



CITY COUNCIL ACTION

Council Meeting Date: August 26, 2019

Item No: 19-328

Responsible Dept: Legal

Action Requested: Ordinance

Map/Lot: N/A

Title, Ordinance

Amending Chapter 257, Sidewalks, by Amending Procedures for Permitting Above-Ground Utilities in the City's Rights-of-Way

Summary

This ordinance would amend the procedure for how City rights-of-way may be used by above-ground utilities.

Use of City rights-of-way is generally limited to utilities, temporary construction activity, road and parking signs, and a few other uses. These are largely covered by City ordinances. One area that City ordinances do not cover is how above-ground utilities are permitted. At present, a utility would have to get an easement from the City for every above-ground use they requested.

This ordinance amendment would streamline our process for permitting above-ground utilities. It covers the application process, criteria for the Engineering Department to consider, permit requirements, and enforcement and appeals.

In conjunction with our street opening permit process for underground utilities, and our pole permit process for installation of utility poles, this ordinance will allow for a more straightforward permitting process for utilities than currently exists.

Committee Action

Committee: Infrastructure

Meeting Date: August 6, 2019

Action:

For:

Against:

Staff Comments & Approvals

City Manager

City Solicitor

Finance Director

Introduced for: First Reading and Referral



CITY COUNCIL ORDINANCE

Date: August 26, 2019

Assigned to Councilor: Davitt

ORDINANCE, Amending Chapter 257, Sidewalks, by Amending Procedures for Permitting Above-Ground Utilities in the City's Rights-of-Way

WHEREAS, utilities are often located in City rights-of-way;

WHEREAS, the City has safety and aesthetic interests in ensuring that utilities in its right-of-way are installed and maintained in an appropriate manner;

WHEREAS, at present, any utility wishing to locate in the right-of-way that is not underground or on a pole must get a separate easement for each above-ground use; and

WHEREAS, the procedure described herein will streamline the process for allowing above-ground utilities in City rights-of-way, but still allow for appropriate review by the City;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANGOR AS FOLLOWS, THAT

Chapter 257 of the Code of the City of Bangor is amended as follows:

§ 257-4 License required to occupy right-of-way for construction purposes.

...

§ 257-6 Permit for utility to occupy right-of-way.

- A. The purpose of this section is to facilitate installation of communications networks and other utilities, while protecting the City's investments in its rights-of-way and the aesthetics thereof.
- B. Permit required. No person may occupy, block, obstruct, or otherwise use any portion of a City sidewalk, esplanade or street for utility purposes without first obtaining a right-of-way permit from the City Engineer as set forth herein.
- C. Scope. This section applies to any use of a right-of-way for a utility, with the exception of the following:
- (1) Underground utilities, for those portions of the use that is placed underground pursuant to a street opening permit issued in accordance with Chapter 271, Article VII of this Code.
 - (2) Utilities located on a pole, for those portions of the use that are located on a pole placed pursuant to

a City-issued pole permit.

- (3) Utilities and other uses with an easement for the area in question, to the extent their occupancy and activities meet the terms of the easement.
- (4) Cable television companies permitted under a franchise agreement with the City, in accordance with 30-A M.R.S. §§ 3008 and 4362.
- (5) Construction uses with a license granted under § 257-4.
- (6) State-maintained highways outside of the urban compact area.
- (7) Uses of the City of Bangor and their agents.

D. Application.

- (1) The applicant shall submit an application in a form as required by the City Engineer, together with any plans, specifications, and attachments as the City Engineer may require.
- (2) The applicant must meet all relevant requirements of 35-A M.R.S. § 2503. The applicant may choose to give written notice by publication in accordance with § 2503(2).
- (3) The applicant must also submit a fee as set by the City Council in the City's Schedule of Fees.

E. Review. All administrative powers and authority vested in the City Council to grant or deny the permit required hereunder shall be delegated to the City Engineer.

- (1) Once the application is deemed complete by the City Engineer and the fee paid, the City Engineer shall inquire of such departments and divisions as he or she may deem appropriate as to whether a permit may be granted consistent with the laws and ordinances enforced by such departments and the criteria set forth in subsection F. The departments and divisions consulted shall include, but are not limited to, the following:
 - (a) Code Enforcement.
 - (b) Fire Prevention.
 - (c) Engineering.
 - (d) Police.
- (2) The City Engineer shall make a decision on the application within 60 days of the application being deemed complete or the application is deemed granted.

