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**CITY OF HOMER  
HOMER, ALASKA**

City Manager/  
Public Works Director

**ORDINANCE 12-13**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,  
ENACTING HOMER CITY CODE CHAPTER 11.24, UTILITY USE OF  
RIGHTS-OF-WAY.

THE CITY OF HOMER ORDAINS:

Section 1. HCC Chapter 11.24, Utility Use of Rights-of-Way, is adopted to read as follows:

Chapter 11.24

UTILITY USE OF RIGHTS-OF-WAY

Sections:

- 11.24.010 Definitions.
- 11.24.020 Permit to use right-of way required.
- 11.24.030 Assignment of utility locations in rights-of-way.
- 11.24.040 Relocation of utility facilities within the right-of way.
- 11.24.050 Costs of utility relocations to be reimbursed by the city.
- 11.24.060 Utility construction project permits.
- 11.24.070 Utility construction project permit requirements.
- 11.24.080 Standards for excavation activity.
- 11.24.090 Appeals.
- 11.24.100 Liability.

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.

46 “Utility” means a person that is defined as a public utility in AS 42.05.990 that owns,  
47 operates, manages, or controls any plant, pipeline or system furnishing electrical service,  
48 telephone service, cable television service, natural or manufactured gas service, water service or  
49 sewer service to the public for compensation.

50  
51 11.24.020 Permit to use right-of way required. a. A utility may not maintain a facility in,  
52 under or over a right-of-way for which it must obtain a utility construction project permit under  
53 HCC 11.24.060 without first obtaining a permit to use the right-of-way under this section.

54 b. A utility applies to the public works department for a permit to use a right-of-way  
55 on a form provided by the public works department, accompanied by the permit fee in the city  
56 fee schedule established by resolution of the council.

57 c. The permit application shall include without limitation:

58 1. the utility’s written agreement to indemnify and save the city harmless  
59 against any loss or damage caused by the negligence of the utility, its agents and  
60 employees while constructing, operating or maintaining its facilities in, under or over the  
61 right-of-way; and

62 2. Evidence of insurance coverage in a form acceptable to the city, with  
63 limits not less than one million dollars per occurrence, to protect the city and third parties  
64 against any loss or damages due to the negligence of the utility, its agents and employees  
65 while constructing, operating and maintaining its facilities in, under or over right-of-way,  
66 including hazards from pollution, underground work, explosion, collapse and damage to  
67 underground wires, conduits, pipes and fittings.

68 d. In addition to requiring compliance with the other requirements of this chapter,  
69 the city may make a utility right-of-way permit subject to reasonable conditions that it deems  
70 necessary to protect the public health, safety, welfare and interests of the city.

71  
72 11.24.030 Assignment of utility locations in rights-of-way. a. General. A utility shall  
73 place new facilities, relocate existing facilities and replace existing facilities in a location  
74 assigned by this section. It is the utility’s responsibility to place its facilities within a right-of-  
75 way in accordance with this chapter, the Design Criteria Manual, and with a reasonable degree of  
76 prudence to enable maximum opportunity for others to use the right-of-way without conflict,  
77 including adequate allowances for the future construction of roads, storm sewers, sanitary sewers  
78 and water mains in the right-of-way. Utilities governed by this section shall be installed  
79 underground unless an exception has been granted by the public works department in accordance  
80 with subsection (b) of this section, or HCC §22.10.055.

81 1. Telephone, electric and cable television utilities. Telephone, electric and  
82 cable television distribution lines will be placed between the boundary of the right-of-  
83 way and to six feet within the boundary of the right-of-way. A location farther within the  
84 right-of-way must be approved by the public works department and noted on the permit.

85 2. Natural gas utilities. Natural gas utility distribution mains will be placed  
86 between the boundary of the right-of-way and eight feet within the boundary of the right-  
87 of-way. A location farther within the right-of-way must be approved by the public works  
88 department and noted on the permit.

89 3. Burial depths. Underground utility lines shall be installed at minimum  
90 depths of thirty-six inches for parallel runs within the right-of-way, and sixty inches for  
91 all roadway crossings. The public works director may require different depths to

92 accommodate unusual topography or street widths, especially in areas where storm  
93 drainage ditches are used along the roadway.

94 4. Incomplete right-of-way dedications. If only a portion of a right-of-way  
95 has been dedicated, utility facilities shall not be placed along the side of the right-of-way  
96 that is likely to be within the roadway after a dedication of additional adjacent right-of-  
97 way. If a utility proposes to place facilities on the side of a partial right-of-way where  
98 additional adjacent right-of-way is likely to be dedicated, the utility shall obtain  
99 easements from the neighboring property owners so that its facilities will be located  
100 outside the future roadway.

