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**CITY OF SELDOVIA
ORDINANCE 19-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SELDOVIA, ALASKA,
REPEALING CHAPTER 11.04 STREET EXCAVATION AND ADOPTING CHAPTER 11.05
RIGHT OF WAY RESTRICTIONS AND REGULATIONS AND TITLE 1 GENERAL
PROVISIONS SECTION 1.08.040 CODE SECTION 11.05.35-11.05.210 *as amended***

SECTION 1. CLASSIFICATION: This ordinance is permanent in nature and shall become a part of the Municipal Code of the City of Seldovia.

SECTION 2: SEVERABILITY: If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application to another person or circumstances shall not be affected thereby.

SECTION 3. ENACTMENT: REPEALING CHAPTER 11.04 STREET EXCAVATION AND ADOPTING CHAPTER 11.05 RIGHT OF WAY RESTRICTIONS AND REGULATIONS:

**Title 11
Streets, Sidewalks, Park Land* and Cemetery**

Chapters:

- 11.04 ~~Street Excavation~~
- 11.05 Right of Way Restrictions and Regulations**
- 11.06 City Land Excavation
- 11.08 Sidewalks
- 11.12 Park Land
- 11.13 Camping Regulations
- 11.14 Violations and Penalties
- 11.16 Cemetery Advisory Commission

**Chapter 11.04
Street Excavation**

Sections:

~~11.04.010 Excavation Permit required.~~

~~11.04.015 Culverts required.~~

~~11.04.020 Laying pipe Permit required.~~

~~11.04.030 Permit Application.~~

~~11.04.040 Permit Issuance.~~

~~11.04.050 Permit Disturbed streets designated.~~

~~11.04.060 Permit Franchised companies.~~

~~11.04.070 Bond requirement.~~

~~11.04.080 Penalty~~

~~11.04.010 Excavation Permit required. It is unlawful for any person or persons, firm, association or corporation, to dig up, break, excavate or disturb, dig under or undermine public streets or alleys, or any part thereof within the City for the purpose of laying down or gaining access to, or repairing any water pipe or main, or for the purpose of laying down, or obtaining access to or repairing any sewer or branch sewer pipe of any kind or for the purpose of erecting or setting any pole or pole lines used for telephone, electric or power purposes, or for any purpose whatsoever without first having obtained a property permit to do so. (Prior code Sec. 5.005(A))~~

~~11.04.015 Culverts required. It is unlawful to permanently disturb water drainage patterns affecting city streets. Culverts are required where necessary to maintain proper drainage. Violation of this chapter is punishable by the fine established in section 1.08.040 of this code. (Ord. 89-6 Sec. 1, 1986; Ord. 16-06)~~

~~11.04.020 Laying pipe Permit required. It is likewise unlawful for any person or persons, firm, association or corporation to construct, maintain or law either above, or on top or underneath the surface, upon or across any street or alley or any part thereof within the city any pipe or pipeline for any purpose whatsoever, without having first obtained a proper permit to do so. (Prior code Sec. 5.005(B))~~

~~11.04.030 Permit Application. Application for permits for any of the purposes designated in Sections 11.04.010 and 11.04.020 shall be made in writing to the City Manager stating therein the name of the street or streets, alley or alleys to be taken up or disturbed, or upon which any poles or pole lines are to be erected, or upon which any pipe lines or mains are to be laid or installed, at which point and for what purpose, and setting forth the number of days required for the work to be accomplished under the permit. (Ord. 74-17 Sec. 1(part), 1974; prior code Sec. 5.010(A))~~

~~11.04.040 Permit Issuance. Permits shall be issued by the Municipal Clerk in conformity with the recommendations of the City Manager or at the direction of the City Council. The City Clerk shall keep a record thereof setting forth the concise matter, the dates, description of the work, names of applicants, and the object for which the permit was granted. No permit shall be issued or granted for a period longer than thirty days; provided, however, that the City Manager shall be authorized and empowered to extend the time for which the permit is~~

issued, provided that application be made for such extension prior to the time of expiration. (Ord. 74-17 Sec. 1(part), 1974; prior code Sec. 5.010(B))

