

**CITY OF HOMER
HOMER, ALASKA**

Evensen/Mayor

ORDINANCE 20-20

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
REPEALING HCC 11.36 VEGETATION IN RIGHTS-OF-WAY.

WHEREAS, In 2016 the City adopted Ordinance 16-51 and updated City Code 11.36, which established that trees and vegetation could be cut, cleared, or mowed throughout street side right-of-way (ROW) “without limitation”; and

WHEREAS, While policy suggested that removal of vegetation would only occur following a finding of necessity issued by the City Manager, the practice has been interpreted to require complete and total clear-cutting of ROW areas as determined by the Public Works Department; and

WHEREAS, Absent administrative review, oversight, permit or work-order procedures, clearing has been inconsistently applied; clearing for harvest has occurred within ROW areas by third party; and trees and vegetation that apparently posed no threat (as defined by purpose for removal) have been removed; and

WHEREAS, Removal has included vertical cutting of trees and vegetation outside of the ROW but overhanging the ROW to heights exceeding 16 feet; and

WHEREAS, Ordinance 16-51 included annexed portions of the City, including ROW of outlying streets of twenty foot widths; and

WHEREAS, Borough practices for ROW areas just outside city limits are comparatively narrower and less invasive; pre-2016 ROW-related practices inside city limits were also narrower and less invasive; and

WHEREAS, A new ordinance should be prepared that provides for unique cutting to allow for visibility, utility installation and maintenance, roadway maintenance, and roadway drainage under the written direction and authority of an administrative officer.

NOW THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code section 11.36 is repealed in its entirety.

Chapter 11.36
VEGETATION IN RIGHTS-OF-WAY
Sections:

44 ~~11.36.010—Vegetation in rights of way.~~

45 ~~11.36.020—Removal of vegetation in rights of way and rights of way maintenance.~~

46 ~~11.36.030—Removal for compliance—Public Works Director discretion.~~

47 ~~11.36.010—Vegetation in rights of way.~~

48

49 All or any part of a tree, shrub, ground material or other vegetation that is located in,
50 over or under a public right of way in the City is subject to removal by the City as
51 necessary for the reasonable public use of the right of way, including without
52 limitation removal as authorized in HCC 11.36.020, regardless of whether:

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54 a. The vegetation existed in, over or under the right of way before the granting,
55 dedication or improvement of the right of way;

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

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60 c. The vegetation originated on property adjacent to the right of way, to the extent
61 that limbs, branches or roots of the vegetation extend into, over or under the right of
62 way. [Ord. 19-27(S) § 1, 2019; Ord. 16-51 § 1, 2016].

63

64 ~~11.36.020—Removal of vegetation in rights of way and rights of way maintenance.~~
65 Except as otherwise provided in this chapter, the City Manager may cause the removal
66 of all or any part of a tree, shrub, ground material or other vegetation that is located
67 on, over or under a public right of way if the City Manager finds that the vegetation:

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69 a. Obstructs or interferes with the use of the right of way by vehicular or pedestrian
70 traffic;

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72 b. Obscures visibility to or from the right of way or otherwise constitutes a safety
73 hazard;

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75 c. Interferes with the maintenance of the right of way, including without limitation
76 paving, grading, cleaning, drainage and snow removal;

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78 d. Has the potential if not removed to damage pavement or other improvements in
79 the right of way;

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81 e. Has the potential if not removed to damage or interfere with the operation of
82 overhead or underground public utility facilities in the right of way. [Ord. 19-27(S) § 1,
83 2019; Ord. 16-51 § 1, 2016].

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84 ~~11.36.030—Removal for compliance—Public Works Director discretion.~~

85

86 ~~a. The Public Works Director retains sole discretion and authority to remove or retain~~
87 ~~any part of a tree, shrub, ground material, or other vegetation located from the outer~~
88 ~~edge to three feet inside of a City-owned right-of-way abutting a road acquired by the~~
89 ~~City after the road was constructed.~~

90
91 ~~b. Notwithstanding subsection (a) of this section, the Public Works Director shall only~~
92 ~~exercise their authority under this section when they determine it is more likely than~~
93 ~~not that the removal of all or part of a tree, shrub, ground material, or other~~
94 ~~vegetation within the three-foot area will improve safety, allow for effective~~
95 ~~maintenance activities, or otherwise make the road more compliant with City laws~~
96 ~~and procedures. [Ord. 19-27(S) § 1, 2019].~~

97
98 Section 2. This ordinance is of a permanent nature and general character and
99 shall be included in Homer City Code.

100
101 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____, 2020.

102
103 CITY OF HOMER
104
105 _____
106 KEN CASTNER, MAYOR

107 ATTEST:
108
109 _____
110 MELISSA JACOBSEN, MMC, CITY CLERK

111
112 YES:
113 NO:
114 ABSTAIN:
115 ABSENT:
116
117 First Reading:
118 Public Hearing:
119 Second Reading:
120 Effective Date:
121
122 Reviewed and approved as to form.

123
124 _____
125 Marvin Yoder, Interim City Manager

126
127 _____
Michael Gatti, City Attorney

127 Date: _____ Date: _____