101 b. Exceptions to assigned utility locations.

102 1. If a utility finds it unreasonable to place its facilities as required by  
103 subsection (a) of this section, it may apply to the public works department for an  
104 exception, submitting at a minimum the following information:

105 i. A complete explanation of the reasons why the utility is requesting  
106 an exception from its assigned location within the right-of-way; and

107 ii. Plans, drawings or sketches necessary to show the locations of  
108 other existing utilities, problem areas such as rock or wetlands, and locations  
109 where the utility is proposing to place its new facilities.

110 2. An application for an exception whose necessity becomes evident during  
111 construction shall be deemed approved if not rejected or modified within four normal  
112 working hours after receipt by the public works department. The utility is responsible for  
113 determining whether the application for an exception has been approved, rejected or  
114 modified.

115 3. This subsection shall not be interpreted or applied in a manner that would  
116 permit an underground utility to be installed above ground.

117  
118 11.24.040 Relocation of utility facilities within the right-of way. a. If the city or a third  
119 party lawfully elects to change the grade or location of any road, street, public place or highway,  
120 and the change will conflict with a utility facility, upon reasonable request and notice from the  
121 city the utility shall relocate its facility, making every effort to accommodate the construction  
122 schedule.

123 b. The city will reimburse the utility for facility relocation costs under the following  
124 conditions:

125 1. The city requests the relocation for a city project or activity reflected in  
126 the city's capital budget;

127 2. The relocation is necessitated by a disturbance to the utility's facilities  
128 incident to the City constructing facilities or otherwise working in the right-of-way; or

129 The city requests the relocation in writing for the benefit of a third party, incident  
130 to the third party constructing facilities or working in a right-of-way. This provision does  
131 not affect any right that the city may have to recover costs of the relocation from the third  
132 party.

133 c. Notwithstanding subsection (b) of this section, the utility shall pay the cost of  
134 relocating its facilities where the relocation is made necessary by:

135 1. The failure of the utility to install the facilities in a reasonably prudent  
136 manner;

137                   2.     The utility placed its facilities in the right-of-way after July 1, 1985  
138 without first obtaining a permit from the city to do so, or the as-built location facilities  
139 varies from the location approved in the permit;

140                   3.     Repairs by the city either to restore the right-of-way after an emergency,  
141 or otherwise to reasonably maintain the serviceability of the right-of-way in the condition  
142 existing when the utility first constructed its facilities; or

143                   4.     Any other circumstance where the RCA has determined such payment to  
144 be reasonable.

145  
146                   11.24.050 Costs of utility relocations to be reimbursed by the city. a. Where HCC  
147 §11.24.040 requires the City to pay costs of relocating utility facilities, the city shall reimburse  
148 the utility for its reasonable cost of the relocation less a “credit” for the value of salvaged  
149 materials and betterments resulting from the construction of new facilities.

150                   b.     The city reserves the right to audit books and accounts of a Utility to verify its  
151 determination of reasonable costs for engineering, acquisition of rights-of-way or easements,  
152 labor, material, equipment, overhead, salvaged materials, and betterment incidental to relocation  
153 of the facilities for a term of six years after substantial completion of the construction project.

154                   c.     Overhead rates for a utility facility relocation project that is reimbursable by the  
155 city shall be negotiated prior to commencement of work and shall not exceed overhead rates  
156 approved for relocation projects reimbursed by the Alaska Department of Transportation and  
157 Public Facilities. Utility equipment stationed at a project in a “standby capacity” will not be  
158 expensed to relocation projects.

159                   d.     The City reserves the right to “offset” against a utility’s claim for reimbursement  
160 of relocation costs for damages and delay claims it may incur for failure of the utility to perform  
161 a relocation in a timely or acceptable manner.

162  
163                   11.24.060 Utility construction project permits. a. After securing a right-of-way use  
164 permit under HCC §11.24.020, a utility shall obtain a permit from the public works department  
165 before performing each individual road opening project or excavation within a right-of-way.

166                   b.     A utility need not obtain a construction project permit under this section for  
167 normal maintenance of utility facilities within a right-of-way unless the maintenance work will  
168 require an excavation in the roadway.