~~11.04.050 Permit—Disturbed streets designated.~~ Such permit when issued shall designate the portion of the street or streets, alley or alleys to be taken up or disturbed or upon which any work shall be done, together with the purpose thereof, the number of days in which the work shall be done, and such other restrictions as may be deemed to be in the public interest. All work done under a permit issued under the authority of this chapter shall be done in conformity with the terms of the permit, and under the supervision of the City Manager or his designee. (Ord. 74-17 Sec. 1(part), 1974; prior code Sec. 5.010(C))

~~11.04.060 Permit—Franchised companies.~~ Under no circumstances shall a permit be granted by the City Manager to any person, persons, firm, association or corporation who now, or may hereafter own or operate any pipe lines, water mains, telephone, electric lighting or power lines for utility without a franchise therefore having first been duly obtained from the City, by ordinance duly enacted, unless the City Manager shall first have been authorized to issue the permit by action of the City Council. (Ord. 74-17 Sec. 1(part), 1974; prior code Sec. 5.010(A))

~~11.04.070 Bond requirement.~~ Where a permit is issued by the City Clerk, as a condition thereto, a bond sufficient to restore the streets or public ways may be required. (Prior code Sec. 5.010(E))

~~11.04.080 Penalty.~~ When required in this chapter to first obtain a property permit, failure to do so is subject to the fine established in section 1.08.040 of this code. (Ord. 16-06)

*For statutory provisions regarding general city powers see AS Sec. 29.35.010 and AS Sec. 29.35.250.

Chapter 11.05 Right of Way Restrictions and Regulations

Sections:

- 11.05.010 Purpose--Administration.
- 11.05.020 Definitions.
- 11.05.030 Prohibited activities within rights-of-way.
- 11.05.040 Right-of-way use permit.
- 11.05.050 Construction permit required.
- 11.05.060 Construction permit application and conditions.

- 11.05.080 Encroachment permits.
- 11.05.090 Permit applications—Initial review--Decision.
- 11.05.100 Permit appeal—Decision final--Appeal.
- 11.05.110 Permit compliance.
- 11.05.120 Right-of-way use permits—Repair and maintenance of rights-of-way.
- 11.05.130 Road closure.
- 11.05.140 Right-of-way use permits—Traffic routing.
- 11.05.150 Right-of-way use permits—Closing rights-of-way.
- 11.05.160 Damage to right-of-way
- 11.05.170 Investigation—Warning.
- 11.05.180 Remedies for violations.
- 11.05.190 Stipulated agreement.
- 11.05.200 Enforcement hearing—Jurisdiction.
- 11.05.210 Enforcement hearing—Enforcement notice.
- 11.05.220 Enforcement hearing—Appeal.
- 11.05.230 Abatement of violation.

11.05.010 Purpose—Administration. A. The purpose of this chapter is to provide for regulation to protect public safety, protect rights-of-way with the City of Seldovia, and to promote responsible use of city rights-of way.

B. This chapter shall be administered by the City Manager.

11.05.020 Definitions. The following words, when used in this chapter, shall have the meanings respectively ascribed to them in this section:

A. "Applicant" means the person requesting a right-of-way use permit from the city.

B. "City" means the City of Seldovia.

C. "Construction," "right-of-way construction," or "construction of right-of-way" means the improving, building, erection, assembly, alteration, demolition, or repair (including, but not limited to, dredging, culvert placement or replacement) of roads, streets, trails, paths, and other improvements in rights-of-way, or near rights-of-way which physically impact the rights-of-way.

D. "Contractor" is defined as set forth in AS 08.18.171(4).

E. "Dedicated road right-of-way" or "right-of-way" means a right-of-way dedicated on a plat for road, street, or utility purposes in accordance with the platting requirements of the City of Seldovia, or such rights-of-way as have been specifically granted by easement or dedicated by statute, within the boundaries of the City of Seldovia.

F. "Development" means any human-caused change to improved or unimproved right-of-way, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of materials or use of the right-of-way.

