



City of Homer

www.cityofhomer-ak.gov

Public Works

3575 Heath Street
Homer, AK 99603

publicworks@cityofhomer-ak.gov

(p) 907- 235-3170

(f) 907-235-3145

Memorandum 20-048

TO: Marvin Yoder, Interim City Manager
FROM: Right-of-Way Clearing Evaluation Committee
THROUGH: Carey S. Meyer, City Engineer
DATE: April 6, 2020
SUBJECT: Evaluation of Alternative Right-of-Way Maintenance Policies

Homer City Council passed Resolution 19-073(S) which established a moratorium on cutting, clearing or removal of trees and vegetation in public rights-of-way. This moratorium remains in effect until an evaluation of alternative right-of-way maintenance policies can be completed by a Committee made up of two City Council members with staff support. The Committee has met several times to evaluate the following issues (as required in the Resolution):

1. Drainage, snow storage and plowing, sight distances, utility operations and maintenance, and equipment and emergency vehicle response,
2. Steep slopes, traffic volumes, zoning districts, and property covenants,
3. Debris cleanup and aesthetics, including landmark trees,
4. Adjacent landowner concerns including timing and noise,
5. Landowner maintenance options and opportunities,
6. Legal rights and responsibilities of City and landowners, including enforcement,
7. Cost of implementation.

Before presenting specific Committee evaluations, some definitions are in order:

Brush Cutting: This term describes the more routine vegetation removal operation completed by Public Works on most roads, in most years. It generally consists of “mowing” with the brush cutter areas on each side of the road to trim back grass, pushki, and newly sprouting small trees. It can also include “raking” of mature trees to remove branches that are overhanging the road or roadside ditches. This effort increases visibility along the road, improves drainage, and keeps vegetative growth under control. Routine “brush cutting” makes “right-of-way tree clearing” far less necessary.

Right-of-Way Clearing: This term describes a more robust operation. It results in the removal of mature trees and stumps. Right-of-way tree clearing is normally done by hand with a chain saw. This operation is usually the result of trees interfering with snow plowing equipment, the creation of new drainage ditches, deepening (widening) of existing ditches, or when tree raking (brush cutting) is not solving the problem.

A summary of the evaluation by the Committee of each issue is presented below:

1. *Drainage, snow storage and plowing, sight distances, utility operations and maintenance, and equipment and emergency vehicle response.*

From the Public Works perspective - Street right-of way is intended to serve the public and provide for safe road access, positive drainage, and a corridor for aboveground and underground utilities. Trees in the right-of-way can and do block sight distances, interfere with snow plowing/snow storage. Uncontrolled, trees can impede emergency vehicle response. Trees can also interfere with the maintenance of water mains, fire hydrants, sewer mains, gas mains, telephone and power lines, and cable facilities. In more rural areas, trees do interfere (and increase the cost of) the creation, maintenance, and operation of drainage improvements (roadside ditches). Roads in rural areas fail to sport heavy vehicles during wet periods, and benefit greatly from ditch maintenance/creation of new ditches.

From the Property Owners perspective – Trees along the front of their property can provide a visual buffer between them and the road. Removal of trees from the right-of-way (especially where no trees exist on the property) exposes these properties visually to the road and eliminates the privacy that the trees have provided. Trees can reduce ground water (uptake) and provide for erosion protection in steep areas. After brush cutting/tree clearing, debris and broken branches are not aesthetically pleasing. Property owners are unhappy that Public Works does not follow up with removal of a debris.

2. *Steep slopes, traffic volumes, zoning districts, and property covenants.*

In areas of the City that are steep, trees and vegetation can provide stability to slopes and protect them from erosion. These areas generally have steeper driveways and street intersection approaches that benefit from maintaining effective sight distances. Roads with higher traffic volumes and traffic speeds benefit more from good sight distances than lower volume/speed roads.

