

CLERK'S OFFICE  
**AMENDED AND APPROVED**

Date: 3-1-05  
IMMEDIATE RECONSIDERATION FAILED  
3-1-05

**ANCHORAGE, ALASKA**  
**AO NO. 2005-2**

**Submitted by:** Assemblymembers  
Shamberg, Tesche  
**Prepared by:** Department of Assembly  
**For reading:** January 11, 2005

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
2 ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION  
3 FACILITIES, SECTION 21.90.030, VARIANCES, SECTION 21.90.060, DESIGNATION  
4 OF TARGET AREAS, TO PROVIDE FOR A FIVE-YEAR PLAN DESIGNATING  
5 TARGET AREAS, AND SECTION 21.90.070, NONCONFORMING OVERHEAD  
6 LINES, TO AUTHORIZE THE DIRECTOR OF THE PLANNING DEPARTMENT TO  
7 GRANT VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND AT  
8 LEAST TWO PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM  
9 SALES WITHIN THE MUNICIPALITY OF ANCHORAGE, TO REMOVE POLES  
10 SUPPORTING NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE  
11 LINES UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE  
12 LINES UNDERGROUND.

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14  
15 THE ANCHORAGE ASSEMBLY ORDAINS:

16  
17 **Section 1.** Anchorage Municipal Code section 21.90.030 is hereby amended to read  
18 as follows: (*Other portions of the section are not affected and therefore not set out.*)  
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20 **21.90.030 Variances.**

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22 A. The director of the Planning Department [AND ZONING COMMISSION]  
23 may grant a variance from Section 21.90.020.A when [THE COMMISSION  
24 FINDS] any of the following is found:  
25

- 26 1. Placing a utility distribution line underground would cause an  
27 excessive adverse environmental impact;
- 28 2. Placing a utility distribution line underground would threaten public  
29 health and safety, because the placement cannot be shown to meet  
30 acceptable technical standards for safety; or
- 31 3. Placing a utility distribution line underground in an environmentally  
32 sound and safe manner would cost more than three times the cost of  
33 placing the line overhead, where the applicant demonstrates the relative  
34 cost to the satisfaction of the director of the Planning Department  
35 [COMMISSION].  
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[The Revisor of Ordinances is instructed to change all subsequent references to "Department of Community Planning and Development" in this section to "Director of the Planning Department".]

(AO No. 156-76; AO No. 84-62; AO No. 86-17)

**Section 2.** Anchorage Municipal Code section 21.90.060 is hereby amended to read as follows:

**21.90.060 Nonconforming overhead lines— Designation of target areas.**

- A. An electric utility that owns poles that support nonconforming utility distribution lines shall prepare or otherwise include as part of its annual capital improvement plan, a five year undergrounding program consistent with Section 21.90.070. This five year program shall be updated on an annual basis. Priorities shall be based on undergrounding in conjunction with the electric utility's essential system improvements and then by target area as set forth below in no particular order. The director of the Planning Department shall provide review and comment for consideration by the electric utilities on these five year programs. When reviewing and commenting on these programs the director shall consider the following factors in no particular order: [THE DIRECTOR OF THE DEPARTMENT OF COMMUNITY PLANNING AND DEVELOPMENT SHALL SUBMIT TO THE ASSEMBLY A TEN-YEAR PROGRAM DESIGNATING TARGET AREAS FOR THE UNDERGROUND PLACEMENT OF NONCONFORMING UTILITY DISTRIBUTION LINES. THE TEN-YEAR PROGRAM SHALL BE RESUBMITTED FOR ASSEMBLY REVIEW EVERY FIVE YEARS. THE COMMUNITY PLANNING DIRECTOR SHALL CONSULT WITH THE UTILITIES AND PUBLIC AGENCIES AFFECTED BY THE PROGRAM. THE TEN-YEAR PROGRAM AND ITS REVISIONS SHALL BECOME EFFECTIVE WHEN ADOPTED BY THE ASSEMBLY AS PART OF THIS CHAPTER. IN REVIEWING THE TEN-YEAR PROGRAM AND ITS REVISIONS, THE ASSEMBLY SHALL CONSIDER THE FOLLOWING FACTORS:]

1. Whether undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric distribution or other attached utility facilities.

2. Whether the street or general area is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic.
  3. Whether the appearance of grounds and structures adjacent to the roadway is such that the removal of the overhead facilities will substantially improve the general appearance of the area.
  4. Whether the street or area affects a public recreation area or an area of scenic interest.
  5. Whether there is a significant opportunity to achieve economies due to the anticipated relocation or replacement of overhead lines or the widening or realignment of streets within a given area.
  6. Whether the five year program sufficiently addresses the objectives of [TARGETED AREAS ARE OF SUFFICIENT SIZE TO ALLOW THE UTILITY COMPANIES SIGNIFICANT DISCRETION IN CHOOSING THOSE FACILITIES THAT WILL BE CONVERTED UNDER] Section 21.90.070.
  7. Whether the area under consideration is within a zone where new and relocated distribution lines are required to be placed underground.
  8. Whether the installation of underground distribution lines is economically, technically and environmentally feasible including the effect on an attached utility.
- B. The director of the Planning Department [OF COMMUNITY PLANNING AND DEVELOPMENT SHALL PREPARE A TWO-YEAR IMPLEMENTATION PLAN WHICH DESIGNATES OVERHEAD UTILITY DISTRIBUTION FACILITIES WITHIN THE TARGET AREAS TO BE PLACED UNDERGROUND THAT TWO-YEAR PERIOD] shall confirm annually that the electric utilities have developed project undergrounding implementation plans. The director shall consult with the utilities and public agencies affected by any implementation plan. [EACH TWO-YEAR IMPLEMENTATION PLAN SHALL BE EFFECTIVE WHEN APPROVED BY THE ASSEMBLY.] In reviewing [A TWO-YEAR] implementation plans [PLAN AND ITS REVISIONS], the [ASSEMBLY] director shall consider the factors stated in subsection A of this section.
- C. The following shall be the target areas [THROUGH THE YEAR 1995]:

1. Central Business District: between and including Third Avenue and Tenth Avenue and L Street and Ingra Street.
2. Mid-town area: between and including New Seward Highway and Minnesota Drive and International Airport Road and Fireweed Lane.
3. All municipal and state street improvement projects except for those which do not require relocation of utility distribution facilities.
4. The following major traffic corridors:
  - a. Old Seward Highway.
  - b. Ingra and Gambell Streets between and including Ninth Avenue and Fireweed Lane.
  - c. Northern Lights Boulevard and Benson Boulevard between and including Glenwood Street and Arlington Drive.
  - d. Muldoon Road between and including New Glenn Highway and Patterson Street.
  - e. Tudor Road between and including Patterson Street and Arctic Boulevard.
  - f. Boniface Parkway between and including 30th Avenue and New Glenn Highway.
  - g. Spenard Road between and including Hillcrest Drive and International Airport Road.
  - h. Arctic Boulevard between 17<sup>th</sup> Avenue and Tudor Road.
  - i. Lake Otis Parkway between Tudor Road and Abbott Loop
5. All [THOSE] park, recreational use and scenic interest areas [DESIGNATED IN THE TWO-YEAR IMPLEMENTATION PLAN].
6. Eagle River Central Business District between and including the New Glenn Highway, North Eagle River Access Road, Aurora street as extended to the Old Glenn Highway and the Old Glenn Highway.

7. Any area where utility distribution facilities are provided by more than one utility as a result of mergers and boundary changes approved by the state public utilities commission.

8. School and university areas.

**Section 3.** Anchorage Municipal Code section 21.90.070 is hereby amended to read as follows:

**21.90.070 Nonconforming overhead lines [–CONFORMANCE WITH TEN-YEAR PLAN].**

A. An electric utility that owns poles that support nonconforming utility distribution lines shall remove the poles and place those lines underground. Any other utility that attaches to such poles shall place its lines underground at the same time that the pole owner places lines underground. [OWNING OR OPERATING NONCONFORMING UTILITY DISTRIBUTION LINES SHALL PLACE THOSE LINES UNDERGROUND IN ACCORDANCE WITH THE TEN-YEAR PLAN APPROVED UNDER SECTION 21.90.060; PROVIDED THAT A UTILITY NEED NOT EXPEND, EXCEPT BY SPECIAL AGREEMENT, DURING ANY FISCAL YEAR OF THE UTILITY, MORE THAN FOUR PERCENT OF ITS GROSS REVENUES DERIVED FROM SERVICE CONNECTIONS WITHIN THE MUNICIPALITY, EXCLUDING TOLL REVENUES AND REVENUES FROM SALES OF ELECTRIC POWER FOR RESALE, DURING ITS PRECEDING FISCAL YEAR TO COMPLY WITH THIS SUBSECTION.]

1. The electric utility that owns poles shall, in each fiscal year, expend at least two percent of a three-year average of its annual gross retail revenues derived from utility service connections within the municipality, excluding toll revenues, revenues from sales of natural gas to third parties, and revenues from sales of electric power for resale **for purposes of undergrounding nonconforming lines**. An electric utility's expenditures, pursuant to AS 42.05.381(h), within the Municipality of Anchorage, shall be counted toward satisfaction of the two percent expenditure required by this subsection.

2. A utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. **To underground nonconforming utility lines, a**[A]n attached utility shall not be required to expend more than two percent of its annual gross retail revenues derived

connections within the municipality, excluding toll revenues. For the purpose of satisfying 21.90.070, the utility's expenditures pursuant to AS 42.05.381(h) within the Municipality of Anchorage are counted toward this two percent expenditure limit.

3. The electric utility that owns poles may choose which existing lines to underground in order to fulfill the two percent expenditure requirement, in consultation with appropriate public agencies and any other utilities.

4. An electric utility that owns poles that does not expend the amount required in subsection A. of this section, or that expends more than that amount, may carry over the under expenditure or over expenditure as an adjustment to the following year's obligation.


B. The electric utility that owns poles shall notify the Director of the Planning Department, and utilities or entities with lines attached to such poles, of the approximate date that the owner plans to remove the poles. Such notice, where possible, shall be given at least four months in advance of the undergrounding except where an emergency or other unforeseen circumstances preclude such notice, in which case such advance notice as is reasonable under the circumstances shall be provided.

C. A utility shall annually submit a report of its undergrounding projects and expenditures for non-conforming lines to the director of the Planning Department within 120 days of the end of the preceding calendar year.

D.[B] All n[N]ew service connections shall be placed underground in the same manner as required for utility distribution lines under Section 21.90.020, [IN TARGET AREAS DESIGNATED UNDER SECTION 21.90.060; PROVIDED THAT] New service lines [CONNECTIONS] may be temporarily installed above ground [OVERHEAD] from October through May, if placed underground within one year of installation.

**Section 4.** This ordinance shall become effective 90 days from its passage and approval.

1  
2 PASSED AND APPROVED by the Anchorage Assembly this 15<sup>th</sup> day of  
3 March, 2005.  
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5  
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8 Chair

9 ATTEST:

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12 Municipal Clerk  
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**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects -- General Government**

**AO Number:** 2005-2

**Title:** AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION FACILITIES, SECTION 21.90.030, VARIANCES, SECTION 21.90.060, DESIGNATION OF TARGET AREAS.

**Sponsor:** Assemblymember Shamberg  
**Preparing Agency:** Department of Assembly  
**Others Impacted:** Municipal Light and Power

**CHANGES IN EXPENDITURES AND REVENUES:**

(In Thousands of Dollars)

|                                  | <u>FY05</u>     | <u>FY06</u>     | <u>FY07</u>     | <u>FY08</u>     | <u>FY09</u> |
|----------------------------------|-----------------|-----------------|-----------------|-----------------|-------------|
| <b>Operating Expenditures</b>    | \$ 1,548        | \$ 1,604        | \$ 1,629        | \$ 1,609        |             |
| 1000 Personal Services           |                 |                 |                 |                 |             |
| 2000 Non-Labor                   |                 |                 |                 |                 |             |
| 3900 Contributions               |                 |                 |                 |                 |             |
| 4000 Debt Service                |                 |                 |                 |                 |             |
| <b>TOTAL DIRECT COSTS:</b>       | <b>\$ 1,548</b> | <b>\$ 1,604</b> | <b>\$ 1,629</b> | <b>\$ 1,609</b> | <b>\$ -</b> |
| Add: 6000 Charges from Others    |                 |                 |                 |                 |             |
| Less: 7000 Charges to Others     |                 |                 |                 |                 |             |
| <b>FUNCTION COST:</b>            | <b>\$ 1,548</b> | <b>\$ 1,604</b> | <b>\$ 1,629</b> | <b>\$ 1,609</b> | <b>\$ -</b> |
| <b>REVENUES:</b>                 |                 |                 |                 |                 |             |
| <b>CAPITAL:</b>                  |                 |                 |                 |                 |             |
| <b>POSITIONS: FT/PT and Temp</b> | <b>5</b>        | <b>5</b>        | <b>5</b>        | <b>5</b>        |             |

**PUBLIC SECTOR ECONOMIC EFFECTS:**

The cost of electrical service to all MOA properties receiving service from ML&P would increase 1.65%. There will be similar cost increases for electric service provided by other utilities. There will also be cost increases for service from other wire or network utilities, though these will likely be much smaller. Also, any municipal buildings currently taking overhead service would be required to modify their service entrance equipment in order to receive underground service if distribution facilities in that area are converted to underground. These costs will vary by location.

**PRIVATE SECTOR ECONOMIC EFFECTS:**

Chugach Electric Association will be required to spend approximately \$2 million/year as a result of this ordinance. Likewise, Matanuska Electric would spend roughly \$400,000 meeting the requirements. Following utilities, those with lines attached to poles owned by electric utilities, will also be impacted. The extent of that impact will depend on a variety of factors, including which distribution lines the pole owners choose to underground. Following utilities include ACS, GCI, and MTA.

Prepared by: Mike Gutierrez  
Reviewed by: Elvi Gray-Jackson

Telephone: 343-4763  
Telephone: 343-4750





# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

NO. AM 2-2005

Meeting Date: January 11, 2005

**From:** Assemblymember Janice Shamberg

**Subject:** AO 2005-2 Relating to Undergrounding Utility Lines

AO 2005-2 amends 21.90.030, variances, to substitute Director of the Planning Department for the Planning and Zoning Commission. It also amends AMC 21.90.070 to require an electric utility to expend two percent of a three-year average of its annual gross retail revenues derived from utility service connections within the Municipality, excluding certain types of revenues. A utility's expenditures, pursuant to AS 42.05.381(h), within the Municipality will be counted toward satisfaction of the two percent expenditure required by this subsection.

The ordinance requires electric utilities that own poles to, on an annual basis, produce a five-year plan for removing poles and placing the attached lines underground. The electric utilities retain the authority to choose which existing lines to underground in fulfillment of the two percent requirement in consultation and cooperation with appropriate public agencies and other impacted utilities. This proposal also establishes a notification process so that the Director of Planning and utilities or other entities with lines attached to the poles are given adequate notice, including an approximate date that the owner intends to remove the poles.

Utilities that own poles that do not expend the amount required by this proposal may carry over the under expenditure or over expenditures as an adjustment to the following year's obligation. Finally, utilities must submit an annual report of expenditures related to the undergrounding of nonconforming overhead lines to the Director of the Planning Department no more than 120 days following the end of the preceding calendar year.

It is recommended that the Assembly adopt AO 2005-2

|                         |  |
|-------------------------|--|
| Prepared by:            | Mike Gutierrez, Utility Budget Analyst                                 |
| Reviewed by:            | Elvi Gray-Jackson, Director – Assembly Budget and Legislative Services |
| Respectfully submitted: | Janice Shamberg, Assemblymember  |

**MUNICIPALITY OF ANCHORAGE**

**PLANNING AND ZONING COMMISSION RESOLUTION NO. 2004-081**

A RESOLUTION RECOMMENDING APPROVAL OF AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION FACILITIES, SECTION 21.90.030, VARIANCES, SECTION 21.90.060, DESIGNATION OF TARGET AREAS, TO PROVIDE FOR A FIVE-YEAR PLAN DESIGNATING TARGET AREAS, AND SECTION 21.90.070, NONCONFORMING OVERHEAD LINES, TO AUTHORIZE THE DIRECTOR OF THE PLANNING DEPARTMENT TO GRANT VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND AT LEAST TWO PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM SALES WITHIN THE MUNICIPALITY OF ANCHORAGE, TO REMOVE POLES SUPPORTING NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE LINES UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE LINES UNDERGROUND.

(Case 2004-070-2)

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WHEREAS, an ordinance was introduced by Assembly member Shamborg on May 3, 2004 and denied by the Commission. The ordinance was revised and returned to the Commission on November 1, 2004 and denied. Notice of Reconsideration was spread the following day and the case returned to the Commission on November 8, 2004 and approved.

WHEREAS, notices were published and public hearings were held on May 3, 2004 and November 1, 2004.


NOW, THEREFORE, BE IT RESOLVED by the Municipal Planning and Zoning Commission that:

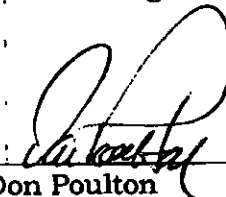
A. The Commission makes the following findings of fact:

1. The Commission finds that revisions were made to the ordinance reviewed at the meeting of May 3, 2004 to address issues raised at that meeting.
2. Regarding the meeting of November, 1, 2004, the Commission finds that the proposed ordinance does not impose an additional burden over what ACS is required to spend under state law. The revised ordinance addresses the situation of competitive advantage because it does not require non-electric utilities to meet the 2% expenditure requirement.
3. The Commission finds that the ordinance retains predictability for the public by retaining the target areas and by requiring a five-year plan from electric utilities.
4. The Commission minority (1) did not support the motion because the question of inequities had not been satisfactorily addressed and requested an analysis of the cost figures to understand the impact of the ordinance on electric and telecommunications utilities.
5. At the meeting of November 8, 2004, the Commission finds that third party evaluations of variance requests provides an additional degree of cost verification to the Planning Director and security to the public.

