Chapter 11.24 Utility Use of Rights-of-Way

Chapter 11.24

UTILITY USE OF RIGHTS-OF-WAY

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11.24.010 Definitions. In this chapter:
“Right-of-way” means any public street, alley or other public way that is not part of the state highway system, but does not include a utility easement located on private property.
“Excavation” means the removal, carrying away, back-filling, tunneling, boring, bulldozing, digging out, leveling, clearing, or moving of material underlying a right-of-way by manual or mechanical means.
“Maintenance” means upkeep, repair or improvement work on an existing utility facility that does not expand the area occupied by, or change the location of, the facility.
“RCA” means the Regulatory Commission of Alaska, or its predecessor, the Alaska Public Utilities Commission.
“Roadway” means the improved driving surface in a right-of-way and all structural fill below that surface that makes up the roadway prism.
“Road opening” means excavation within a roadway.
“Utility” means a person that is defined as a public utility in AS 42.05.990 that owns, operates, manages, or controls any plant, pipeline or system furnishing electrical service, telephone service, cable television service, natural or manufactured gas service, water service or sewer service to the public for compensation. (Ord. 12-13 §1, 2012).

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(Homer 03/12)
11.24.020—11.24.030

11.24.020 Permit to use right-of way required. a. A utility may not maintain a facility in, under or over a right-of-way for which it must obtain a utility construction project permit under HCC 11.24.060 without first obtaining a permit to use the right-of-way under this section.
b. A utility applies to the public works department for a permit to use a right-of-way on a form provided by the public works department, accompanied by the permit fee in the city fee schedule established by resolution of the council.
c. The permit application shall include without limitation:
1. the utility’s written agreement to indemnify and save the city harmless against any loss or damage caused by the negligence of the utility, its agents and employees while constructing, operating or maintaining its facilities in, under or over the right-of-way; and
2. Evidence of insurance coverage in a form acceptable to the city, with limits not less than one million dollars per occurrence, to protect the city and third parties against any loss or damages due to the negligence of the utility, its agents and employees while constructing, operating and maintaining its facilities in, under or over right-of-way, including hazards from pollution, underground work, explosion, collapse and damage to underground wires, conduits, pipes and fittings.

d. In addition to requiring compliance with the other requirements of this chapter, the city may make a utility right-of-way permit subject to reasonable conditions that it deems necessary to protect the public health, safety, welfare and interests of the city. (Ord. 12-13 §1, 2012).

11.24.030 Assignment of utility locations in rights-of-way. a. General. A utility shall place new facilities, relocate existing facilities and replace existing facilities in a location assigned by this section. It is the utility's responsibility to place its facilities within a right-of-way in accordance with this chapter, the Design Criteria Manual, and with a reasonable degree of prudence to enable maximum opportunity for others to use the right-of-way without conflict, including adequate allowances for the future construction of roads, storm sewers, sanitary sewers and water mains in the right-of-way. Utilities governed by this section shall be installed underground unless an exception has been granted by the public works department in accordance with subsection (b) of this section, or HCC §22.10.055.
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(Homer 03/12)
11.24.030(a)(1)—11.24.030(b)(1)(ii)

1. Telephone, electric and cable television utilities. Telephone, electric and cable television distribution lines will be placed between the boundary of the right-of-way and to six feet within the boundary of the right-of-way. A location farther within the right-of-way must be approved by the public works department and noted on the permit.
2. Natural gas utilities. Natural gas utility distribution mains will be placed between the boundary of the right-of-way and eight feet within the boundary of the right-of-way. A location farther within the right-of-way must be approved by the public works department and noted on the permit.
3. Burial depths. Underground utility lines shall be installed at minimum depths of thirty-six inches for parallel runs within the right-of-way, and sixty inches for all roadway crossings. The public works director may require different depths to accommodate unusual topography or street widths, especially in areas where storm drainage ditches are used along the roadway.
4. Incomplete right-of-way dedications. If only a portion of a right-of-way has been dedicated, utility facilities shall not be placed along the side of the right-of-way that is likely to be within the roadway after a dedication of additional adjacent right-of-way. If a utility proposes to place facilities on the side of a partial right-of-way where additional adjacent right-of-way is likely to be dedicated, the utility shall obtain easements from the neighboring property owners so that its facilities will be located outside the future roadway.
b. Exceptions to assigned utility locations.
1. If a utility finds it unreasonable to place its facilities as required by subsection (a) of this section, it may apply to the public works department for an exception, submitting at a minimum the following information:
i. A complete explanation of the reasons why the utility is requesting an exception from its assigned location within the right-of-way; and
ii. Plans, drawings or sketches necessary to show the locations of other existing utilities, problem areas such as rock or wetlands, and locations where the utility is proposing to place its new facilities.

