

ORDINANCE NO. 2023-55

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, ARTICLE 11, LICENSING AND REGISTRATION OF RESIDENTIAL, GENERAL AND TRADE CONTRACTORS TO ELIMINATE CERTAIN LOCAL TESTING REQUIREMENTS; INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 14, Buildings and Building Regulations, Article 11, Licensing and Registration of Residential, General and Trade Contractors is hereby amended to read as set forth below. Underlining indicates added text. Strikeouts indicate deleted text.

**ARTICLE 11. ~~LICENSING AND~~ REGISTRATION OF RESIDENTIAL,
GENERAL AND TRADE CONTRACTORS**

**DIVISION 1. ~~LICENSING AND~~ REGISTRATION OF RESIDENTIAL,
GENERAL AND TRADE CONTRACTORS**

Sec. 14.370.1 Definitions.

Abandonment Pursuant to 105.5 of the International Building Code or R 105.5 of the International Residential Code a permit becomes expired through inactivity of the construction work for 180 days. A lack of scheduled building inspections demonstrating progress is evidence of abandonment.

Perform To cause to be completed with one's own hands, or with help from employees or subcontractors.

Sec. 14.371. Prohibited acts.

A person who violates this section commits a misdemeanor and is subject to a fine of not less than \$250.00 upon conviction per occurrence. The Building Official may issue a Notice of Violation for any of the unlawful acts listed below:

- (1) Display or cause a permit to be displayed or to have in one's possession any registration~~license~~ for doing any construction work, knowing it to be fictitious or to have been canceled, suspended, expired, altered or revoked;
- (2) Lend or permit the use of any registration~~license~~ for doing any construction work to any person not entitled to it;

- (3) Display or to represent as one's own, any ~~registration~~license for any construction work when the ~~registration~~license has not been lawfully issued to the person displaying it;
- (4) Fail or refuse to surrender to the Building Official any ~~registration~~license for any construction work that has been suspended, canceled or revoked;
- (5) Apply for or have in one's possession more than one current City ~~registration~~construction license of the same type;
- (6) Use a false or fictitious name or address in any application for any ~~registration~~license or permit provided for in this chapter or any renewal or duplicate or make a false statement or conceal a material fact or otherwise commit fraud in making any application;
- (7) Perform any construction work for which a ~~registration~~license is required without having the ~~registration~~license—or while the ~~registration~~license is suspended, expired, canceled, revoked or the ~~registration~~license holder becomes unable to supervise the permitted work or dies;
- (8) Perform any construction work for which a permit is required without having the permit issued or after the permit has been canceled;
- (9) Perform any plumbing, mechanical or electrical work where a license or registration is required from the Texas Board of Plumbing Examiners or Texas Department of Licensing without having the required license or registration;
- (10) Fail or refuse to make the necessary repair or changes as provided in a written notice issued by the inspections division. A separate offense is deemed to be committed each day after the expiration of the time for correction provided in the notice until the work is corrected;
- (11) Permit any construction work covered by this article to be performed by any person not properly ~~registered~~ licensed, while owning or in control of premises covered by this article;
- (12) Remove, break, change, destroy, tear, mutilate, cover or otherwise deface or injure any official notice or seal posted by the building inspection division;

- (13) Continue to work after a Stop Work Order has been posted;
- (14) Use the design of a Registered Architect or Engineer without his or her permission.
- (15) To fill a swimming pool that is part of a building permit without obtaining a passed pool barrier inspection.
- (16) Place or leave the property in such condition that it injures or endangers persons or property;
- (17) Abandonment of a project by the registered~~licensed~~ contractor;
- (18) To install a foundation without obtaining an engineer's acceptance letter; or
- (19) The contractor allows a building to be occupied without obtaining a Certificate of Occupancy.

Sec. 14.371.1-~~Certificate of insurance required for contractors~~ Reserved.