169                   c.     An application for a construction project permit shall be made upon a form  
170 provided by the city, accompanied by the permit fee in the city fee schedule established by  
171 resolution of the council, and shall include, at a minimum, the following information:

172                   1.     The name of the utility, its address, phone number, and contact person;

173                   2.     The name of any subcontractor working for the utility on the project, and  
174 the subcontractor’s name, address, phone number, and contact person;

175                   3.     The name and location of the right-of-way in which the work is to be  
176 performed;

177                   4.     The type of improvement or facility planned;

178                   5.     Plans, drawings or sketches showing the length, distance from the right-of-  
179 way boundary and configuration of the improvement, and its relationship to the roadway  
180 if one exists;

181                   6.     The proposed method of locating and marking of the boundaries of the  
182 right-of-way for construction purposes;

183 7. Whether a detour of traffic will be necessary, and, if so, a traffic routing  
184 narrative statement and plan as required by HCC §11.24.060; and

185 8. Any requested exceptions to assigned utility locations as prescribed by  
186 HCC §11.24.030, with the supporting material required by that section.

187 c. The city shall review and grant or deny an application for a utility construction  
188 project permit within three working days, if the proposed construction conforms to the standards,  
189 terms and conditions in this chapter, and within ten working days if the proposed construction  
190 does not conform to the standards, terms, and conditions in this chapter.

191  
192 11.24.070 Utility construction project permit requirements. A utility construction project  
193 permit shall conform to the following requirements:

194 a. The permit shall state the commencement and completion dates for construction,  
195 and the procedure for any required road closure during the course of construction. A utility  
196 should make every effort to comply with the schedule for construction in the permit, but it shall  
197 not be penalized for failing to perform if emergency or other priority work preempts the  
198 schedule. The utility shall notify the city in advance of any proposed schedule change arising  
199 from utility exigencies.

200 b. The permit shall establish locations for utility facilities to assure compatibility  
201 with all present and anticipated future uses of the right-of-way in which the utility facilities are  
202 located, in accordance with the following general standards:

203 1. Utility facilities shall be located outside of the existing or anticipated  
204 roadway whenever possible.

205 2. The location of the utility facilities shall allow for the safe and practical  
206 maintenance and improvement of both the utility facilities and the roadway.

207 3. Surface utility facilities shall be set back from the existing or planned  
208 roadway surface and shall be located so as not to create a visual obstruction or physical  
209 obstacle contrary to codes or statutes regarding placement of obstacles in public rights-of-  
210 way.

211 4. Both underground and surface facilities shall be offset a minimum of five  
212 feet from existing or proposed water and/or sewer service stubouts, gate valves, manholes  
213 and vaults. Any deviation from this minimum must have prior approval from the public  
214 works director or his designee.

215 5. Excavation, backfill or other disturbance of the right-of-way surface by  
216 utility construction or maintenance activities shall be finished in a manner that restores  
217 the right-of-way in accordance with HCC §11.24.080.

218  
219 11.24.080 Standards for excavation activity. Excavation under a utility construction  
220 project permit shall conform to the following standards:

221 a. Project Coordination. The utility shall coordinate its work with the schedule for  
222 other construction work in the same area of the right-of-way, including giving timely notice to  
223 persons who may be inconvenienced by the utility's work in the right-of-way. The utility may  
224 use a "one-call locate" service to give notice to other utilities.

225 b. Notice of Damage. If the utility damages plant or equipment of another utility, it  
226 shall immediately notify the affected utility of the damage.

227 c. Manner of Excavation. The utility shall conduct excavations in compliance with  
228 the excavation standards promulgated by the Alaska Department of Labor, Occupational Safety

229 and Health Administration. The utility shall exercise caution to avoid injury to pipes, cables or  
230 conduits of another utility in making excavations or tunnels.

231 d. Pedestrian Ways. If the utility's work blocks a pedestrian way, the utility shall  
232 construct or provide a temporary pedestrian way which shall be safe and convenient for travel.

233 e. Traffic Routing. If the utility's work affects traffic, the utility shall provide  
234 proper traffic signs, detours, and safeguards in accordance with the Alaska Traffic Manual and  
235 shall notify fire, emergency medical, police and school bus transportation agencies to obtain  
236 clearance for the type of detour, time, and other limitations imposed.

237 f. Closing Roads. When traffic conditions permit, the city may give written  
238 approval for the closing of roads to all traffic for a necessary period of time. Such approval may  
239 require the utility to give notification to various public agencies and to the general public.

240 g. Clearance for Vital Structures. The excavation work shall be performed in a  
241 manner that will enable access to fire hydrants, fire stations, fire escapes, water gates,  
242 underground vaults, valve housing structures and other vital equipment.