G. "Encroachments" means a structure, object, operation or material placed in, on, under or over a right-of-way.

H. "Maintenance" is defined as work performed on a routine basis to maintain a road in its originally constructed condition (or subsequently improved condition), or to prevent deterioration of the road. Maintenance does not include road construction or improvement.

I. "Operator" means the person operating or driving vehicles or equipment, who may or may not be the owner of the vehicle or equipment.

J. "Permittee" means the person granted a right-of-way use permit by the City.

K. "Respondent" means a person issued an enforcement notice from the City of Seldovia.

L. "Road" means a right-of-way that is used for travel by motor vehicles which may lawfully travel on state highways.

M. "Trail" means clearing or construction of a right-of-way for access by pedestrians, bikes, horses, all-terrain vehicles, snow machines, or other motorized vehicles which are designed primarily for off-road use.

11.05.030 Prohibited activities with rights-of-way. Except as provided in this chapter, the following activities are prohibited within dedicated rights-of-way in the road service area:

A. No person may extract, excavate, or remove sand, gravel, soil or trees from a dedicated right-of-way except as necessary for the construction, improvement, or maintenance of a road or driveway within the right-of-way and then only to the extent necessary for the construction, improvement, or maintenance.

B. No person shall construct a road or driveway within a dedicated right-of-way unless a permit has been obtained from the City prior to construction. The construction activity shall be conducted only in accordance with the issued permit conditions. Permits shall be issued subject to the conditions set forth in this chapter and any road service area resolutions adopted consistent with this chapter.

C. No private person, individual, or entity may, by any manner, regulate or purport to regulate the flow of traffic, or place any traffic regulatory device or sign within a right-of-way without the express permission of the City of Seldovia. Nor may any private person, individual, or entity prevent others' lawful use of the right-of-way by constructing or erecting any barricade or other blockage.

D. No person shall construct, install or place objects in a right-of-way without an encroachment permit. Permits shall only be issued subject to the conditions set forth in this chapter and any road service area resolutions adopted consistent with this chapter.

11.05.040 Right-of-way use permits. The City shall issue the following types of right-of-way use permits for City rights-of-way:

A. **Right-of-way construction permits.** Right-of-way construction permits are issued for construction of roads, driveways, trails and any related blockages which impede traffic flow or lawful use of rights-of-way related to construction, which include the following types of permits:

1. Driveway permits for intersections within City rights-of-way between private drives and City rights-of-way.

2. Project-specific construction permits for all construction within a City right-of-way that is not covered by a driveway permit.

B. Encroachment permits. Encroachment permits are issued by the City Manager for objects existing or to be constructed, installed or placed within a City right-of-way by a private party or other non-city entity.

C. Prior permits; expiration. Permits issued prior to the adoption of these regulations shall be valid for three months after the effective date of these regulations. Permits which are not fulfilled within this time frame shall expire, however, permittee may request a new permit under current regulations.

D. Permits; priority. Multiple permits may be issued for a right-of-way where the applications do not present a conflict. Permits may be issued for an upgraded or different use of a right-of-way, or section of right-of-way, which is already subject to a permit. The City Manager has discretion to determine how to resolve conflicts over right-of-way permits in the City's best interest.

11.05.050 Construction permit required. A right-of-way construction permit is required under the circumstances set forth in this section.

A. Construction. Construction permits are required for construction of a road or driveway within a dedicated right-of-way.

B. Traffic flow; barricades. Construction permits are required to regulate the flow of traffic, to place any traffic regulatory device or sign within a dedicated right-of-way, or for placement of any barricade or blockage which impedes lawful use of a constructed right-of-way, or right-of-way under construction. Where the regulation of the flow of traffic, barricade, or blockage is not related to a planned or ongoing construction project, an encroachment permit is required.

