

**Business of the City Council
 City of Ruston, WA**

**Subject: Ordinance #1496 – Update
 Street Excavation Permit
 Chapter 14.08 RMC**

Dept. Origin: City Attorney’s Office

**Prepared by: Jennifer Robertson
 City Attorney**

For Agenda of: May 16, 2017

Exhibits: Ordinance #1496

Proposed Council Action:

This is scheduled for First Reading. No
 Action Requested.

Concurred by Mayor:	Initial & Date
Approved/form by City Atty:	<u>JSR / 5-2-17</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

Chapter 14.08 of the Ruston Municipal Code, entitled “Street Excavation Permits” establishes the requirements and standards for performing work in City rights-of-way. The City has been engaged in updating a pole lease agreement with a communication company. Through that process, there has been both resistance and lack of clarity by the company about which permit process to utilize for updating, replacing or adding new pole attachments. The City has adopted several chapters regarding use of the City’s right of way. These are all found in Title 14 RMC and include Chapters 14.03 – Right of Way Encroachment Permits; 14.06 Right of Way Use – Master Permits and Utility Relocation; and 14.08 Street Excavation Permits.

Although many utilities utilize Chapter 14.06 which provides for master permits that can be used over time for many projects, some utilities would rather do “one off” type permits for some work. The City has historically utilized Street Excavation Permits (“SEP”) for one time projects involving the rights of way. This is the permit process that the City staff and consultants are most familiar with as it is utilized frequently. However, the SEP chapter does not describe pole attachment type work as included in this permit process. Therefore, in order to allow flexibility by the utility companies choose between the Master Permit or the SEP, additional language is needed in the SEP Chapter to include these types of projects within the SEP process.

In addition to the inclusion of pole work into the SEP chapter, housekeeping amendments (such as replacing “town” with “city”) are being made to bring the entire chapter up to date.

The following is a summary of proposed changes:

<u>Section Number</u>	<u>Description of Revisions</u>
14.08.010 – Purpose	Language is added to expand the work that may be done under the SEP process.

- 14.08.020 – Permit – Added to the SEP permit is “work upon or involving any structure Required. (including utility poles or the installation or modification of utility cabinets) located within 15 feet of a public street of the City”.
- 14.08.030 – Definitions. The language in .020 above was added to the definition of “excavate” or “excavation.”
- 14.08.040 – Permit – This section describes what is needed for an application. Application. Subsection “f” was amended to add required information for utility pole work.
- 14.08.045 – Application standards. A new subsection “e” was added specific to utility pole work. The requirements in this section includes the application materials that are required under the pole use agreement.
- 14.08.050 – Permit – A new subsection “g” was added to this section for utility pole Criteria for approval. attachments to require: a consideration of whether “the proposal is feasible given the current load on the poles, the space available on the poles, whether the utility has a current franchise or other agreement with the City, how this proposal is consistent with the terms of any agreement between the City and the applicant, the danger (if any) created by the new equipment, and the visual impact of the new equipment.”
- 14.08.060, 14.08.070, Housekeeping amendments only.
 14.08.080, 14.08.090,
 14.08.100

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

This is on for First Reading. No Action requested. Unless directed otherwise, this will come back to Council on June 6, 2017 for Second Reading and Adoption.

ORDINANCE NO. 1496

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, RELATING TO STREET EXCAVATION PERMITS, AMENDING CHAPTER 14.08 OF THE RUSTON MUNICIPAL CODE, AMENDING SECTIONS 14.08.010, 14.08.020, 14.08.030, 14.08.045, 14.08.050, 14.08.060, 14.08.070, 14.08.080, 14.08.090 AND 14.08.100, FOR THE PURPOSE OF CLARIFYING THAT UTILITY WORK INVOLVING UTILITY POLES IS INCLUDED IN THE DEFINITION OF “STREET EXCAVATION” AND ESTABLISHING APPLICATION AND APPROVAL CONDITIONS REGARDING THE SAME, MAKING OTHER HOUSEKEEPING AMENDMENTS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in accordance with RCW 35A.11.020 the City has the authority to control its rights-of-way; and

WHEREAS, proper use and construction within these rights-of-way is important to the public health, safety and welfare; and

