

CITY OF SACRAMENTO

8

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April 24, 1985

Law and Legislation Committee
City Hall
Sacramento, CA 95814

SUBJECT: Certification of Journeyman Plumbers

Honorable Members in Session:

SUMMARY

The proposed ordinance would institute a system under which the City, through an appointed Board of Plumbing Examiners, would certify journeyman plumbers who do work in the City for minimum competency.

BACKGROUND

On March 19, 1985 the Council referred to the Law and Legislation Committee a proposed ordinance relating to city certification of journeyman plumbers for competence submitted by Councilman Serna.

A journeyman plumber is a person who engages in plumbing, but is neither an apprentice nor a licensed contractor. The journeyman plumber is employed for wages by a licensed contractor. The City does not currently regulate journeyman plumbers.

At present, the level of competency required of the journeyman plumber is decided by the employer. City inspection of plumbing work also helps to ensure minimum construction standards.

Several communities in California, including the City of Long Beach, Santa Clara County, and Los Angeles County, require journeyman plumbers to pass a competency exam administered by the local jurisdiction before they can do plumbing work in that jurisdiction. The proposed ordinance submitted by Councilman Serna would provide for a similar competency exam within the City of Sacramento, beginning January 1, 1986.

Among the ordinance details:

1. The exam system would be administered by a 5-member Board of Plumbing Examiners appointed by the Council.
2. Application and renewal fees would be set to cover costs of administering the program.
3. The Board of Plumbing Examiners would also review allegations that a certified journeyman had negligently or intentionally performed plumbing work in violation of applicable codes, and may revoke or suspend a certificate for cause after hearing.
4. It would be unlawful and an infraction for anyone other than a contractor, apprentice, or exempted utility employee to do plumbing work for another for consideration in the City without a certificate.
5. It would be unlawful and an infraction for a contractor to employ anyone to do plumbing work unless that person has a certificate or is exempt from the certificate requirement.
6. Certificates of competency may be issued without examination to persons who hold a comparable certificate from another jurisdiction or who have ten or more years full time experience performing plumbing work.

The California Attorney General issued an opinion in 1964 which concluded that municipalities may not require unlicensed contractors or persons employed by contractors to take examinations because the state has preempted the field of determining contractors' qualifications. 43 Ops. Atty. Gen. 115. Under this opinion, the proposed ordinance would be invalid. Although opinions of the California Attorney General are not binding on courts, they often carry great weight.

Others, including the communities which currently certify journeyman plumbers, do not agree that state law preempts a journeyman certification program.

Both positions are arguable.

Law and Legislation Committee
Certification of Journeyman Plumbers
April 24, 1985
Page three

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the proposed ordinance and make a recommendation to the City Council.

Respectfully submitted,

JAMES P. JACKSON
City Attorney

By:



DIANE B. BALTER
Deputy City Attorney

May 2, 1985
All Districts

AN ORDINANCE ADDING ARTICLE XXIV TO CHAPTER 9 OF THE
SACRAMENTO CITY CODE RELATING TO CERTIFICATION OF
JOURNEYMAN PLUMBERS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Article XXIV is hereby added to Chapter 9 of the Sacramento City Code, to read as follows:

Article XXIV. Certification of Journeyman Plumbers

Sec. 9.961. Intent.

This ordinance is adopted to protect the health, safety and welfare of the citizens of the City of Sacramento. Such ordinance is necessary to provide minimum standards of qualification for journeyman plumbers who perform work within the City of Sacramento. Plumbing work is complex and demanding and carries a high risk of harm to person and property if done improperly. This ordinance does not regulate either plumbing contractors licensed under the Contractors' License Law, section 700, et. seq. of the Business and Professions Code or apprentice plumbers regulated under an apprenticeship program pursuant to section 3070 et. seq. of the Labor Code.

Sec. 9.962. Exemption for Utility Employees.

An employee for a public utility operating under the authority and jurisdiction of the Public Utility Commission of the State of California (PUC), the Federal Power Commission (FPC), or the Sacramento Municipal Utility District (SMUD), shall be exempt from the provisions of this ordinance when performing work regulated by the PUC, FPC or SMUD. This exemption is not intended to apply to work which must meet the Sacramento City Plumbing Code.