6. The Commission finds that the goal of the ordinance is laudable and is hopeful that clarifying information concerning costs associated with undergrounding utilities could be made available to the Assembly.
- B. The Commission recommends to the Municipal Assembly approval of the amendment to Title 21, subject to the following conditions:
1. Add the statement to 21.90.030.A.3. "...where the applicant demonstrates the relative cost to the satisfaction of the director of the Planning Department *and which may include an evaluation by an independent third party.*"

PASSED AND APPROVED by the Municipal Planning and Zoning Commission this 8th day of November 2004.

  
\_\_\_\_\_  
Tom Nelson  
Secretary

  
\_\_\_\_\_  
Don Poulton  
Chair

(Case No. 2004-070)

sf

## PLANNING AND ZONING COMMISSION MEETING

Assembly Chambers  
Z.J. Loussac Library  
3600 Denali Street  
Anchorage, Alaska

MINUTES OF  
November 8, 2004  
6:30 PM

*A work session on the Transportation Alternate Development was conducted at 5:30 p.m. with Transportation Planning. Staff attending included Jon Spring and Lance Wilber.*

### A. ROLL CALL

Present Don Poulton, Chair  
Toni Jones  
Megan Simonian  
Greg Jones, Vice Chair  
Nancy Pease  
Jim Lottsfeldt  
Bill Wielechowski  
Art Isham

Excused Johnny Gibbons

Staff Al Barrett  
Sharon Ferguson  
Cathy Hammond

CHAIR POULTON explained that municipal regulations state that any action by the Commission require a favorable vote of a majority of the fully constituted Commission, except when others may be excused due to conflicts voiced during disclosure. Therefore, an affirmative vote by 5 of the 8 members present at this meeting is necessary for the approval of any action. If this caused concern, petitioners could request postponement.

MAX GARNER attorney for ACS asked that case 2004-070 be postponed given the number of Commissioners in attendance. CHAIR POULTON asked if Commissioners T. Jones and Simonian had listened to the tapes of the last hearing on this case; both responded in the affirmative. Given this fact, four of the five Commissioner members participating would carry the motion because Commissioners G. Jones, Lottsfeldt, and Wielechowski would be abstaining due to conflicts. COMMISSIONER T. JONES stated that, if this were not a reconsideration, but instead were an ordinary case on the agenda, affected

parties would be allowed to request postponement. After conferring with his client, MR. GARNER indicated that he would withdraw his request to postpone case 2004-070.

**B. MINUTES – None**

**C. SPECIAL ORDER OF BUSINESS**

**1. Disclosures**

VICE CHAIR G. JONES requested that members make disclosures regarding items on this evening's agenda. He noted that in case 2004-070 Commissioner Lottsfeldt, Commissioner Wielechowski, and he have been conflicts.

COMMISSIONER T. JONES disclosed in case 2004-070 that in one of the supplemental documents was a letter from TemTel Inc. that lists clients, a number of which are clients of the firm for which she works. Many of those clients are rural telephone companies and she does utility-related work for them. She did not believe this constituted a conflict. There were no objections to her participation in case 2004-070.

**2. Notice of Reconsideration: Case 2004-070, An ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities.**

CHAIR POULTON passed the gavel to COMMISSIONER T. JONES.

CHAIR POULTON moved to reconsider case 2004-070.

COMMISSIONER ISHAM seconded.

CHAIR POULTON stated that his interpretation of the positions taken at the last meeting is that no one is necessarily opposed to under grounding; however, he was not convinced that the amendments would have a neutral effect on all parties. He felt that the implementation of an ordinance and the situation it might create in term of competitive advantage or disadvantage is the concern of the companies involved, not the Commission. Based on that and because of some documentation that was submitted, he wished to reconsider the matter.

ACTING CHAIR T. JONES asked what number of affirmative votes would be required to act on this matter. MS. FERGUSON stated that Staff believes four affirmative votes would be required to pass any motion.

AYE: Isham, Pease, T. Jones, Poulton, Simonian  
NAY: None  
ABSTAIN: G. Jones, Lottsfeldt, Wielechowski

PASSED

CHAIR POULTON indicated he had asked at the November 1, 2004 meeting that information be supplied from Chugach Electric Association (CEA) and Alaska Communications Systems (ACS) to Mr. Gutierrez for analysis. This concern was raised by ACS's position on the ordinance. Mr. Gutierrez indicated there would be no negative impact on ACS as a result of adopting this ordinance. ACS submitted paperwork that Mr. Gutierrez also analyzed and Mr. Gutierrez again indicated there would be no negative impact on ACS. In addition to the monetary issues presented, ACS submitted some alternate language, as did Staff. He asked that Staff discuss the language submitted by ACS and by Staff. MS. FERGUSON indicated she had nothing to add to Mr. Gutierrez's analysis. She stated that the Department did not support the language recommended by ACS because it refers to current expenditure under state statute rather than simply stating that the utility need not expend more than is required under state statute. The Department is not aware what amount ACS is currently expending and whether or not they are meeting state statute. Secondly, ACS is asking to maintain the current status, which would be in violation of state law. State law is clear that if electrical utilities go underground, attached utilities must go underground at the same time. CHAIR POULTON noted that Staff has suggested adding language to AMC 21.90.030.A.3 "...where the applicant demonstrates the relative cost to the satisfaction of the director of the Planning Department *and which may include an evaluation by an independent third party.*" He asked if analyses are done in other situations by independent third parties. MS. FERGUSON was not aware of any, but was also not aware of other ordinances where the cost is being requested from an applicant. Staff does not have expertise in terms of the cost of placing utilities underground, therefore, Staff cannot analyze the costs submitted by an applicant. An independent third party evaluation would verify the accuracy of the figures submitted by an applicant. CHAIR POULTON asked whether these issues would come back before the Commission. MS. FERGUSON indicated that, as written, the matter would go before the Planning Director.

COMMISSIONER ISHAM asked if it is necessary to define how the independent third party is selected. MS. FERGUSON replied that the Planning Department would most likely select the independent third party. There was discussion with CEA that the Department would have the discretion to choose the independent third party. COMMISSIONER ISHAM thought the third party could be biased toward whoever is paying their fee. MS. FERGUSON suggested that the Department could work with the utilities. She noted that, at the time of discussion

with electrical utilities, this did not appear to be a topic upon which there could not be agreement.

COMMISSIONER PEASE asked whether someone from CEA could respond to questions. CHAIR POULTON noted that Mr. Gutierrez was told he could not testify this evening and did not attend. He was unsure whether this would affect the decision to allow others to respond to questions. ACTING CHAIR T. JONES stated that, if Commissioners need information that can be clarified by testimony, unless there is objection, she would allow parties to address questions. MS. FERGUSON indicated that a representative from CEA, Mr. Jenkins, was present. COMMISSIONER PEASE noted that ACS has submitted per foot costs to underground projects (DeArmoun Road, Dowling Road, and "C" Street). Mr. Gutierrez's analysis was that, if ACS or any other non-electric utility were following CEA's lead, CEA would bear the brunt of the cost. She asked whether Mr. Jenkins could provide high and low dollar ranges for CEA's projects. ED JENKINS stated he could secure those numbers, but not tied to projects. Dowling Road from Lake Otis to Old Seward has been closed out. That is a State project and the portion of work related to CEA's relocation was approximately \$6.7 million, which was reimbursed by the State of Alaska. Within that project approximately two miles of overhead line was put underground. There was also approximately .6 miles of underground facilities that were also retired as part of that project. COMMISSIONER PEASE asked what was the total length of that project. MR. JENKINS stated the total project cost was \$6.7 million and total line miles retired were approximately 2.6; the overhead portion of that would be approximately 77%. Dividing 77% of the total cost by the overhead lines retired equates to \$2.6 million per mile.

COMMISSIONER PEASE asked a representative of ACS what percentage of their costs for undergrounding in a roadway is reimbursed by ADOT. MARY ANN PEASE replied that on the Dowling Road project ACS was reimbursed approximately 49% of their costs. COMMISSIONER PEASE asked why there is a different reimbursement rate for ACS versus the main utility. MS. PEASE was uncertain, but suggested an ACS engineer could respond. GREG SCHMIDT, outside plant engineering foreman for ACS, explained that the formula for reimbursing ACS is negotiated with ADOT based on what facilities exist in the area and when they were permitted. He believed ACS was responsible for paying 41% of the Dowling Road project; there were problems associated with the permits for older facilities and the State, under their statutes, would not reimburse for them. COMMISSIONER PEASE asked if those facilities were nonconforming in other ways. MR. SCHMIDT replied that, if valid permits can be produced, they are reimbursable. COMMISSIONER PEASE asked what is the average amount ACS is typically reimbursed for State road projects. MR. SCHMIDT stated that reimbursement could range from high to low; it is completely a negotiation process.

COMMISSIONER SIMONIAN asked if the supplemental raw numbers provided by ACS did not consider reimbursement by the State. MR. SCHMIDT replied that those figures were on recent projects and some of them were engineering estimate costs because those projects have not been completely closed out. He had submitted figures on two municipal projects that were nearly full cost to ACS, as well as figures on two State projects. Those range in price from \$68 to over \$800 per foot. Those were total costs of the project and did not include any State reimbursement.

ACTING CHAIR T. JONES asked if CEA has experienced problems with reimbursement such as Mr. Schmidt discussed, i.e. not having complete records to serve as basis for reimbursement. MR. JENKINS replied that CEA typically does not have problems of this type. He explained that CEA has always been a coop, whereas ACS was municipally owned in the past.

The reconsidered motion was restated: COMMISSIONER GIBBONS moved for approval of the ordinance amending AMC 21.90 and taking into consideration the Department recommendations on page 5 of the Staff packet.

COMMISSIONER PEASE asked whether there was any other way to pin down the financial predictability of this ordinance. CHAIR POULTON stated there has now been additional information and both parties still appear to be of differing opinions. He deferred to Mr. Gutierrez's conclusion that, "If ACS is fulfilling its statutory obligation, this proposal would not impact them. If ACS is not fulfilling its statutory obligation, this proposal could impact them to the extent they are failing to meet said obligations." CHAIR POULTON thought the inclusion of the third party review was meritorious and would allow for additional review based on individual projects. COMMISSIONER PEASE thought the third party review pertained only to new projects. CHAIR POULTON also understood this review would be for new installations, not for grandfathered facilities.

COMMISSIONER PEASE asked Ms. Shamberg whether any of the information supplied since November 1, 2004 is different than information seen previously and if there had been a good faith effort to secure cost figures previously. ASSEMBLYMEMBER SHAMBERG indicated she had not personally seen any figures from ACS in the past, although they might have been sent to Mr. Gutierrez. COMMISSIONER PEASE asked whether this information has been requested in the past. ASSEMBLYMEMBER SHAMBERG replied that figures were requested during meetings and ACS indicated that their books are not kept such that they could supply that information; that all undergrounding is combined, whether new or existing facilities that have been undergrounded.

COMMISSIONER SIMONIAN asked if the motion before the Commission included the amended language. ACTING CHAIR T. JONES indicated that the motion is the Staff recommendation on page of the November 1, 2004 packet.



COMMISSIONER SIMONIAN moved to amend to include the language on page 5 that states "Add the statement to AMC 21.90.030.A.3 '...where the applicant demonstrates the relative cost to the satisfaction of the director of the Planning Department and which may include an evaluation by an independent third party.'"

CHAIR POULTON seconded.

COMMISSIONER SIMONIAN felt that the potential for a third party evaluation provides an important safety valve for all parties, although as Ms. Pease noted, this only applies to new installations.

COMMISSIONER PEASE noted that Staff requested that the authority for new installations to be taken from Planning and Zoning Commission and given to Staff, which takes away the public comment component. This amendment gives some security to the public; since there would not be a public hearing, there would at least be a third party weighing in on the request.

CHAIR POULTON supported the amendment, given the relevance of financial considerations with this ordinance. The amendment provides the opportunity to present hard numbers for individual projects as they come before the Staff.

Amendment

AYE: Isham, Pease, T. Jones, Poulton, Simonian

NAY: None

ABSTAIN: G. Jones, Lottsfeldt, Wielechowski

PASSED

COMMISSIONER SIMONIAN stated this is a situation where the Commission must depend on conflicting information about costs and finances. She felt the goal of the ordinance is laudable and noted that, when there is conflicting information and there is a financial interest on the part of the party providing the information, caution must be used.

CHAIR POULTON indicated he would support the motion, having voted against it on November 1, 2004 because of his concern with regard to the issues discussed this evening. There is a secondary review process in place that will ensure equitable treatment of all parties.

COMMISSIONER PEASE had hoped that this reconsideration would put a clearer financial picture before the Commission and that there would be a slip stream effect to undergrounding that would address ACS's inability to pass along costs to consumers. The financial picture is not as clear as she had hoped, however, she did not think the information provided by ACS directly addressed

the question as they should and could have in order to make their case. They presented information that does imply that because they are not always fully reimbursed on roadway projects, on those projects their costs might rise while GCI's might stay low. The figures ACS has supplied do not clearly show that ACS's costs would exceed their 1% requirement under State statute while CEA is meeting its 2% obligation under the municipal ordinance.

ACTING CHAIR T. JONES supported the motion because she believes undergrounding is good for the community and implementation should be pursued, although she was concerned that equity should be assured. She stated that ACS is unique and different from electric utilities and the Telecommunications Act of 1996 was not always kind to incumbent telephone companies. Companies have an obligation to interconnect with competitors and there is nothing they can do to recapture costs from their competitors' customers. She also had sensitivity to the fact that ACS may have inherited less than complete records so they might not be eligible for 100% reimbursement with all projects. She hoped when the ordinance goes before the Assembly, additional clarifying information could be supplied.

Main Motion

AYE: Isham, Pease, T. Jones, Poulton, Simonian

NAY: None

ABSTAIN: G. Jones, Lottsfeldt, Wielechowski

PASSED

MR. BARRETT distributed additional information to the Commission. CHAIR POULTON asked the nature of this information. MR. BARRETT explained that late today the Department received information from the Mayor's Office. Apparently some of the public had been in contact with the Mayor and asked that this information be considered, should case 2003-095 be pulled from the Consent Agenda.

**D. CONSENT AGENDA**

1. **Resolutions for Approval:** 2004-059 (case 2004-115), 204-060 (case 2004-130), 2004-070 (case 2004-001-2)
2. **Introduction for Public Hearing** – None
3. **Site/Landscape Plan Approval** – None
4. **Time Extensions/Expedited Public Hearings; Minor Conditional Use Amendments**

## PLANNING AND ZONING COMMISSION MEETING

Assembly Chambers  
Z.J. Loussac Library  
3600 Denali Street  
Anchorage, Alaska

MINUTES OF  
November 1, 2004  
6:30 PM

*A work session on the Proposed MOA 2005 Capital Improvement Budget/2005-2010 Capital Improvement Program was conducted at 5:30 p.m.*

### A. ROLL CALL

Present Don Poulton, Chair  
Johnny Gibbons  
Greg Jones, Vice Chair  
Nancy Pease  
Jim Lottsfeldt  
Bill Wielechowski  
Art Isham

Excused Toni Jones

Unexcused Megan Simonian

Staff Cathy Hammond  
Mary Autor  
Angela Chambers  
JoAnn Contreras

CHAIR POULTON explained that municipal regulations state that any action by the Commission require a favorable vote of a majority of the fully constituted Commission, except when others may be excused due to conflicts voiced during disclosure. Therefore, an affirmative vote by 5 of the 7 members present at this meeting is necessary for the approval of any action. If this caused concern, petitioners could request postponement.

### B. MINUTES

COMMISSIONER G. JONES moved for approval of the minutes of September 13, 2004 and September 20, 2004.

COMMISSIONER LOTTSFELDT seconded.

AYE: Isham, Pease, Gibbons, Poulton, G. Jones, Lottsfeldt, Wielechowski  
NAY: None

PASSED

**C. SPECIAL ORDER OF BUSINESS**

**1. Disclosures**

VICE CHAIR G. JONES requested that members make disclosures regarding items on this evening's agenda.

COMMISSIONER ISHAM noted that Mr. Klinkner is the attorney for Alaska Aerospace and he works with him frequently.

COMMISSIONER PEASE noted that her sister-in-law was present, presumably to testify in case 2004-070, which she was directed to participate in previously.

COMMISSIONER WIELECHOWSKI stated regarding case 2004-069 that he is associate general counsel for IBEW and among the members the union represents are employees of ACS. He disclosed regarding case 2004-070 that he is associate general counsel for IBEW, which represents employees of ACS, ML&P, MEA, and MTA, among other organizations that might be affected by the ordinance. VICE CHAIR G. JONES asked if Mr. Wielechowski had been excused when case 2004-069 was before the Commission. COMMISSIONER WIELECHOWSKI replied in the affirmative. VICE CHAIR G. JONES indicated that Mr. Wielechowski would then also abstain from the vote on the resolution pertaining to that case. He also understood that Mr. Wielechowski was not on the Commission when case 2004-070 was heard previously. COMMISSIONER WIELECHOWSKI indicated this was correct. VICE CHAIR G. JONES felt that, based on past practice, Mr. Wielechowski would be asked to abstain in case 2004-070. COMMISSIONER PEASE stated the packet indicated there was consent on behalf of the utilities in case 2004-070, but the Commission could not be sure whether they would testify on that case. VICE CHAIR G. JONES suggested that a decision on a conflict should be based on the case, not those in attendance. CHAIR POULTON asked if there is an actual conflict of interest or an appearance of a conflict. COMMISSIONER WIELECHOWSKI did not believe he had an actual conflict, but thought perhaps there could be an appearance of a conflict. CHAIR POULTON noted at the last Commission meeting there was an appearance of conflict on the part of one member in a case and the Commission asked that Commissioner to not participate. COMMISSIONER GIBBONS felt that, if there is an appearance, of a conflict Mr. Wielechowski should not participate in case 2004-070. CHAIR POULTON stated that this would be in line with the Commission's general philosophy. VICE CHAIR G. JONES ruled there is an appearance of conflict and directed that Mr. Wielechowski abstain in case 2004-070.

