelled or an application for registration may be denied~~ in not less than ~~ten (10)~~ 10 days from the date of the notice. The notice shall contain a statement of the basis for the suspension ~~or cancellation, or for denial of application for registration.~~

C. If the registered side sewer contractor wishes to appeal the ~~action~~ suspension, the contractor must file with the Hearing Examiner within 10 days of the date of service or mailing of the notice required by subsection B, whichever is earlier, a request for a hearing detailing the reasons why the proposed suspension should not be imposed, with a copy to the Director of Seattle Public Utilities the Department of Planning and Development a request for a hearing before the Hearing Examiner within ten (10) days of the date of service or mailing of such notice. The registered side sewer contractor shall submit the Hearing Examiner's filing fee with ~~such~~ the request as well as a copy of the notice of suspension.

D. If a timely request for a hearing is filed by the contractor ~~or applicant,~~ a hearing shall be scheduled before the Hearing Examiner and shall be conducted by the Hearing Examiner ~~according to his/her rules for contested cases.~~

E. When a hearing has been requested ~~by a contractor in connection with~~ regarding a suspension ~~or cancellation of a the~~ contractor's registration, the registration shall remain in effect pending the determination made as a result of such hearing; provided, that in cases involving a substantial and immediate threat to the public health, safety or welfare, the registration may be summarily suspended by the Director. Any notice of a summary suspension must state that it is a summary suspension and state the facts surrounding the substantial and immediate threat to the public health, safety or welfare.

F. If a timely appeal is not filed ~~by the contractor or applicant,~~ the notice ~~order~~ of the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development ~~denying, suspending or revoking the registration shall be final, provided,~~ that the Hearing Examiner may waive the ten (10) day requirement upon satisfaction that failure to receive notice of the order was beyond the control of the person requesting the hearing.

G. The Director of ~~Seattle Public Utilities' the Department of Planning and Development's~~ decisions shall be reversed only if the Hearing Examiner finds that the decision was arbitrary and capricious.

H. The record shall be established at the hearing before the Hearing Examiner, which shall be conducted according to the Hearing Examiner's rules for contested cases. ~~The Hearing Examiner shall either close the record after the hearing or leave it open to a specified date for additional testimony, written argument or exhibits.~~

I. The Hearing Examiner shall issue a written decision within ~~fifteen (15)~~ 15 days after closing the record. The Hearing Examiner may affirm, reverse, remand or modify the decision of the Director of Seattle Public Utility's decision the Department of Planning and Development to suspend the registration. Written findings and conclusions supporting the Hearing Examiner's decision shall be made. The Director of ~~Seattle Public Utilities the Department of Planning and Development~~ and all parties of record shall be bound by the terms and conditions of the Hearing Examiner's decision.

J. The Hearing Examiner's decision shall be mailed ~~by the Hearing Examiner~~ on the day the decision is issued to the parties of record and to all those requesting notice.

K. ~~The Hearing Examiner's decision shall be final and conclusive unless the Hearing Examiner's decision specifically states that the Hearing Examiner retains jurisdiction.~~

~~L.~~ Within fifteen (15) calendar days from the date of issuance of the Hearing Examiner's decision, a party of record may appeal the decision to the King County Superior Court through application for a writ of review.

~~M. Whenever a registration is denied, no reapplication for registration will be considered by the Director of Seattle Public Utilities until correction of the disability on which the denial was based.~~

~~N.L.~~ Whenever a registration is suspended ~~revoked~~, no new application for registration or renewal that has been revoked of that contractor may be made ~~will be considered by the Director of Seattle Public Utilities during the period of suspension for a period of one (1) year, commencing on the date the order to revoke becomes final.~~

~~O.M.~~ The period of suspension ~~shall be a period as stated in the order to suspend, and may be for any period up to one (1) year, commencing on the date the period of suspension provided for in the Director's notice, Hearing Examiner's decision or order to suspend becomes final~~ actually begins.

N. After the period of suspension, the registered contractor must apply for and obtain a license renewal pursuant to Section 21.16.060E in order to be reinstated as a registered side sewer contractor.

Section 5. A new section, Section 21.16.068, is added to the Seattle Municipal Code as follows:

SMC 21.16.068 Registered Contractor Roster Required.

Each registered subcontractor shall provide to the Director of the Department of Planning and Development a roster of current employees who have passed the examination described in SMC 21.16.060A2. Each registered side sewer contractor shall notify the Director of the Department of Planning and Development within 10 days of any changes in the employment status of any employees who are or should be on this roster.