Sec. 9.963. Certificate of Competency Required.

a. It shall be unlawful after December 31, 1985, for any person other than a contractor, apprentice or utility employee as specifically exempted by Sections 9.961 and 9.962 of this Ordinance to labor for another for consideration at the work or trade of installing, removing, altering or repairing plumbing systems within the City unless such person shall have applied for and been granted a certificate of competency from the City of Sacramento Plumbing Board of Examiners.

b. It shall be unlawful after December 31, 1985, for any contractor to hire, employ or contract for the services of any individual to labor at the work or trade of installing, removing, altering or repairing plumbing systems within the City unless such individual shall have secured a certificate of competency from the City of Sacramento Board of Plumbing Examiners or such individual is exempt from the requirements of this ordinance. It shall be the obligation of the contractor hiring,

employing or contracting for the services to determine whether the individual or individuals to be hired possess a valid City of Sacramento certificate of competency.

Sec. 9.964. Establishing the Board of Plumbing Examiners.

The City of Sacramento hereby establishes the Board of Plumbing Examiners. The Board of Plumbing Examiners shall consist of five members representing two California licensed plumbing contractors, two journeyman plumbers and one public member. The Chief Plumbing Inspector shall act as the secretary to the Board of Plumbing Examiners. The Board of Plumbing Examiners shall be appointed by the Mayor with the approval of the Sacramento City Council. The term of office for a member of the Board of Plumbing Examiners shall be three years, except that as to the first Board, one member shall be appointed for a one year term, two members shall be appointed for a two year term and two members shall be appointed for a three year term. If a vacancy occurs due to death, illness, resignation or for any other reason, the City Council shall appoint a replacement only for the remainder of the term. Members of the Board of Plumbing Examiners shall not be compensated.

The Board shall adopt reasonable rules for the conduct of its business. It shall select a chairman for a term of one year and shall establish procedures to be followed by the Secretary of the Board. Three regular members of the Board shall constitute a quorum. Action taken by the Board must be approved by a majority of the members present and voting on the matter before the Board.

Sec. 9.965. Duties of the Board of Plumbing Examiners.

a. It shall be the duty of the Board of Plumbing Examiners to hold regular meetings at least every 90 days.

b. It shall be the duty of the Board of Plumbing Examiners to prepare and conduct examinations at least quarterly, and more often if the need arises, for the purpose of determining the competency and knowledge of the individuals to engage in plumbing work as set forth in this ordinance. The Board shall determine what constitutes "passing" the qualification examination. The examination shall test at a level which assumes sufficient knowledge of both theory and practice to enable the applicant to perform competent plumbing work. The examination shall include a written test and such other tests as the Board in its discretion may determine.

c. It shall be the duty of the Board of Plumbing Examiners to compile and maintain a current list of individuals holding valid certificates of competency from the Board of Plumbing Examiners.

d. It shall be the duty of the Board of Plumbing Examiners to carefully consider any written charges filed in the manner provided in this ordinance at its first regular meeting after the filing of such charges, provided that prescribed notice requirements can be met. If the notice requirements cannot be met, the Board shall either schedule a

special meeting or shall set the matter for hearing at the following regular meeting.

e. The Board of Plumbing Examiners shall compile and keep current a list of agencies maintaining satisfactory examination and qualification procedures. This list shall be reviewed and brought up to date at least once each year. A copy of said list shall be kept on file in the Office of the Chief Plumbing Inspector.

Sec. 9.966. Issuance of Certificate of Competency.

When an applicant for a certificate of competency shall have made payment of an application fee provided for by resolution of the City Council and shall have passed an examination as required by the Board of Plumbing Examiners, or is the legal possessor of an equivalent credential, as established by the Board of Plumbing Examiners, the Board of Examiners shall certify him/her to the Chief Plumbing Inspector who shall issue to him/her a certificate of competency.

Sec. 9.967. Application for Examination for Certificate of Competency.

Persons desiring to take the examination for a certificate of competency shall file an application with the Secretary of the Board of Plumbing Examiners. To be eligible for the examination for the certificate of competency, the applicant shall have at least four (4) years of plumbing experience as an apprentice and shall attach proof of such apprenticeship to the application for examination. Special training or education acceptable to the Board of Plumbing Examiners may be credited to a portion or all of the required experience. Such determination shall be in the discretion of the Board of Plumbing Examiners. Such equivalency shall be determined by the Board of Plumbing Examiners at their next scheduled regular or special meeting.

Sec. 9.968. Application for Reexamination.

Any individual who fails to pass the examination for competency as prescribed by the Board of Plumbing Examiners may apply for reexamination. All applications for reexamination must be accompanied by a reexamination fee to be set by resolution of the City Council. Should such individual fail to pass the examination for qualification a second time, the Board of Plumbing Examiners shall refuse a third application until after the expiration of six months.