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(Homer 03/12)
11.24.030(b)(2)—11.24.040(c)(2)

2. An application for an exception whose necessity becomes evident during construction shall be deemed approved if not rejected or modified within four normal working hours after receipt by the public works department. The utility is responsible for determining whether the application for an exception has been approved, rejected or modified.
3. This subsection shall not be interpreted or applied in a manner that would permit an underground utility to be installed above ground. (Ord. 12-13 §1, 2012).

11.24.040 Relocation of utility facilities within the right-of way. a. If the city or a third party lawfully elects to change the grade or location of any road, street, public place or highway, and the change will conflict with a utility facility, upon reasonable request and notice from the city the utility shall relocate its facility, making every effort to accommodate the construction schedule.
b. The city will reimburse the utility for facility relocation costs under the following conditions:
1. The city requests the relocation for a city project or activity reflected in the city's capital budget;
2. The relocation is necessitated by a disturbance to the utility's facilities incident to the City constructing facilities or otherwise working in the right-of-way; or
The city requests the relocation in writing for the benefit of a third party, incident to the third party constructing

facilities or working in a right-of-way. This provision does not affect any right that the city may have to recover costs of the relocation from the third party.
c. Notwithstanding subsection (b) of this section, the utility shall pay the cost of relocating its facilities where the relocation is made necessary by:
1. The failure of the utility to install the facilities in a reasonably prudent manner;
2. The utility placed its facilities in the right-of-way after July 1, 1985 without first obtaining a permit from the city to do so, or the as-built location facilities varies from the location approved in the permit;

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(Homer 03/12)
11.24.040(c)(3)—11.24.060(b)

3. Repairs by the city either to restore the right-of-way after an emergency, or otherwise to reasonably maintain the serviceability of the right-of-way in the condition existing when the utility first constructed its facilities; or
4. Any other circumstance where the RCA has determined such payment to be reasonable. (Ord. 12-13 §1, 2012).

11.24.050 Costs of utility relocations to be reimbursed by the city. a. Where HCC §11.24.040 requires the City to pay costs of relocating utility facilities, the city shall reimburse the utility for its reasonable cost of the relocation less a “credit” for the value of salvaged materials and betterments resulting from the construction of new facilities.
b. The city reserves the right to audit books and accounts of a Utility to verify its determination of reasonable costs for engineering, acquisition of rights-of-way or easements, labor, material, equipment, overhead, salvaged materials, and betterment incidental to relocation of the facilities for a term of six years after substantial completion of the construction project.
c. Overhead rates for a utility facility relocation project that is reimbursable by the city shall be negotiated prior to commencement of work and shall not exceed overhead rates approved for relocation projects reimbursed by the Alaska Department of Transportation and Public Facilities. Utility equipment stationed at a project in a “standby capacity” will not be expensed to relocation projects.
d. The City reserves the right to “offset” against a utility’s claim for reimbursement of relocation costs for damages and delay claims it may incur for failure of the utility to perform a relocation in a timely or acceptable manner. (Ord. 12-13 §1, 2012).

