



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

Public Works

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## Memorandum 20-051

TO: City Council

THROUGH: Marvin Yoder, City Manager

FROM: Jan Keiser, Director of Public Works

DATE: April 22, 2020

SUBJECT: Resolution 20-040 extending Resolution 19-073(S), which created a moratorium on vegetation clearing

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**Issue:** Resolution 19-073(S) imposing a moratorium on clearing in City rights-of-way expires May 1, 2020. We request an extension of this moratorium to June 1, 2020.

**Background:** Ordinance 16-51 effective October 25, 2016, issued specific authority to the City to remove vegetation from City rights of way. Ordinance 19-27(S), effective June 25, 2019, expanded upon that authority by granting the public works director with the “*sole discretion and authority to remove...*” any vegetation deemed to be “*more likely than not*” to generally interfere with safety, effective maintenance and the City’s road standards.

Resolution 19-073(S) effective October 14, 2019, imposed a moratorium on “*cutting, clearing and removal of trees and vegetation located in City Rights of Way (ROW) until May 1, 2020 and established a ROW Policy Evaluation Team*”. Since the passage of Resolution 19-073(s), the City hired me as the new Director of Public Works, declared a state of emergency due to the Covid-19 pandemic, and changed its City Manager. The combined effect of these events have delayed the work of the ROW Policy Evaluation Team. An extension of the moratorium will give me time to research this important issue, confer with the ROW Policy Evaluation Team and propose new language. The new language will address concerns about the Public Works’ Director’s use of his/her “*sole discretion and authority*” regarding the removal of vegetation in the City’s rights of way.

In particular, I am researching best practices utilized by the Federal Highway Administration, the Kenai Borough and other public agencies, engaged in maintaining gravel/paved roads. I have two immediate goals. Goal #1 is to identify more specific criteria, based on best practices, which will govern instances where removal of vegetation is required. Goal #2 is to identify a process where such instances are documented so timely notice can be given to city officials and affected property owners.

The Public Works Department will not engage in any tree removal or vegetation clearing until the moratorium is lifted, except where injury or property damage may result.

**Action Recommended:** That the City Council extend the moratorium to give this important work time to be completed in a thoughtful manner.

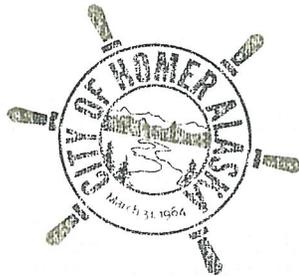


45 d. Has the potential if not removed to damage pavement or other improvements in  
46 the right-of-way;

47 e. Has the potential if not removed to damage or interfere with the operation of  
48 overhead or underground public utility facilities in the right-of-way.  
49

50 Section 2. This ordinance is of a permanent and general character and shall be  
51 included in the City code.  
52

53 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 24<sup>th</sup> day of October, 2016.  
54



CITY OF HOMER

  
BRYAN ZAK, MAYOR

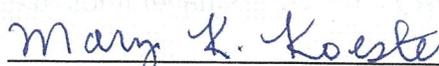
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60 ATTEST:

  
JO JOHNSON, MMC, CITY CLERK

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68 AYES: 6  
69 NOES: 0  
70 ABSTAIN: 0  
71 ABSENT: 0  
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74 First Reading: 10/10/16  
75 Public Reading: 10/24/16  
76 Second Reading: 10/24/16  
77 Effective Date: 10/25/16  
78

79 Reviewed and approved as to form:

80  
81  
82   
83 Mary K. Koester, City Manager  
84

  
Holly C. Wells, City Attorney

85 Date: 10.24.16

Date: 11.7.16

1 CITY OF HOMER  
2 HOMER, ALASKA

Stroozas/Lord

3  
4 ORDINANCE 19-27(S)

5  
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,  
7 AMENDING HOMER CITY CODE CHAPTER 11.36, "VEGETATION IN  
8 RIGHTS-OF-WAY" TO AMEND HOMER CITY CODE 11.36.020 AND  
9 ADD HOMER CITY CODE 11.36.030 "REMOVAL FOR COMPLIANCE-  
10 PUBLIC WORKS DIRECTOR DISCRETION," TO PERMIT PUBLIC  
11 WORKS DIRECTOR TO AUTHORIZE REMOVAL OF VEGETATION TO  
12 BRING ROADS CONSTRUCTED PRIOR TO CITY REGULATION INTO  
13 COMPLIANCE WITH CITY LAWS AND CONSTRUCTION  
14 PROCEDURES.

15  
16 WHEREAS, In October 2016, the Homer City Council adopted Ordinance 16-51 clarifying  
17 the City of Homer's right and obligation to maintain public rights-of-way; and

18  
19 WHEREAS, There are a number of roads, especially in the annexed portion of the City,  
20 that were not built to City standards and as such have offset center lines and narrow rights-of-  
21 way, making maintenance difficult (especially snow removal/storage) and particularly  
22 noticeable to adjoining property owners.

23  
24 NOW THEREFORE, The City of Homer Ordains:

25  
26 Section 1. Homer City Code Chapter 11.36, "Vegetation in Rights-of-Way, is amended  
27 as follows:

28  
29 Chapter 11.36

30  
31 VEGETATION IN RIGHTS-OF-WAY

32  
33 Sections:

34 11.36.010 Vegetation in rights-of-way.

35 11.36.020 Removal of vegetation in rights-of-way **and rights-of-way maintenance.**

36 **11.36.030 Removal for compliance - public works director discretion.**

37  
38 11.36.010 Vegetation in rights-of-way.