COMMISSIONER LOTTSFELDT indicated regarding case 2004-069 that he was excused previously for a conflict. He participated in case 2004-070 when it was previously heard by the Commission, but as the case proceeded, one of the issues that became apparent was the competition between ACS and GCI and the cost attributed to their customers. Because of his client/agency relationship with ACS, he believed he has a conflict in this case. VICE CHAIR G. JONES ruled that Mr. Lottsfeldt be directed to abstain in cases 2004-069 and 2004-070.

VICE CHAIR G. JONES stated he has been directed to abstain on case 2004-069 and when the underground ordinance, case 2004-070, was before the Commission previously he was also asked to abstain based on his employment at GCI. He noted that three members would be abstaining in case 2004-070 and in case 2004-069.

COMMISSIONER PEASE noted she was excused from case 2004-069 on the Consent Agenda. VICE CHAIR G. JONES indicated that Ms. Pease would not participate in the vote on the resolution pertaining to that case.

AYE: Isham, Pease, Gibbons, Poulton, G. Jones, Lottsfeldt, Wielechowski  
NAY: None

PASSED

**D. CONSENT AGENDA**

1. **Resolutions for Approval: 2004-069 (case 2004-145)**
2. **Introduction for Public Hearing – None**
3. **Site/Landscape Plan Approval – None**
4. **Time Extensions/Expedited Public Hearings; Minor Conditional Use Amendments**
  - a. **2004-165** Alaska Women's Resource Center. A minor amendment to a conditional use, Case # 1999-152, to allow licensed child care services. Pyhala Subdivision, Block 1, Lot 6. Located at 611 W 47<sup>th</sup> Avenue.
5. **Other – None**

COMMISSIONER GIBBONS moved for approval of the Consent Agenda.

COMMISSIONER LOTTSFELDT seconded:

CHAIR POULTON noted that Commissioners Pease, Lottsfeldt, Wielechowski and G. Jones were abstaining in the vote on Resolution 2004-069.

**E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS –**  
None

**F. REGULAR AGENDA - None**

**G. PUBLIC HEARINGS**

1. **2004-070** Municipality of Anchorage. An ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, section 21.90.030, variances, section 21.90.060, designation of target areas, to provide for a five-year plan designating target areas, and section 21.90.070, nonconforming overhead lines, to authorize the director of the planning department to grant variances, to require a utility owning poles to expend at least two percent of its gross annual retail revenues from sales within the Municipality of Anchorage, to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

Staff member ANGELA CHAMBERS explained that the quorum is reduced by the three conflicts to six, requiring the affirmative vote of four members in order for the ordinance to pass. CHAIR POULTON asked whether the petitioner wished to postpone. No request was made.

Staff member SHARON FERGUSON explained that Assemblymember Shamberg and staff of the Assembly Office developed this ordinance amendment. This case was heard by the Commission on May 3, 2004 and was denied. The amendments are to 21.90.030, 21.90.060 and 21.90.070. The amendment to 21.90.030 regarding variances pertains to transferring responsibility for granting variances from Planning and Zoning Commission to the Director of the Planning Department and transfers responsibility for evaluating the cost of under ground versus overhead from Planning and Zoning Commission to the Director of the Planning Department. At the previous meeting on the ordinance, the Commission

was concerned with this transfer of authority. According to Chugach Electric Association (CEA), there have been only two submittals for variance requests in the last five years. CEA is recommending the transfer of responsibility on behalf of their customers. CEA does not apply for variances directly. The amendment to 21.90.060 requires an electric utility that owns poles that support nonconforming utility distribution lines to prepare as part of its annual capital improvement plan, a five-year undergrounding program. The five-year plan would be updated by the electric utility and reviewed by the Planning Director on an annual basis. The amendment to 21.90.070 eliminates reference to conformance with the ten-year plan and that is replaced by the five-year plan done by the utilities. The amendment also changes the requirement that utilities need not expend more than four percent of its gross revenues to underground utility lines to state that electric utilities must remove poles and place those lines underground using at least two percent of revenue derived from utility service connections within the municipality. State statute requires one percent. The proposed ordinance The proposed ordinance states a utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. This provision dovetails with the 1999 Alaska Statute, which also requires that any attached utilities be placed underground at the same time as the electric line. MS. FERGUSON indicated that Assemblymember Shamberg was in attendance, as was Mike Gutierrez, who might be able to answer questions from the Commission.

CHAIR POULTON asked why this ordinance amendment is before the Commission again, having been heard on May 3, 2004. MS. FERGUSON explained that Assemblymember Shamberg wished to have an opportunity to be present during the hearing on the ordinance. Some changes have been made to the ordinance since it was last before the Commission. CHAIR POULTON asked if the concerns listed in the analysis were addressed by the revised ordinance. MS. FERGUSON stated that page 4 of the Staff recommendation lists areas of concern expressed by the Commission. Regarding the issue of unfair competitiveness, the Municipality cannot offer any specific remedies to address the unfair competitiveness issue for two reasons: 1) issues regarding leasing arrangements among telecommunications companies can only be resolved through the Regulatory Commission of Alaska; and 2) an exemption for an attached utility cannot be made due to state statute which in 2000, compelled electric and telephone utilities to spend at least one percent of their gross revenues to place existing overhead lines underground and any other overhead line or cable in the same location shall be placed underground at the same time. CHAIR POULTON asked if all utilities are treated the same under this ordinance.

MS. FERGUSON deferred this question to either Mr. Gutierrez, Utility Budget Analyst with the Office of Budget and Legislative Services, or Assemblymember Shamberg.

COMMISSIONER PEASE asked whether Staff had any information on the current level of expenditures to underground utilities. MS. FERGUSON stated CEA is currently spending 1% of their revenues in compliance with state statute. COMMISSIONER PEASE asked if this is information reported to the Planning Department for review. MS. FERGUSON stated it is not currently, but under this ordinance utilities would have to develop a five-year plan showing what lines would be undergrounded during that period and providing an annual status report and update to the five-year plan. COMMISSIONER PEASE asked what substantiation exists that CEA is spending 1% of their revenue on undergrounding. MS. FERGUSON had no evidence, only the indication from CEA that this is the case. CHAIR POULTON asked who is affected by this ordinance. MS. FERGUSON indicated that CEA, Municipal Light & Power (ML&P) and Matanuska Electric Association (MEA) that covers parts of Eagle River would be required to submit a five-year plan.

The public hearing was opened.

ASSEMBLYMEMBER JANICE SHAMBERG provided a response to the issues of concern expressed by the Planning and Zoning Commission. With regard to the issue of lack of fairness, municipal and state law already requires undergrounding and some utilities have decided not to comply. The competitive harm argument has been eroded by increased lease rates agreed to by ACS and GCI and through the U.S. Supreme Court decision. Regarding the concern about community values determining community aesthetics, she stated that community value is subjective, nevertheless the utilities choose where to bury lines based on a list that embeds community values. Utilities are, for the most part, controlled by their ratepayers. They are not arbitrary and they decide to locate their facilities based upon the best interests of their ratepayers. This is not simply about aesthetics, it is about safety, and the state and municipal laws mandate it. Regarding the concern of lack of certainty as to whether the target areas for undergrounding will occur with predictable results, she stated that, in order to ensure predictable results, this has been placed back in the hands of the Planning Department and it will be monitored by the Department. MS. SHAMBERG indicated that when she ran for Assembly the first time in 2000, she collected a short list of what her constituents wanted her to do if elected and one of the larger concerns expressed was overhead utility lines. Her constituents believed that the electrical utilities were uncaring, greedy, and not complying with existing law. During the course of researching the legislation, she found the utility companies were not at fault or non-compliant, rather the existing legislation was flawed. She is in the third year of mending these flaws. In 1984, the MOA



adopted AO 84-62 that requires pole owning utilities to underground their existing overhead distribution lines gradually by spending "up to four percent" of their gross annual retail revenue by following a 10-year plan created by the Planning Department. The envisioned 10-year plan was never created, although mandated by the ordinance, and the utilities had nothing to follow. The amount specified to be spent is between 0% and 4%. There is also no reporting requirement and no measurement of compliance. Because of these flaws, Anchorage is behind in implementing the vision of undergrounding by 20 years. Upon meeting with CEA and ML&P she was pleased to find these utilities, which own the majority of overhead electric lines in the Anchorage Bowl, were willing to assist in drafting a new undergrounding ordinance. They simply wanted to be able to underground lines they choose and continue to exclude the undergrounding requirement for transmission lines. Ultimately, all of the utilities have come together to share their thoughts to produce the ordinance amendments before the Commission. All utilities have been kept informed and encouraged to suggest changes that has aided in achieving consensus among the stakeholders. The Planning Department has also been involved. MS. SHAMBERG stated that existing lines should be buried in order to improve public safety by reducing the possibility of injury from downed lines and to protect essential public services from natural and manmade accidental destruction, to provide consistency in the management of the Municipality's rights-of-way, and to improve the aesthetics of the community and remove obstructions in the public right-of-way. She indicated she had a list of changes to the ordinance, of the Commission wished her to review those.

CHAIR POULTON asked that Ms. Shamberg continue her testimony to review the changes to the ordinance. MS. SHAMBERG indicated that the ordinance changes eliminate a 10-year program of target areas, but it does require a target list. It asks utilities to provide a 5-year undergrounding plan for undergrounding to be reviewed by the Municipality. Utilities owning poles are allowed to choose which lines to underground. It requires that the lines selected be undergrounded and the poles be removed and that any other utilities attaching to such poles do the same. It replaces the 0% to 4% requirement with a 2% requirement. It requires that 2% of a utility's gross revenue be expended each year, but allows what has been spent satisfying the state statute's 1% requirement to be deducted from that 2%. The 2% number allows the utilities to no involve the Alaska Regulatory Commission. It allows the utilities to roll any expenditure over or under the 2% into the following year. It requires utilities to notify the Municipality and coordinate with other utilities to keep the undergrounding effort a short, inexpensive, and cooperative as possible. It requires accountability through reporting. It puts the responsibility for review and enforcement into the hands of the Planning Department. It does not deal with undergrounding of new utility lines because utility companies have been complying with that requirement for years. It does not require the non-pole owning utilities to spend the 2% minimum, but it does protect them from spending more than 2%.

COMMISSIONER PEASE asked what information exists on the current rate of compliance. ASSEMBLYMEMBER SHAMBERG replied that some utilities, because it was not required, did not separate their recordkeeping of nonconforming existing lines and new lines, so there are not good numbers. CEA is the only utility that has provided numbers. COMMISSIONER PEASE asked what are the figures provided by CEA. ASSEMBLYMEMBER SHAMBERG stated that work was done 1.5 years ago and she recalled they spent over \$400,000 in 1999, over \$400,00 the following year, and close to \$900,000 the year after. COMMISSIONER PEASE asked what percentage these figures represent. ASSEMBLYMEMBER SHAMBERG stated that an expenditure of 1% would be \$1 million, but the state statute formula is different than what is proposed for the ordinance; she was unsure whether or not they were counting lines that are not directly in the Anchorage Bowl. COMMISSIONER PEASE noted that the Commission was previously concerned with competitive advantage, and she understood that the revised ordinance requires a 2% expenditure of an electric utility and other utilities that have facilities attached to those poles would also underground. She asked what is the relative expenditure of an attached utility compared to the electric utility. ASSEMBLYMEMBER SHAMBERG stated she could not supply a hard figure, but in discussions with GCI the figure was as low 10% and in discussions with ACS it was as high as 300%. She noted that not every line owned by an electric utility would have other utilities attached. COMMISSIONER PEASE understood that the attached utilities are protected by a 2% cap. ASSEMBLYMEMBER SHAMBERG replied that this was correct and added that the likelihood of them reaching the 2% is minimal.

COMMISSIONER GIBBONS asked what is the difference between the state's 1% requirement and the proposed 2% requirement. ASSEMBLYMEMBER SHAMBERG indicated that she could not explain the formula for the 1% requirement, other than it results in a slightly lower figure. The proposed 2% requirement is based on the gross retail revenue earned within the Municipality. MIKE GUTIERREZ, Utility Budget Analyst for the Municipal Assembly, explained that AS 42.05.381 requires that electric or telephone utilities that have overhead distribution lines that provide services in a municipality with a population of more than 200,000 must spend at least 1% of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines underground. The proposed ordinance addresses electric utilities spending, in a fiscal year, at least 2% of a three-year average of its annual gross retail revenues derived from utility service connections within the municipality, excluding toll revenues, revenues from sales of natural gas to third parties, and revenues from sales of electric power for resale.

ASSEMBLYMEMBER SHAMBERG reiterated that whatever is spent to comply with the 1% state requirement is deducted from the 2% municipal requirement.

CHAIR POULTON asked for an explanation of the lease arrangement. ASSEMBLYMEMBER SHAMBERG explained that one of ACS's concerns is that GCI has been able to piggy-back on ACS's lines and they are charged a fixed rate so they would not be impacted as much by this ordinance as ACS believes it would. There was a ruling that ACS would get \$265,000 more per month from GCI. The impact ACS foresaw is considerably less than they believed it was when they appeared before the Commission in May 2004. CHAIR POULTON asked to what Supreme Court decisions she had referred. ASSEMBLYMEMBER SHAMBERG did not have that information at hand. MR. GUTIERREZ explained that part of this issue has to do with the Telecommunications Act in which the FCC determined what rates ACS could charge to someone that is leasing part of its network. The Court ruled that the FCC erred in their determination of what those rates could be and that has allowed some flexibility in this case. CHAIR POULTON asked if this addresses the inequities that were discussed at the last hearing. MR. GUTIERREZ was not sure there was inequitable treatment in this ordinance; all utilities are treated the same other than non-electric utilities are not required to remove their own poles. If an electric utility pole is required to go underground, all utilities on that pole must go underground and must pay their share of the cost. This is consistent with current state law. Currently in statute, if any utility on a pole goes underground, every other utility goes underground, regardless of who owns the pole and who went underground first. CHAIR POULTON asked why the existing laws are not simply enforced. ASSEMBLYMEMBER SHAMBERG explained that the existing municipal law put the onus on the Municipality to produce a work plan that was never produced. She has amended the ordinance to remove that requirement; the utilities would prefer to decide what lines should be placed underground, based on cost.

COMMISSIONER PEASE clarified that 21.90.030 speaks to variances from undergrounding new lines. ASSEMBLYMEMBER SHAMBERG indicated this was correct. COMMISSIONER PEASE noted that when this was last before the Commission several Commissioners were interested that the authority to grant variances would change to the Planning Department and that public participation in a variance would not normally be provided. She asked if there was information on how often utility companies have requested variances for undergrounding new lines. ASSEMBLYMEMBER SHAMBERG indicated that none of the changes she had proposed address new lines. The change she noted was made by the Planning Department. MS. FERGUSON stated it is her understanding in talking to CEA that over the past five years they could remember only two requests for variances. The one for a church was denied by the Commission.

CHAIR POULTON asked if GCI and ACS would also be affected by this ordinance. MS. FERGUSON replied in the affirmative, explaining that page 3 of the packet contains a list of those affected.

COMMISSIONER PEASE asked what kind of process Assemblymember Shamberg has had to resolve the concerns of utilities. ASSEMBLYMEMBER SHAMBERG responded that all utilities have been invited to all meetings, which have been held at City Hall and there has been communication by email. Attempts were made to make changes to accommodate ACS, but the change was inconsistent with state law and had to be removed. She felt the municipality had made all the meaningful changes proposed by utilities that could be addressed. She stated it is unfortunate that the changes ACS has requested would need to be made at the state level.

MARY ANN PEASE, Vice President of ACS, commented on the article displayed by Ms. Shamberg and explained that ACS has received a slight increase in the lease rate paid by GCI, but it is substantially lower than the cost of providing service to their competitor and it is based on a rate case heard over five years ago, so undergrounding was not considered as part of that. ACS opposes the ordinance. ACS favors undergrounding, but the unique adverse competitive effect of these amendments is of concern to ACS. None of the concerns in terms of competitive disadvantage that were expressed before the Commission on May 3<sup>rd</sup> have been addressed. It has been mentioned that state legislative action or Regulatory Commission would be required to address these concerns, but this ordinance would place ACS at a distinct competitive disadvantage equating to about \$4 million annually. ACS maintains overhead distribution lines on over 17,000 owned or leased utility poles in Anchorage. In its written comments, ACS has explained how the amendments to AMC 21.90 would subject ACS to a unique competitive disadvantage. While ACS would pass the cost of undergrounding on to its retail customers, it cannot pass costs onto the retail customers of its competitor who use the elements of the ACS network to provide service to their customers. Customers shift between telephone carriers because of only slight cost differences. If ACS were to automatically put a pass through on its customer bills for the cost of undergrounding, there would likely be a mass exodus to ACS's competitor. If the Commission believes the amendments are desirable to the community apart from their unique adverse impact on ACS, the best solution would be to limit the application of 21.90 to utilities that operate in a traditional monopoly environment and can pass the full cost of undergrounding onto their customers without any adverse impact. This amendment places a competitive disadvantage on ACS and gives it minimal control where lines are to be undergrounded. ACS has proposed an amendment to 21.90 to state that "Subsection A of this section does not apply to any pole that supports a utility distribution line of a local exchange telecommunications utility that is required by law to lease its network elements to other carriers." She indicated that over 90% of the distribution facilities in Anchorage are owned by ACS.

