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**ORDINANCE NO. 3215**

**AN ORDINANCE OF THE CITY OF MCPHERSON, KANSAS ADDING NEW SECTIONS 107 THROUGH 122 INCLUSIVE TO ARTICLE III, CHAPTER 18 OF THE CODE OF THE CITY OF MCPHERSON, KANSAS CONCERNING CONTRACTORS, PROVIDING FOR THE LICENSING AND REGULATION THEREOF.**

**WHEREAS**, the City of McPherson, currently licenses subcontractors including plumbers, electricians, mechanical contractors and gasfitters;

**WHEREAS**, the City currently does not license or oversee general contractors directing the work of the subcontractors; and

**WHEREAS**, the governing body feels it is in the best interest of the citizens of McPherson to begin the process of licensing general contractors doing business in the City to maintain similar levels of quality control at all levels.

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

**SECTION 1. Addition to Code.** From and after the effective date of this Ordinance, the following sections 18-107 to 18-122, inclusive shall be added to Article III, Chapter 18 of the Code of the City of McPherson, Kansas as follows:

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

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

framing contractors. Unless specifically provided otherwise by this Contractor Licensing Ordinance, only a contractor licensed herein may obtain, directly or indirectly, a building permit.

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

**Section 18-108. License Required.** Unless specifically exempted, no building permit shall be issued to any contractor who has not first obtained a license or who is delinquent in payment of his annual license fee, or whose license has been suspended or revoked by action of the Board. It is further unlawful for any person to enter into a contract with another so as to bring himself under the classification of a contractor as defined in this Article, or to perform any work as a contractor, or any work under a contract, without having first obtained a contractor’s license. Further, it is unlawful for any person issued a license as required by this Article to contract to perform any work other than specified by such license. Contractor applicants shall be licensed by satisfying the requirements in either 18-111, 18-112, or 18-113. A license will be granted once all information as submitted is verified.

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

- (a) An employee or agent working for and under the supervision of a contractor licensed under this Article for the type of construction, alteration, repair or demolition being undertaken; and

- (b) A homeowner who personally occupies or will occupy and undertakes the construction, alteration, repair or maintenance of such homeowner's single-family residence or an accessory structure thereto. Notwithstanding the foregoing, for purposes of this section, any homeowner who undertakes the construction of a new residence for such homeowner's personal occupancy more than three times in any four year period shall be deemed to be a "contractor" under this Article.

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

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

**Class A Commercial:** A "Class A Commercial" license shall entitle the holder thereof to construct, remodel, repair, demolish any structure and perform work described in Class D, Building Specialties of framing and concrete. A Class A Commercial license requires six (6) years of qualifying experience within the commercial construction industry. The holder thereof must also have a Certificate of Competency or equivalent reasonably acceptable to the Lead Building Inspector and/or the Board or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the governing body and will also require 30 code training hours (3 CEU) per license period.

**Class B Commercial:** A "Class B Commercial" license shall entitle the holder thereof to construct, remodel, repair, demolish any structures not exceeding three (3) stories in height and perform work described in Class D, Building Specialties of framing and concrete. A Class B Commercial License will also entitle the holder to perform non-structural remodeling, tenant finish, and repairs of all structures. A Class B Commercial license requires four (4) years of qualifying experience within the commercial construction industry. The holder thereof must also have a Certificate of Competency or equivalent reasonably acceptable to the Lead Building Inspector and/or the Board; or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the governing body and will also require 30 code training hours (3 CEU) of continuing education per license period.

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

Building Inspector and/or the Board or, hold a bachelor's degree in engineering, architecture, or construction science from an accredited institution of higher learning. The license and renewal fee shall be as set by resolution of the governing body and will also require 20 code training hours (2 CEU) of continuing education per license period.

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

- a. **Framing Contractor:** A Framing Contractor license shall entitle the holder thereof to frame a structure or building, including bearing walls and non-bearing walls, and including repair to any of the above. A Framing Contractor license requires a minimum of four (4) years qualifying experience within the construction industry.
- b. **Concrete Contractor:** A Concrete Contractor license shall entitle the holder thereof to perform general concrete work to include the placing and erecting of steel bars for the reinforcing of foundations, pavement, flat and other concrete work. A Concrete Contractor license requires a minimum of four (4) years of concrete placing, erecting, and structural experience within the construction industry.

The license and renewal fee shall be as set by resolution of the governing body and will also require 10 code training hours (1 CEU) of continuing education per license period.

### **Section 18-112. Local licensing.**

- (a) Requirements to obtain a Local Class B Commercial license shall be:
  - a. Minimum of 6 Years in commercial construction as an employee of a commercial construction company performing various tasks common to the construction industry to include a minimum of two (2) years management at a level of foreman or above.
  - b. Special Building Limitations to the Local Class B Commercial license will be:
    - i. No new structure/building project to be over a single story;
    - ii. No commercial addition to a structure/building project to be over a single story; and
    - iii. Structural alterations to buildings over a single story will not be allowed.
  - c. A Local Class B Commercial license is considered a Conditional Class B Commercial license until there are 20 code training hours (2 CEU) directly related to commercial construction within 24 months of application and the granting of Conditional Class B Commercial Contractor’s License. The Conditional license can also become a regular Class B Commercial Contracting License with the completion of the full requirements stated in Section 18-111.
  - d. Once the experience and code training hour requirements are met within the

24 months, the Conditional Class B Commercial License will become a Local Class B Commercial License with all Special Building Limitations remaining in force.