C. Information required. The following information shall be required for all applications to construct, improve, or alter a City right-of-way:

1. A statement of the length and width of right-of-way to be constructed, the proposed uses after construction, and a drawing on the plat of the location and proposed design and method of the construction;
2. Approximate locations of flood plain, floodways, wetlands, streams, lakes, or other water bodies adjacent to or within 50 feet of the outer boundaries of the right-of-way;
3. Approximate grades of the natural terrain and final grade of the proposed road;
4. Soil conditions of the area subject to construction;
5. Identification of all properties to be served or accessed by the proposed construction;
6. Amount, type and placement of materials used in construction; and
7. Where information provided by existing topographic maps, aerial photography, and photographs is inadequate to accurately reflect conditions of the right-of-way or potential problems created or exacerbated by construction, additional information, surveys, or engineering analysis may be required prior to issuance of a permit.

11.05.060 Construction permit application and conditions. The following application procedures and conditions must be met for the right-of-way construction permits:

A. Application form. A right-of-way construction permit may be obtained by filing a complete application on a form provided by the City, which contains the information required by SMC 11.05.050(C). The construction activity shall be conducted only in accordance with the issued permit conditions.

B. Mandatory conditions. All construction permits shall be subject to the following conditions:

1. The permittee has responsibility to properly locate the proposed facility within the named right-of-way and to coordinate its construction activity with utilities in the same right-of-way.
2. Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line. The line locator phone number shall be included on the permit form by the City.
3. The City of Seldovia disclaims any warranty or liability regarding location or coordination with utility companies.
4. Materials or trees shall not be used or removed except to the extent necessary to construct the road or driveway and provide adequate snow storage areas. Gravel may not be mined from any City right-of-way unless the permittee has specific prior written approval by the City Manager.
5. The permittee must agree to comply with the terms, conditions and requirements of SMC Chapter 11.05, and any regulations adopted pursuant to this chapter.
6. All permits shall contain an expiration date determined by the City Manager.
7. Upon completion, permittee shall agree not to restrict the flow of traffic, place traffic signs, or prevent use by the public unless prior approval has been received from the City.
8. The permittee shall indemnify, defend, and hold and save the City, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character arising from applicant or applicant's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the City or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the City.
9. Permittee is responsible for determining the need for any other local, state, or federal permits and acquiring the same. Permittee must abide by all applicable local, state, and federal laws.
10. Per SMC 11.05.180, violation of the permit's terms may result in its revocation or other administrative or court action against the permittee. The City reserves the right to revoke the permit at any time for its convenience.
11. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

C. Discretionary conditions. The City Manager may impose the following discretionary conditions:

1. The permit may be subject to additional conditions to protect and manage City rights-of-way by preventing damage to the rights-of-way and adjacent public and private property or water bodies.
2. The posting of a security in favor of the City may be required for permits involving right-of-way construction, except driveway construction permits. The amount of the security shall be based on the length of right-of-way subject to construction. The security warrants the permittee will faithfully observe the terms and conditions of the permit and may be used to defray any costs for restoration and

rehabilitation of the property, including without limitation environmental damage and cleanup. The security may be in the form of a certificate of deposit ("CD"), bond or certified check.

a. After a period of one year from the date of termination of the permit, the security shall be released and any balance remaining, including any remaining accrued interest, will be returned to the permittee, as long as the City determines the construction was performed in compliance with the permit conditions, within the boundaries of the right-of-way, does not pose a threat to the right-of-way or adjacent land and water bodies, remains in reasonably good condition, and continues to meet all applicable road standards and/or approved plans or agreements.

b. The security shall not be the City's exclusive monetary remedy if the costs of restoration and cleanup exceed the amount of the security.

3. A right-of-way construction permit may be denied if conditions cannot be placed on it to prevent damage to the rights-of-way, adjacent public or private property, or water bodies. Dedication of right-of-way alone does not mean a construction permit will be issued if issuance may damage the right-of-way, adjacent private or public property, or watercourses and water bodies.

4. Upon completion of construction, the permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48, if deemed necessary by the City Manager.

11.05.080 Encroachment permits.

A. Any person desiring to construct or cause an encroachment on a City right-of-way shall apply for an encroachment permit to the City Manager. Failure to obtain an encroachment permit is subject to the remedies set forth in SMC 11.05.080(E) and SMC 11.05.180.

