

CITY OF BOX ELDER

**RIGHT-OF-WAY CONSTRUCTION
REGULATIONS**

ORDINANCE #495

EFFECTIVE 7/23/2010

CITY OF BOX ELDER ORDINANCE #495
RIGHT-OF-WAY CONSTRUCTION REGULATIONS
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BE IT ORDAINED by the Common Council of the City of Box Elder as follows:

ARTICLE I – PURPOSE AND JURISDICTION

SECTION 1 – PURPOSE AND REPEAL OF ORDINANCES.

Ordinance #495 is an ordinance regulating construction within rights-of-way within the jurisdiction of the City of Box Elder. The Common Council of the City of Box Elder has deemed these regulations and controls to be reasonable and reasonably related to the health, safety, and welfare of the residents of Box Elder. To eliminate conflicts with these regulations, Ordinance #104 of the Box Elder Municipal Code is hereby repealed in its entirety.

SECTION 2 – JURISDICTION.

This Ordinance shall govern all territory within the municipal limits of the City of Box Elder, South Dakota.

SECTION 3 – SEVERABILITY AND SEPARABILITY.

Should any Article, Section, Subsection, or Provision of this Ordinance be found to be or declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof, other than the portion so declared to be invalid or unconstitutional.

ARTICLE II – DEFINITIONS

For the purposes of this Ordinance, and in order to carry out the provisions and intentions as set forth herein, certain words, terms, and phrases are to be used and interpreted as defined hereafter. Words used in the present tense shall include the future tense; words in the singular number include the plural; words in the plural number include the singular; the word “person” includes a firm, partnership, or corporation as well as an individual; the term “shall” is always mandatory and not discretionary; and the word “may” is permissive.

CITY: The City of Box Elder, South Dakota.

COMMISSION: The Planning & Zoning Commission of the City.

CONTRACTOR: Any person who is engaged in the act of construction or excavation or in the supervision of construction or excavation on any real property within the municipal limits of the City.

CONSTRUCTION: Includes, but is not limited to, concrete, masonry, carpentry, excavation, or building trade work (which includes electrical, plumbing,

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roofing, painting, remodeling, siding, and rough framing) for new construction, alteration, addition, repairs, or demolition of structures, streets, sidewalks, pavement, or utilities within a right-of-way.

COUNCIL: The Common Council of the City.

EXCAVATION: The removal or recovery by any means whatsoever of soil, rock, or other material from on or beneath the land surface.

PUBLIC RIGHT-OF-WAY: A strip of land defined by right-of-way lines on a plat that is intended to be occupied by a street, recreation trail, utility line, or other similar use and to be used by the public.

PUBLIC RIGHT-OF-WAY EASEMENT: A portion of a parcel of land that is a permanent easement for use as a public right-of-way.

PUBLIC WORKS DIRECTOR: The person appointed by the Common Council to manage the City's Public Works Department.

ARTICLE III – PERMIT REQUIREMENTS

SECTION 1 – PERMIT REQUIREMENTS.

- A. It is deemed a violation of this Ordinance for any person, except City or public utility, State Department of Transportation, County Highway Department, or City Street Department employees engaged in the performance of their authorized duties, to commence construction within any public or private right-of-way within the municipal limits of the City without first obtaining a Right-of-way Work Permit to do such work. Construction permitted by an Approach, Building, Sewer and Water, or other Permit issued by the City shall be exempt from the Right-of-way Work Permit requirement.
- B. A Right-of-way Work Permit Application must be submitted to the City Planning Department at least twenty-four (24) hours before the start of work. A Right-of-way Work Permit Application shall consist of an application form provided by the Planning Department, a Right-of-way Work Permit Application Fee, proof of City Contractor's License (when required), and, if necessary, a Late Application Fee.
- C. The amounts of the Right-of-way Work Permit Application Fee and the Late Application Fee shall be set by resolution of the Council.
- D. The Public Works Director shall review and may approve Right-of-way Work Permits.

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- E. The Public Works Director may require the contractor to post surety of up to five thousand dollars (\$5,000.00) with the City as a condition of approval of the Right-of-way Work Permit.

ARTICLE IV – CONSTRUCTION REQUIREMENTS

SECTION 1 – INSPECTION OF WORK.

All construction within rights-of-way shall be performed in a workmanlike manner and may be subject to inspection and approval by the Public Works Director or his designee. The contractor shall notify the Public Works Director or his designee before such inspections are to occur.

SECTION 2 – DUE DILIGENCE REQUIRED.

The contractor shall obtain utility locations within the boundaries of the construction site from South Dakota One Call before construction begins. The contractor shall be responsible for preventing unnecessary damage to all utility infrastructure within or adjacent to the construction site. The contractor shall also be responsible for preventing unnecessary damage or injury to any tree or shrub, or the roots thereof, within or adjacent to the construction site.

SECTION 3 – TEMPORARY SIDEWALKS.

If a sidewalk is blocked by construction for more than twenty-four (24) hours, a temporary sidewalk shall be constructed or provided which shall be safe for traveling and convenient for users.

SECTION 4 – SAFETY BARRIERS.

A contractor performing construction within or adjacent to a public or private right-of-way shall erect and maintain around the construction site suitable guards, fences, signals, and lighting, to prevent injury to persons or vehicles on account of such construction. Lighting or signals, when installed, shall be kept lighted by the contractor during period of darkness or low visibility.

SECTION 5 – BACKFILL.

All trenches or other excavations made in a public or private right-of-way shall be backfilled in accordance with the proper backfilling procedures and specifications provided in the City's Standard Specifications for Public Works Construction.

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ARTICLE IV – VIOLATIONS AND PENALTIES

A violation of any provision of this Ordinance or any amendment thereto, or failure to perform any act required hereunder, is a Class II Misdemeanor. In addition to any fine or penalty assessed by the court, any violator found guilty shall pay all court costs and expenses involved in the case and any restitution necessary to repair any damage resulting from the violation. Any violation of this Ordinance is hereby declared to be a public nuisance per se.

BE IT FURTHER ORDAINED by the Common Council of the City of Box Elder that this Ordinance shall become effective in accordance to law.

CITY OF BOX ELDER

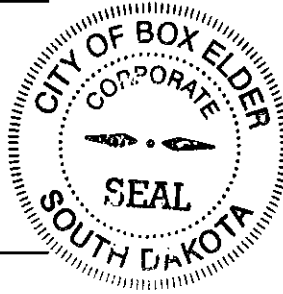


Mayor Alfred Dial

ATTEST:



Finance Officer Debbie Knapp



(SEAL)

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