

Introduced: 10/26/18
Posted: 11/21/18
Public Hearing: 11/26/18
Adoption: 11/26/18

CITY OF SELDOVIA

ORDINANCE 19-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SELDOVIA, ALASKA,
ADOPTING CHAPTER 11.10 PERMITS FOR UTILITY USE OF RIGHT-OF-WAY**

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. ADOPTING CHAPTER 11.10 Permits for Utility Use of Right-of-Way:

Title 11

Streets, Sidewalks, Park Land* and Cemetery

Chapters:

11.04 Street Excavation

11.08 Sidewalks

11.10 Permits for Utility Use of Right-of-Way

11.12 Park Land

11.13 Camping Regulations

11.14 Violations and Penalties

11.16 Cemetery Advisory Commission

Chapter 11.10 Permits for Utility Use of Right-of-Way

Sections:

- 11.10.010 Purpose--Administration.
- 11.10.020 Definitions.
- 11.10.030 Utility use of right-of-way—Permits required.
- 11.10.040 General utility right-of-way use permit.
- 11.10.050 Utility construction project permits.
- 11.10.060 Construction permit requirements.
- 11.10.070 Standards concerning excavation activity.
- 11.10.080 Utility locations within the right-of-way.
- 11.10.090 Prior existing installations—Maintenance—Relocation-- Costs.
- 11.10.100 Appeals/Enforcement

11.10.010 Purpose—Administration. A. The purpose of this chapter is to provide for regulation of construction activities by public utilities within City of Seldovia rights-of-way.

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

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

A. “City Right-of-way” all dedicated rights-of-way, public easements and section line easements within the City of Seldovia.

B. “Maintenance” upkeep, repair, or improvement work on an existing utility facility which does not expand the area occupied by, or change the location of the facility.

C. “Excavation” the removal, carrying away, backfilling, tunneling, boring, bulldozing, digging out, leveling, clearing, or moving of earth or soil by manual or mechanical means.

D. “Public utility” every corporation, company, individual or association of individuals as defined by AS 42.05.720 that owns, operates, manages or controls any plant, pipeline or system for furnishing electrical service, telephone service, cable television service, natural or manufactured gas service, water service or sewer service to the public for compensation.

E. “Road opening” excavation within a road accepted for maintenance by the City of Seldovia.

11.10.030 Utility use of right-of-way—Permits required.

A. After **January 1, 2019**, a public utility shall not construct any facility in, under or over city right-of-way without first having been granted:

1. A general utility right-of-way use permit as set forth in section 11.10.040 of this chapter; and,

2. A utility construction project permit for each individual road opening project, excavation or overhead pole line project as set forth in section 11.10.050 of this chapter.

B. Utility right-of-way use permits may include reasonable conditions deemed necessary to protect the public health, safety and welfare and the interests of the city.

11.10.040 General utility right-of-way use permit. A. A general utility right-of-way use permit shall give written evidence of a utility's written agreement to comply with terms, conditions and requirements of this chapter, including, but not limited to:

1. A provision for indemnification by the utility saving the city harmless against any loss or damages due to the negligence of the utility or its agents and employees while constructing, operating and maintaining its plant and equipment in, under or over city right-of-way.

B. There is established an annual base fee for a general utility right-of-way permit in the amount listed in the most current City of Seldovia Fee Schedule. Permit renewal fees are due at the beginning of each calendar year.

C. A general utility right-of-way permit issued to a utility authorizes the utility to:

1. Conduct normal maintenance and/or repairs of existing utility facilities within a right-of-way.
2. Provide service connections from existing utility facilities within a right-of-way to individual customer facilities outside of the right-of-way.

D. Each service connection installed under a general utility right-of-way permit shall be reported to the City Manager in accordance with the provisions of section 11.10.040(C).

1. A one-time fee in the amount listed in the most current City of Seldovia Fee Schedule for each service connection installed shall accompany the utility's report.

2. The utility bears the responsibility for submitting an accurate report and accounting of all service connections installed on an annual basis.

11.10.050 Utility construction project permits. A. After securing a general right-of-way use permit as provided in section 11.10.040 of this chapter, a utility shall obtain a permit from the city for each individual road opening project, excavation or overhead pole line project sought to be performed by a utility for the purpose of installing new primary or secondary distribution lines, trunks or mains; including extensions of existing facilities.