F. Criteria.

- (1) Travel. The utility may not interfere with pedestrian or vehicular travel over the right-of-way. The utility must leave an adequate unobstructed travel aisle for the use of the sidewalk for pedestrian traffic.
- (2) Durability. The utility must be installed in durable and secure manner, and any base or fixture to which the utility is attached must be sufficiently durable, all to the satisfaction of the City Engineer.
- (3) Location.
 - (a) In areas of the City where electrical utilities have been put underground such that there are decorative street light poles and no other utility poles, utilities must meet the following requirements:
 - (i) The utility must be placed underground. Underground work must be done pursuant to a street opening permit if one is required.
 - (ii) If the utility cannot be placed underground, it must be incorporated into the existing decorative pole in a manner that does not substantially alter the appearance of the decorative pole. A Design Committee composed of the City's Planning Officer, Downtown Coordinator, and Economic and Community Development Officer or their designees shall determine whether the appearance of the decorative pole would be substantially altered.
 - (iii) If neither of the options under subsections (i) or (ii) is technically feasible, the utility must be incorporated into a new streetlight pole that is of substantially similar design as existing City decorative streetlight poles. A Design Committee composed as indicated in subsection (ii) shall determine whether the pole is of substantially similar design.
 - (b) In areas where subsection (a) does not apply, utilities must be mounted on existing poles, buildings, or other structures where feasible.
 - (i) Where such uses are proposed as stand-alone facilities, the applicant must make a showing that it is not practical to locate on another structure.
 - (ii) For proposed new support structures, including but not limited to new utility poles, the applicant must agree to reasonable requests for co-location.
 - (c) In addition to the requirement set out in subsections (a) and (b) above, the location of any new stand-alone facilities must be approved by the City Engineer and a Design Committee, composed as indicated in subsection (a)(ii). In determining whether to approve the new facilities, the City Engineer and Design Committee shall take into account the demonstrated need for the new facilities, safety concerns, and similarity to nearby structures and other aesthetic considerations.
- (4) The City Engineer may impose additional reasonable conditions of approval in keeping with the terms of this ordinance.

G. Permit requirements

- (1) The Permittee must complete installation of the utility within six months of the permit being granted.

The City Engineer may issue one or more six-month extensions on good cause shown.

- (2) Installation of the utility must be completed within 30 days after work is begun.
- (3) No work may be performed between November 1 and April 30, apart from maintenance activity that cannot be delayed until after April 30.
- (4) The Permittee must provide for maintenance and repair of the installed utilities.
- (5) The Permittee must remove the utility and restore the area to its original condition if the utility is abandoned or becomes obsolete, or if it is reasonably necessary to allow the City to undertake work in the right-of-way. The Permittee must remove a utility and restore the area within one year of the utility being abandoned or becoming obsolete.
- (6) The City Engineer may impose additional permit requirements in keeping with the terms of this ordinance.

H. Enforcement.

- (1) Any person who is found to be in violation of any provision or requirement of this article shall be subject to a civil penalty as set forth in 30-A M.R.S.A. § 4452. Each violation of a separate provision or requirement, and each day of violation, shall constitute a separate offense.
- (2) In addition or alternative to the penalties found in subsection (H)(1), the City Engineer may, after notice and hearing, suspend or revoke a permit granted under this section.
- (3) The City Engineer is responsible for enforcing the provisions of this section. He or she may make procedural rules to assist in administering and enforcing the provisions of this section. Failure to follow such rules may result in a permit not being granted, suspended, or revoked.

I. Appeals

- (1) An abutter or owner of facilities may file a written objection in accordance with § 2503(3). If a written objection is filed, the City Engineer shall hold a hearing in accordance with § 2503(4) and shall render a written decision.
- (2) In the event of denial of an application or of a written objection under subsection (I)(1), the City Engineer shall give the applicant and any objecting party written notice of the reason or reasons for his or her decision sufficient to appraise the applicant, objecting party, and any interested member of the public as to the basis for his or her decision.
- (3) The decision of the City Engineer shall be filed with all parties and the City Clerk within one week from the date of the decision.
- (4) Appeals may be taken in accordance with 35-A M.R.S. § 2503(13).

Additions are underlined, deletions ~~struck through~~.

IN CITY COUNCIL

AUGUST 26, 2019

COrd 19-328

FIRST READING



CITY CLERK

SEPTEMBER 9, 2019

COrd 19-328

MOTION MADE AND SECONDED FOR PASSAGE

VOTE: 7 - 0

COUNCILORS VOTING YES: DAVITT, GRAHAM, SCHAEFER, SPRAGUE, TREMBLE, WESTON, NICHOLS

COUNCILORS VOTING NO: NONE

PASSED



CITY CLERK