Sec. 9.969. Exemption from Examination.

a. A certificate of competency shall be issued without the necessity of an examination to any individual possessing a similar certificate from an agency maintaining, in the opinion of the board, a satisfactory examination and qualification procedure.

b. A certificate of competency may be issued in the discretion of the Board of Plumbing Examiners, without the necessity of an examination to any individual having ten (10) or more years full time job

experience performing plumbing work. Such an exemption shall be heard by a quorum of the Board at its next regular or scheduled meeting.

Sec. 9.970. Posting of Certificate of Competency.

Every journeyman shall carry his/her certificate with him/her at all times while doing any construction work regulated by this ordinance and shall exhibit it when required to do so by the Chief Inspector or his/her authorized representative at any time while he/she is engaged in any activity for which a certificate of competency is required.

Sec. 9.971. Notification of Address Change to Board of Plumbing Examiners.

The holder of a certificate of competency shall notify the Board of any change of address.

Sec. 9.972. Loaning of Certificates of Competency Prohibited.

No individual holding a certificate of competency required by this ordinance shall lend such certificate to any person or allow any other person to carry on, engage in, or labor at the trade of installing, removing, altering or repairing plumbing systems on a certificate of competency not issued in their name. A violation of this section by any person holding a certificate of competency shall be grounds for revocation of such certificate.

Sec. 9.973. Suspension or Revocation of Certificate of Competency.

a. Any person may file with the Board of Examiners written charges against the holder of a certificate of competency alleging that the holder of a certificate of competency has negligently or intentionally performed work in violation of applicable codes. Such charges shall state in detail the nature and substance of the matters charged and must be signed with the full name and correct address of the person making the charge or charges.

b. The Board shall notify the holder of the certificate of competency against whom charges have been submitted of the next regular or special meeting of the Board at which the matter shall be heard. Written notice shall be mailed by first class at least fifteen (15) days before the hearing to the address provided to the Board by the holder of the certificate of competency.

c. No certificate of competency shall be suspended or revoked until the holder of the certificate of competency has had an opportunity to appear and show cause why his/her certificate should not be suspended or revoked. In showing such cause, he/she may be represented by an attorney and may present evidence.

d. The Board may either suspend or revoke a certificate of competency if the Board determines that the holder of the certificate of

competency has willfully or negligently violated any of the provisions of this article or any ordinance, code, or regulation governing the installation, removal, alteration, or repair of plumbing systems.

e. Should the Board of Plumbing Examiners find that any certificate of competency has been obtained by fraud, it shall revoke such certificate.

f. No refund of fees shall be made to any person whose certificate of competency is suspended or revoked.

Sec. 9.974. Appeals.

Any person aggrieved by the decision of the Board of Plumbing Examiners in granting or denying a certificate of competency, or suspending or revoking a certificate of competency, may appeal such decision to the City Council. The appeal shall be made by filing a written notice of appeal with the City clerk within twenty (20) days after notice of the Board's decision. The Council shall hold a hearing on the appeal and its decision shall be final and conclusive. The Council may appoint a hearing examiner to consider the matter pursuant to Article XII of Chapter 2 of the City Code.

Sec. 9.975. Renewal.

Certificates of competency shall be renewed every 2 years upon payment of a renewal fee set by resolution of the City Council.

Sec. 9.976. Definitions.

a. Applicant: The person signing the application for the examination for the certificate of qualification and paying the fees therefor.

b. Apprentice: A person who is enrolled in an apprenticeship program approved by the Department of Industrial Relations of the State of California.

c. Journeyman Plumber: A person who installs, removes, alters or repairs plumbing systems as an employee, who does not furnish materials or supplies and who is the legal possessor of a ~~XXXXXXXXXXXXXXXXXXXX~~ certificate of competency.

d. Certificate of Competency: A certificate authorized by the Board of Plumbing Examiners to be issued by the Chief Plumbing Inspector to qualified persons not otherwise regulated by the Business and Professions Code of the State of California or the Labor Code of the State of California.

e. Plumbing system: Plumbing system means and includes all potable water supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipe and all building drains, including their respective joints and connections, devices, receptacles and appurtenances within the property lines of the premises and shall include potable water

pipng, potable water treating or using equipment, fuel gas piping, water heaters and vents for same; provided however, that for purposes of this Article, sewer mains are specifically excluded from the definition of plumbing system.

Date Passed for Publication:

Date Enacted:

Date Effective:

MAYOR

ATTEST:

CITY CLERK