COMMISSIONER GIBBONS asked what costs would be associated with a typical undergrounding that ACS would have to absorb. MS. PEASE responded that the amount would vary greatly depending on where the electric utility would

choose to underground. The cost could be \$1 to \$4 on a bill. GCI has a fixed lease rate with ACS. COMMISSIONER GIBBONS asked if this is the amount ACS would have to absorb. MS. PEASE replied in the affirmative and then noted that GCI has a fixed lease rate from ACS. COMMISSIONER GIBBONS asked how the lease rate was obtained. MS. PEASE replied that the rate was set through a regulatory arbitration process that has been in process for over five years.

COMMISSIONER PEASE noted that according to Assemblymember Shamberg the cost to the telecommunication utilities to underground their lines when an electrical line is undergrounded varies. She asked whether ACS could supply specific figures for undergrounding lines. MS. PEASE stated the area that is targeted changes the costs drastically. For example, if a project is on Lake Otis and the line has to go under water, the costs are high. If it is part of a road project, there are reimbursables and the cost is not excessive. COMMISSIONER PEASE asked if ACS's costs would run parallel to CEA's costs such that if CEA bumps against its limits, so would ACS. MS. PEASE explained that this would depend on the gross revenues of both utilities against which the percentage requirement is calculated. She stated that ACS is on the leased facilities of ML&P and CEA, as well as owning its own facilities. Two percent of gross revenues for ACS is a \$4 million figure. COMMISSIONER PEASE explained that she was trying to determine if an expensive site for CEA would also be expensive for ACS. MS. PEASE indicated that ACS's engineer could attempt to address a hypothetical situation. COMMISSIONER PEASE noted at the last hearing on this matter it was stated that telecommunications companies would not be able to predict annual costs because electric utilities would be deciding the location of undergrounding. She asked whether the 5-year plan would allow room for negotiation to ensure that ACS does not go above its cap while CEA is meeting its obligations. MS. PEASE felt there would be room for negotiation, but it does not eliminate the fact that a distinct competitive disadvantage is being placed on a local utility by this ordinance.

CHAIR POULTON asked that Ms. Pease comment on whether ACS's concerns should be addressed at the state level. MS. PEASE believed the suggestion was to get the Legislature to change state statute. The state statute requires an expenditure of 1% of gross retail revenues and that has been part of negotiations with ACS's competitor in terms of the lease rate. She noted that there is uncertainty involved in a legislative process. CHAIR POULTON understood that the nominal payment would be different for different companies based on their gross revenue. He asked whether a company that had not met its cap while others on a pole had would shoulder the entire expense of undergrounding. MS. PEASE was not sure what would be required in the ordinance.

COMMISSIONER GIBBONS asked if there is also no requirement to go over the cap. MS. PEASE hoped there was no such requirement. COMMISSIONER

GIBBONS remarked that in the scenario that Chair Poulton proposed ACS would not be required to go over its cap. MS. PEASE felt there could be a circumstance where CEA and ML&P had met their requirements and there was still an undergrounding requirement and ACS could shoulder the burden because of a higher gross revenue number than the other utilities.

COMMISSIONER PEASE understood that under state law ACS would be required to pay \$4 million to underground lines. MS. PEASE indicated that figure is under the 2% law; the 1% requirement would require an expenditure of \$2 to \$2.5 million. COMMISSIONER PEASE understood that under the proposed ordinance, ACS is not required to spend 2% and it is protected from spending no more than 2%. If ACS's 1% expenditure is \$2 million and CEA's 2% expenditure is \$2 million, there would be a compatible rate of expenditure.

CHAIR POULTON asked if all utilities on a pole would go underground to their expenditure limits. MS. PEASE stated this is correct. She read from the ordinance "a utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. An attached utility shall not be required to expend more than 2% of its annual gross retail revenues." This equates to \$4 to \$5 million for ACS.

PHIL STEYER, representing Chugach Electric Association (CEA), stated that CEA supports the proposed revision to the existing ordinance. This is not a new ordinance or a new spending requirement; it is a revision to an existing ordinance that has a much greater financial impact on the customers of utilities. There is currently a 4% requirement and this amendment changes that requirement to 2% and that includes the 1% state law requirement. The revision is an improvement in that the utilities are allowed to determine which projects would be put underground. The existing ordinance requirement to underground new lines has been working well. However, the requirement to convert existing overhead lines to underground has not worked as well as originally envisioned. The ordinance puts the power to determine which lines should be converted from overhead to underground in the hands of the utility, which is preferable. CEA does not want to take serviceable overhead plant and prematurely retire it because one of the costs of that is bottom line depreciation. CEA also thinks that the prospect for an administrative waiver is good, given that many requests for variances might be dissuaded by the prospect of coming before the Commission. MR. STEYER clarified that the customer, not the utility, applies for a variance. CEA is also supportive of the process that has led to this proposed ordinance.

COMMISSIONER PEASE asked for confirmation that under this ordinance 2% of CEA's gross revenues would equate to \$2 million annually. MR. STEYER could not respond specifically what are the sales within the municipality, but he guessed they are about \$100 million, so 2% would be \$2 million. CEA is

currently spending about \$400,000 to comply with state statute. COMMISSIONER PEASE asked with regard to deciding which lines are currently undergrounded whether CEA works with utilities that also use the poles. MR. STEYER replied this is done if it is a discretionary situation. Most poles, although not all, are owned by one of the three electric utilities. He stated that CEA is only one of these three. CEA also has a joint trenching agreement with other utilities that use the pole that addresses in advance what will be done when a pole line is retired. In the case where a utility decides not to go into the trench, the ownership of the pole is transferred to that utility. COMMISSIONER PEASE asked what happens if a pole is retired and CEA's lines are taken off, but the pole is in a CEA right-of-way. MR. STEYER replied that CEA must have an easement that allows legal installation of an underground line. Telecommunication utilities must also have an easement and often this involves the same physical area of land. A utility cannot be on a pole if it does not have the right to be on a pole.

COMMISSIONER ISHAM understood that the cost of placing a line underground is \$1 million per mile. MR. STEYER indicated that the cost of converting an average three-phase overhead distribution line to underground is about \$1 million per mile. Electric goes in the bottom of a trench and other utilities are not as deep.

CHAIR POULTON asked if CEA's rates are set by the Regulatory Commission. MR. STEYER replied in the affirmative. CHAIR POULTON asked if the rates are in a tariff. MR. STEYER replied in the affirmative. CHAIR POULTON understood that replacement costs are built into the rate structure. MR. STEYER indicated this is not the case. Instead, the utility spends the money and through depreciation it recovers the cost to install a plant. CHAIR POULTON asked if there are contingency funds for replacing utilities. MR. STEYER explained that if an existing pole line is hit, it is replaced with a new pole. If a new project is done, the lines may or may not be put underground. CEA spends the money to do the work and then recovers its costs after the fact.

COMMISSIONER PEASE asked if there is a recent underground project that both CEA and ACS would be familiar with to give an idea of representative costs. ED JENKINS, Director of Engineering for CEA, stated there are current projects such as road projects where facilities are placed underground in agreement with ACS. Those figures are available, but he did not bring those costs with him this evening.

TOM ATKINSON, Executive Director of the Alaska Conservation Alliance, supported the amendments to the code. He stated this ordinance would affect not just the five utilities listed, but everyone including businesses, residents, and prospective businesses. The list of priority areas in the existing ordinance is heavily trafficked business areas. He posited that businesses would be more

likely to locate a new business in those areas if they were more aesthetically appealing. He stated he has been working with CEA and Mr. Steyer for three years on wind power projects and he differed from Mr. Steyer only in that he would support more undergrounding strictly on an aesthetic basis. Underlying that is the supposition that the more quality of life is improved, the more new businesses are attracted to the city.

JOHN WEDDLETON, representing the Mid-Hillside Community Council, stated that council and the Hillside East Community Council passed a joint resolution supporting this ordinance. There was a fairly lengthy meeting and discussion in January 2004 on this ordinance at which there was general support; the matter was tabled until October and the resolution was adopted unanimously. He noted that the council members walked down O'Malley Road to look at that road project and the question arose if the poles could be placed underground. Undergrounding is an issue on hillside and community-wide. There is solid support for this change although it is estimated that placing all lines underground would take 50 years.

DIANNE HOLMES, representing the Rabbit Creek Community Council, indicated the council reviewed this item earlier this year and agrees that this ordinance is needed. This council area is one of high winds and placing lines undergrounding might help with the potential of power outages. Also, there are at least four Anchorage 2020 policies that stipulate that land use design should consider northern city concepts of the natural setting and the protection of scenic views. The Council has not, however, reviewed some of the most recent changes by the Planning Department, such as variances being reviewed by the Planning Director. She personally had concern that so much power would be placed in the hands of an appointed person, particularly when the community councils may not be given notice. She hoped that any inequity between utilities could be resolved so the ordinance can be passed. She hoped that, to the extent there is inequity among utilities that could be resolved so the ordinance could be adopted. She stated she recently visited large cities on the North American continent and she felt there should be as much help as possible to this northern city where people are not moving because of the weather. Asked whether, if a pole were leased from CEA, the lease and its costs would go away when the utilities are undergrounded.

CHRIS HAMRE, representing the Home and Landowners Organization for southeast Anchorage (HALO), stated HALO has been on record for many years and was involved in the first ordinance in support of undergrounding. Undergrounding has for the most part not been realized as was hoped under the original ordinance. HALO feels these amendments go a long way toward achieving the goal of undergrounding.



BILL STRICKLER, ADOT utility engineer, stated he has been handling contracts for all four utilities for the last 15 years during which time approximately \$30 million of telecommunication and electric facilities were undergrounded. That amount is roughly 10% of the road budget. He has also signed all the utility permits for the last 15 years and he believed CEA and ACS are doing a tremendous job trying to underground all new facilities. He stated there is a finite annual budget for roads and every dollar spent undergrounding takes from that budget. He urged the ordinance to give the utility companies, the state and the Municipality the most flexibility possible to make a cost-effective decision whether or not to underground.

COMMISSIONER PEASE asked if the \$30 million figure was for new facilities. MR. STRICKLER replied that it was for undergrounding existing facilities including the two Dimond Boulevard projects, the A/C Couplet, and the recent Dowling Road project; it did not include costs associated with the DeArmoun Road project.

COMMISSIONER ISHAM indicated he had a question for ACS. He asked what is an approximate per mile cost for undergrounding facilities. He presumed ACS's costs would be less than those of CEA would. MS. PEASE thought ACS's cost probably is less than CEA, but depending on the area, the cost could be extremely high. She asked ACS's engineer what is one of the lower and one of the higher figures spent per mile, to which he responded that high cost is \$500,000 to \$600,000 per mile and a low cost is \$150,000 per mile.

COMMISSIONER PEASE recalled that in May there was discussion of costs to maintain a pole if ACS decided not to underground at the same time as CEA. MS. PEASE stated ACS pays ML&P \$53,000 annually for 5,964 poles and CEA \$115,000 annually for 10,221 poles. COMMISSIONER PEASE asked whether when CEA decides to underground there are instances where depreciation remains on ACS's equipment and ACS would decide to keep the poles in ACS's ownership and maintain them. MS. PEASE replied that she was not sure the capability exists to do that under the current ordinance.

CHAIR POULTON remarked that the parties affected have various costs associated with the proposed ordinance. He noted that the Commission does not typically deal with issues of cost, but it appeared that issue was before the body. He asked if it would be possible for a cost breakdown to be developed by a third party. MS. FERGUSON replied that she believed it would be possible to get figures from CEA, but was not sure if it would be possible to get figures from ACS or GCI. If those figures were available, they could be summarized by the city and brought to the Commission. Mr. Gutierrez is the utility budget analyst and would be most qualified to do that analysis. MR. GUITTIEREZ replied that he would hesitate because he was not sure how the analysis would be conducted, but he could undertake it.

COMMISSIONER PEASE explained the point of her question was to determine if the telecommunications companies would reach their limit at the same time that an electric company would, which would then just require coordination of undergrounding efforts. ASSEMBLYMEMBER SHAMBERG replied that the annual cost to CEA is \$2 million, the annual cost to ML&P is \$1 million, and MEA would have minimal costs because of their limited facilities in the Anchorage Bowl. ACS has said the most expensive mile they underground is \$500,000 and that 2% of their gross revenues would be \$4 million. She stated ACS would never bump up against the \$4 million because their most expensive mile is much less than CEA's most expensive mile and yet they have a larger budget. She doubted if the Commission needs an analysis of costs. She stated that CEA is not going to be inclined to bury expensive areas unless required to do so, in which case, passenger utilities would have no choice. MS. PEASE remarked that the language in the ordinance clearly states the electric utility must expend "at least 2%" and CEA and ML&P could pass that cost onto their customers. The ordinance does not cap the amount at 2%.

The public hearing was closed.

COMMISSIONER GIBBONS moved for approval of the ordinance amending AMC 21.90 and take into consideration the Department recommendations on page 5 of the Staff packet.

COMMISSIONER PEASE seconded.

COMMISSIONER GIBBONS supported the motion, believing the ordinance reflects community desires. He believed that the issues of competitiveness have been addressed since the last hearing. He felt the ordinance would be good for the community.

COMMISSIONER PEASE was inclined to support the motion. She understood that the information given to the Commission is that the combined electric utilities would spend something over \$3 million annually on undergrounding, which would cover three miles. With ACS's high-end cost to underground at \$600,000 per mile, undergrounding those three to three and one-half mile would equate to a \$2 million expense and they are required by state law to spend 1% of their revenue, which is about \$200,000 to \$250,000. She felt the proposed ordinance does not impose an additional burden over what ACS is already required to spend under state law. She also thought the revised ordinance addresses the situation of competitive advantage because it does not require non-electric utilities to meet the 2% expenditure requirement. This ordinance retains predictability for the public by retaining the target areas and by requiring a five-year plan from electric utilities. She indicated her concerns had been addressed.

COMMISSIONER ISHAM also supported the motion, believing this ordinance would not place a burden on ACS, given their cost per mile to underground. He felt that giving the Planning Director strict guidelines on variances is appropriate. He noted that if someone is dissatisfied with the Planning Director's decision, they could appeal.

CHAIR POULTON did not support the motion because he was not comfortable that the question of inequities had been satisfactorily addressed. He explained he would like to see the cost figures so he could understand the impact of the ordinance on electric and telecommunications utilities.

COMMISSIONER PEASE asked whether Mr. Gibbons would withdraw his motion pending the receipt of the financial information requested by Mr. Poulton. COMMISSIONER GIBBONS did not believe that this information would add to the discussion and did not withdraw his motion.

AYE: Isham, Pease, Gibbons

NAY: Poulton

ABSTAIN: G. Jones, Lottsfeldt, Wielechowski

FAILED

- 2. 2004-155** Municipality of Anchorage. An ordinance amending Anchorage Municipal Code subsection 21.35.020b amending the definition of dormitory and rooming house, adding a definition for lodging house, amending section 21.40.020 regarding conditional uses in the PLI (public lands and institutions) district, amending section 21.40.200 regarding conditional uses in the I-1 (light industrial) district, and amending section 21.45.080 to establish minimum off-street parking requirements for dormitories.

Staff member ANGELA CHAMBERS explained that the Commission asked the Municipality to bring forward this petition, but there is reference to Hope Community Resources. The request is an amendment to Title 21 to change the definition of the term "dormitory" and to add the use to a conditional use permit as an adjunct facility to a permitted use in the I-1 and PLI districts, to establish minimum off-street parking requirements, and to provide a separate definition of "lodging house." The Department did provide a revised ordinance definition to the Commission this evening. MS. CHAMBERS explained that the Commission heard an Appearance Request by Barbara Kraft representing Hope Community Resources on

**MUNICIPALITY OF ANCHORAGE**  
**PLANNING AND ZONING COMMISSION RESOLUTION NO. 2004-033**

A RESOLUTION RECOMMENDING DENIAL OF AN ORDINANCE TO AMEND ANCHORAGE MUNICIPAL CODE REGARDING CHAPTER 21.90 UTILITY DISTRIBUTION FACILITIES, SECTION 21.90.030; VARIANCES, AND SECTION 21.90.070; NONCONFORMING OVERHEAD LINES, TO AUTHORIZE THE DIRECTOR OF THE OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT TO GRANT VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND TWO PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM SALES WITHIN THE MUNICIPALITY OF ANCHORAGE, TO REMOVE POLES SUPPORTING NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE LINES UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE LINES UNDERGROUND.

(Case 2004-070)

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WHEREAS, an ordinance was introduced by Assemblymember Shamborg, AO 2004-60, amending Anchorage Municipal Code Chapter 21.90 Utility Distribution Facilities.

WHEREAS, notices were published and a public hearing was held on May 3, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Planning and Zoning Commission that:

A. The Commission makes the following findings of fact:

1. The Commission finds that AMC 21.90.060 and 21.90.070 have not been implemented since approved by the Assembly in 1976. These sections obligated the Planning Department to submit to the Assembly a ten-year program designating target areas for the underground placement of nonconforming utility distribution lines. The ten-year program would be resubmitted for Assembly review every five years. The Planning Department would consult with the utilities and public agencies affected by the program. The program has never been implemented due to other department commitments and lack of staff resources. The proposed ordinance eliminates the need for utilities to conform to the ten-year program.
2. The emphasis of the ordinance focuses on developing a ten-year plan by the Planning Department designating target areas for the underground placement of nonconforming utility lines. These target areas center on major traffic corridors throughout the Anchorage Bowl as well as roadways within the Central Business District and the Midtown area. The proposed amendment would leave decisions regarding the location of utility undergrounding to the discretion of the electric utilities.
3. Assemblymember Shamborg initiated an amendment to enable the Municipality to implement removal of electric utility poles and placement of these lines underground without waiting for the Planning Department to develop the ten-year program. Assemblymember Shamborg held meetings to discuss the proposed ordinance with the affected utilities.
4. The Anchorage Municipal Code requires that requests for variances are decided by the Planning and Zoning Commission. The proposed ordinance transfers this responsibility to the Director of the Office of Economic and Community Development.
5. The amended ordinance also proposes that the responsibility for evaluating the cost of placing a line underground as opposed to overhead be transferred from the Planning and

Zoning Commission to the Director of the Office of Economic and Community Development.