~~(a) — A licensed Residential Contractor or General Contractor performing construction work in the City shall provide the inspection division a certificate of insurance that meets the requirements of subsection (b) of this section. The building inspections division will not issue a license until it receives the certificate of insurance.~~

~~(b) — A certificate of insurance shall:~~

- ~~(1) — Be written by a company licensed to do business in the State of Texas;~~
- ~~(2) — Provide for commercial general liability insurance coverage for the builder for claims for property damage or bodily injury;~~
- ~~(3) — Be in a coverage amount of not less than \$1,000,000.00 for all claims arising in any one year period; and~~
- ~~(4) — Residential contractors will not be required to carry liability insurance.~~

~~(c) — This article and article 12 of this chapter do not alter the responsibility of any person performing any construction activity for damages to anyone or for performance of a contract. Neither the City nor any City officer or employee assumes any liability on the basis of an inspection activity or a license, certificate or permit issued pursuant to this article or article 12.~~

Sec. 14.372. Registration~~License~~ required; exception.

(a) It is unlawful for any person to perform construction work subject to this article unless the person is registered~~licensed~~ as a contractor or is exempt under one of the following:

- (1) A maintenance person may perform maintenance work only upon property owned by the person's employer. A maintenance person who performs work upon the property of more than one property owner is deemed to be performing work for the general public and shall be registered~~licensed~~ as a city residential or general contractor. A maintenance person need not hold a license or registration.
- (2) A property owner may perform construction work with the owner's own hands or use other persons to perform construction work in/on an existing residence owned by the owner or someone in their immediate extended family. Such other persons performing work for the property owner or work that is performed by the owner on a property that is not the owner's homestead shall, however, be subject to applicable licensing requirements under state law. All work is subject to permit, inspection and approval in accordance with this chapter. "Immediate extended family" for the purposes of this section is defined as children, parents or grandparents by blood or marriage.
- (3) An approved authorized single representative of a political subdivision. Each subdivision is authorized to submit one person to serve as general representative for projects under \$8,000.00 for purposes of permitting. This exception does not authorize work outside the political subdivision unless the person holds a general ~~contractors~~contractor's registration~~license~~ under this section.
- ~~(4) A Specialist Contractor shall be required to register as a Specialist contractor and may perform work for the general public within the specifications and limitations of the registration.~~
- (~~4~~5) A person licensed by the State of Texas as a trade contractor, including the mechanical, plumbing, or electrical trades.

Sec. 14.373. Qualifications for ~~license or~~ registration.

(a) *Residential Contractor.* This designation applies to construction limited to one- and two-family dwellings. A person applying for a residential contractor's registration~~license~~ shall provide their name, business name, address, phone number, driver's license, and email address. ~~proof of passing the required~~

~~examination for the license.~~ A *Residential contractor* may be an employee of a company or organization.

~~Exception: A person can meet the requirements of this designation with a valid contractor's license with proof of passing grade where an examination of equal or greater rigor was taken, as determined by the Building Official. State registration certificates and licenses that do not require examination involving general building practices, codes and standards do not apply.~~

(b) *General Contractor.* This designation applies to any building construction within our jurisdiction. A person applying for a general contractor's registration license shall provide their name, business name, address, phone number, driver's license, and email address. ~~proof of a passing grade for the required examination for the license.~~ A *General contractor* may be an employee of a company or organization.

~~Exception: A person can meet the requirements of this designation with a valid contractor's license with proof of passing an examination of equal or greater rigor, as determined by the building official. State registration certificates and licenses that do not require examination involving general building practices, codes and standards do not apply.~~

(c) *Specialist Contractor.* ~~This designation applies to limited specific forms of construction such as awnings, retaining walls, stair repairs and similar types of work as determined by the Building Official. A person applying for a specialist contractor registration shall be able to demonstrate proficient knowledge in the area specified as determined by the Building Official. No testing is required for this category of license.~~ A registered Residential Contractor or General Contractor performing construction work in the City shall provide the Permit Center a certificate of insurance that meets the requirements of subsection (1) of this section. The Permit Center will not issue a registration until it receives the certificate of insurance.