Section 6. Section 21.16.070 of the Seattle Municipal Code, which was last amended by Ordinance 118396, is amended as follows:

21.16.070 Permit required.

A. A side sewer permit is required for any work on a side sewer including, but not limited to, construction, alteration, repair, removal, and capping.

B. When an existing structure is removed from a site and a new structure is constructed, a side sewer permit is required

to connect the new structure to the public sewer system or approved outlet.

C. Unless an emergency exists, as determined by the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development, a side sewer permit must be obtained from the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development before any work may be started on a side sewer located within the City's sewer service area, either on private property or within a public place.

D. No ~~permit shall be altered and no~~ work shall be performed on a side sewer other than that provided for in the permit ~~or any revised permit issued by the Department of Planning and Development~~. If additional work is necessary, the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development may require an additional permit and/or fees.

Section 7. Section 21.16.080 of the Seattle Municipal Code, which was last amended by Ordinance 118396, is amended as follows:

21.16.080 Permit-Application-~~Authority of the Director of the Department of Planning and Development~~ Director of ~~Seattle Public Utilities'~~ authority.

A. For work in a public place, a permit shall only be issued to an individual who has successfully completed the examination ~~prescribed in~~ required by Section 21.16.060 of the Seattle Municipal Code and who is a registered side sewer contractor or an employee duly authorized representative of a registered side sewer contractor.

B. For work in other than a public place, a permit may be issued to the owner or occupant of the property or agent thereof.

~~C. Whenever a registered side sewer contractor applies for a permit, a permit shall be issued only to an individual who has successfully completed the examination prescribed in Section 21.16.060 of the Seattle Municipal Code and who is a duly authorized representative of the contractor.~~

~~D.~~ Application for the permit required by this chapter shall be filed with the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development with the following:

1. The name, address and telephone number of the applicant;
2. Name, mailing address, and telephone number of the property owner;
3. Legal description and address of the property to be served;
4. A scale drawing showing the location of all structures on the property, dimensions of the structures, and the location of all existing and proposed side sewers;
5. Purposes for which all structures are to be used;
6. Proof that all necessary permits have been obtained in conjunction with or prior to issuance of the side sewer permit;
7. Proof that all necessary easements, releases, and/or permissions to connect have been obtained and recorded provided to the Director of Department of Planning and Development for recording with the King County Department of Records and Elections;
8. Proof of payment of all permit fees and other charges required by Chapter 21.24 of the Seattle Municipal Code.

~~D. E.~~ The Director of ~~Seattle Public Utilities~~ the Department of Planning and Development may change or modify the application and designate the manner and place where the side sewer shall connect to the public sewer system, may specify the material, size and grade of the side sewer, and determine whether or not a permit shall be granted. The

Director of ~~Seattle Public Utilities~~ the Department of Planning and Development may require the applicant to furnish plans prepared and stamped by a professional engineer, licensed in The State of Washington. The Director of ~~Seattle Public Utilities~~ the Department of Planning and Development shall keep such records as the Director ~~he/she~~ deems necessary of all side sewer permits and inspection reports.

E. F. Notwithstanding any other provisions of this chapter, the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development may refuse, until the condition is corrected, to issue a permit for work in a public place to a registered side sewer contractor for any of the following conditions:

1. Failure to pay within ~~sixty (60)~~ 60 days any bill for work performed by the City and for which the contractor is liable;
2. Failure to maintain the ~~comprehensive general liability~~ insurance or the bond required by Section 21.16.060 of the Seattle Municipal Code; ~~or~~
3. Failure to comply with a notice posted pursuant to Section 21.16.360 of the Seattle Municipal Code; -
4. Failure to have a current business license issued under Section 5.55.030 of the Seattle Municipal Code; or
5. Failure to have a current Washington State Contractor's license.

Section 8. Subsection 21.16.090 C of the Seattle Municipal Code, which was last amended by Ordinance 118396, is amended to read as follows:

21.16.090 Permits-Period of validity-Restrictions-Posting.

C. All side sewer permits shall expire ~~ninety (90) days~~ 18 months after issuance unless extended by the Director of ~~Seattle Public Utilities~~ the Department of Planning and Development prior to the date of expiration. Expired permits are not subject to refunds pursuant to Section 21.24.090 of the Seattle Municipal Code.