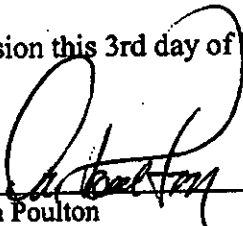
6. Under the proposed ordinance, electric utilities must remove poles and place those lines underground using two percent of revenue derived from utility service connections within the municipality. The electric utility that owns the poles may choose which existing lines to underground in order to fulfill the two percent expenditure, in consultation with any other utilities with facilities attached to such poles.
7. The proposed ordinance states a utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. The attached utility shall not be required to expend more than two percent of its annual gross retail revenues derived from utility service connections within the municipality. However, if it should happen that the attached utility has spent two percent of its revenues, the electric utility is not required to remove its poles supporting the attached utility and may, instead, transfer pole ownership via a pole attachment agreement to the attached utility. The two percent figure was derived from the amount that utilities may amend its rates to recover the costs of undergrounding utility lines without going through a review process with the Regulatory Commission of Alaska, a process which can take approximately 18 months to complete.
8. The cost of undergrounding telecommunication lines is approximately one-sixth to one-tenth the cost of undergrounding electric lines. Given the significant cost differential between undergrounding electric lines as opposed to telecommunication lines, it is unlikely that attached utilities will have expended two percent of their revenues and will likely underground their lines at the same time.
9. State law [AS 42.05.381(h)] requires an electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend at least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground. The two percent annual expenditure by the electric utilities includes the state obligation of one percent.
10. After hearing testimony from a representative of Alaska Communications Systems (ACS), the Commission majority (4) felt the amended ordinance creates an unfair competitive situation for ACS.
11. One member believed that community vision and values should determine priorities for utility undergrounding. Members questioned whether there is not some type of funding available to produce the ten-year plan for the underground placement of utility lines.
12. Members expressed the view that they wished to retain the ten-year plan and the identification of target areas to provide predictability and certainty that the plan would be carried out.
13. The Commission minority (1) finds that the burden on utilities is not much greater than that already required under the State statute requiring 1% of retail revenues be used to underground utilities. Further, it would be better to initiate the amendment rather than leave the issue to potential planning. The goal of the proposed ordinance is an important

one, it is a positive step in the right direction, and any unfair competitive situation created by the requirement can be addressed at the Assembly level through waivers or other means.

- B. The Commission recommends DENIAL of the Municipal Assembly amendment to the Anchorage Municipal Code Chapter 21.90 Utility Distribution Facilities.

PASSED by the Municipal Planning and Zoning Commission this 3rd day of May 2004.

  
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Tom Nelson, Acting Director  
Secretary

  
\_\_\_\_\_  
Don Foulton  
Chair

(Case No. 2004-070)

AYE: Pease, T. Jones, Gibbons, Poulton, G. Jones, Simonian, Lottsfeldt, Isham

NAY: None

PASSED

- 6. 2004-070** Municipality of Anchorage. An Ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, Section 21.90.030, Variances, and Section 21.90.070, Nonconforming Overhead Lines, to authorize the Director of the Office of Economic Development and Community Development to grant variances to require a utility owning poles to expend two percent of its gross annual retail revenues from sales within the Municipality of Anchorage to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

Staff member SHARON FERGUSON stated this case involves amendments to Chapter 21.90, Utility Distribution Facilities, Section 21.90.030, Variances, and Section 21.90.070, Nonconforming Overhead Lines. These requirements have been in the code since 1976, but have not been an effective ordinance due to other Department commitments and lack of staff resources. The code requires that the Planning Department develop a 10-year plan designating target areas for nonconforming underground utilities; this plan was never developed. Assemblymember Shamberg's ordinance revises these ordinances by allowing the electric utilities to underground lines at their discretion. The affected utilities are required to expend 2% of their annual gross retail revenue derived from utility service connections. The ordinance refers to statute AS 42.05.381(h), which requires electric and public communication utilities to spend at least 1% of gross retail revenues to underground utility lines. The proposed ordinance includes the 1% required by that statute in the 2% this ordinance requires. MS. FERGUSON amended the revised ordinance, packet page 09, Section 1.A to include the phrase "The director may also request an evaluation by an independent third party for the following three factors." She noted that Richard Gutierrez and Mr. Lore with the Municipality were present to respond to any questions from the Commission.

The public hearing was opened.

MARY ANN PEASE, Vice President for Alaska Communications Systems (ACS) agreed there has been a long process on utility under grounding and the matter is down to a few issues that are key to ACS. She felt if Staff would reconsider those issues, the resulting ordinance would benefit the city and other utilities. She explained that ACS is not able to pass on to its ratepayers any increase that would result from under grounding. Both Chugach Electric Association (CEA) and Municipal Light and Power (ML&P) are monopolies and they can pass on costs to consumers. If the cost of under grounding were passed onto ACS's ratepayers, ACS would be placed at a distinct disadvantage to its competitor, which leases ACS's facilities at a fixed cost over time. With a 50% control in the market for telecommunications, any financial impact on ACS places it at a competitive disadvantage. The amendments causing Ms. Pease the greatest concern were that the amendment should establish a clear, all-inclusive limit of 2% of revenues on annual expenditures. Under 21.90.070.A and A.2 there are conflicts. In one paragraph there is a limit of 2% and in others it is left open to interpretation. The amendments do not explain how the limitation should be applied. She explained that this clarifying language is desired because every time either CEA or ML&P goes underground, they make a decision how much they will spend and can pass that onto their consumers. In those events, ACS is left with the ownership, maintenance, and cost of lines that are left above ground or ACS also has to go underground. This is a direct financial impact on ACS that is essentially an unfunded mandate.

COMMISSIONER SIMONIAN asked if 21.90.9070.A conflicts with A.2 because if ACS had already reached 2%, but another utility has to go underground and ACS is attached to that pole, ACS also has to go underground. MS. PEASE replied in the affirmative. She explained that the other conflict is if the decision is made to not go underground, the poles are transferred to ACS. The cost of disposing poles is \$1,000 per pole, but ACS is currently on 10,700 with CEA and almost 6,000 with ML&P, with a potential impact to ACS of \$17 million, albeit that impact would occur over a period of time. COMMISSIONER SIMONIAN asked if there is less of a financial impact if the utility that owns the pole goes underground and ACS is required to go underground as well. MS. PEASE responded that if that work is beyond the 2% requirement, it is still a huge financial impact. She also noted that other factors greatly affect cost. She noted that what is best for electric utility might not always be best for the telephone utility. She thought the first step in rectifying the problem is to clearly state that ACS will not be bound to an expenditure of more than 2% of its annual revenues.

CHAIR POULTON asked if the letter the Commission had received from Ms. Pease summarized ACS's concerns. MS. PEASE replied in the affirmative.

COMMISSIONER T. JONES asked whether ACS participated in the meetings that have occurred regarding these amendments. MS. PEASE replied that she



attended some of those meetings and at those meetings had offered recommended language; some of that language was included in the proposed ordinance changes and some was not. COMMISSIONER T. JONES noted that MTA was not listed as a participant in the meeting and she believed they are in a similar position to ACS in the Eagle River-Chugiak area. MS. PEASE stated that MTA is also a monopoly and any increases can go directly to their ratepayers. MS. FERGUSON stated that MTA was, in fact, involved in the meetings. MR. GUTIERREZ indicated that MTA is supportive of the ordinance.

COMMISSIONER ISHAM asked if GCI could bear any of the costs Ms. Pease had discussed. MS. PEASE stated GCI leases ACS's facilities at a fixed rate, so they could bear some of this cost, if they chose, but she did not believe that was a realistic expectation. COMMISSIONER ISHAM asked whether ACS could pass on costs to GCI. MS. PEASE replied in the negative. COMMISSIONER T. JONES stated there are lengthy proceedings to arrive at an agreed upon amount to be paid for every aspect of service used by one utility from another; those are essentially then "cast in stone." She estimated a minimum period of time for change is 18 months.

COMMISSIONER PEASE asked whether, if ACS were exempted from subsection A, it would be expending 2% of gross revenues on poles of its own choosing. She asked if two different solutions were suggested. MS. PEASE replied that if there were a 2% limit, the bulk of her concerns would be addressed. Also have to realize that there are other issues that happen automatically as other utilities spend 2% of their gross revenues, such as the decision by ACS to either take ownership of the poles and operate and maintain and dispose of them over time, or looking at going underground. Costs for undergrounding vary with each particular project.

COMMISSIONER LOTTSFELDT asked what mechanisms are used in other cities that require undergrounding of utilities. MS. PEASE replied that she could not answer this specifically. There are other telephone utilities in other areas and costs for undergrounding are borne by those utilities and those costs are passed onto consumers; the Alaska competitive situation is unique.

GEORGE VAKALIS, representing the Anchorage Chamber of Commerce, stated that those who do business and live in Anchorage would like the community to be aesthetically pleasing. The Chamber represents a substantial number of businesses in the community, representing a workforce of about 55,000 employees. He stated the position of the Chamber is not supportive of the ordinance, as offered. The reasons for this position is that the ordinance singles out one utility and requires them to bear costs without having the ability, in a comprehensive and competitive manner, to pass the expense onto the ratepayer. Secondly, there are currently two laws in effect dealing with this issue, the municipal code and the state statute. The latter is only directed to Anchorage

and does not affect other communities. Third, there are expenses involved for the utilities other than ACS and those expenses will be passed onto the ratepayer. There will also be additional expenses for public facilities under the proposed ordinances, which are paid for by the taxpayers. He stated the 2% requirement in the current ordinances makes sense; if there is a problem with enforcement that should be addressed; and if there is a problem with long-range planning, then that should be addressed. He reiterated that the Chamber does not recommend approval of the ordinance, as offered.

COMMISSIONER PEASE asked, if this ordinance were not passed, what is the status of under grounding in the Municipality. She asked if the utilities have been spending 2%, are there patterns of under grounding, and are there areas utilities should have been put underground and were not. BOB LORE with the municipal Office of Management and Budget stated it is his understanding that the utilities are complying with the state statute and are spending 1% per year. Under grounding means taking existing overhead lines and placing them underground, not for new construction to be placed underground. He did not believe the utilities are spending the 2% that the ordinance requires. COMMISSIONER PEASE asked if there is a pattern of under grounding. MR. LORE stated he could not provide a geographic breakdown, but he was aware that placing higher voltage lines underground is extremely cost prohibitive. Distribution lines are the focus of the state statute and this ordinance.

COMMISSIONER LOTTSFELDT asked if most of the poles are currently controlled by electric utilities and because the electric utility line goes the deepest in the trench when it is under grounded, in almost all cases they would be driving the under grounding process. MR. GUTIERREZ believed this was correct. He stated that the ordinance, as proposed, is in its fourth or fifth iteration. As originally constructed, it was worded that a utility shall underground, referring to any utility owning a pole. As a concession to ACS, that wording was changed to an electric utility that owns poles shall remove their lines and place them underground. The cost of electric utilities is the largest among utilities. The logic used in crafting this ordinance was that the cost of under grounding an electrical distribution line was ten times the cost of under grounding a telephone line. For example, ML&P would be required to underground on average two miles of line a year at \$2 million, putting ACS's exposure at \$200,000 to follow in that under grounding.

COMMISSIONER SIMONIAN remarked that Section 2.A.5 of the ordinance seems to allow the electric utility to not spend 2% in one year and count it in another year. MR. GUTIERREZ explained the 2% amount is calculated on a rolling average to help smooth unusual dips or rises in revenue from one year to the next. It allows the utility to plan ahead for projects that represent more than 2% in a given year. COMMISSIONER SIMONIAN asked why this language is specific to an electric utility. MR. GUTIERREZ replied that this language is

intended to apply to all utilities; he understood that was Assemblymember Shamberg's intent.

COMMISSIONER LOTTSFELDT asked if there are lines on a pole besides power and telephone lines. MR. GUTIERREZ stated power lines go on the top of the pole and telephone lines below for safety reasons. There may be other lines attached to the poles. COMMISSIONER LOTTSFELDT confirmed the poles generally house electric and telephone lines.

MR. GUTIERREZ stated on the issue of ACS being forced to take over the management burden and cost of the poles that, as initially written, the ordinance required that poles would be automatically removed; there was no provision for leaving the poles. The current practice of topping the line is to take electrical lines off the top, shorten the pole, and leave telephone lines. At ACS's insistence, language was included in the proposed draft that once the 2% was reached, the topping of the pole would be allowed.

COMMISSIONER PEASE noted that 21.90.030.A allows the director of the office of economic and community development to grant a variance; there is no public hearing. She asked whether there has been a problem with slow responses on variances from under grounding requirements. MS. FERGUSON did not believe there was a problem with slow response from the city's side. From the utility's perspective, the two to three months involved in an application review might be viewed as lengthy, but typically all cases are heard within 50 days of receipt.

COMMISSIONER SIMONIAN understood that the intent of the ordinance is not that a utility collocated on a pole that is being vacated by another utility in order to meet their 2% is also required to vacate the pole. MR. GUTIERREZ stated this is correct. He added that there is recognition that collocating on poles that are being vacated by utilities could bring about a "perfect storm" so the ordinance recognizes that no utility will be required to pay beyond 2% of their gross retail revenues per year.

COMMISSIONER T. JONES asked if a "follower" utility would become the owner of a pole if the owner vacates it. MR. GUTIERREZ replied in the affirmative. COMMISSIONER T. JONES asked what happens with respect to the utility easements that are designated to a particular party, if that party is no longer located on the pole. MR. GUTIERREZ was not certain he could respond to this question, except to point out the language on page 3 of 4, line 11 of the ordinance that states "transfer pole ownership per any pole attachment agreement in effect between the electric utility and the attached utility."

COMMISSIONER LOTTSFELDT stated Anchorage has a competitive telephone market and, assuming all utilities passed on the costs of under grounding to their customers, as an ACS customer and CEA customer, he would be charged by

both, where his neighbor with CEA and GCI could be charged by CEA only. He asked whether the city has thought of a proposal where the ordinance is more neutral between the two competing telephone companies. MR. LORE replied that the competitiveness of telecommunications in Alaska is largely a matter for the Regulatory Commission of Alaska or perhaps the Federal Communications Commission. He noted that, on a remand from the Alaska Supreme Court this year, ACS and GCI were able to achieve a stipulation and present it to the Regulatory Commission of Alaska that represents a breakthrough of cooperative behavior within a competitive environment. He believed an element of that agreement was a change in the amount of wholesale payments for the use of unbundled network elements. He was uncertain whether this could be addressed in this ordinance.

CHAIR POULTON asked that Ms. Pease speak to Mr. Lore's remarks. MS. PEASE stated the rural exemption referred to by Mr. Lore affects Juneau and Fairbanks; that agreement was reached after court battles that occurred over six years' time ranging up to the Alaska Supreme Court and Regulatory Commission of Alaska. CHAIR POULTON asked if the Regulatory Commission of Alaska sets the rates. MS. PEASE replied that the Regulatory Commission of Alaska sets the rates at which ACS leases facilities to GCI. CHAIR POULTON asked what involvement there is by the Federal Communications Commission. MS. PEASE replied that there is no FCC involvement. The rates are generally in effect for a long time; current rates went into effect in 1997 with an interim change in 2002. CHAIR POULTON whether, if this ordinance is adopted, ACS could go back to the Regulatory Commission of Alaska. MS. PEASE replied that this could be done, but she suspected there would be no final decision for five or six years. COMMISSIONER T. JONES stated she spends the majority of her day working on rate cases and she it is her experience that those cases are drawn out even when there is not competition between the companies; the cost is passed onto the consumer in the end.

CHAIR POULTON noted that Mr. Vakalis mentioned a ripple effect if this ordinance was adopted. MS. PEASE explained a business bears the cost of a rate increase from a utility and that business will likely pass on a percentage of that burden to their customers. If ACS has to bear the cost of under grounding and its competitor does not, there is a distinct advantage of one company over the other. She agreed with staff that there has been a great deal of time and energy spent on this ordinance and she believed, if there were clarifications in the ordinance, ACS would be helped a great deal. ACS has suggested amendments that have not been incorporated into the ordinance and she felt that one more review would benefit everyone.

COMMISSIONER G. JONES asked that the Commission reconsider his participation in this matter, given that he is an officer in GCI. He explained he was not aware this ordinance would be discussed as a competitive issue.

COMMISSIONER T. JONES moved to direct Commissioner Jones to continue to participate in case 2004-080.

COMMISSIONER SIMONIAN seconded.

COMMISSIONER T. JONES stated that, having heard the testimony and Commissioner Jones's concerns, she believed there is a strong appearance of impropriety and he should be excused.

AYE: None

NAY: Pease, T. Jones, Gibbons, Poulton, Simonian, Lottsfeldt, Isham

ABSTAIN: G. Jones

FAILED

COMMISSIONER G. JONES departed the meeting.

COMMISSIONER PEASE indicated she did not realize her sister-in-law's testimony would be so key to this case. She stated she had not discussed this matter in any way with her, but if the Commission wished to excuse her from participation, she would agree to that.

CHAIR POULTON feared there could be an issue of appearance of impropriety with regard to Commissioner Pease's participation.

COMMISSIONER SIMONIAN moved to direct Commissioner Pease to continue participating in case 2004-080.

COMMISSIONER LOTTSFELDT seconded.

COMMISSIONER SIMONIAN supported her motion noting that, while Mr. Jones had a financial interest that could be adverse to the testimony presented this evening, this did not appear to be the case with Commissioner Pease. She felt that, unless Commissioner Pease felt uncomfortable, she should participate.

COMMISSIONER T. JONES asked whether Commissioner Pease felt she could continue to participate in this matter impartially. COMMISSIONER PEASE replied that she felt she could participate impartially, but she wanted the Commission to consider any appearance of impropriety.