WHEREAS, the City of Ruston previously adopted Chapter 14.08 of the Ruston Municipal Code entitled “Street Excavations Permits”; and

WHEREAS, although the City has adopted Chapter 14.06 “Right of way use – Master Permits and Utility Relocation”, not every utility desires to use the master permit process; and

WHEREAS, in order to have consistent application procedures for all work in or near the City’s rights of way, the Planning Director recommends that the City add utility work on poles in the rights of way to Chapter 14.08; and

WHEREAS, the City Council finds that it is in the public interest to amend Chapter 14.08 RMC to make it applicable to aerial utility work within the rights of way; and

WHEREAS, on May 16, 2017, the City Council held the first reading of this Ordinance;
and

WHEREAS, on June 6, 2017, the City Council adopted this Ordinance during its regular meeting at the second reading; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 14.08.010 of the Ruston Municipal Code is hereby amended to read as follows:

14.08.010 - Purpose.

The purpose of this chapter is to establish a regulatory process for excavation and other work in or adjacent to city rights-of-way within the ~~Town~~ City of Ruston.

Section 2. Section 14.08.020 of the Ruston Municipal Code is hereby amended to read as follows:

14.08.020 - Permit — Required.

It is unlawful for any person to dig up, break, excavate, tunnel, undermine or in any manner break up any street, sidewalk, driveway or other structure within 15 feet of a public street of the ~~Town~~ City or to perform work upon or involving any structure (including utility poles or the installation or modification of utility cabinets) located within 15 feet of a public street of the City, or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit, or leave upon any street any earth or other excavated material obstructing or tending to interfere with the free use of any street, except as provided for in this chapter, unless such person shall first have obtained a street excavation permit from the Mayor or his designee. For the purposes of this chapter, all of the activities listed in this section shall constitute "excavation".

Section 3. Section 14.08.030 of the Ruston Municipal Code is hereby amended to read as follows:

14.08.030 - Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

"Applicant" means any person making written application to the Mayor or his designee for an excavation permit hereunder. The term "applicant" also applies to a person who has received a permit from the ~~Town~~ City in accordance with this chapter.

"Emergency" means a situation that places life or property at risk of imminent harm.

"Excavate" or "excavation" means any opening in the surface of a street made in any manner whatsoever, except an opening into a lawful structure below the surface of a street, the top of which is flush with the adjoining surface and so constructed as to permit frequent opening without injury or damage to the street. For the purposes of this chapter, taking any of the following actions will also be considered "excavation": to dig up, break, excavate, tunnel, undermine or in any manner break up any street, sidewalk, driveway or other structure within 15 feet of a public street of the ~~Town~~ City or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit, or leave upon any street any earth or other excavated material obstructing or tending to interfere with the free use of any street or to perform work upon or involving any structure (including utility poles or the installation or modification of utility cabinets) located within 15 feet of a public street of the City. "Excavation" does not include digging outside of the improved portion of the street or right-of-way for landscaping projects that do not involve excavation deeper than 12 inches unless such projects have a potential impact on the structural integrity of the street or right-of-way or interfere with utilities or other facilities under the street or right-of-way.

"Facility" means pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under or over any street.

"Right-of-way" means the area of land dedicated to the ~~Town~~ City, by whatever means, for transportation purposes whether or not improved.

"Street" means the improved portion of the right-of-way including, but not limited to, motor vehicle travel lanes, sidewalks, bike lanes, gutter, storm drainage facilities, traffic control facilities, turnouts or structures in, upon, over or under such street for exclusive or nonexclusive use as permitted by the ~~Town~~ City, including landscaping, visual and sound buffers between such street and adjacent properties.

"Street excavation permit" is a permit issued by the Mayor or his designee in accordance with this chapter.

"Substructure" means any pipe, conduit, duct, tunnel, manhole, vault, buried cable or wire, or any other similar structure located below the surface of any street.

Section 4. Section 14.08.040 of the Ruston Municipal Code is hereby amended to read as follows:

14.08.040 - Permit — Application.