B. A public utility or person who is issued a permit for utility facilities under SMC chapter 11.10 is not required to apply for an encroachment permit.

C. No encroachment permit is required for construction in accordance with an approved right-of-way construction permit issued pursuant to SMC 11.05.050 as long as the work is consistent with the terms of the construction permit.

D. A permit fee shall be charged for encroachment permits as provided in the current approved City of Seldovia Fee Schedule. A person who fails to apply for and obtain an encroachment permit prior to an enforcement notice being issued pursuant to SMC 11.05.200(A) shall pay a double permit fee.

E. Unauthorized encroachments shall be subject to removal by the owner upon being given notice by the City. Notice shall consist of a tag placed on the property allowing 48 hours to remove the encroachment. If the owner does not remove the encroachment after being given such notice, the City shall remove the encroachment and the person encroaching shall be fined pursuant to SMC 01.08.040 and pay all costs incurred by the City related to removal of the encroachment. However, the City may immediately remove any unauthorized encroachment that impedes traffic or maintenance, or which causes a public safety hazard, with no notice to the owner at the discretion of the City Manager.

F. All encroachments, including those that pre-date the effective date of this ordinance, must apply for an encroachment permit. Permits for encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.

G. Any encroachment without a permit may be removed in accordance with SMC 11.05.080(E) or may be granted a permit allowing such encroachment to remain if such encroachment meets the approval of the City Manager or designee.

H. The City Manager has discretion to grant or deny any encroachment permit. The following standards shall be considered for all encroachment permit applications:

1. The encroachment may not interfere with road maintenance.
2. The encroachment may not block access to normal travel along the right-of-way.
3. The encroachment may not interfere with sight lines or distance.
4. The encroachment may not create a safety hazard.
5. The encroachment may not be a permanent structure, meaning any structure of a permanent nature that requires footings, foundations or pilings.

I. A person may not be denied a reasonable means of access to their property solely by the requirements of this chapter. An encroachment permit shall not grant the permittee exclusive right to use the area encroached upon.

J. A permit for construction of an encroachment (not covered by SMC 11.05.060) shall have an expiration date at which time the installation or construction of the encroachment must be complete. The permittee shall file a written notice of completion with the City Manager within ten days after completion of construction. No work shall be performed after the expiration date unless an extension is approved. If an extension is not approved, the city may require the removal of the encroachment in accordance with SMC 11.05.080(E).

K. Hold harmless. The permittee shall indemnify, defend, and hold and save the City, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character, sustained by any person, or property arising from permittee or permittee's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the City or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the City.

L. Any damages to a public right-of-way, dedication, easement or City land which is caused by an encroachment, authorized or unauthorized, are subject to immediate repair by the City, at the owner's expense. The City may require the owner to repair the damage within a timeframe specified by the City Manager if notice is given to the owner. The owner shall be subject to a fine as set forth in SMC 01.08.040 and liable for all costs incurred by the City from the repair, including overhead costs.

M. The City Manager may revoke an encroachment permit or require removal of a permitted encroachment if at any time the encroachment impacts City duties such as road construction, improvements or maintenance, or otherwise impairs or impedes public safety or access to the right-of-way. Removal of an encroachment due to revocation of an encroachment permit shall comply with the requirements of SMC 11.05.080(E). Issuance of an encroachment permit does not create a property right in the continuing encroachment.

11.05.090 Permit applications—Initial review--Decision. The City Manager shall have seven days from the date a complete right-of-way use permit application is received to issue a written denial or approval of the permit requested, unless for good cause stated, the City Manager extends the time frame for permit determinations or refers the permit to the City Council for initial review. The City Manager shall, by first-class mail, facsimile, electronic mail ("email"), or hand-delivery transmit written notice of approval or denial to the applicant at the most recent address provided to the City in writing by the applicant.