CHAIR POULTON clarified that the action taken by the Commission is a recommendation to the Assembly. MS. FERGUSON confirmed this is the case.

COMMISSIONER T. JONES believed Commissioner Pease could make an impartial and fair decision in this case. She noted that, although one company has provided testimony, this ordinance affects the entire municipality. She indicated that Commissioner Pease could abstain from a particular section of the ordinance, if it presents a particular conflict.

AYE: T. Jones, Gibbons, Poulton, Simonian, Lottsfeldt, Isham

NAY: None

ABSTAIN: Pease

PASSED

MR. GUTIERREZ stated there are three amendments referenced by Ms. Pease as not included. One was to exempt ACS from the ordinance entirely, which was not acceptable to Assemblymember Shamberg. The other two are detailed in an email he received from Ms. Pease on 2/16/04, being an amendment on page 2 of 4, line 18 to remove "remove the poles" and insert "subject to the provisions of 4 below." The effect of that amendment would have been to not require an electric utility to remove its poles. The other amendment is page 3 of 4, line 30 to insert "electric" before "utility." That section deals with an annual report that utilities are required to provide to the Municipality of their revenues spent.

COMMISSIONER PEASE asked whether, given that the Municipality has never carried out the plan, there has been any creative thinking about how to carry that out without producing a formal adopted plan. She thought perhaps central planning was being abandoned, but that might be part of the answer. MR. NELSON replied that there has not been a discussion in this regard, which is probably part of the reason Assemblymember Shamberg brought this ordinance forward. The undergrounding utility ordinance was adopted at a time of economic downturn and a time of downturn in staffing. When the economy turned around, the Department was involved in other priorities. The Planning Department was not a major party in the preparation of the ordinance proposed by Assemblymember Shamberg; it was led primarily by the utility company. Creating a centralized plan would involve the time and commitment of a number of entities. In the absence of being able to make that commitment, the proposed ordinance is one in which the utilities are taking the initiative in determining which lines will be placed underground.

The public hearing was closed.

MR. NELSON clarified that the Planning Department attended one meeting with the utilities. He noted that if 21.90.070 is modified, there is a need to amend 21.90.060 as well, which is one of the recommendations from Staff tonight. If the utilities are initiating which lines are put underground, there would be a conflict in 21.90.060 which calls for identification of target areas in an implementation plan.

It was discussed at the meeting Planning attended that the language could be retained whereby utilities take the initiative in determining which utilities go underground, but the ordinance could establish criteria upon which those selections are made. Those criteria could be subsections 1 through 8 in 21.90.060.

COMMISSIONER LOTTSFELDT moved for approval of case 2004-070 subject to Staff recommendations.

COMMISSIONER T. JONES seconded.

COMMISSIONER SIMONIAN moved to amend to recommend under 21.90.030.A after "found" at line 23 "The director of the office and economic and community development may request an evaluation by an independent third party for any of the following grounds for a variance." This was accepted as a friendly amendment.

COMMISSIONER LOTTSFELDT opposed the motion. He stated he wished the ordinance could be fixed in this forum because under grounding is beneficial, but he did not feel the concerns of ACS had been addressed adequately. He believed that the ordinance should be fair to all utilities affected.

COMMISSIONER PEASE also opposed the motion because it creates an unfair competitive situation for ACS and because she felt it is desirable to let community values weigh in on which lines should receive priority for under grounding. She commented that the idea of planning is to have a community vision for which areas are appropriate for aesthetic improvement, etc. She thought there might be a creative way to use some of the 2% money to fund a periodic planning project that uses the criteria in 21.90.060 to create the plan. She felt this is an area of public interest and, since utility under grounding typically arises as part of a subdivision development or road improvement project, it is not a burden for the Commission to review it and it is not necessary to assign that review to the director.

COMMISSIONER T. JONES did not support the motion not because she does not favor under grounding, but because she was not sure whether, if this were approved, the result would be predictable and desirable. There is concern with the aesthetics of Anchorage, but if this requirement to underground is imposed, there should be a plan through which targeted areas are identified and that gives some certainty regarding this requirement. She was not convinced that there is not some type of funding available to do this planning activity. She suggested this plan might be done through a contract and not done in-house by the Planning Department.

COMMISSIONER SIMONIAN supported the motion, believing that while the ordinance requires some revision, there is a State statute that requires 1% of retail revenues be used to underground and this ordinance proposal is not much more of a burden. She felt it is better to initiate this through a requirement than to let it fall through the cracks of potential planning.

COMMISSIONER GIBBONS stated that looking at the fact the ordinance conceivably places an additional burden on ACS as compared with its competitor, and because he did not have a good sense of what would be that additional financial burden, he could not support the ordinance.

CHAIR POULTON stated he would not support the motion. He indicated that the requirement to underground is not a burden, but the fact the burden would not be shared equitably is of concern.

AYE: Simonian

NAY: Pease, T. Jones, Gibbons, Poulton, Lottsfeldt, Isham

**FAILED**

## **I. REPORTS**

### **1. Chair**

CHAIR POULTON welcomed Tom Nelson into his position as Planning Director. He noted that all commissioners had been emailed pre-agenda items.

### **2. Secretary**

TOM NELSON stated some members joined the Commission during his recent absence and he wished to welcome them to the body. He stated he has worked for 29 years with the Municipality's Planning Department. He indicated he does not anticipate making any significant, immediate changes to the Department or its operation, but he encouraged open lines of communication with the Commission to rectify any concerns and address any issues. He remarked that earlier this evening the Commission delayed a case, which he wished to discuss. CHAIR POULTON noted that this case is in an appeal period and he felt it was ill advised to comment on the matter.

MR. BARRETT reminded the Commission of the parliamentary procedure workshop scheduled for May 11, 2004 at 5:30 p.m. at the Permit Center.

### **3. Committees**



# Municipality of Anchorage

C.2.

## Planning Department

### MEMORANDUM

**DATE:** November 1, 2004

**TO:** Planning and Zoning Commission

**THRU:** *TN* Tom Nelson, Director

**FROM:** *SF* Sharon Ferguson, Senior Planner

**SUBJECT:** **Case 04-070;** An Ordinance Amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, Section 21.90.030; Variances, and Section 21.90.060, Designation of Target Areas, to provide for a five-year plan designating Target Areas, and Section 21.90.070, Nonconforming Overhead Lines, to Authorize the Director of the Planning Development to grant variances, to require a utility owning poles to expend at least two percent of its gross annual retail revenues from sales within the Municipality of Anchorage to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

The proposed ordinance, proposed by Assemblymember Shamberg and the Assembly Office staff, introduces an amendment to the Anchorage Municipal Code Chapter 21.90 Utility Distribution Facilities to amend three sections. These sections are 21.90.030 Variances, 21.90.060 Nonconforming Overhead Lines -Designation of Target Areas, and 21.90.070 Nonconforming Overhead Lines- Conformance with ten-year plan.

Note: This case was heard by the Commission on May 3, 2004 and rejected. The Commission had various concerns ranging from: a lack of fairness to all affected utilities, a desire to let community values determine community aesthetics through a public process, and concern pertaining to the lack of certainty as to whether the target areas for undergrounding utilities will occur with predictable results (see attached meeting minutes).

The primary revisions to the ordinance included the addition of section 21.90.060 Nonconforming overhead lines – Designation of target areas, which is described below. The revised ordinance also deletes the following under section 21.90.070 – Nonconforming overhead lines, “Each year that an attached utility has spent 2% of its annual gross retail revenues, the electric utility is not required to remove its poles, which support lines owned by the attached utility. It may, instead, transfer pole ownership per any pole attachment agreement in effect between the electric utility and the attached utility.” Upon further study of AS 42.05.381, it was determined by Assemblymember Shamberg’s staff that this provision was in violation of state law as attached utilities

must be placed underground at the same time that electric utility lines are placed underground.

**DISCUSSION:**

The ordinance proposes the following amendments to the existing ordinance:

21.90.030 Variances

1. Subsection 21.90.030.A. transfers responsibility for granting variances from the Planning and Zoning Commission to the Director of the Planning Department.
2. 21.90.030.A.3. transfers responsibility for evaluating the cost of placing a line underground as opposed to overhead from the Planning and Zoning Commission to the Director of the Planning Department.

The staff of Chugach Electric Association (CEA), believe that the granting of a variance should be an administrative decision. It is their belief that if the granting of a variance was done administratively, quicker response could be obtained. They further believe that the three factors involved in the granting of a variance are clear and can be performed administratively by the Director of the Planning Department.

The third factor in evaluating the granting of a variance reads: "Placing a utility distribution line underground in an environmentally sound and safe manner would cost more than three times the cost of placing the line overhead, where the applicant demonstrates the relative cost to the satisfaction of the director of the Planning Department." The Planning Department would like to add the statement "where the applicant demonstrates the relative cost to the satisfaction of the director of the planning development *and which may include an evaluation by an independent third party.*"

At the previous meeting to discuss the proposed ordinance, there was Commission concern regarding the transfer of responsibility for granting variances. According to CEA, there have been two submittals for variance requests over the past five years. Chugach Electric is recommending the transfer of responsibility on behalf of their customers. In discussions with CEA, they have indicated that the cost of applying for a variance, along with the effort to prepare the submittal, discourages their customers from applying for a variance.

The ordinance has been revised from the version reviewed at the May 3, 2004 meeting (see attachment) to include the following section.

Section 21.90.060 Nonconforming overhead lines – Designation of target areas

Section 21.90.060 is included in the revision to require an electric utility that owns poles that support nonconforming utility distribution lines to prepare as part of its annual capital improvement plan, a five year undergrounding program. The five year plan would be updated by the electric utility and reviewed by the Planning Director on an annual basis. Priority for undergrounding of utilities would be based on the needs of an electric

utility to upgrade its facilities. Only as a secondary concern would the underground placement of utility lines in the target areas be considered. The retention of the target areas in the proposed ordinance allows the Director of the Planning Department to determine whether the five year program prepared by an electric utility is achieving the goal of undergrounding nonconforming overhead utility lines in the target areas as well as acting as an advisement to utility companies.

#### 21.90.070 Nonconforming overhead lines

The proposed ordinance eliminates reference to conformance with the ten-year plan. The purpose of the ten year program or plan is the following: "The Director of the Department of Community Planning and Development shall submit to the Assembly a ten-year program designating target areas for the underground placement of nonconforming utility distribution lines. The ten-year program shall be resubmitted for Assembly review every five years. The Community Planning Director shall consult with the utilities and public agencies affected by the program. The ten-year program and its revisions shall become effective when adopted by the Assembly as part of this chapter."

By eliminating the submittal of the Planning Department's ten year program provision from the ordinance and replacing it with a five year plan developed by an electric utility enables the Municipality to implement removal of electric utility poles and placement of these lines underground.

Assemblymember Shamberg held meetings to discuss the proposed ordinance with the affected utilities: Chugach Electric Association, Municipal Light & Power, Matanuska Electric Association, Matanuska Telephone Association, Alaska Communications Systems, and GCI. It is staffs' understanding that the proposed ordinance has gained consensus among these utilities.

Under the ordinance currently in place, utilities need not expend more than four percent of its gross revenues to underground utility lines. Under the proposed ordinance, electric utilities must remove poles and place those lines underground using at least two percent of revenue derived from utility service connections within the municipality. The electric utility that owns the poles may choose which existing lines to underground in order to fulfill the two percent expenditure, in consultation with appropriate public agencies and any other utilities with facilities attached to such poles. Priorities in determining which lines to underground will be based on a determination centered on which of their circuits need rebuilding and the upgrading of inadequate wire size. CEA would entertain making a partial contribution toward undergrounding utility lines in conjunction with road improvements if the utility line needed upgrading and if they had two years advanced notice to enable sufficient planning. Anchorage Municipal Code -21.90.080 states that "if municipal road construction requires the relocation of a nonconforming utility distribution line, the municipality, as part of the road construction project cost, shall reimburse the cost of the relocation."

The proposed ordinance states a utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. This provision dovetails with the 1999 Alaska

Statute which also requires that any attached utilities be placed underground at the same time as the electric line (refer to attachment: AS 42.05.381- j.). The attached utility shall not be required to expend more than two percent of its annual gross retail revenues derived from utility service connections within the municipality. Given the significant cost differential between undergrounding electric lines as opposed to telecommunication lines, it is unlikely that attached utilities will expend two percent of their revenues and will likely underground their lines at the same time. According to CEA, ACS indicated that the cost of undergrounding telecommunication lines is approximately one-sixth to one-tenth of the cost of undergrounding electric lines. CEA has indicated that two percent of its annual gross retail revenues derived from utility service connections would amount to approximately \$2 million. CEA has indicated that the cost of undergrounding one mile of electric line is approximately \$1 million. They further indicated that there are approximately 30 poles per mile.

The two percent figure was derived from the amount that utilities may amend its rates to recover the costs of undergrounding utility lines without going through a review process with the Regulatory Commission of Alaska (RCA), a process which can take approximately 18 months to complete. Beginning in 2000, state law [AS 42.05.381(h) (see attached) required "an electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend a least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground...This subsection applies to an undergrounding program to the extent that the costs do not exceed two percent of the utility's annual gross revenue. If an undergrounding program's costs exceed two percent, the RCA may regulate rate increases proposed for the recovery of the amount above two percent." The two percent annual expenditure by the electric utilities includes the above mentioned state obligation of one percent.

State law also states that "When an electric utility or a telephone utility is implementing a program to place existing overhead utility distribution lines located in a municipality underground, any other overhead line or cable in the same location shall be placed underground at the same time. Each entity whose lines or cables are placed underground shall pay the cost of placing its own lines or cables underground."

The Municipality cannot offer any specific remedies to address the unfair competitiveness issue for two reasons: 1) issues regarding leasing arrangements among telecommunications companies can only be resolved through the Regulatory Commission of Alaska; 2) as indicated earlier, an exemption for an attached utility cannot be made due to state statute which in 2000, compelled electric and telephone utilities to spend at least one percent of their gross revenues to place existing overhead lines underground and any other overhead line or cable in the same location shall be placed underground at the same time.

There was further concern pertaining to the lack of certainty as to whether the target areas for undergrounding utilities will occur with predictable results. The electric utilities will submit a five year program identifying which lines they intend to underground over that period. It should be evident from the plan the degree of overlap

There was further concern pertaining to the lack of certainty as to whether the target areas for undergrounding utilities will occur with predictable results. The electric utilities will submit a five year program identifying which lines they intend to underground over that period. It should be evident from the plan the degree of overlap between priorities established by CEA for placing lines underground and whether these lines also occur within the target areas identified in the ordinance.

**AGENCY AND PUBLIC COMMENTS:** See attachments for all agency comments. The following is an abbreviated account of their primary concerns.

Alaska Department of Transportation and Public Facilities objects to the proposed ordinance because the requirement to underground services will result in additional costs to transportation projects.

Staff received the following comment: Public Comment – The neighborhoods and community councils that would be affected by any variances issued by the Director of the Economic Development and Community Development should have a voice as to whether the variance should be issued.

#### **DEPARTMENT RECOMMENDATION**

The Department recommends APPROVAL of the Ordinance Amending Anchorage Municipal Code Chapter 21.90 – sections 21.90.030 Variances, 21.90.060 Nonconforming Overhead Lines -Designation of Target Areas, and 21.90.070 Nonconforming Overhead Lines- Conformance with ten-year plan, subject to the recommendation below.

1. Add the statement to 21.90.030.A.3. "...where the applicant demonstrates the relative cost to the satisfaction of the director of the Planning Department *and which may include an evaluation by an independent third party.*"

RETURN COMMENTS TO:

DEPARTMENT OF PLANNING  
Zoning and Platting Division  
P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Phone 343-7943

Case No. 2004-070

Request: An ordinance amending Title 21 for utilities under AMC 21.90  
0.00 acre(s)

N/A

to:

utilities under AMC 21.90

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COMMENTS AND MEETING SCHEDULE:

Planning and Zoning Commission Public hearing

Hearing Date: Monday, November 01, 2004

Agency Comments Due: Monday, October 04, 2004

Council Comments Due: Friday, October 22, 2004

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DISTRIBUTION: STANDARD DISTRIBUTION  
COMMUNITY COUNCIL(S):

All Community Councils

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|---------------------------------------|-----------|
| PLANNING AND ZONING COMMISSION        |           |
| Assembly Hall, Z. J. Loussac Library  |           |
| 3600 Denali Street, Anchorage, Alaska |           |
| Monday, November 01, 2004             | 6:30 p.m. |

Submitted by: Assemblymember Shamberg  
 Prepared by: Department of Assembly  
 For reading: 2004

**REVISED**

ANCHORAGE, ALASKA  
 AO NO. 2004-

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
 2 ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION  
 3 FACILITIES, SECTION 21.90.030, VARIANCES, SECTION 21.90.060, DESIGNATION  
 4 OF TARGET AREAS, TO PROVIDE FOR A FIVE-YEAR PLAN DESIGNATING  
 5 TARGET AREAS, AND SECTION 21.90.070, NONCONFORMING OVERHEAD  
 6 LINES, TO AUTHORIZE THE DIRECTOR OF THE PLANNING DEPARTMENT TO  
 7 GRANT VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND AT  
 8 LEAST TWO PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM  
 9 SALES WITHIN THE MUNICIPALITY OF ANCHORAGE, TO REMOVE POLES  
 10 SUPPORTING NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE  
 11 LINES UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE  
 12 LINES UNDERGROUND.