A complete application for a street excavation permit shall consist of the following:

- (a) Application fee.
- (b) A complete street excavation permit application form.
- (c) Name and address of the applicant.
- (d) Nature, location and purpose of the excavation.
- (e) Date of commencement of the excavation and estimated date of completion.
- (f) Plans showing the location and extent of the proposed excavation work, except that plans shall not be required when excavations are being made for service connections by a utility or for the location of trouble in conduits, pipes or making repairs by a utility, however, the utility work general location shall be shown on the map and if involving utility poles, the specific poles shall be clearly identified as well as the information contained in RMC 14.08.045(e).
- (g) If the proposed excavation work requires or could require the applicant to use or access any private property, the applicant shall provide written authorization from the owner of the property to demonstrate he has the authority to enter onto or use such property.
- (h) Information demonstrating that the applicant has the financial ability to complete the project.
- (i) Information demonstrating that the applicant has the technical ability to properly complete the project in accordance with City standards.
- (j) All application plans and other materials shall be consistent with the "Application Standards" contained in RMC 14.08.045 below and with the applicable standards contained in Chapter 12.09 RMC.
- (k) Such other information as may be required by the Mayor or his designee.

Section 5. Section 14.08.045 of the Ruston Municipal Code is hereby amended to add a new subsection "e" to read as follows:

14.08.045 - Application standards.

The following standards shall apply to all applications submitted under this chapter.

* * * * *

(e) For utility pole attachments, the applicant shall provide working sketches or maps correctly identifying each pole to which the equipment is to be attached and any other information (for example, with regard to the proposed nature, appearance, circuit arrangement and line sags of the equipment), as well as the following information:

(1) The type of equipment to be attached;

(2) The utility poles affected by the new Equipment to be attached;

(3) The amount of space desired on each pole affected by the equipment;

(4) The weight of the new equipment;

(5) The proposed location of the equipment on the affected poles;

(6) The action that the applicant intends to take to accommodate any additional strain that will be imposed upon the affected poles by the equipment; and

(7) The action that the applicant proposes to take to make the addition of the new equipment aesthetically pleasing, including removal of excess wires/cables belonging to the applicant, using technology to make the equipment smaller or less noticeable, etc.

Section 6. Section 14.08.050 of the Ruston Municipal Code is hereby amended to add a new subsection “g” to read as follows:

14.08.050 - Permit — Criteria for approval.

Street excavation permits are a permit for the use of a public facility and as such are not subject to the project permit processing requirements in RMC Title 19. The Mayor or his designee's decision granting, denying or conditioning a street excavation permit shall be based upon the following considerations:

* * * * *

(g) If the proposal is for attaching equipment to a utility pole, whether the proposal is feasible given the current load on the poles, the space available on the poles, whether

the utility has a current franchise or other agreement with the City, how this proposal is consistent with the terms of any agreement between the City and the applicant, the danger (if any) created by the new equipment, and the visual impact of the new equipment.

(h) Proposals which would result in a net loss of on-street parking are not permitted.

Section 7. Section 14.08.060 of the Ruston Municipal Code is hereby amended to read

as follows:

14.08.060 - Same — Conditions for approval.

Any street excavation permit issued by the Mayor or his designee shall contain at least the following conditions to which the applicant shall comply:

- (a) The applicant shall be required to restore the excavation area to the same or better condition as existed prior to the excavation work in accordance with the specifications of the Mayor or his designee and the ~~Town~~ City's public work standards.
- (b) The applicant shall be required to indemnify and hold the ~~Town~~ City harmless from any and all claims for bodily injury or property damage that may arise out of or in connection with the applicant's permitted use. The applicant shall be required to sign an indemnification agreement prepared by the ~~Town~~ City Attorney as a condition of receiving the permit.
- (c) Prior to beginning any work, the applicant shall provide the ~~Town~~ City with proof of insurance that will remain in effect during all periods of use for street excavation permit. Such insurance will provide for public liability and property damage and shall be in a form and type that is acceptable to the ~~Town~~ City. The limits of said insurance shall be established by the Mayor or his designee. A certificate evidencing the existence of said insurance or, upon written request of the Mayor or his designee, a duplicate copy of the policy shall be provided to the ~~Town~~ City as evidence of the existence of the insurance protection prior to the applicant beginning any work. Said insurance shall not be cancelable or reduced without prior written notice to the ~~Town~~ City, not less than 30 days in advance of the cancellation or alteration. Said insurance shall name the ~~Town~~ City as a named or additional insured and shall be primary as to any other insurance available to the ~~Town~~ City.
- (d) The applicant shall provide to the ~~Town~~ City a performance bond sufficient to restore the street or sidewalk surface to its original condition and sufficient to guarantee and maintain the site of the excavation work for a 12-month period following restoration as is required by RMC 14.08.060(P). Such bond shall be provided in a form acceptable to the ~~Town~~ City Attorney. The amount of the bond shall be established by the Mayor or his designee.