The zoning of a neighborhood can affect the need for and a property owner's attitude toward right-of-way tree clearing. In the Central Business District and Commercial zoning, the neighborhood is mostly developed to a higher density, trees and vegetation do not exist in the same way they do in other areas. Businesses value visibility from the road, more than other property owners do.

In residential zoning, more so in rural than in urban (but in urban too), lower development densities result in more trees and vegetation in street rights-of-way. In low-density neighborhoods, visual buffering and privacy can be more valued than in higher density development areas.

Subdivision Covenants sometimes establish restrictions to tree cutting and timber harvesting. Property owners within some subdivision neighborhoods, with these types of covenants, feel that trees within the right-of-way should not be cut at all. In the opinion of the City Attorney, these covenant restrictions do not apply to street rights-of-way.

3. Debris cleanup and aesthetics, including landmark trees.

Public Works uses mechanical equipment to complete brush cutting. After brush cutting, there is generally limited effort to clean up debris. Debris from mechanical equipment is normally cut up into small pieces. Tree racking can produce splintered branches and larger pieces. Branches left on the trees can also be splintered and are sometimes considered an eye sore.

From Brush Cutting Operations: The results from brush cutting (as defined above) can be unsightly. Additional resources beyond current levels would be needed to rectify this situation. Picking up larger splintered branches produced from raking and trimming splintered branches on the trees would require additional personnel. See below for details of cost implementation.

From Right-of-Way Clearing Operations: Right-of-way clearing (because it involves the removal of trees), can result in the need for a higher cleanup level of effort. If a property owner is interested in the firewood, Public Works will leave it for them. If not, crews remove all large debris. Ground disturbed due to root removal is returned to original grades. Wood chips, small branches and sawdust are normally left to reduce costs and provide temporary erosion control.

Public Works makes every effort to contact property owners adjacent to the work before any significant vegetation removal is completed, to provide warning and explain the need for the work. In most cases, property owner understands why the work is being done, even if they are not thrilled with the change. Survey control staking is in place to assure the owner that no trees on their property will be disturbed.

4. Adjacent landowner concerns including timing and noise.

Most landowners appreciate, or at least understand why, vegetation is being cut back or removed within the street right-of-way. As discussed in 1) above, some property owners are concerned about clearing of vegetation within the right-of-way because the trees provide a visual buffer between the road and their house.

Other concerns expressed by property owners include:

- 1) Unsightliness of raked back trees (splintered branches remain on trees)
- 2) Wood chips and broken branches left on the ground

Very few if any landowners have expressed concern regarding the timing of brush cutting (completed during the normal operating hours in summer months) or tree clearing (completed during late fall, early winter months).

5. Landowner maintenance options and opportunities.

Property owners are encouraged to control vegetation growth in the right-of-way in front of their homes or businesses. This occurs quite frequently in the central business district, commercial and urban residential neighborhoods.

If property owners hand cut grass, brush and trees in street right-of-way adjacent to their lots, the mechanical equipment used by Public Works will not be necessary.

Property owners should protect trees on their property that provide visual buffering between their homes and the road. Planting additional trees on their property will reduce their dependence of vegetation in the public right-of-way.

6. *Legal rights and responsibilities of City and landowners, including enforcement.*

According to Homer City Code (see recent Ordinances 16-51 and 19-27(S)), it is the City's right and responsibility to maintain street right-of-way and control vegetation within the right-of-way. Currently, Homer City Code does not establish legal rights or responsibility for landowners to maintain the street right-of-way adjacent to their property. Any work by a landowner in the street right-of-way requiring excavation or installation of a temporary or permanent structure would require a permit from the City. No permit is required for a property owner to cut or remove vegetation from the right-of-way adjacent to their property if ground is not disturbed.

Many communities require property owners to maintain the street right-of-way adjacent to their properties (including grass cutting; vegetation control; and snow removal, sanding, and construction/repair of sidewalks, etc.), but this is not the case in Homer.