13  
 14  
 15 THE ANCHORAGE ASSEMBLY ORDAINS:

16  
 17 **Section 1.** Anchorage Municipal Code section 21.90.030 is hereby amended to read  
 18 as follows: (*Other portions of the section are not affected and therefore not set out.*)

19  
 20 **21.90.030 Variances.**

21  
 22 A. The director of the Planning Department [AND ZONING COMMISSION]  
 23 may grant a variance from Section 21.90.020.A when [THE COMMISSION  
 24 FINDS] any of the following is found:

- 25  
 26 1. Placing a utility distribution line underground would cause an  
 27 excessive adverse environmental impact;  
 28  
 29 2. Placing a utility distribution line underground would threaten public  
 30 health and safety, because the placement cannot be shown to meet  
 31 acceptable technical standards for safety; or  
 32  
 33 3. Placing a utility distribution line underground in an environmentally  
 34 sound and safe manner would cost more than three times the cost of  
 35 placing the line overhead, where the applicant demonstrates the relative  
 36 cost to the satisfaction of the director of the Planning Department  
 37 [COMMISSION].

\*\*\*\*                      \*\*\*\*                      \*\*\*\*  
[The Revisor of Ordinances is instructed to change all subsequent references to  
"Department of Community Planning and Development" in this section to  
"Director of the Planning Department".]

(AO No. 156-76; AO No. 84-62; AO No. 86-17)

**Section 2.** Anchorage Municipal Code section 21.90.060 is hereby amended to read  
as follows:

**21.90.060 Nonconforming overhead lines— Designation of target  
areas.**

A. An electric utility that owns poles that support nonconforming utility  
distribution lines shall prepare or otherwise include as part of its annual  
capital improvement plan, a five year undergrounding program consistent  
with Section 21.90.070. This five year program shall be updated on an  
annual basis. Priorities shall be based on undergrounding in conjunction  
with the electric utility's essential system improvements and then by target  
area as set forth below in no particular order. The director of the Planning  
Department shall provide review and comment for consideration by the  
electric utilities on these five year programs. When reviewing and  
commenting on these programs the director shall consider the following  
factors in no particular order: [THE DIRECTOR OF THE DEPARTMENT  
OF COMMUNITY PLANNING AND DEVELOPMENT SHALL SUBMIT TO  
THE ASSEMBLY A TEN-YEAR PROGRAM DESIGNATING TARGET  
AREAS FOR THE UNDERGROUND PLACEMENT OF NONCONFORMING  
UTILITY DISTRIBUTION LINES. THE TEN-YEAR PROGRAM SHALL BE  
RESUBMITTED FOR ASSEMBLY REVIEW EVERY FIVE YEARS. THE  
COMMUNITY PLANNING DIRECTOR SHALL CONSULT WITH THE  
UTILITIES AND PUBLIC AGENCIES AFFECTED BY THE PROGRAM. THE  
TEN-YEAR PROGRAM AND ITS REVISIONS SHALL BECOME  
EFFECTIVE WHEN ADOPTED BY THE ASSEMBLY AS PART OF THIS  
CHAPTER. IN REVIEWING THE TEN-YEAR PROGRAM AND ITS  
REVISIONS, THE ASSEMBLY SHALL CONSIDER THE FOLLOWING  
FACTORS:]

1. Whether undergrounding will avoid or eliminate an unusually heavy  
concentration of overhead electric distribution or other attached utility  
facilities.



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2. Whether the street or general area is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic.
  3. Whether the appearance of grounds and structures adjacent to the roadway is such that the removal of the overhead facilities will substantially improve the general appearance of the area.
  4. Whether the street or area affects a public recreation area or an area of scenic interest.
  5. Whether there is a significant opportunity to achieve economies due to the anticipated relocation or replacement of overhead lines or the widening or realignment of streets within a given area.
  6. Whether the five year program sufficiently addresses the objectives of [TARGETED AREAS ARE OF SUFFICIENT SIZE TO ALLOW THE UTILITY COMPANIES SIGNIFICANT DISCRETION IN CHOOSING THOSE FACILITIES THAT WILL BE CONVERTED UNDER] Section 21.90.070.
  7. Whether the area under consideration is within a zone where new and relocated distribution lines are required to be placed underground.
  8. Whether the installation of underground distribution lines is economically, technically and environmentally feasible.
- B. The director of the Planning Department [OF COMMUNITY PLANNING AND DEVELOPMENT SHALL PREPARE A TWO-YEAR IMPLEMENTATION PLAN WHICH DESIGNATES OVERHEAD UTILITY DISTRIBUTION FACILITIES WITHIN THE TARGET AREAS TO BE PLACED UNDERGROUND THAT TWO-YEAR PERIOD] shall confirm annually that the electric utilities have developed project undergrounding implementation plans. The director shall consult with the utilities and public agencies affected by any implementation plan. [EACH TWO-YEAR IMPLEMENTATION PLAN SHALL BE EFFECTIVE WHEN APPROVED BY THE ASSEMBLY.] In reviewing [A TWO-YEAR] implementation plans [PLAN AND ITS REVISIONS], the [ASSEMBLY] director shall consider the factors stated in subsection A of this section.
- C. The following shall be the target areas [THROUGH THE YEAR 1995]:

1. Central Business District: between and including Third Avenue and Tenth Avenue and L Street and Ingra Street.
2. Mid-town area: between and including New Seward Highway and Minnesota Drive and International Airport Road and Fireweed Lane.
3. All municipal and state street improvement projects except for those which do not require relocation of utility distribution facilities.
4. The following major traffic corridors:
  - a. Old Seward Highway.
  - b. Ingra and Gambell Streets between and including Ninth Avenue and Fireweed Lane.
  - c. Northern Lights Boulevard and Benson Boulevard between and including Glenwood Street and Arlington Drive.
  - d. Muldoon Road between and including New Glenn Highway and Patterson Street.
  - e. Tudor Road between and including Patterson Street and Arctic Boulevard.
  - f. Boniface Parkway between and including 30th Avenue and New Glenn Highway.
  - g. Spenard Road between and including Hillcrest Drive and International Airport Road.
  - h. Arctic Boulevard between 17<sup>th</sup> Avenue and Tudor Road.
  - i. Lake Otis Parkway between Tudor Road and Abbott Loop
5. All [THOSE] park, recreational use and scenic interest areas [DESIGNATED IN THE TWO-YEAR IMPLEMENTATION PLAN].
6. Eagle River Central Business District between and including the New Glenn Highway, North Eagle River Access Road, Aurora street as extended to the Old Glenn Highway and the Old Glenn Highway.

7. Any area where utility distribution facilities are provided by more than one utility as a result of mergers and boundary changes approved by the state public utilities commission.

8. School and university areas.

**Section 3.** Anchorage Municipal Code section 21.90.070 is hereby amended to read as follows:

**21.90.070 Nonconforming overhead lines [-CONFORMANCE WITH TEN-YEAR PLAN].**

**A.** An electric utility that owns poles that support nonconforming utility distribution lines shall remove the poles and place those lines underground. Any other utility that attaches to such poles shall place its lines underground at the same time that the pole owner places lines underground. [OWNING OR OPERATING NONCONFORMING UTILITY DISTRIBUTION LINES SHALL PLACE THOSE LINES UNDERGROUND IN ACCORDANCE WITH THE TEN-YEAR PLAN APPROVED UNDER SECTION 21.90.060; PROVIDED THAT A UTILITY NEED NOT EXPEND, EXCEPT BY SPECIAL AGREEMENT, DURING ANY FISCAL YEAR OF THE UTILITY, MORE THAN FOUR PERCENT OF ITS GROSS REVENUES DERIVED FROM SERVICE CONNECTIONS WITHIN THE MUNICIPALITY, EXCLUDING TOLL REVENUES AND REVENUES FROM SALES OF ELECTRIC POWER FOR RESALE, DURING ITS PRECEDING FISCAL YEAR TO COMPLY WITH THIS SUBSECTION.]

**1.** The electric utility that owns poles shall, in each fiscal year, expend at least two percent of a three-year average of its annual gross retail revenues derived from utility service connections within the municipality, excluding toll revenues, revenues from sales of natural gas to third parties, and revenues from sales of electric power for resale. An electric utility's expenditures, pursuant to AS 42.05.381(h), within the Municipality of Anchorage, shall be counted toward satisfaction of the two percent expenditure required by this subsection.

**2.** A utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. An attached utility shall not be required to expend more than two percent of its annual gross retail revenues derived from utility service connections within the municipality,

1 excluding toll revenues. For the purpose of satisfying 21.90.070, the  
2 utility's expenditures pursuant to AS 42.05.381(h) within the Municipality of  
3 Anchorage are counted toward this two percent expenditure limit.

4  
5 3. The electric utility that owns poles may choose which existing lines  
6 to underground in order to fulfill the two percent expenditure requirement,  
7 in consultation with appropriate public agencies and any other utilities.

8  
9 4. An electric utility that owns poles that does not expend the amount  
10 required in subsection A. of this section, or that expends more than that  
11 amount, may carry over the under expenditure or over expenditure as an  
12 adjustment to the following year's obligation.

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14 B. The electric utility that owns poles shall notify the Director of the Planning  
15 Department, and utilities or entities with lines attached to such poles, of  
16 the approximate date that the owner plans to remove the poles. Such  
17 notice, where possible, shall be given at least four months in advance of  
18 the undergrounding except where an emergency or other unforeseen  
19 circumstances preclude such notice, in which case such advance notice  
20 as is reasonable under the circumstances shall be provided.

21  
22 C. A utility shall annually submit a report of its undergrounding projects and  
23 expenditures for non-conforming lines to the director of the Planning  
24 Department within 120 days of the end of the preceding calendar year.

25  
26 D.[B] All n[N]ew service connections shall be placed underground in the same  
27 manner as required for utility distribution lines under Section 21.90.020,  
28 [IN TARGET AREAS DESIGNATED UNDER SECTION 21.90.060;  
29 PROVIDED THAT] New service lines [CONNECTIONS] may be  
30 temporarily installed above ground [OVERHEAD] from October through  
31 May, if placed underground within one year of installation.

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34 Section 4. This ordinance shall become effective immediately upon its passage and  
35 approval.  
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PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk

(c) The commission may reject the filing of all or part of a tariff that does not comply with the form or filing regulations of the commission. A tariff or provision so rejected is void. If the commission rejects a filing, it shall issue a statement of the reasons for the rejection. Unless the utility and the commission agree to an extension of time, the commission may not reject a filing under this subsection after 45 days have elapsed from the date of filing. (§ 6 ch 113 SLA 1970; am § 2 ch 104 SLA 1986)

**Opinions of attorney general.** — Where public utility company entered into contract to sell natural gas to federal military installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2)

from asserting its jurisdiction over the sale. August 4, 1978, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to subsection (a) of this section. August 4, 1978, Op. Att'y Gen.

#### NOTES TO DECISIONS

Stated in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Cited in *Stepanov v. Homer Elec. Ass'n*, 814 P.2d 731 (Alaska 1991).

**Collateral references.** — Variation of utility rates based on flat and meter rates. 40 ALR2d 1331.

**Sec. 42.05.365. Interest on deposits.** (a) A public utility may collect and retain a deposit for contracted recurring monthly service. A public utility that collects and retains a deposit of over \$100 for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service. (§ 1 ch 50 SLA 1986)

**Cross references.** — For legal rate of interest, see AS 45.45.010.

**Sec. 42.05.370. [Repealed, § 5 ch 113 SLA 1970.]**

**Sec. 42.05.371. Adherence to tariffs.** The terms and conditions under which a public utility offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. A legally filed and effective tariff rate, charge, toll, rental, rule, regulation, or condition of service may not be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

**Failure to hold hearing nonjurisdictional and subject to waiver.** — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before

the commission. *Far N. Sen., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Applied in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

**Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]**

**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service

furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers.

(e) The commission shall adopt regulations for electric cooperatives and for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative or telephone utility may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative or telephone utility satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error.

(f) A local exchange telephone utility may adjust its rates in conformance with changes in jurisdictional cost allocation factors required by either the Federal Communications Commission or the Regulatory Commission of Alaska upon a showing to the Regulatory Commission of Alaska of

- (1) the order requiring the change in allocation factors;
- (2) the aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factors; and
- (3) the rate adjustment required to conform to the required shift in local revenue requirement.

(g) The commission shall allow, as a necessary and reasonable expense, all payments made to the Department of Environmental Conservation under AS 46.14.240 — 46.14.250. The commission shall allow the public utility to recover these fees through a periodic fuel surcharge rate adjustment.

(h) An electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend at least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground. In determining the annual gross revenue under this subsection, only revenue derived from the utility's distribution lines in the municipality shall be considered.

(i) An electric or telephone utility that is implementing a program to place existing overhead utility distribution lines located in a municipality underground may amend its rates for services provided to customers in the municipality to enable the utility to recover the full actual cost of placing the lines underground. Notwithstanding AS 42.05.411 — 42.05.431, an amendment to a utility's rates under this subsection is not subject to commission review or approval. A utility amending its rates under this

subsection shall notify the commission of the amendment. This subsection applies to an undergrounding program to the extent that the costs do not exceed two percent of the utility's annual gross revenue. If an undergrounding program's costs exceed two percent, the commission may regulate rate increases proposed for the recovery of the amount above two percent.

(j) When an electric utility or a telephone utility is implementing a program to place existing overhead utility distribution lines located in a municipality underground, any other overhead line or cable in the same location shall be placed underground at the same time. Each entity whose lines or cables are placed underground shall pay the cost of placing its own lines or cables underground. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980; am § 3 ch 104 SLA 1986; am § 1 ch 87 SLA 1990; am §§ 1, 2 ch 81 SLA 1991; am § 11 ch 74 SLA 1993; am § 1 ch 73 SLA 1999; am § 89 ch 21 SLA 2000)

**Revisor's notes.** — In 1999, in subsection (f) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

**Cross references.** — For the Electric and Telephone Cooperative Act see AS 10.25.

**Effect of amendments.** — The 1993 amendment, effective June 28, 1993, added subsection (g).

The 1999 amendment, effective September 22, 1999, added subsections (h)-(j).

The 2000 amendment, effective April 28, 2000, deleted the former last sentence of subsection (e), which read: "The commission shall adopt the regulations concerning adjustment of rates by local exchange telephone utilities on or before October 1, 1991."

#### NOTES TO DECISIONS

**Separation of intrastate and interstate properties, expenses and revenues** is required for properly determining the adequacy of a utility's intrastate rates. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owaischak v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

**Lobbying expenses excluded from revenue re-**

**quirement.** — The commission acted reasonably and within its statutory authority in excluding lobbying expenses as part of a utility's revenue requirement. *Homer Elec. Ass'n v. State, Alaska Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

Applied in *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549 (Alaska 1975).

**Collateral references.** — Charitable contributions by public utility as part of operating expense. 59 ALR3d 941.

**Fuel adjustment clauses: validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased costs of fuel to its customers.** 53 ALR3d 938.

**Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes.** 53 ALR3d 963.

**Affiliates: amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding.** 16 ALR4th 454.

**Injunctions — rates: validity, construction, and application of Johnson Act (28 USCS § 1342), prohibiting interference by Federal District Courts with state orders affecting rates chargeable by public utilities.** 28 ALR Fed. 422.

**Sec. 42.05.385. Charges for water and sewer line extensions.** (a) A water or sewer line extension may not be constructed unless the legislative body of each municipality through which the extension passes has approved the extension. This subsection does not apply to an extension that will not create any charges or assessments against the adjacent property.

(b) Except as provided in (e) of this section, when utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the service through the extension shall notify the property owner, according to the procedure set forth for service of process in the Alaska Rules of Civil Procedure, of the charges and interest due the utility if the property owner elects to obtain the utility service through the extension. The property owner does not owe the charge for the extension until the property owner connects to the extension.

(c) Except as provided in (e) of this section, and unless the property owner connects to the extension,



CHAIR POULTON asked what would be an appropriate date to postpone this case. MR. BARRETT suspected the next available date would be June 7 or June 14. Recognizing the concern expressed by Ms. Jones that more than 50% of the project would be outside the public review, he suggested the Commission could require another conditional use application for the remainder of the project or make the site plan review a public hearing. CHAIR POULTON voiced appreciation for the efforts of the applicant and the Staff to forward this application.

COMMISSIONER G. JONES stated he has no concern with the validity of the project, but did have concern with the process.

COMMISSIONER LOTTSFELDT amended his motion to postpone case 2004-080 to be heard under Old Business at the Commission's June 7, 2004 meeting.

COMMISSIONER G. JONES stated he hoped to see the entire project at the June 7, 2004 meeting.

AYE: Pease, T. Jones, Gibbons, Poulton, G. Jones, Simonian, Lottsfeldt, Isham

NAY: None

PASSED

6. 2004-070

Municipality of Anchorage. An Ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, Section 21.90.030, Variances, and Section 21.90.070, Nonconforming Overhead Lines, to authorize the Director of the Office of Economic Development and Community Development to grant variances to require a utility owning poles to expend two percent of its gross annual retail revenues from sales within the Municipality of Anchorage to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

Staff member SHARON FERGUSON stated this case involves amendments to Chapter 21.90, Utility Distribution Facilities, Section 21.90.030, Variances, and Section 21.90.070, Nonconforming Overhead Lines. These requirements have been in the code since 1976, but have not been an effective ordinance due to other Department commitments and lack of staff resources. The code requires that the

Planning Department develop a 10-year plan designating target areas for nonconforming underground utilities; this plan was never developed. Assemblymember Shamberg's ordinance revises these ordinances by allowing the electric utilities to underground lines at their discretion. The affected utilities are required to expend 2% of their annual gross retail revenue derived from utility service connections. The ordinance refers to statute AS 42.05.381(h), which requires electric and public communication utilities to spend at least 1% of gross retail revenues to underground utility lines. The proposed ordinance includes the 1% required by that statute in the 2% this ordinance requires. MS. FERGUSON amended the revised ordinance, packet page 09, Section 1.A to include the phrase "The director may also request an evaluation by an independent third party for the following three factors." She noted that Richard Gutierrez and Mr. Lohr with the Municipality were present to respond to any questions from the Commission.

The public hearing was opened.

