

Introduced by: Mayor
Date: 10/25/94
Committee Referral:
Land Use Planning
Hearing: 11/29/94
Postponed to: 1/03/95
Postponed to: 1/17/95
Postponed to: 2/07/95
Action: Enacted as Amended
Vote: 7 Yes, 2 No

**KENAI PENINSULA BOROUGH
ORDINANCE 94-56**

**AN ORDINANCE ESTABLISHING A PERMIT SYSTEM FOR REGULATION
OF CONSTRUCTION ACTIVITIES BY PUBLIC UTILITIES WITHIN
KPB RIGHTS-OF-WAY AND ESTABLISHING REGULATIONS FOR USE
AND CONTROL OF RIGHTS-OF-WAY**

WHEREAS, over 1,800 miles of dedicated right-of-way are located within the Kenai Peninsula Borough outside of the first and second class cities and not subject to State maintenance; and

WHEREAS, by statute, these right-of-way are available for use as public utility corridors as well as for transportation purposes; and

WHEREAS, the lack of Borough regulation to coordinate utility and road construction can lead to conflicts, where the placement of the first built improvement can deny a later right-of-way project any practical room for construction without relocation of the first built improvement; and

WHEREAS, such relocation expenses could be avoided through coordination of the development of the roads and utilities within the Borough rights of way;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That a new KPB Chapter 14.08 is enacted as follows:

**Chapter 14.08
Permits for Utility Use of Right-of-Way**

14.08.005. Purpose — Administration.

A. The purpose of this chapter is to provide for regulation of construction activities by public utilities within Borough rights-of-way.

B. This chapter shall be administered by the planning director under the direction of the

mayor unless the mayor authorizes another official to administer all or portions of this chapter. The mayor shall report to the assembly any authorization for administration other than the planning director.

14.08.010. Definitions.

A. Borough right-of-way: all dedicated right-of-ways, public easements and section line easements within the Kenai Peninsula Borough which are outside of the boundaries of any first- and second- class city and which are not subject to jurisdiction and maintenance by the Alaska Department of Transportation and Public Facilities.

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, tunnelling, 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 Kenai Peninsula Borough.

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

A. After (the effective date of this Ordinance), a public utility shall not construct any facility in, under or over Borough right-of-way without first having been granted:

1. A general utility right-of-way use permit as set forth in section 14.08.030 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 14.08.040 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 borough.

14.08.030. 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 borough 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 borough right-of-way.

B. There is established a \$250 annual base fee for a general utility right-of-way permit. 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 planning department in accordance with the provisions of section 14.08.050(C).

1. A one-time fee of \$1 (one) 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.

14.08.040. Utility construction project permits.

A. After securing a general right-of-way use permit as provided in section 14.08.030 of this chapter, a utility shall obtain a permit from the borough planning department 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 borough 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 14.08.060 of this chapter;

8. Exceptions to assigned utility locations as prescribed by section 14.08.070 of this chapter; and,

9. Any additional information and assurances as the planning director shall find reasonably necessary for the issuance of a construction project permit.

C. Each application for a utility construction permit shall include a fee. The amount will be calculated as follows:

\$50 minimum base fee for start-up including the first
200 linear feet of construction plus \$0.10 per linear
foot thereafter up to a maximum amount of \$2,500.

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

14.08.050. 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 borough planning director 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 borough planning department as-built survey or other similar documentation as approved by the planning director showing the actual location and configuration of the facility within the right-of-way.
- D. Coordination between utilities for their construction activities within borough rights-of-way shall be solely the responsibility of the utilities and each permit shall expressly state the borough's disclaimer of any warranty or liability regarding coordination of utility facilities.

14.08.060. 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 fire, emergency medical, police and school bus transportation agencies to obtain clearance for the type of detour, time and other limitations imposed.
- D. Closing roads. When traffic conditions permit, the borough 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 borough. Failure to do so will be cause for the borough to accomplish the required work and to collect damages from the utility.

1. Unpaved roads. In the case of unpaved roads, nothing but non-frost susceptible material shall be placed in the excavation and six inches of good Type B gravel on the driving surface except where the existing road itself is not built according to these standards in which case the excavation shall be refilled as nearly as possible as found. The excavation and adjacent areas shall be graded to leave the site in the same condition than prior to the excavation.

2. Paved roads. In the case of paved roads, 26 inches of Type A material, six inches of Type B material and two inches of D1 leveling course shall be placed in the excavation before overlaying the area with 2 inches of hot asphaltic concrete. The excavation shall be guaranteed for three years against settling. Any area that has settled within three years shall be promptly rectified at no cost to the borough.

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 clean up operations shall be accomplished at the expense of the Utility and shall be completed to the satisfaction of the borough.

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 borough 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.

14.08.070. 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 borough planning department 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 planning commission, the borough planning director or his designee has authority to grant an exception to the assigned utility location within the borough 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 within four (4) normal working hours after receipt by the borough planning department. It is a utility's responsibility to inquire if the request for an exception has been approved, rejected or modified.

14.08.080. 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.

14.08.090. Appeals/Enforcement.

A. Decisions of the planning director regarding utility right-of-way permits shall be final unless appealed by the applicant to the planning commission within 20 (twenty) calendar days after the director's decision has been issued.

B. Appeal of a planning commission determination regarding the director's decision shall be directly to the Alaska Public Utilities Commission, or to the Superior Court of the State of Alaska at Kenai, as appropriate.

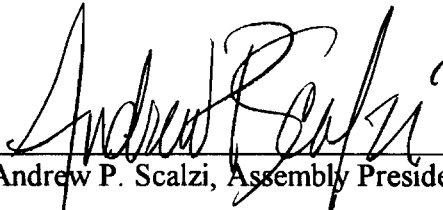
C. Any person aggrieved by a decision of the borough or a utility pertaining to this chapter may, within 30 calendar days after a decision is mailed or delivered to the person, file an appeal to the Alaska Public Utilities Commission pursuant to AS 42.05.251, or to the Superior Court of the State of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

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

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

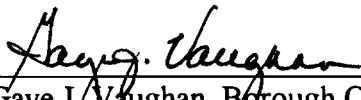
SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7th DAY OF FEBRUARY, 1995.



Andrew P. Scalzi, Assembly President

ATTEST:



Gaye J. Vaughan, Borough Clerk