243 h. Restoration of Right-of-Way. The utility shall restore the right-of-way to the  
244 grade and condition originally found or to the grade and condition directed by the utility  
245 construction project permit. Clearing of vegetation should be held to a minimum necessary for  
246 safe construction and maintenance of the utility. Debris and felled timber should be disposed of  
247 in a neat and orderly manner. Property pins, gravel, paving or seal coating, ditches, culverts,  
248 signs, or other public improvements shall be replaced, unless the city gives specific written  
249 direction to the contrary. If the utility fails to restore a right-of-way as required by this  
250 subsection after reasonable notice from the city to do so, the city may accomplish the work and  
251 recover the cost from the utility.

252 i. Unpaved Roads. Excavations in unpaved roads will be backfilled with useable  
253 native material to the subgrade of the existing road. Geotextiles will match existing conditions  
254 with a minimum two foot overlap to existing geotextile material. Type II material will be placed  
255 and compacted to within six inches of finish grade with the final six inch lift consisting of Type  
256 III material. The excavation and adjacent areas shall be graded to leave the site in a condition as  
257 nearly equal to that found prior to the excavation as is reasonably possible.

258 j. Paved Roads. For excavations in paved roads, fill below subgrade will match  
259 existing material with native backfill when material is approved as suitable. Geotextiles will  
260 match existing materials with a minimum two foot overlap of the new and existing materials.  
261 Gravel fill will consist of a minimum of twenty-six inches of Type II material, followed by six  
262 inches of Type III material, followed by two inches of leveling course before being overlaid with  
263 two inches of hot asphalt concrete.

264 k. Excavation Warranty. Compaction of backfilled material should be equal to that  
265 of the surrounding material. The excavation shall be guaranteed for three years against settling.  
266 Any area that has settled within three years shall be promptly rectified at no cost to the city.

267 l. Cleanup. As the excavation work progresses, all roads shall be thoroughly  
268 cleaned of all rubbish, excess earth, rock, and other debris deposited by the utility. All gutters  
269 shall be maintained unobstructed. Whenever a gutter crosses an intersecting street, an adequate  
270 waterway shall be provided and maintained at all times. All cleanup operations shall be  
271 accomplished at the expense of the utility and shall be completed to the reasonable satisfaction of  
272 the city.

273 m. Prompt Completion of Work. After an excavation is commenced, the work shall  
274 be promptly completed and the road restored to its original condition as soon as reasonably  
275 possible.

276 n. Urgent Work – The city may order emergency work to complete an excavation as  
277 soon as possible when required to protect the public health, safety, and welfare.

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

284  
285 11.24.090 Appeals. a. A person aggrieved by a decision of the public works director  
286 under this chapter may appeal the decision to the city manager within five working days after  
287 receiving notice of the decision. The city manager shall decide an appeal under this subsection  
288 within five working days.

289 b. A person aggrieved by a decision of the city manager under this section may  
290 appeal the decision to the RCA pursuant to AS 42.05.251. Unless the RCA provides a different  
291 time by regulation, the appeal must be filed within thirty days after the city manager's decision is  
292 mailed or delivered to the appellant.

293  
294 11.24.100 Liability. Nothing in this chapter is imposes a duty on the city to inspect any  
295 activity of a utility for purposes of assuring compliance with standards set forth in this chapter;  
296 nor does the city warrant to a utility that a right-of-way will be preserved in any particular  
297 condition.

298  
299 Section 2. This Ordinance is of a permanent and general character and shall be included  
300 in the City Code.

301  
302 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 27<sup>th</sup> day of  
303 March 2012.

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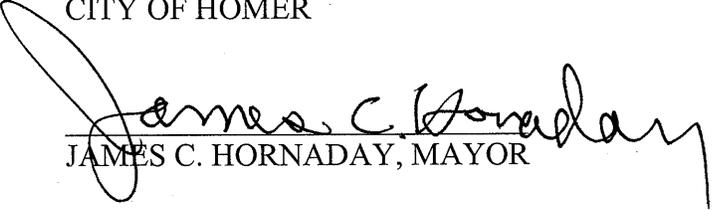
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CITY OF HOMER

  
JAMES C. HORNADAY, MAYOR

ATTEST:

  
JO JOHNSON, CMC, CITY CLERK

319 YES: 5  
320 NO: 0  
321 ABSTAIN: 0  
322 ABSENT: 0

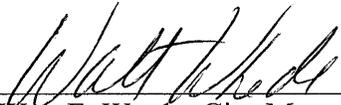
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326 First Reading: 3/12/12  
327 Public Hearing: 3/27/12  
328 Second Reading: 3/27/12  
329 Effective Date: 3/28/12

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Reviewed and approved as to form:

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Walt E. Wrede, City Manager

  
Thomas F. Klinkner, City Attorney

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337

Date: 3/29/12

Date: 4-2-12

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