11.24.060 Utility construction project permits. a. After securing a right-of-way use permit under HCC §11.24.020, a utility shall obtain a permit from the public works department before performing each individual road opening project or excavation within a right-of-way.
b. A utility need not obtain a construction project permit under this section for normal maintenance of utility facilities within a right-of-way unless the maintenance work will require an excavation in the roadway.

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(Homer 03/12)
11.24.060(c)—11.24.070(a)

c. An application for a construction project permit shall be made upon a form provided by the city, accompanied by the permit fee in the city fee schedule established by resolution of the council, and shall include, at a minimum, the following information:
1. The name of the utility, its address, phone number, and contact person;
2. The name of any subcontractor working for the utility on the project, and the subcontractor’s name, address, phone number, and contact person;
3. The name and location of the right-of-way in which the work is to be performed;
4. The type of improvement or facility planned;
5. Plans, drawings or sketches showing the length, distance from the right-of-way boundary and configuration of the improvement, and its relationship to the roadway if one exists;
6. The proposed method of locating and marking of the boundaries of the right-of-way for construction purposes;
7. Whether a detour of traffic will be necessary, and, if so, a traffic routing narrative statement and plan as required by HCC §11.24.060; and
8. Any requested exceptions to assigned utility locations as prescribed by HCC §11.24.030, with the supporting material required by that section.
c. The city shall review and grant or deny an application for a utility construction project permit within three working days, if the proposed construction conforms to the standards, terms and conditions in this chapter, and within ten working days if the proposed construction does not conform to the standards, terms, and conditions in this chapter.

(Ord. 12-13 §1, 2012).

11.24.070 Utility construction project permit requirements. A utility construction project permit shall conform to the following requirements:
a. The permit shall state the commencement and completion dates for construction, and the procedure for any required road closure during the course of construction. A utility should make every effort to comply with the schedule for construction in the permit, but it shall not be penalized for failing to perform if emergency or other priority work preempts the schedule. The utility shall notify the city in advance of any proposed schedule change arising from utility exigencies.
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(Homer 03/12)

11.24.070(b)—11.24.080(b)

b. The permit shall establish locations for utility facilities to assure compatibility with all present and anticipated future uses of the right-of-way in which the utility facilities are located, in accordance with the following general standards:
1. Utility facilities shall be located outside of the existing or anticipated roadway whenever possible.
2. The location of the utility facilities shall allow for the safe and practical maintenance and improvement of both the utility facilities and the roadway.
3. Surface utility facilities shall be set back from the existing or planned roadway surface and shall be located so as not to create a visual obstruction or physical obstacle contrary to codes or statutes regarding placement of obstacles in public rights-of-way.
4 Both underground and surface facilities shall be offset a minimum of five feet from existing or proposed water and/or sewer service stubouts, gate valves, manholes and vaults. Any deviation from this minimum must have prior approval from the public works director or his designee.
5. Excavation, backfill or other disturbance of the right-of-way surface by utility construction or maintenance activities shall be finished in a manner that restores the right-of-way in accordance with HCC §11.24.080. (Ord. 12-13 §1, 2012).

11.24.080 Standards for excavation activity. Excavation under a utility construction project permit shall conform to the following standards:
a. Project Coordination. The utility shall coordinate its work with the schedule for other construction work in the same area of the right-of-way, including giving timely notice to persons who may be inconvenienced by the utility's work in the right-of-way. The utility may use a "one-call locate" service to give notice to other utilities.
b. Notice of Damage. If the utility damages plant or equipment of another utility, it shall immediately notify the affected utility of the damage.