11.05.100 Permit appeal—Decision final--Appeal. The City Manager's initial permit review under SMC 11.05.090 is appealable to the City Council. An appeal to the City Council must be filed within 10 days of the distribution date of the City Manager's written decision. The appeal shall be in writing and shall state the reasons the appellant believes the City Manager's decision to be in error, including references to code sections violated by the City Manager's decision. The permittee may request review by the City Council following the procedures and deadlines under this provision when the City Manager issues a cease and desist order SMC 11.05.180(C) or revokes a permit under SMC 11.05.180(D). Whether the City Council reviews a permit on appeal or provides the initial permit review, the applicant for a permit may appeal the City Council's determination to the superior court. Nothing in this regulation shall prohibit utilization of a mutually-acceptable alternative dispute resolution procedure.

11.05.110 Permit compliance. A permit may not be issued under this title if the permit applicant is subject to any enforcement orders regarding outstanding violations under chapter SMC 11.05.

11.05.120 Right-of-way use permits—Repair and maintenance of rights-of-way. For any permit issued under SMC 11.05.060, 11.05.065, or 11.05.080, the permittee has an ongoing responsibility to maintain the right-of-way in a condition equal to that which existed before the permittee's operation began as long as the maintenance required can be attributed to the permittee. The permittee shall repair the right-of-way immediately after discovery of any damage or deterioration caused by the permittee's use of the right-of-way. Such repair must return the right-of-way to at least the same condition as existed before the permittee damaged the right-of-way. In the event the permittee fails to comply with this section, the City may repair the right-of-way at the permittee's expense 24 hours after giving the permittee telephonic, electronic, hand-delivered or facsimile notice of the need for repair or maintenance. Repair costs may be deducted from the security posted, and permittee may be subject to any other remedies available under this chapter or at law or in equity. This section does not require a construction permittee to perform right-of-way maintenance after construction is completed.

11.05.130 Road closure. The City Manager may close a road with a physical barricade and signage where damage to the right-of-way or a threat to public safety is presented by continued use of the road. The road may be reopened when the City Manager determines that the condition causing the threat to public safety or damage to the right-of-way has been repaired or alleviated.

11.05.140 Right-of-way use permits—Traffic routing. When traffic or lawful use of the right-of-way by others will be affected by the permittee's use of the right-of-way, the permittee shall so state on the permit application and shall provide signage and safeguards in accordance with the most current edition of the Alaska Traffic Manual. The permittee shall be responsible for obtaining any further permission for such routing from the appropriate entities including but not limited to the applicable fire, emergency medical, police, and school bus transportation agencies.

11.05.150 Right-of-way use permits—Closing rights-of-way. In the event the permittee may need to temporarily close a right-of-way, the permittee shall indicate on the permit application the proposed date, time and duration of the proposed closure. The City Manager shall indicate on the permit whether the proposed closure is authorized. The City Manager may require a date, time, or duration for right-of-way closure different from that proposed by the permittee if it is in the best interests of the City. The permittee shall be responsible for obtaining

any further permission needed for an approved closure from the appropriate entities including but not limited to applicable fire, emergency medical, police, and school bus transportation agencies.

11.05.160 Damage to right-of-way. Persons or entities causing damage to a right-of-way are liable to the borough for the cost of repair, and may be subject to any other remedy available under this chapter or at law or in equity.

11.05.170 Investigation—Warning.

A. Upon receiving information indicating the occurrence of a violation of SMC Chapter 11.05, the City Manager or designee may investigate the violation to the extent, and within the timeframe, that the City Manager or designee finds to be appropriate to the circumstances.

B. The City may issue a written warning notice to an alleged violator. The warning notice shall describe the violation, the provisions of this title that have been violated, and the remedies that the City may seek if the violation is not corrected voluntarily. If the City Manager or designee issues a warning notice the notice shall state clearly that it does not initiate an enforcement proceeding, but that the City may initiate an enforcement proceeding if the violation is not corrected or abated within a specified time.

11.05.180 Remedies for violations.

A. Court Action. For any violation of this chapter the City may bring a civil action in superior court against the violator for any one or more of the following:

1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
3. To recover damages to the City caused by the violation.
4. To recover a civil penalty not exceeding \$1,000.00 for each violation, pursuant to AS 29.25.070(b) as now enacted or hereinafter amended.