Landowners should be encouraged to plant visual buffering vegetation on their properties and not depend on vegetation in street right-of-way.

A recent Supreme Court decision involving the Municipality of Anchorage sheds some light on their right to remove trees from the ROW. See Superior Court Case # S16678 attached to this memo.

7. Cost of Implementation.

Like any activity the Public Works undertakes, cost is an important consideration. Public Works completes routine brush cutting during the summer months. Right-of-way tree clearing is done in the late fall/winter when existing staff time permits (after summer maintenance efforts, but before the snow plowing/sanding season begins). This accomplishes the mission without the need for additional staff. Tree clearing is generally completed in preparation for ditching, to remove trees that are conflicting with snow plowing operations, or improve site distances.

The other consideration regarding cost, as it relates to brush cutting or tree clearing, is that when mobilizing to a street or neighborhood to complete work, Public Works cuts or clears all vegetation in that street or neighborhood, rather than just that portion that is needed at that time. Overall costs are reduced when crews do not have to mobilize to an area several times (year after year) to control vegetation.

In the case of brush cutting and tree clearing:

- 1) Brush cutting by Public Works is completed using mechanical equipment. This normally means a brush cutting attachment on a track-mounted excavator). To complete this work using hand tools would significantly increase the cost. It would require additional staff.
- 2) Tree clearing is generally done with hand tools.

In response to concerns expressed by the public regarding tree clearing by Public Works in street right-of-way, the committee looked at several operational changes that could minimize complaints from the public (and the costs associated):

- a) When responding to a street or neighborhood, only clear sections of trees that need to be cleared. This will not increase direct costs, but makes crews less efficient over time. There should be fewer complaints, since specific reasons can be provided to adjacent property owners for the tree removal, rather than its policy that clearing the entire street or neighborhood is policy.
- b) Property owners sometimes complain that the results of tree clearing or brush cutting is unsightly. This could be mitigated in several ways:
 - 1) Hire additional staff to assist in cleanup. The use of full time staff to complete seasonal, low skilled cleanup is not cost effective. The use of part time employees would be more cost effective. The use of seasonal parks employees might be a solution. All existing employees are fully engaged in their normal duties. Cost to hire additional workers 2 workers @ \$20/hr x 25 days = \$1,000. Plus cost of supervision = 8 hours x \$40/hr = \$320. Total cost \$1,320.
 - 2) Hydro seeding disturbed areas would significantly improve aesthetics and minimize potential for erosion after clearing/ditching operations. Estimated cost = \$7,500.

Additional Topics evaluated by the Committee:

A) Policy Of Other Municipalities

- 1) **Municipality of Anchorage** - Response provided by Lead Right of Way Enforcement Officer:

Does Anchorage have any formal or informal policy on ROW clearing short of mowing down all vegetation in the applicable ROW? Yes, any "use" of the right of way requires a right of way use permit. The Municipality of Anchorage will permit the approved scope of work within a public place. Title 24 addresses this in code. I will paste a definition list and a couple applicable code sections.

Are property owners responsible for maintaining the ROW in front of their property? Yes and No. MOA requires some commercial and businesses in specific zoning areas to keep the sidewalk adjacent to their property clear. I will paste the code section below. MOA has the final say on trees and brush in a public place. This is necessary for both safety reasons

as well as protection of infrastructure. I already provided the code section in an earlier email.

Are there best practices in place for landowners that address issues such as slope stability and how to make sure privacy vegetation buffers are on the property and not in the ROW? *This is done through code, Municipality of Anchorage Specifications and design Criteria Manual, and not policy. A 2:1 slope is permissible and any retaining wall over 4' requires an engineered design and permit through building safety. That addresses the issues on property. As MOA has management authority and ownership of the row and public use easement and use must be reviewed and permitted through the ROW Section. Any non-permitted use is subject to enforcement action and removal.*