- (e) The applicant shall take appropriate measures to assure that during the performance of the excavation work normal traffic flow conditions shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. The applicant shall maintain safe crossing for two lanes of vehicle traffic at all street intersections where possible, and safe crossing for pedestrians at intervals of not more than 300 feet. If any excavation is made across any public street, alley or sidewalk, adequate crossing shall be maintained for vehicles and pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one-half of the sidewalk width shall be maintained in and along such sidewalk line.
- (f) Any closing of streets shall only occur consistent with the provisions of Chapter 47.48 RCW, or as hereafter amended. The costs for such notice and closure shall be entirely borne by the applicant.
- (g) The applicant must take reasonable precautions to place and maintain at each end of such excavation and along the line thereof barriers or flags or warning lights or other equipment as may be prescribed by the Mayor or his designee. When dictated by field conditions, warning sign shall be placed far enough in advance of the construction operation to alert traffic properly within a street.
- (h) The excavation work shall be performed and conducted so as not to interfere with the access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, and all other vital equipment as designated by the Mayor or his designee.
- (i) The applicant shall not interfere with any existing facility without the written consent of the Mayor or his designee and the owner of the facility. If it becomes necessary to relocate any existing facility, such work shall be done by its owner. No facility owned by the ~~Town~~ City shall be moved to accommodate the applicant unless the cost of such work be borne by the applicant. The cost of moving privately owned facilities shall be similarly borne by the applicant unless other arrangements are made with the owners of the facility. The applicant shall support and protect all pipes, conduits, poles, wires, or other apparatus which may be affected in any way by the excavation work and do everything necessary to support, sustain, and protect them under, over, along, or across said work. In case of any said pipes, conduits, poles, wire or pipe coating or other encasement or devices or apparatus should be damaged, the applicant shall promptly notify the owners thereof. All damaged facilities shall be repaired by the agency or person owning them, and the expense of such repairs shall be charged to the applicant. It is the intent of this paragraph that the applicant shall assume all liability for damage to facilities, and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the applicant. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The applicant shall inform itself as to the existence and location of all underground facilities prior to initiating any work on site and protect the same against damage.

- (j) The applicant shall at all times, at his or its own expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures the applicant shall obtain permission from the owner of such private property for such purpose. The applicant shall obtain such permission as part of the permit application process outlined in RMC 14.08.040 above. The applicant shall at its own expense shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it shall be necessary for the applicant to trench through any lawn area, said area shall be reseeded or the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this chapter. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began.
- (k) All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians, or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the Mayor or his designee shall have the authority to require that the applicant haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the applicant's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.
- (l) As the excavation work progresses all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the applicant and shall be completed to the satisfaction of the Mayor or his designee. From time to time as may be ordered by the Mayor or his designee, and in any event immediately after completion of said work, the applicant shall at his or its own expense clean up and remove all refuse and unused materials of any kind resulting from said work, and upon failure to do so within 24 hours after having been notified to do so by the Mayor or his designee said work may be done by the Mayor or his designee and the cost thereof charged to the applicant.
- (m) The applicant shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all times maintained. The applicant shall make provisions to take care of all surplus water, muck, silt, slickings, or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