(1) A certificate of insurance shall:

- a. Be written by a company licensed to do business in the State of Texas;
- b. Provide for commercial general liability insurance coverage for the builder for claims for property damage or bodily injury;
- c. Be in a coverage amount of not less than \$1,000,000.00 for all claims arising in any one-year period; and

d. Residential contractors will not be required to carry liability insurance.

(d) This article and article 12 of this chapter do not alter the responsibility of any person performing any construction activity for damages to anyone or for performance of a contract. Neither the City nor any City officer or employee assumes any liability on the basis of an inspection activity or a license, certificate or permit issued pursuant to this article or article 12.

Sec. 14.374. ~~Examination~~ Reserved.

~~(a) — The Building Official may provide for testing of candidates for residential and general contractor's licenses through the use of International Code Council (ICC) National Contractor tests.~~

~~(b) — Examinations for ICC certifications are conducted by ICC or their affiliates.~~

Sec. 14.375. Reserved.

Sec. 14.376. Reserved.

Sec. 14.377. Issuance, ~~renewal of license of~~ registration.

(a) Upon receiving an application and information required ~~passing grade on the examination for a license or registration~~ under this division, the Building Official can issue a license or registration to the applicant ~~successful candidate. If any changes occur in the information provided, the registree shall amend the registration to reflect the changes within ten (10) business days of the change.~~

(b) No license ~~registration~~ will be issued for more than one (1) year. A registration ~~license~~ may be renewed from year to year upon application of the holder. All registrations ~~licenses~~ issued under this division expire on the last day of December. Any new registration ~~license~~ issued in December of the current year will be valid through December of the following year. ~~The building department has the ability to grant a sixty day grace period for the purposes of continuing education. This section does not apply to individuals who have not held a license with the City in the previous six (6) months.~~

(c) — ~~Any licensee failing to make application for renewal of a license within sixty (60) days after its expiration is considered as an applicant for an original license. This section does not permit construction work by a contractor with an expired license.~~

~~(d) — Each person who obtains a license shall register with the Building Official. The registration will include the information required by the Building Official.~~

~~(e) — Prior to the renewal of any contractor's license, the contractor shall complete six (6) hours of continuing education approved by the Building Official.~~

~~(f) — Maintenance and Specialist registrations expire on the last day of December and must be renewed annually.~~

Sec. 14.379. Suspension and revocation of registrationlicense.

(a) The Building Official may suspend the ~~license or~~ registration of a ~~general building~~ contractor, ~~residential specialist~~ contractor or maintenance person who has been cited without case disposition or convicted two (2) times within one (1) year of a violation or three (3) times within two (2) years of violation of section 14.371, 14.372 of this chapter or subsection (i) of this section. The suspension will be for a period not to exceed twelve (12) months. For purposes of this section, deferred adjudication will be treated as a conviction.

(b) If the Building Official decides to suspend a registrationlicense, the official will notify the ~~registree~~licensee of the suspension by first class mail to the ~~registree's~~ licensee's last address on the Building Official's records, by electronic notification, or by hand delivery to the ~~registree~~licensee. Notice by mail is deemed to be received three (3) days after posting or by non-retuned delivered electronic correspondence.

(c) The Building Official can refuse to issue permits while there are outstanding violations against a contractor until the violation(s) have been resolved by court disposition or arranging a court hearing.

(d) The Building Official can refuse to issue permits while there are outstanding fees, unpaid fines or expired permits.

(e) The ~~registree~~licensee may appeal a suspension decision to the Construction Board of Appeals by filing a written request within ten (10) days of receiving notice of the suspension. The Board will hold a hearing to determine whether the suspension decision should be sustained or reversed and will follow the hearing procedures outlined in subsection 14.380(b).

(f) If a ~~registree~~licensee's license has been suspended twice in a three-year period, and the ~~registree~~licensee then commits another violation under section 14.371 or 14.372, the Building Official will notify the Construction Board of Appeals. The Board will then hold a hearing under section 14.380.

(g) Enforcement actions taken under this section are not exclusive, and do not affect any other remedies for violations of section 14.371 or 14.372.