Does Anchorage do any community education/outreach on ROW maintenance regarding either how to maintain, own, or why ROW maintenance is needed? *MOA has a website. In addition, our enforcement officers continually work with the public to Educate, Inform and Enforce. In that order.*

How does Anchorage inform property owners of upcoming ROW maintenance (flyers, knocking on doors, letters to residence, none)? *There is no requirement for MOA to notify property owners of maintenance or construction projects within a public place. There are however some who do. Our Project Management and Engineering project teams send out mailers to notify the public of upcoming construction projects performed for MOA. Our Street Maintenance delivers fliers to properties on large maintenance projects. Not on small projects where they are in and out quickly. Some utility companies' mail fliers and others do not. Small contractors doing water and sewer services seldom notify adjacent properties.*

2) **City of Ketchikan** - Response provided by Public Works Administrative Assistant

Does Ketchikan have any formal or informal policy on ROW clearing short of mowing down all vegetation in the applicable ROW? *Yes, most of our ROW is forested. Homeowner must get City Council approval to remove trees in the ROW.*

Are property owners responsible for maintaining the ROW in front of their property? *We do not have a formal regulation, but with good cause we can remove trees/vegetation in the ROW.*

Are there best practices in place for landowners that address issues such as slope stability and how to make sure privacy vegetation buffers are on the property and not in the ROW? *We have wall and slope standards, but the City does not have privacy buffers in place.*

Does Ketchikan do any community education/outreach on ROW maintenance regarding either how to maintain, own, or why ROW maintenance is needed? *We do not.*

How does Ketchikan inform property owners of upcoming ROW maintenance (flyers, knocking on doors, letters to residence, none)? *Yes, we knock on doors and send letters if necessary.*

Concerns of City Council Committee Members/Heart of the Problem

Council Member Evensen wanted to make sure the City is still able to maintain ditches. However, he felt like Homer has been surviving all this time w/o pro-active clearing. Evensen asked what the condition of the ditches are. Public Works Director Meyer said in higher density development areas they are in reasonably good shape; in lower density developed areas (especially the annexed areas), they need attention or ditches are non-existent.

Council Member Lord would like to see direction from Council that is less prescriptive. Essentially, she would like Public Works to have the authority and support of council but not work under the assumption that 100% of the ROW will be cleared edge to edge. Can we clear as needed instead of proactively? She suggested a general shift in philosophy “if the trees are not a problem, then PW won’t take them”. Council Member Lord Rachel wants to see what other communities are doing, improve land owner outreach for what they can do on their private property, focus on community education on maintaining ROW and why, and define best practices for private landowners with slope stability and buffers (what grows well, etc.).

Public Works Director Meyer provided a map that showed areas of significant street right-of-way clearing completed in the last 10 years (to the best of his knowledge). This map is attached. He acknowledged that the brush cutting/right-of-way clearing activities of the Public Works Department has been perceived by the Council as too aggressive (based on complaints received).

Public Works has no interest or budget to proactively clear trees from all street right-of-way just for the sake of clearing trees. Public Works has proactively attempted to remove trees using City crews that interfere with road maintenance equipment or remove trees to allow City crews to create ditching that in our opinion would dramatically improve road conditions.

He also acknowledged that the community has established a HART fund that subsidizes road improvements to dramatically improve road conditions. Maybe Public Works should rely on HART assessments to solve road stability concerns, rather than using the City’s operating budget.

Mr. Meyer also talked about how expensive it is to mobilize equipment to an area. Public Works does complete some additional clearing in a neighborhood that may not be immediately necessary to efficiently use equipment and labor. Remobilizing next year to take care of what could be dealt with today may not be what the community and the Council want. This could be a part of any ROW clearing policy. He also stated that once you clear some trees, the ones around it are subject to failure from wind, etc. – and this too should be dealt with in any new policy.

Recommendation:

Attached is the draft policy developed by the Committee that would, if approved by the City Council, guide Public Works in its efforts to maintain rights-of-way within the City limits and document standard procedures for the public.