- (n) A hydra-hammer or similar equipment may be used in breaking up the pavement. Unstable pavement shall be removed over cave-outs and overbreaks, and the subgrade shall be treated as the main trench. Cutouts outside of the trench lines must be parallel to the trench line. The applicant shall not be responsible for the repair or pavement damage existing prior to the excavation.
- (o) Backfilling in any street opened or excavated pursuant to an excavation permit issued hereunder shall be compacted to a degree consistent with that of the undisturbed ground in which the trench was dug. Compacting shall be done by manual or mechanical tampers or vibrators, by rolling in layers, or by water settling as required by the soil in question and sound engineering practices. Fine material reasonably free from lumps and stones, selected from the spoil, shall be thoroughly compacted around and under the substructure to the upper level of such substructure. Above the upper level of the substructure, backfill material shall be placed to the subgrade of the pavement in lifts consistent with the type of soil involved. Broken pavement, large stones, roots, and other debris shall not be used in the backfill.
- (p) After completion of the work it shall be the duty of the applicant to guarantee and maintain the site of the excavation work in the same condition as it was prior to the excavation for 12 months after restoring it to its original or better condition.
- (q) Each applicant shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property, including compliance with the ~~Town~~ City's noise code.
- (r) Any monuments set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point or a permanent survey bench mark within the ~~Town~~ City shall not be removed or disturbed or caused to be removed or disturbed, except in case of an emergency, without first obtaining permission in writing from the Mayor or his designee. Permission to remove or disturb such monuments, reference points, or bench marks shall be granted only upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Mayor or his designee.
- (s) As a condition of issuance, the applicant shall consent that in the event the ~~Town~~ City is required to take enforcement actions to enforce the terms and conditions of the permit, that the ~~Town~~ City shall be entitled to recover its costs, disbursements, and expenses including its attorneys' fees, which sums may be filed as a lien against applicant's premises and enforceable in the manner provided for the enforcement of mortgages on real property.

Section 8. Section 14.08.070 of the Ruston Municipal Code is hereby amended to read

as follows:

14.08.070 - Restoration of surface — By ~~Town~~ City.

- (a) If the applicant shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or fails to prosecute the work in accordance with the requirements of this chapter or shall otherwise have failed to complete the excavation work covered by such permit, the Mayor or his designee shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The Mayor or his designee shall notify the applicant in accordance with the enforcement procedures outlined in Chapter 12.40 RMC which are adopted herein by RMC 14.08.110. The ~~Town~~ City may enforce this chapter in any manner provided by law, including the abatement of public nuisances.
- (b) In the case of an emergency that is created by the work of the applicant, the Mayor or his designee may undertake the restoration work immediately with no prior notice to the applicant or the surety. In such case, the Mayor or his designee will provide notice of such action to the applicant and the surety as soon as practicable consistent with the enforcement procedures outlined in Chapter 12.40 RMC which are adopted herein by RMC 14.08.110. The cost and expense of such repair shall be assessed against the applicant and his surety, including all fees, costs, and expenses incurred, including attorneys' fees associated with the enforcement of or collection of the same.

Section 9. Section 14.08.080 of the Ruston Municipal Code is hereby amended to read

as follows:

14.08.080 - Appeal.

Any decision of the Mayor or his designee, with respect to the issuance, conditions or denial of a street excavation permit, may be appealed to the ~~Town~~ City Council by filing an appeal such decision with the ~~Town~~ City Administrator/Clerk within ten days of the date of issuance of the decision being appealed. If an appeal from any such decision is taken, the appellant shall be required to pay a nonrefundable appeal fee in an amount set by the ~~Town~~ City Council. The appeal shall include a complete statement of the reason or reasons that form the basis of the appeal. The decision of the ~~Town~~ City Council shall be final, binding and conclusive, the decision being solely within the discretion of the legislative body.

Section 10. Section 14.08.090 of the Ruston Municipal Code is hereby amended to read

as follows:

14.08.090 - Emergency.

In the case of an emergency, obtaining of a permit prior to performance of work may be excused when the excavation is necessary for the preservation of life or property; provided that the person making such excavation shall apply for a permit for such work from the ~~Town~~ City Engineer on the next business day.

Section 11. Section 14.08.100 of the Ruston Municipal Code is hereby amended to read as follows:

14.08.100 - Liability of ~~Town~~ City.

This chapter shall not be construed as imposing upon the ~~Town~~ City or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder, nor shall the ~~Town~~ City or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work.

Section 12. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 13. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 14. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 6th day of June, 2017.

APPROVED by the Mayor this 6th day of June, 2017.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO: 1496