



# City of Homer

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Public Works

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## Memorandum 22-126

TO: Mayor Castner and Homer City Council  
THROUGH: Rob Dumouchel, City Manager  
FROM: Janette Keiser, PE, Director of Public Works  
DATE: July 13, 2022  
SUBJECT: Pushing snow and other obstructions into the public ROW

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- I. **Issue:** The purpose of this Memorandum is to recommend a code revision to prohibit - - pushing snow or otherwise encroaching into into City road rights-of-way and easements.
- II. **Background:** The Public Works Operators have had a long-standing problem with people pushing snow from their private property into the rights-of-way as well as other ROW and easement encroachments. This practice interferes with the Operators' ability to efficiently remove snow and keep traffic flowing on City Streets or otherwise interfering with an easement. It is particularly a problem with snow when this occurs after the City crews have cleared the streets, they have to come back, and do it again. Clearing up someone else's mess causes undue expense to the City residents. Since municipal powers are liberally construed, it is reasonable to conclude that the City has existing authority to control its rights of ways and remove encroachments and obstructions to protect the public safety. To solidify that authority the attached ordinance expressly prohibits the disposal of snow and other encroachments into the right of way.
- III. **Recommendation:** We recommend the Homer City Council adopt a new section to the Homer City Code, which is based on 17 AAC 10.020(g).

### [17 AAC 10.020. Driveways and approach roads](#)

(a) A driveway or approach road constructed under permit within a highway right-of-way is the property of the state, but all cost and liability arising from the construction, operation, or maintenance of a driveway or approach road is at the sole expense of those lands served. The department is not obligated to change its maintenance practices to accommodate a driveway or approach road constructed under a permit, or to incur any additional expense removing snow berms or other obstructions from a driveway or approach road within a right-of-way resulting from the department's activities, or activities under a permit issued under [17 AAC 15](#).

(b) A permittee under this section shall construct and maintain a driveway or approach road in such a manner that the highway, and all of the highway's appurtenances or facilities, including drainage facilities, pipes, culverts, ditches, traffic control devices, street lights, pathways, and sidewalks are not impaired or endangered in any way by the construction or maintenance. The department will include in a permit express conditions that provide for the enforcement of this subsection and (a) of this section.

(c) In a driveway or approach road permit, except for a driveway or approach road included in a utility permit described in [17 AAC 15](#), the department will include a clause that requires the permittee to adjust or relocate the driveway or approach road without cost or liability to the department if the use or safety of the highway requires that the driveway or approach road be adjusted or relocated. The department also will include in the permit a requirement that the permittee shall indemnify, defend, and hold harmless the state, or officers, agents, employees, and contractors of the state in any matters pertaining to the driveway or approach road, and that the permittee shall assume all liability or cost in connection with the driveway or approach road.

(d) The department will, in its discretion, issue a permit for a driveway or approach road on any highway that is not a controlled access facility, if the department determines that the driveway or approach road is proposed to be located in a manner that is consistent with the requirements of [17 AAC 10.040](#), that is compatible with the public safety, and that does not interfere with the use of the highway. In the permit, the department will require that the permittee, the permittee's heirs, and the permittee's successors in interest, or assignees shall assume all cost and liability occasioned by either the construction or maintenance of the driveway or approach road.

(e) If a driveway or approach road that provides ingress to or egress from adjoining land is replaced during a project to construct or reconstruct a highway, the department, as a cost of construction, will, in its discretion, replace the driveway or approach road in a manner and location consistent with the requirements of [17 AAC 10.040](#).

(f) Repealed 5/4/2000.

(g) The burden and cost of maintaining a driveway or approach road within a highway right-of-way is upon the lands served by a driveway or approach road. A driveway or approach road must be maintained to conform the requirements of [17 AAC 10.040](#) and to accepted engineering practice. The department is not obligated to remove snow berms plowed into a driveway or approach road during its highway snow removal activities. A permittee may not plow snow from a driveway or approach road onto a highway, or interfere with highway drainage structures.

(h) If an emergency situation arises from the use, operation, or maintenance of a driveway or approach road issued a permit under this section or [17 AAC 10.060](#), that compromises the design or safety of a highway, and the department lacks sufficient time to contact the permittee or a permittee's heirs, successors in interest, or assignees to correct the situation, the department will, in its discretion, take whatever steps necessary to cure the situation and recover the costs of the cure from the person responsible for the operation and maintenance of the driveway or approach road.