- e. The Local Class B Commercial license may not allow for reciprocating licensing in other jurisdictions without further testing.
- (b) Qualifications for Local Class C Residential can be accomplished with the following:
- a. Minimum of 4 Years in Residential Construction performing layout, foundation set ups and foundations, framing, and roofing tasks as are typical in the residential construction industry.
  - b. The Local Class C Residential license is considered conditional until there are 20 code training hours (2 CEU) of training within 24 months of application and granting of Conditional Class C Residential Contractor's License.
  - c. Once the experience and the code training hour requirements are met within the conditional license period of 24 Months, the Conditional Class C Residential license will become a Local Class C Residential license.
  - d. The Local Class C Residential license may not allow for reciprocating licensing in other jurisdictions without further testing.

### **Section 18-113. Conditional licensing.**

- (a) Qualifications for a Conditional Class B Commercial license can be accomplished with the following:
- a. Minimum of 2 Consecutive years verifiable Commercial Construction as a business owner/operator in the City of McPherson immediately before the date of the application.
  - b. Minimum of 4 years total commercial construction experience.
  - c. Special Building Limitations to the Conditional Class B General Contractor's License will be:
    - i. No new structure/building project to be over a single story;
    - ii. No commercial addition to a structure/building project to be over a single story; and
    - iii. Structural alterations to buildings over a single story will not be allowed.
  - d. The conditional license will become a Local Class B Commercial or Class B Commercial Contracting License with the completion of the full requirements stated in Sections 18-111 or 18-112.
  - e. After the Conditional Period of 24 Months with all requirements being met for a Local Class B Commercial, the Conditional Class B Commercial License will become a Local Class B Commercial License with all Special Building Limitations remaining in force or a Class B Commercial license.
- (b) Qualifications for Conditional Class C Residential license can be accomplished with the following:
- a. Minimum of 4 Years in Residential Construction performing layout,

foundation set ups and foundations, framing, and roofing tasks as are typical in the residential construction industry.

- b. Minimum of 2 Consecutive Years verifiable full time Residential Construction as a business owner/operator in the City of McPherson immediately before the time of application.
- c. After the Conditional Period of 24 Months with all requirements being met, the Conditional Class C Residential license will become a Local Class C Residential or a Class C Residential license.

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

**Section 18-115. Contractor insurance.** Every contractor except a contractor who has an “inactive license” shall keep in force a policy of general liability insurance including completed operations coverage.

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

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

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

**Section 18-117. Renewal of conditional licensing.** The holder of a Conditional Class B Commercial or Conditional Class C Residential license may not renew the conditional license. The conditional license will no longer be granted after January 1, 2019.

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

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

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

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

The Board shall mail to the Contractor, at the address on the license, at least seven (7) days prior to the hearing date a written notice listing the reasons for the possible discipline, but the Board shall not be limited to such list of reasons if evidence is developed at the hearing showing other or additional reasons for discipline. The City shall have the burden of proof. The Board may adopt such rules and procedures deemed reasonably necessary to conduct such hearing. The building code official shall have the discretion, but not the duty, to issue verbal and/or written warnings without waiving any potential violation.

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

- a. Admonish or reprimand the Contractor;
- b. Restrict the allowable scope of work allowed by the Contractor for a fixed period not to exceed ninety days.
- c. Suspension of the contractor's license for a fixed period not to exceed ninety days.
- d. Suspension of the contractor's license for a fixed period up to 180 days, provided, however, the contractor shall have the right to have the suspension



and the terms thereof reconsidered by the Board at the expiration of the first 90 days to determine if just cause exists to modify or terminate the suspension. Such reconsideration may, at the Board's option, include a hearing.

- e. Revocation of the contractor's license for a period not less than 12 months from the date of revocation. A contractor's license shall be revoked if the contractor has been suspended two times during any 36 month period.

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

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

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

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

**SECTION 3. Publication and Effective Date.** This ordinance shall be in full force and effect after August 1, 2016, and its passage by the governing body, signature by the Mayor and publication of a summary of this ordinance in the official city newspaper and posting of the full text of the ordinance on the City's website in compliance with K.S.A. 12-3007(b).

**Passed** by the governing body June 20, 2016.

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Thomas A. Brown, Mayor

(SEAL)

ATTEST:

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Tamra K. Seely, City Clerk

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## Ordinance No. 3215, Summary

On June 20, 2016, the City of McPherson, Kansas adopted Ordinance No. 3215 adding new Sections to the Code of the City of McPherson, Kansas concerning contractors, providing for the licensing and regulation thereof. A complete copy of this Ordinance is available at [www.mcpcity.com](http://www.mcpcity.com) or at the Municipal Center, 400 E. Kansas, McPherson, Kansas. Jeffrey A. Houston, City Attorney, certified this summary.