B. City Enforcement Proceeding. For any violation of this chapter, the City may bring an administrative enforcement proceeding against the violator for any one or more of the following:

1. To correct or abate the violation.
2. To recover a civil fine not exceeding \$500.00 per day for each violation in accord with the fine schedule set forth at SMC 01.08.040.

C. Cease and desist order.

1. The City Manager may issue a cease and desist order if they determine that any person or entity is violating the terms of the permit or SMC Chapter 11.05. The order may require that the person or entity

immediately cease all activity within the right-of-way, even if previously permitted to conduct work, upon receiving notice of the order. Notice may be given in person, or via telephone, e-mail, or facsimile.

2. The person or entity may request an informal meeting with the City Manager to attempt to resolve the violation. The City Manager has discretion to engage in an informal review and may require remedial action, modify the terms of a permit, or establish new permit conditions at the informal meeting. Any such changes must be consistent with mandatory conditions pursuant to SMC 11.05 and the original terms and intent of the permit. The cease and desist order will remain in effect until such time as the City Manager withdraws the order.

3. The City Manager may post a cease and desist order within the affected right-of-way if the person violating SMC Chapter 11.05 cannot be ascertained. Removal of a posted notice is subject to the fines set forth in SMC 01.08.040.

4. The person or entity subject to a cease and desist order is entitled to review of the City Manager's decision before the City Council under SMC 11.05.100.

D. Permit revocation.

1. If the City Manager and permittee do not resolve permit violation(s) informally under SMC 11.05.180(C)(2), or if the violations cannot be resolved informally, the City Manager may revoke any permit issued under SMC Chapter 11.05. The City Manager is not required to engage in an informal resolution process before revoking a permit.

2. A permit may be revoked at the discretion of the City Manager for failure to comply with the terms of the permit or City code, or for impacts to the exercise of City duties, access, or public safety. The permittee is entitled to review before the City Council regarding the revocation subject to SMC 11.05.100.

3. A permittee who continues with work under a revoked permit is subject to fines as set forth in SMC 01.08.040.

E. No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

11.05.190 Stipulated agreement.

A. In lieu of, or in addition to a written warning notice as described in SMC 11.05.170, the City may enter into a stipulated agreement with a person for violations of SMC Chapter 11.05.

B. A stipulated agreement between the City and a person committing violations shall constitute an admission and acknowledgement by the person of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. The stipulated fine shall be one-half the fine for a one-day violation. Where there is more than one violation associated with the stipulation the stipulated fine shall be one-half of the highest one day fine.

C. If a person does not fully comply with a stipulated agreement, an enforcement notice may be issued as provided in SMC 11.05.200(A). Failure to comply with the stipulated agreement may subject violator to additional fines under SMC 01.08.040.

D. Nothing in this section prevents the City and the violator from entering into a stipulation after an enforcement notice has been issued. The limitation of fines set forth in SMC 11.05.210(G)(2) shall not apply to such a stipulated agreement. The fine may be negotiated subject to the City Council's approval.

11.05.200 Enforcement hearing—Notice.

A. The City Manager commences an administrative enforcement hearing under this chapter by serving an enforcement notice on each alleged violator, copied to the City Council, that contains the following:

1. The names and last known addresses of all alleged violators;
2. The name of the right-of-way, or description by location if the right-of-way is unnamed, on which the alleged violations are located;
3. A citation to each provision of this title that is alleged to have been violated, and a statement of the facts that constitute each alleged violation in sufficient detail to provide the recipient with a reasonable opportunity to respond to the allegations;
4. A description of the action, if any, that is required to correct or abate the alleged violation, and the time within which the correction or abatement must occur;
5. The remedies that City will seek for the alleged violation; and
6. The address, telephone, facsimile number and email address for contacting the City regarding the violation.
7. Notice of the date of the hearing.