B. Application shall be made upon forms provided by the city and shall include, at a minimum, the following information:

1. The name and location of the right-of-way for which the permit is sought;
2. The type of improvement or facility planned;
3. Plans, drawings, or sketches showing the length, horizontal width, vertical depth and configuration of the improvement, its specific location within the right-of-way and its relationship to the existing roadway;
4. The proposed method of location and marking of the boundaries of the right-of-way for construction purposes;

5. The name of the utility, its address, phone number and contact person;
6. Whether any subcontractor may be working for the utility on this project and, if so, the subcontractor's name, address, phone number and contact person;
7. Whether a detour of traffic will be necessary and, if so, a traffic routing narrative statement and plan as required by Section 11.10.050 of this chapter;
8. Exceptions to assigned utility locations as prescribed by section 11.10.060 of this chapter; and
9. Any additional information and assurances as the City Manager shall find reasonably necessary for the issuance of a construction project permit.

C. Each application for a utility construction permit shall include a fee in the amount listed in the most current City of Seldovia Fee Schedule.

D. The City shall review and grant or deny construction project permits within 10 working days, where the standards, terms and conditions of the chapter are met.

11.10.060 Construction permit requirements. A. Each permit shall set out a window for construction dates including projected start and completion dates, and the procedure to be followed for any required road closures during the course of construction.

B. Utility lines or facilities shall be located to assure compatibility with all present and anticipated future uses of the right-of-way in which the utility is located. The following general standards shall apply:

1. Utilities shall be located outside of the existing or anticipated travel surface and avoid impacting the drainage of the roadway whenever possible.

2. The location of the utility shall allow for the safe and practical maintenance and improvement of both the utility and the roadway.

3. Surface utility fixtures shall be set back from the existing or planned roadway surface and shall not be located so to create a visual or physical obstacle or hazard.

4. Excavation, backfill, or other disturbance by utility construction or maintenance activities shall be finished in a manner which restores the ground surface and landscape to the original or better condition. Clearing of vegetation shall be held to the minimum necessary for safe construction and maintenance of the utility. Slash and debris shall be disposed of in a neat and orderly manner. Felled timber shall be removed in a manner approved by the City Manager prior to the next construction season.

C. Each permit shall require that prior to beginning the next construction season the permittee shall provide proof of compliance with the application and permit requirements by filing with the City Manager as-built survey or other similar documentation as approved by the City Manager showing the actual location and configuration of the facility within the right-of-way.

D. Coordination between utilities for their construction activities within city rights-of-way shall be solely the responsibility of the utilities and each permit shall expressly state the City's disclaimer of any warranty or liability regarding coordination of utility facilities.

11.10.070 Standards concerning excavation activity. Upon securing a permit, all utilities shall abide by the following excavation standards:

A. Repair broken lines. The utility shall immediately notify an affected utility of any damage to their plant or equipment.

B. Project coordination. The utility shall insure adequate and timely notice to fire, emergency medical and police agencies and attempt to coordinate its work with the schedule for other construction work. It is the responsibility of the utility to see that proper traffic signs, detours and safeguards are provided, and that property owners affected are notified.

C. Traffic routing. Where traffic is affected, the utility shall provide that proper signing and safeguards be in accordance with the Alaska Traffic Manual and shall notify the Seldovia City Office to obtain clearance for the type of detour, time and other limitations imposed.

D. Closing roads. When traffic conditions permit, the City may, by written approval, permit the closing of roads to all traffic for a necessary period of time. Such approval may require the utility to give notification to various public agencies and to the general public.

E. Clearance for vital structures. The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures and all other vital equipment unless approved on the permit.

F. Restoration of right-of-way. The right-of-way shall be restored to the grade and condition originally found. Gravel, paving or seal coating, ditches, culverts, fences, signs or other improvements shall be replaced, unless specific direction to the contrary is authorized in writing by the City. Failure to do so will be cause for the City to accomplish the required work and to collect damages from the utility.

G. Clean up. As the excavation work progresses, all roads shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris caused by the construction. All existing drainage ways shall remain free and unobstructed. All cleanup operations shall be accomplished at the expense of the Utility and shall be completed to the satisfaction of the city.

