

Introduced by: City Manager Baird
Introduction Date: November 15, 2005
Public Hearing: November 29, 2005
Action: Passed
Vote: 5-0

CITY OF BETHEL, ALASKA

ORDINANCE #05-18

**AN ORDINANCE REPEALING BETHEL MUNICIPAL CODE
SECTION 17.04.070 B, AND ENACTING A REPLACEMENT SECTION 17.04.070 B**

WHEREAS Bethel Utilities Corporation has commenced a petition, No. U-05-40, in front of the Regulatory Commission of Alaska seeking an order that Bethel Municipal Code Section 17.04.070 B is invalid in that it requires utilities to pay the cost of relocation of the utility lines on City property;

WHEREAS the Alaska Public Utilities Commission, the predecessor to the Regulatory Commission of Alaska has issued a ruling that municipal codes with the provision contained in Bethel Municipal Code Section 17.04.070 B is invalid under State law, Re: Homer Electric Association Inc., 6 APUC 484 (APUC 1985) [Order U-83-74(7)/U83-79(4)]

BE IT ORDAINED by the City Council of Bethel, Alaska that:

SECTION 1. Classification. This ordinance is permanent in nature and shall be placed in the Bethel Municipal Code.

SECTION 2. Repeal of Bethel Municipal Code Section 17.04.070 B. The version of Bethel Municipal Code Section 17.04.070 B existing on the date of this ordinance is repealed.

SECTION 3. Enactment of revised Bethel Municipal Code Section 17.04.070 B. The following is adopted as Bethel Municipal Code Section 17.04.070 B:

"B. The placement of utility facilities in a dedicated street or utility right-of-way or easement ("City property") may occur only under a permit issued by the city authorizing the placement. The director of the public works department or such other person as the manager may designate shall issue utility permits. The permit may be conditioned on the payment of either or both one time or annual fees established by the council by resolution. The rights of the public or the city to the use of a dedicated way or easement is superior to that of a private utility or other private person.

If, incident to the construction of public facility or public road, the city determines in writing that a utility facility located across, along, over, under, or within City property must be changed, relocated, or removed, the utility owning or maintaining the utility facility shall change, relocate,

or remove it in accordance with the written determination, within a reasonable time set by City in the written determination.

If the utility facility is not changed, relocated, or removed in accordance with the written determination, any permit authorizing the facility issued by the City under the Bethel Municipal Code becomes invalid and the facility will be considered an unauthorized encroachment.

The cost of change, relocation, or removal, as set out in the written determination is to be paid as follows:

(1) by the city as a cost of public facility or public road construction, if the utility facility is installed or authorized after June 11, 1986 under a utility permit or a regulation and is installed in the location specified in the permit;

(2) by the city as a cost of the public facility or public road construction, if the facility was installed before June 11, 1986 under a utility permit or utility easement and is in the location specified in the permit or easement;

(3) by the city as a cost of public facility or public road construction, if the utility facility was installed before the location became a part of City property or before permits were required;

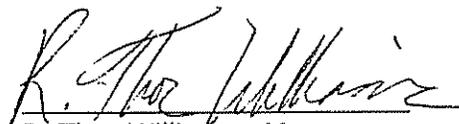
(4) by the city as a cost of public facility or public road construction, if the utility permit that requires the utility to pay the relocation cost was issued more than five years before the contract for the public facility or public road construction was first advertised;

(5) by the utility in all other cases unless the city finds it is in the public interest for the cost to be paid by the city."

SECTION 4. Effective Date. This ordinance shall become effective immediately upon passage by the City Council.

PASSED AND APPROVED THIS 29th DAY OF NOVEMBER 2005, BY A VOTE OF 5 IN FAVOR AND 0 OPPOSED.

ATTEST:


R. Thor Williams, Mayor


Sandra Modigh, City Clerk