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(Homer 03/12)
11.24.080(c)--11.24.080(h)

c. Manner of Excavation. The utility shall conduct excavations in compliance with the excavation standards promulgated by the Alaska Department of Labor, Occupational Safety and Health Administration. The utility shall exercise caution to avoid injury to pipes, cables or conduits of another utility in making excavations or tunnels.
d. Pedestrian Ways. If the utility's work blocks a pedestrian way, the utility shall construct or provide a temporary pedestrian way which shall be safe and convenient for travel.
e. Traffic Routing. If the utility's work affects traffic, the utility shall provide proper traffic signs, detours, and safeguards in accordance with the Alaska Traffic Manual and shall notify fire, emergency medical, police and school bus transportation agencies to obtain clearance for the type of detour, time, and other limitations imposed.
f. Closing Roads. When traffic conditions permit, the city may give written approval for the closing of roads to all traffic for a necessary period of time. Such approval may require the utility to give notification to various public agencies and to the general public.
g. Clearance for Vital Structures. The excavation work shall be performed in a manner that will enable access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures and other vital equipment.
h. Restoration of Right-of-Way. The utility shall restore the right-of-way to the grade and condition originally found or to the grade and condition directed by the utility construction project permit. Clearing of vegetation should be held to a minimum necessary for safe construction and maintenance of the utility. Debris and felled timber should

be disposed of in a neat and orderly manner. Property pins, gravel, paving or seal coating, ditches, culverts, signs, or other public improvements shall be replaced, unless the city gives specific written direction to the contrary. If the utility fails to restore a right-of-way as required by this subsection after reasonable notice from the city to do so, the city may accomplish the work and recover the cost from the utility.

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(Homer 03/12)
11.24.080(i)--11.24.080(n)

i. Unpaved Roads. Excavations in unpaved roads will be backfilled with useable native material to the subgrade of the existing road. Geotextiles will match existing conditions with a minimum two foot overlap to existing geotextile material. Type II material will be placed and compacted to within six inches of finish grade with the final six inch lift consisting of Type III material. The excavation and adjacent areas shall be graded to leave the site in a condition as nearly equal to that found prior to the excavation as is reasonably possible.
j. Paved Roads. For excavations in paved roads, fill below subgrade will match existing material with native backfill when material is approved as suitable. Geotextiles will match existing materials with a minimum two foot overlap of the new and existing materials. Gravel fill will consist of a minimum of twenty-six inches of Type II material, followed by six inches of Type III material, followed by two inches of leveling course before being overlaid with two inches of hot asphalt concrete.
k. Excavation Warranty. Compaction of backfilled material should be equal to that of the surrounding material. The excavation shall be guaranteed for three years against settling. Any area that has settled within three years shall be promptly rectified at no cost to the city.
l. Cleanup. As the excavation work progresses, all roads shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris deposited by the utility. All gutters shall be maintained unobstructed. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and maintained at all times. All cleanup operations shall be accomplished at the expense of the utility and shall be completed to the reasonable satisfaction of the city.
m. Prompt Completion of Work. After an excavation is commenced, the work shall be promptly completed and the road restored to its original condition as soon as reasonably possible.
n. Urgent Work – The city may order emergency work to complete an excavation as soon as possible when required to protect the public health, safety, and welfare.

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(Homer 03/12)
11.24.080(o)—11.24.100

o. Emergency Action. Nothing in this chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble within a conduit or pipe, or for making repairs, provided that the person making such excavation should make a reasonable effort to notify police dispatch of the location of the emergency excavation. A utility excavating on an emergency basis in a roadway shall apply for a permit on the first working day after such work commenced. (Ord. 12-13 §1, 2012).

11.24.090 Appeals. a. A person aggrieved by a decision of the public works director under this chapter may appeal the decision to the city manager within five working days after receiving notice of the decision. The city manager shall decide an appeal under this subsection within five working days.
b. A person aggrieved by a decision of the city manager under this section may appeal the decision to the RCA pursuant to AS 42.05.251. Unless the RCA provides a different time by regulation, the appeal must be filed within thirty days after the city manager’s decision is mailed or delivered to the appellant. (Ord. 12-13 §1, 2012). (Ord. 12-13 §1, 2012).

11.24.100 Liability. Nothing in this chapter is imposes a duty on the city to inspect any activity of a utility for purposes of assuring compliance with standards set forth in this chapter; nor does the city warrant to a utility that a right-of-way will be preserved in any particular condition. (Ord. 12-13 §1, 2012). (Ord. 12-13 §1, 2012).

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