B. An enforcement notice may be served upon a person by:

1. Delivery to the person or the person's authorized agent;
2. Certified mail, return receipt requested, restricted delivery, to the person or the person's authorized agent;
3. Any other method of delivery where the person acknowledges receipt of the enforcement notice in writing;
4. Posting at the site of the violation if the City Manager cannot ascertain a good mailing address or achieve personal service; or
5. Publication notice as provided in Rule 4(e)(2) of the Alaska Rules of Civil Procedure, but only if reasonable attempts to utilize the methods prescribed by subparagraphs (1) through (4) above are not successful.

11.05.210 Enforcement hearing—Jurisdiction. The City Council while conduct adjudicative proceedings under this chapter.

11.05.220 Enforcement hearing—Appeal. An appeal from a City Council decision may be filed in the superior court within 30 days after the date of distribution of the City Council's decision to the parties, and is governed by Part 6 of the Alaska Rules of Appellate Procedure. The City Council's decision remains in effect while an appeal is pending unless stayed by the superior court.

11.05.230 Abatement of violation.

A. Any use, activity, condition, property, or structure identified as a violation in an enforcement notice that continues after the City Council has issued an order finding the use, activity, condition, property, or structure to be in violation may be abated as provided in this section.

B. Before a civil action is filed to abate a violation, a final warning notice shall be served personally or by certified mail with return receipt requested to the violator. The City may request the court to order the violator(s) to abate the violation. If the violator has failed or is unwilling or unable to abate the violation, the court may order the violator(s) to pay the costs of the City's abatement of the violation.

C. The persons found in violation of an enforcement order by the City Council are liable to the City for the entire cost of the abatement, including incidental expenses. "Costs of abatement" include removal, repair, relocation, and any other costs, including incidental costs, which are or would reasonably and necessarily be incurred to remedy or remove the violation or comply with the order of the City Council. For purposes of this section, the term "incidental expenses" shall include but not be limited to the actual expenses and costs to the City in the preparation of the notices, specifications and contracts, work inspection, attorney's fees, consultant fees and interest from the date of completion at the rate of ten percent per annum. The City will cause an invoice for collection to be sent to the violator specifying the nature and costs of the work performed.

SECTION 4. MINOR OFFENSE TABLE 1.08.040

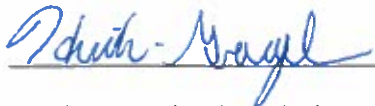
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|---|--|----------|
| 11.05.035(A) | Unauthorized Extraction, Excavation or Removal of Material from Right-of-way | \$300.00 |
| 11.05.035(B) 11.05.035(C) 11.05.050 | Unlawful Regulation of Traffic Flow; Barricading Right-of-Way; Failure to Obtain ROW Construction Permit | \$300.00 |
| 11.05.060 | Violation of Construction Permit Conditions (each condition) | \$300.00 |
| 11.05.065 | Failure to Obtain Maintenance Permit; Violation of Permit Conditions | \$150.00 |
| 11.05.035(D) 11.05.080 | Failure to Obtain Encroachment Permit (Encroachment Without a Permit); Violation of Encroachment Permit Conditions | \$300.00 |

| | | |
|--------------|--|----------|
| 11.05.080(L) | Damage to Right-of-way | \$300.00 |
| 11.05.120 | | |
| 11.05.160 | | |
| 11.05.170 | Failure to Comply with Warning Notice | \$300.00 |
| 11.05.180(C) | Violation of Cease and Desist Order/Removal of Posted Notice | \$300.00 |
| 11.05.180(D) | Continuing Work in Violation of Permit Revocation | \$300.00 |
| 11.05.190 | Violation of Stipulated Agreement | \$300.00 |

SECTION 5. EFFECTIVE DATE. This ordinance becomes effective upon its adoption by the City Council.

ADOPTED by a duly constituted quorum of the City Council of the City of Seldovia, Alaska this 10 day of December, 2018.

ATTEST:



Heidi Geagel, City Clerk



APPROVED:



Dean Lent, Mayor

Vote:

Colberg- Y
 Campbell-
 Morrison- Y
 Rojas- Y
 Lethin- Y
 Sweat- Y