H. Prompt completion of work. After an excavation is commenced, the work shall be promptly completed and the road restored to its original condition as soon as possible.

I. Urgent work: The City shall have the authority to condition the issuance of a permit upon the utility's operating on a twenty-four hour per day schedule, in order to complete an excavation as soon as possible when required by traffic conditions, safety or the convenience of the traveling public.

J. Emergency action. Nothing in this chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall make a reasonable effort to notify police dispatch of the location of the emergency excavation. A utility excavating on an emergency basis in a roadway shall apply for a permit on the first working day after such work is commenced.

K. Existing survey monuments shall be protected and if disturbed or destroyed by construction activities, they will be replaced in accordance with AS 34.65.040.

11.10.080 Utility locations within the right-of-way. A. All utility facilities shall be placed within either of two 10-foot wide corridors located along the outer portions of each side of the right-of-way, i.e. ten feet as measured from the edge of the right-of-way toward the centerline of the right-of-way. If only half of the right-of-way has been dedicated, utilities placed within the right-of-way shall be placed only within the ten feet of the right-of-way adjacent to the subdivided lots or tracts from which the right-of-way was created.

B. Exceptions to assigned utility locations:

1. Whenever a utility finds it unreasonable to place its facilities within their assigned area, it may apply for an exception on a form provided by the City Manager and shall include, at a minimum, the following information:

a. A complete explanation as to why the utility is requesting an exception from its assigned location within the right-of-way;

b. Additional plans, drawings or sketches necessary to show locations of other existing utilities, problem areas such as rock or wetlands, and locations where the utility is proposing to place new facilities; and,

c. Evidence that the request for an exception has been reviewed and approved by all other affected utilities.

2. Subject to appeal to the Seldovia Planning Commission, the City Manager or his designee has authority to grant an exception to the assigned utility location within the city right-of-way.

3. Requests for exceptions that become necessary and evident during actual ongoing construction shall be deemed approved if not rejected or modified after receipt by the City Manager. It is a utility's responsibility to inquire if the request for an exception has been approved, rejected or modified.

11.10.090 Prior existing installations—Maintenance—Relocation—Costs. A. Utility facilities, within a right-of-way subject to this chapter, installed prior to the effective date of this ordinance may remain in place as installed unless relocation of the prior existing utility is required for the installation or construction of a road or another utility within the right-of-way. In the event that such relocation is required, the relocated facility must comply with the provisions of this chapter.

B. The release from compliance granted under this section does not create the presumption the existing facility was properly or reasonably installed. Further while this release allows maintenance of existing facilities for their useful life, except as otherwise provided herein, it does not authorize an upgrade or relocation of the existing facility without complying with the provisions of this chapter.

C. Responsibility, if any, for the cost of relocation shall be determined in accordance with rulings of the Alaska Public Utilities Commission and any tariffs approved under its rules.

11.10.100 Appeals/Enforcement. A. Decisions of the City Manager regarding utility right-of-way permits shall be final unless appealed by the applicant to the Seldovia Planning Commission within 20 (twenty) calendar days after the City Manager's decision has been issued.

B. Appeal of a Seldovia Planning Commission determination regarding the City Manager's decision shall be directly to the Alaska Public Utilities Commission, or to the Superior Court of the State of Alaska, as appropriate.

C. Any person aggrieved by a decision of the City or a utility pertaining to this chapter may, within 30 calendar days after a decision is mailed or delivered to the person, file an appeal to the Alaska Public Utilities Commission pursuant to AS 42.05.251, or to the Superior Court of the State of Alaska, as appropriate.

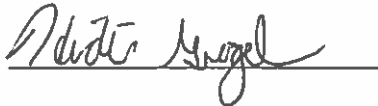
D. Nothing in this section shall prohibit a mutually acceptable alternative dispute resolution procedure between the City and a utility to avoid the expense of an appeal to the Alaska Public Utilities Commission.

E. The City may, in its discretion, seek injunctive relief to enforce compliance with this chapter.

SECTION 4. 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 26 day of November, 2018.

ATTEST:



Heidi Geagel, City Clerk



APPROVED:



Vivian Rojas, Acting Mayor

Vote:

Colberg-**Y**
Campbell-**Y**
Morrison-**Y**
Rojas-**Y**
Lethin-**Y**
Sweatt-**Y**