39  
40 All or any part of a tree, shrub, **ground material** or other vegetation that is located in,  
41 over or under a public right-of-way in the city is subject to removal by the city as necessary for  
42 the reasonable public use of the right-of-way, including without limitation removal as

43 authorized in HCC 11.36.020, regardless of whether:

44

45 a. The vegetation existed in, over or under the right-of-way before the granting,  
46 dedication or improvement of the right-of-way;

47 b. The vegetation was planted in the right-of-way by another person, including without  
48 limitation an owner of property adjacent to the right-of-way; or

49 c. The vegetation originated on property adjacent to the right-of-way, to the extent that  
50 limbs, branches or roots of the vegetation extend into, over or under the right-of-way.

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52 **11.36.020 Removal of vegetation in rights-of-way and rights-of-way maintenance.**

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54 **Except as otherwise provided in this chapter,** ~~the~~ city manager may cause the  
55 removal of all or any part of a tree, shrub, **ground material or** other vegetation that is located  
56 on, over or under a public right-of-way if the city manager finds that the vegetation:

57

58 a. Obstructs or interferes with the use of the right-of-way by vehicular or pedestrian  
59 traffic;

60 b. Obscures visibility to or from the right-of-way or otherwise constitutes a safety  
61 hazard;

62 c. Interferes with the maintenance of the right-of-way, including without limitation  
63 paving, grading, cleaning, **drainage,** and snow removal;

64 d. Has the potential if not removed to damage pavement or other improvements in the  
65 right-of-way;

66 e. Has the potential if not removed to damage or interfere with the operation of  
67 overhead or underground public utility facilities in the right-of-way.

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69 **11.36.030 Removal for compliance - public works director discretion**

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71 **a. The public works director retains the sole discretion and authority to remove or**  
72 **retain any part of a tree, shrub, ground material, or other vegetation located from the**  
73 **outer edge to three feet inside of a City-owned right-of-way abutting a road acquired by**  
74 **the City after the road was constructed.**

75

76 **b. Notwithstanding subsection (a), the public works director shall only exercise his**  
77 **or her authority under this section when he or she determines it is more likely than not**  
78 **that the removal of all or part of a tree, shrub, ground material, or other vegetation**  
79 **within the three feet area will improve safety, allow for effective maintenance activities,**  
80 **or otherwise make the road more compliant with City laws and procedures.**

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82 Section 2. This ordinance shall take effect upon its adoption by the Homer City  
83 Council.

**[Bold and underlined added. Deleted language stricken through]**



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**CITY OF HOMER  
HOMER, ALASKA**

Lord/Aderhold

**RESOLUTION 19-073 (S)**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,  
ESTABLISHING A MORATORIUM ON CUTTING, CLEARING OR  
REMOVAL OF TREES AND VEGETATION LOCATED WITHIN PUBLIC  
RIGHTS OF WAY (ROW) BETWEEN OCTOBER 15, 2019 AND MAY 1,  
2020 AND ESTABLISHING A ROW POLICY EVALUATION TEAM

WHEREAS, For many years Public Works did not regularly maintain City Rights of Way (ROW), leading to overgrowth and recent increased vegetation clearing activities; and

WHEREAS, The City adopted Ordinances 16-51 and 19-27(S) establishing Homer City Code 11.36 and outlining laws regarding the City of Homer's actions for public use of City ROW; and

WHEREAS, This law does not address potential concerns in areas of steep slopes, landmark trees, traffic volume, zoning classification, or property covenants but is a "one size fits all" approach; and

WHEREAS, The City has received complaints over the years about vegetation removal activities, including debris, noise, and scope of clearing in the rights of way; and

WHEREAS, the Public Works Department has expressed concerns regarding the cost and time required to effectively maintain ROW across the City; and

WHEREAS, The Homer City Council should examine opportunities to create a ROW maintenance policy that maintains city infrastructure, promotes visibility and safety, is cost effective, and appreciates adjacent landowner concerns; and

WHEREAS, Such policy may require legal guidance in regards to both City and landowner rights and responsibilities under state and local laws, including private covenants.

NOW, THEREFORE, BE IT RESOLVED that the City of Homer establishes a moratorium on cutting, clearing, or removal of vegetation located within public ROW between October 15, 2019 and May 1, 2020; and

BE IT FURTHER RESOLVED that during the aforementioned period, the City Council of Homer Alaska will evaluate the City's ROW maintenance policy by appointing two Council members to work with the City Manager and appropriate staff, as determined by the City

43 Manager, to propose alternative ROW maintenance policies to City Council no later than the  
44 last Council meeting in March, 2020; and

45  
46 BE IT FURTHER RESOLVED that the evaluation team shall discuss and evaluate policy to  
47 include the following issues of concern:

- 48
- 49 1. Drainage, snow storage and plowing, sight distances, utility operations and
  - 50 maintenance, and equipment and emergency vehicle response
  - 51 2. Steep slopes, traffic volumes, zoning districts, and property covenants
  - 52 3. Debris cleanup and aesthetics, including landmark trees
  - 53 4. Adjacent landowner concerns including timing and noise
  - 54 5. Landowner maintenance options and opportunities
  - 55 6. Legal rights and responsibilities of City and landowners, including enforcement
  - 56 7. Cost of implementation
- 57

58 BE IT FURTHER RESOLVED that in order to address these issues, the evaluation team may  
59 seek legal counsel from the City Attorney.

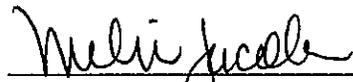
60  
61 PASSED AND ADOPTED by the City Council of Homer, Alaska, this 14 day of October,  
62 2019.

63  
64 CITY OF HOMER

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68 KEN CASTNER, MAYOR

69  
70 ATTEST:

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72  
73 MELISSA JACOBSEN, MMC, CITY CLERK

74  
75 Fiscal Note: N/A