(h) Maintenance registration can be revoked upon charge or conviction of any code violation.

(i) A person is subject to disciplinary action under this section if the person violates an order issued by the Board, a board rule, or any of the following:

- (1) Obtaining an license, endorsement or registration through error or fraud;
- (2) Willfully, negligently, or arbitrarily violating a municipal rule or ordinance that regulates sanitation, drainage, or plumbing;
- (3) Making a misrepresentation of services provided or to be provided to a customer that causes financial harm to the customer; or
- (4) Making a false promise with the intent to induce a person to contract for a service.

~~(k) Retesting procedures may be used to determine whether grounds exist for suspension or revocation of a license, endorsement, or registration due to incompetence or a willful violation by a person licensed under this chapter.~~

Sec. 14.380. Hearing procedures for revocation of registrationlicense; notice of revocation.

(a) When the Construction Board of Appeals is notified that a registree's ~~licensee's~~ license or registration has been suspended twice in a three-year period under subsection 14.380(a), and that the registree~~licensee~~ has committed another violation under section 14.371 or 14.372, the Board will set a registration revocation hearing within thirty (30) days and will send a copy of the information to the registree by certified mail or by hand delivery not less than ten (10) days before the date of the hearing.

(b) The registree~~licensee~~ may appear in person at the hearing and may be represented by an attorney or any other person. All hearings will be open to the public. The City and the registree~~licensee~~ are entitled to present evidence and arguments at the hearing. The Board may, through its chair or secretary, administer oaths and compel the attendance of witnesses by subpoena issued by the chair. If the registree~~licensee~~ does not appear, the Board may proceed to hear and determine whether to revoke the registree~~licensee's~~ license.

(c) If the registree~~licensee~~ admits the truth of the charges, or if the Board, by vote of three (3) or more members, finds them to be true, the Board will

revoke the ~~registration~~license of the ~~registree~~licensee. The decision of the Board in each revocation hearing will be entered into the meeting minutes of the Board.

(d) Notice of the revocation will be given by the Board either in person at the hearing, by first class mail to the ~~registree's~~licensee's last address on the Building Official's records, or by hand delivery to the ~~registree~~licensee. Notice by mail is deemed to be received three (3) days after posting.

(e) A ~~registree~~licensee whose ~~registration~~license is revoked under this section may not apply for another ~~registration~~license until two (2) years after the effective date of revocation.

Sec. 14.381. Surrender and return of suspended ~~license or~~ registration.

Any ~~registration~~license suspended under this division shall be surrendered to the Building Official. At the end of the period of suspension, in the absence of further violations, the surrendered ~~license or~~ registration will be returned to the ~~registree~~licensee and will again be valid. If the period of suspension extends beyond the normal expiration date, the ~~registree~~licensee shall pay all ~~registration~~license renewal fees in order for the Building Official to ~~issue the registration~~return the license.

Sec. 14.382. Appeals.

Under this division, any ~~registree~~licensee who has been denied a ~~registration~~license or whose ~~license or~~ registration has been suspended or revoked may file a petition with the municipal court within ten (10) days of the date of the denial, suspension, or revocation. The ~~registree~~licensee shall also file a copy of the petition with the Building Official on the same day that the petition is filed with the municipal court. The municipal court will give all parties at least three (3) days' notice of the hearing. The municipal court judge will determine whether there is a reasonable basis for the ~~registration~~license denial, suspension, or revocation. The judge will determine factual issues by a preponderance of the evidence.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. In codifying this ordinance into the City Code, Municode may renumber or reformat any parts hereof as deemed necessary to be consistent with the numbering and formatting of the City Code and may correct spelling and grammatical errors that do not change the meaning or substance hereof.

SECTION 5. This ordinance shall become effective upon adoption on second reading.

PASSED AND APPROVED on first reading on August 1, 2023.

PASSED, APPROVED, AND ADOPTED on second reading on August 15, 2023.

Jane Hughson
Mayor

Attest:

Approved:

Elizabeth Trevino
City Clerk

Samuel J. Aguirre
City Attorney