Section 9. Section 21.16.280 of the Seattle Municipal Code, which was last amended by Ordinance 120794, is amended as follows:

21.16.280 Restoration of streets and other public areas.

Streets, sidewalks, planting strips, and other public areas except as mentioned in Section 21.16.270, disturbed or altered in the course of any side sewer or drainage work, shall be restored ~~by the side sewer contractor to the original surface condition as approved by the Director of Seattle Public Utilities; and in event of the failure of the contractor to so restore the area the Director of Seattle Public Utilities may make such restoration and charge the cost thereof to the side sewer contractor who shall, upon receiving written notice of the amount thereof or upon posting of such notice at the area make immediate payment thereof to the City Director of Executive Administration to the standards and in the manner required by the Seattle Department of Transportation.~~

Section 10. Section 21.16.380 of the Seattle Municipal Code, which was last amended by Ordinance 119192, is amended as follows:

21.16.380 Violation-Penalty.

A. Violation.

(1) A failure to comply with any provision of this chapter or any rule, regulation, notice, or order of the Director of

Health, the Director of Seattle Public Utilities, or the Director of the Department of Planning and Development issued pursuant to this chapter is a violation of this chapter.

(2) Each day of violation or failure to comply constitutes a separate violation.

B. Civil Penalty.

(1) In addition to any other sanction or remedial procedure that may be available, any person who violates or fails to comply with any provision of this chapter, or any rule, regulation, notice, or order of the Director of Health, the Director of Seattle Public Utilities, or the Director of the Department of Planning and Development issued pursuant to this chapter shall be subject to a civil penalty in the amount of \$500 per day for each day of each violation.

(2) The Director of Health, of Seattle Public Utilities or of the Department of Planning and Development shall notify the City Attorney in writing of the name of any person subject to a civil penalty for violations of this chapter. The City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed.

C. Alternative criminal penalty.

A Any person who violates or fails to comply with any provision of this chapter or any rule, regulation, notice, or order of the Director of Health, the Director of Seattle Public Utilities, or the Director of the Department of Planning and Development issued pursuant to this chapter is guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04 of the Seattle Municipal Code, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 of the Seattle Municipal

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Code need be proved. The Director may request the City Attorney to prosecute such violations criminally as an alternative to the civil penalty provided in Section 21.16.380 B.

~~B. Each day of violation or failure to comply shall constitute a separate violation.~~

Section 11. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2005, and signed by me in open session in authentication of its passage this ____ day of _____, 2005.

President _____ of the City Council

Approved by me this ____ day of _____, 2005.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2005.

City Clerk

(Seal)

smw: smw

Reg Side Sewer Code

November 28, 2005

Version. 7

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Attachment A

Changes Made by the Proposed Legislation

- * A new first-time registration fee of \$200 for registered side sewer contractors (RSSC) and an annual renewal fee of \$150 are added to cover the costs of administering the registration program.
- * The examination fee is increased from \$60 to \$100 in order to recover the cost of administering the exam.
- * RSSC's are required to give DPD a list of employees who have passed the examination.
- * All work on side sewers located in a public way must be supervised by a person who has passed the examination.
- * The liability insurance requirements are modified. The current regulations require comprehensive general liability insurance with bodily injury limits of \$300,000 for each person injured, and \$1,000,000 for more than one person injured, plus liability limits of at least \$100,000 for all damages to property. The proposed legislation requires commercial general liability coverage of \$1,000,000 for each occurrence of single-limit bodily injury combined with property damage. This change was made at the suggestion of the City's Risk Management office, and is consistent with the requirements for grading in environmentally critical areas.

- * The amount of the bond required of RSSCs is increased from \$15,000 to \$30,000. The bond requirements have not changed in fifteen years or more. The increased bond amount is a more realistic estimate of the cost of restoring streets and other public places and potential City liability if the contractor fails to complete the work. A higher bond is also necessary because contractors often work on several projects at one time. The Risk Management Division consulted with the bonding and insurance community to help determine the appropriate amount.
- * Indemnification of the City for any claims resulting from the RSSC's work is required of all RSSCs.
- * The grounds and procedures for cancelling or suspending RSSC's registrations are modified; and the procedures for appealing are modified.
- * Failure to have a current City business license or a current State contractor's license are added to the list of reasons for which DPD can refuse to issue a permit for work in a public place to an RSSC..
- * The requirement that RSSCs restore disturbed areas is modified to require disturbed areas be restored according to SDOT standards. The current code contains vague language about restoration to a condition as good as when the work began.
- * Civil enforcement procedures and penalties are added.
- * The length of time a side sewer permit is valid is lengthened from 90 days to 18 months, the same as building permits.

Maureen Traxler:

November 30, 2005:

RSSC Attachment A:

Version #7