MARY ANN PEASE, Vice President for Alaska Communications Systems (ACS) agreed there has been a long process on utility undergrounding and the matter is down to a few issues that are key to ACS. She felt if Staff would reconsider those issues, the resulting ordinance would benefit the city and other utilities. She explained that ACS is not able to pass on to its ratepayers any increase that would result from undergrounding. Both Chugach Electric Association (CEA) and Municipal Light and Power (ML&P) are monopolies and they can pass on costs to consumers. If the cost of undergrounding were passed onto ACS's ratepayers, ACS would be placed at a distinct disadvantage to its competitor, which leases ACS's facilities at a fixed cost over time. With a 50% control in the market for telecommunications, any financial impact on ACS places it at a competitive disadvantage. The amendments causing Ms. Pease the greatest concern were that the amendment should establish a clear, all-inclusive limit of 2% of revenues on annual expenditures. Under 21.90.070.A and A.2 there are conflicts. In one paragraph there is a limit of 2% and in others it is left open to interpretation. The amendments do not explain how the limitation should be applied. She explained that this clarifying language is desired because every time either CEA or ML&P goes underground, they make a decision how much they will spend and can pass that onto their consumers. In those events, ACS is left with the ownership, maintenance, and cost of lines that are left above ground or ACS also has to go underground. This is a direct financial impact on ACS that is essentially an unfunded mandate.

COMMISSIONER SIMONIAN asked if 21.90.9070.A conflicts with A.2 because if ACS had already reached 2%, but another utility has to go underground and ACS is attached to that pole, ACS also has to go underground. MS. PEASE replied in the affirmative. She explained that the other conflict is if the decision is made to not go underground, the poles are

transferred to ACS. The cost of disposing poles is \$1,000 per pole, but ACS is currently on 10,700 poles with CEA and almost 6,000 with ML&P, with a potential impact to ACS of \$17 million, albeit that impact would occur over a period of time. COMMISSIONER SIMONIAN asked if there is less of a financial impact if the utility that owns the pole goes underground and ACS is required to go underground as well. MS. PEASE responded that if that work is beyond the 2% requirement, it is still a huge financial impact. She also noted that other factors greatly affect cost. She noted that what is best for electric utility might not always be best for the telephone utility. She thought the first step in rectifying the problem is to clearly state that ACS will not be bound to an expenditure of more than 2% of its annual revenues.

CHAIR POULTON asked if the letter the Commission had received from Ms. Pease summarized ACS's concerns. MS. PEASE replied in the affirmative.

COMMISSIONER T. JONES asked whether ACS participated in the meetings that have occurred regarding these amendments. MS. PEASE replied that she attended some of those meetings and at those meetings had offered recommended language; some of that language was included in the proposed ordinance changes and some was not. COMMISSIONER T. JONES noted that MTA was not listed as a participant in the meeting and she believed they are in a similar position to ACS in the Eagle River-Chugiak area. MS. PEASE stated that MTA is also a monopoly and any increases can go directly to their ratepayers. MS. FERGUSON stated that MTA was, in fact, involved in the meetings. MR. GUTIERREZ indicated that MTA is supportive of the ordinance.

COMMISSIONER ISHAM asked if GCI could bear any of the costs Ms. Pease had discussed. MS. PEASE stated GCI leases ACS's facilities at a fixed rate, so they could bear some of this cost, if they chose, but she did not believe that was a realistic expectation. COMMISSIONER ISHAM asked whether ACS could pass on costs to GCI. MS. PEASE replied in the negative. COMMISSIONER T. JONES stated there are lengthy proceedings to arrive at an agreed upon amount to be paid for every aspect of service used by one utility from another; those are essentially then "cast in stone." She estimated a minimum period of time for change is 18 months.

COMMISSIONER PEASE asked whether, if ACS were exempted from subsection A, it would be expending 2% of gross revenues on poles of its own choosing. She asked if two different solutions were suggested. MS. PEASE replied that if there were a 2% limit, the bulk of her concerns would be addressed. Also have to realize that there are other issues that happen automatically as other utilities spend 2% of their gross revenues, such as the decision by ACS to either take ownership of the poles and operate and maintain and dispose of them over time, or looking at going underground. Costs for under grounding vary with each particular project.

COMMISSIONER LOTTSFELDT asked what mechanisms are used in other cities that require undergrounding of utilities. MS. PEASE replied that she could not answer this specifically. There are other telephone utilities in other areas and costs for undergrounding are borne by those utilities and those costs are passed onto consumers; the Alaska competitive situation is unique.

GEORGE VAKALIS, representing the Anchorage Chamber of Commerce, stated that those who do business and live in Anchorage would like the community to be aesthetically pleasing. The Chamber represents a substantial number of businesses in the community, representing a workforce of about 55,000 employees. He stated the position of the Chamber is not supportive of the ordinance, as offered. The reasons for this position is that the ordinance singles out one utility and requires them to bear costs without having the ability, in a comprehensive and competitive manner, to pass the expense onto the ratepayer. Secondly, there are currently two laws in effect dealing with this issue, the municipal code and the state statute. The latter is only directed to Anchorage and does not affect other communities. Third, there are expenses involved for the utilities other than ACS and those expenses will be passed onto the ratepayer. There will also be additional expenses for public facilities under the proposed ordinances, which are paid for by the taxpayers. He stated the 2% requirement in the current ordinances makes sense; if there is a problem with enforcement that should be addressed; and if there is a problem with long-range planning, then that should be addressed. He reiterated that the Chamber does not recommend approval of the ordinance, as offered.

COMMISSIONER PEASE asked, if this ordinance were not passed, what is the status of undergrounding in the Municipality. She asked if the utilities have been spending 2%, are there patterns of undergrounding, and are there areas utilities should have been put underground and were not. BOB LOHR with the municipal Office of Management and Budget stated it is his understanding that the utilities are complying with the state statute and are spending 1% per year. Undergrounding means taking existing overhead lines and placing them underground, not for new construction to be placed underground. He did not believe the utilities are spending the 2% that the ordinance requires. COMMISSIONER PEASE asked if there is a pattern of undergrounding. MR. LOHR stated he could not provide a geographic breakdown, but he was aware that placing higher voltage lines underground is extremely cost prohibitive. Distribution lines are the focus of the state statute and this ordinance.

COMMISSIONER LOTTSFELDT asked if most of the poles are currently controlled by electric utilities and because the electric utility line goes the deepest in the trench when it is undergrounded, in almost all cases they would be driving the undergrounding process. MR. GUTIERREZ believed this was correct. He stated that the ordinance, as proposed, is in its fourth or fifth iteration. As originally constructed, it was worded that a utility shall

underground, referring to any utility owning a pole. As a concession to ACS, that wording was changed to an electric utility that owns poles shall remove their lines and place them underground. The cost of electric utilities is the largest among utilities. The logic used in crafting this ordinance was that the cost of under grounding an electrical distribution line was ten times the cost of under grounding a telephone line. For example, ML&P would be required to underground on average two miles of line a year at \$2 million, putting ACS's exposure at \$200,000 to follow in that under grounding.

COMMISSIONER SIMONIAN remarked that Section 2.A.5 of the ordinance seems to allow the electric utility to not spend 2% in one year and count it in another year. MR. GUTIERREZ explained the 2% amount is calculated on a rolling average to help smooth unusual dips or rises in revenue from one year to the next. It allows the utility to plan ahead for projects that represent more than 2% in a given year. COMMISSIONER SIMONIAN asked why this language is specific to an electric utility. MR. GUTIERREZ replied that this language is intended to apply to all utilities; he understood that was Assemblymember Shamberg's intent.

COMMISSIONER LOTTSFELDT asked if there are lines on a pole besides power and telephone lines. MR. GUTIERREZ stated power lines go on the top of the pole and telephone lines below for safety reasons. There may be other lines attached to the poles. COMMISSIONER LOTTSFELDT confirmed the poles generally house electric and telephone lines.

MR. GUTIERREZ stated on the issue of ACS being forced to take over the management burden and cost of the poles that, as initially written, the ordinance required that poles would be automatically removed; there was no provision for leaving the poles. The current practice of topping the line is to take electrical lines off the top, shorten the pole, and leave telephone lines. At ACS's insistence, language was included in the proposed draft that once the 2% was reached, the topping of the pole would be allowed.

COMMISSIONER PEASE noted that 21.90.030.A allows the director of the office of economic and community development to grant a variance; there is no public hearing. She asked whether there has been a problem with slow responses on variances from under grounding requirements. MS. FERGUSON did not believe there was a problem with slow response from the city's side. From the utility's perspective, the two to three months involved in an application review might be viewed as lengthy, but typically all cases are heard within 50 days of receipt.

COMMISSIONER SIMONIAN understood that the intent of the ordinance is not that a utility which is collocated on a pole that is being vacated by another utility in order to meet their 2% is also required to vacate the pole. MR. GUTIERREZ stated this is correct. He added that there is recognition that collocating on poles that are being vacated by utilities could bring about

a "perfect storm" so the ordinance recognizes that no utility will be required to pay beyond 2% of their gross retail revenues per year.

COMMISSIONER T. JONES asked if a "follower" utility would become the owner of a pole if the owner vacates it. MR. GUTIERREZ replied in the affirmative. COMMISSIONER T. JONES asked what happens with respect to the utility easements that are designated to a particular party, if that party is no longer located on the pole. MR. GUTIERREZ was not certain he could respond to this question, except to point out the language on page 3 of 4, line 11 of the ordinance that states "transfer pole ownership per any pole attachment agreement in effect between the electric utility and the attached utility."

COMMISSIONER LOTTSFELDT stated Anchorage has a competitive telephone market and, assuming all utilities passed on the costs of undergrounding to their customers, as an ACS customer and CEA customer, he would be charged by both, where his neighbor with CEA and GCI could be charged by CEA only. He asked whether the city has thought of a proposal where the ordinance is more neutral between the two competing telephone companies. MR. LOHR replied that the competitiveness of telecommunications in Alaska is largely a matter for the Regulatory Commission of Alaska or perhaps the Federal Communications Commission. He noted that, on a remand from the Alaska Supreme Court this year, ACS and GCI were able to achieve a stipulation and present it to the Regulatory Commission of Alaska that represents a breakthrough of cooperative behavior within a competitive environment. He believed an element of that agreement was a change in the amount of wholesale payments for the use of unbundled network elements. He was uncertain whether this could be addressed in this ordinance.

CHAIR POULTON asked that Ms. Pease speak to Mr. Lohr's remarks. MS. PEASE stated the rural exemption referred to by Mr. Lohr affects Juneau and Fairbanks; that agreement was reached after court battles that occurred over six years' time ranging up to the Alaska Supreme Court and Regulatory Commission of Alaska. CHAIR POULTON asked if the Regulatory Commission of Alaska sets the rates. MS. PEASE replied that the Regulatory Commission of Alaska sets the rates at which ACS leases facilities to GCI. CHAIR POULTON asked what involvement there is by the Federal Communications Commission. MS. PEASE replied that there is no FCC involvement. The rates are generally in effect for a long time; current rates went into effect in 1997 with an interim change in 2002. CHAIR POULTON whether, if this ordinance is adopted, ACS could go back to the Regulatory Commission of Alaska. MS. PEASE replied that this could be done, but she suspected there would be no final decision for five or six years. COMMISSIONER T. JONES stated she spends the majority of her day working on rate cases and it is her experience that those cases are drawn out even when there is not competition between the companies; the cost is passed onto the consumer in the end.

CHAIR POULTON noted that Mr. Vakalis mentioned a ripple effect if this ordinance was adopted. MS. PEASE explained a business bears the cost of a rate increase from a utility and that business will likely pass on a percentage of that burden to their customers. If ACS has to bear the cost of under grounding and its competitor does not, there is a distinct advantage of one company over the other. She agreed with staff that there has been a great deal of time and energy spent on this ordinance and she believed, if there were clarifications in the ordinance, ACS would be helped a great deal. ACS has suggested amendments that have not been incorporated into the ordinance and she felt that one more review would benefit everyone.

COMMISSIONER G. JONES asked that the Commission reconsider his participation in this matter, given that he is an officer in GCI. He explained he was not aware this ordinance would be discussed as a competitive issue.

COMMISSIONER T. JONES moved to direct Commissioner Jones to continue to participate in case 2004-080.

COMMISSIONER SIMONIAN seconded.

COMMISSIONER T. JONES stated that, having heard the testimony and Commissioner Jones's concerns, she believed there is a strong appearance of impropriety and he should be excused.

AYE: None

NAY: Pease, T. Jones, Gibbons, Poulton, Simonian, Lottsfeldt, Isham

ABSTAIN: G. Jones

FAILED

COMMISSIONER G. JONES departed the meeting.

COMMISSIONER PEASE indicated she did not realize her sister-in-law's testimony would be so key to this case. She stated she had not discussed this matter in any way with her, but if the Commission wished to excuse her from participation, she would agree to that.

CHAIR POULTON feared there could be an issue of appearance of impropriety with regard to Commissioner Pease's participation.

COMMISSIONER SIMONIAN moved to direct Commissioner Pease to continue participating in case 2004-080.

COMMISSIONER LOTTSFELDT seconded.

COMMISSIONER SIMONIAN supported her motion noting that, while Mr. Jones had a financial interest that could be adverse to the testimony

presented this evening, this did not appear to be the case with Commissioner Pease. She felt that, unless Commissioner Pease felt uncomfortable, she should participate.

COMMISSIONER T. JONES asked whether Commissioner Pease felt she could continue to participate in this matter impartially. COMMISSIONER PEASE replied that she felt she could participate impartially, but she wanted the Commission to consider any appearance of impropriety.

CHAIR POULTON clarified that the action taken by the Commission is a recommendation to the Assembly. MS. FERGUSON confirmed this is the case.

COMMISSIONER T. JONES believed Commissioner Pease could make an impartial and fair decision in this case. She noted that, although one company has provided testimony, this ordinance affects the entire municipality. She indicated that Commissioner Pease could abstain from a particular section of the ordinance, if it presents a particular conflict.

AYE: T. Jones, Gibbons, Poulton, Simonian, Lottsfeldt, Isham

NAY: None

ABSTAIN: Pease

PASSED

MR. GUTIERREZ stated there are three amendments referenced by Ms. Pease as not included. One was to exempt ACS from the ordinance entirely, which was not acceptable to Assemblymember Shamberg. The other two are detailed in an email he received from Ms. Pease on 2/16/04, being an amendment on page 2 of 4, line 18 to remove "remove the poles" and insert "subject to the provisions of 4 below." The effect of that amendment would have been to not require an electric utility to remove its poles. The other amendment is page 3 of 4, line 30 to insert "electric" before "utility." That section deals with an annual report that utilities are required to provide to the Municipality of their revenues spent.

COMMISSIONER PEASE asked whether, given that the Municipality has never carried out the plan, there has been any creative thinking about how to carry that out without producing a formal adopted plan. She thought perhaps central planning was being abandoned, but that might be part of the answer. MR. NELSON replied that there has not been a discussion in this regard, which is probably part of the reason Assemblymember Shamberg brought this ordinance forward. The under grounding utility ordinance was adopted at a time of economic downturn and a time of downturn in staffing. When the economy turned around, the Department was involved in other priorities. The Planning Department was not a major party in the preparation of the ordinance proposed by Assemblymember Shamberg; it was led primarily by the utility company. Creating a



centralized plan would involve the time and commitment of a number of entities. In the absence of being able to make that commitment, the proposed ordinance is one in which the utilities are taking the initiative in determining which lines will be placed underground.

The public hearing was closed.

MR. NELSON clarified that the Planning Department attended one meeting with the utilities. He noted that if 21.90.070 is modified, there is a need to amend 21.90.060 as well, which is one of the recommendations from Staff tonight. If the utilities are initiating which lines are put underground, there would be a conflict in 21.90.060 which calls for identification of target areas in an implementation plan. It was discussed at the meeting Planning attended that the language could be retained whereby utilities take the initiative in determining which utilities go underground, but the ordinance could establish criteria upon which those selections are made. Those criteria could be subsections 1 through 8 in 21.90.060.

COMMISSIONER LOTTSFELDT moved for approval of case 2004-070 subject to Staff recommendations.

COMMISSIONER T. JONES seconded.

COMMISSIONER SIMONIAN moved to amend to recommend under 21.90.030.A after "found" at line 23 "The director of the office of economic and community development may request an evaluation by an independent third party for any of the following grounds for a variance." This was accepted as a friendly amendment.

COMMISSIONER LOTTSFELDT opposed the motion. He stated he wished the ordinance could be fixed in this forum because under grounding is beneficial, but he did not feel the concerns of ACS had been addressed adequately. He believed that the ordinance should be fair to all utilities affected.

COMMISSIONER PEASE also opposed the motion because it creates an unfair competitive situation for ACS and because she felt it is desirable to let community values weigh in on which lines should receive priority for under grounding. She commented that the idea of planning is to have a community vision for which areas are appropriate for aesthetic improvement, etc. She thought there might be a creative way to use some of the 2% money to fund a periodic planning project that uses the criteria in 21.90.060 to create the plan. She felt this is an area of public interest and, since utility undergrounding typically arises as part of a subdivision development or road improvement project, it is not a burden for the Commission to review it and it is not necessary to assign that review to the director.

COMMISSIONER T. JONES did not support the motion not because she does not favor under grounding, but because she was not sure whether, if this were approved, the result would be predictable and desirable. There is concern with the aesthetics of Anchorage, but if this requirement to underground is imposed, there should be a plan through which targeted areas are identified and that gives some certainty regarding this requirement. She was not convinced that there is not some type of funding available to do this planning activity. She suggested this plan might be done through a contract and not done in-house by the Planning Department.

COMMISSIONER SIMONIAN supported the motion, believing that while the ordinance requires some revision, there is a State statute that requires 1% of retail revenues be used to underground and this ordinance proposal is not much more of a burden. She felt it is better to initiate this through a requirement than to let it fall through the cracks of potential planning.

COMMISSIONER GIBBONS stated that looking at the fact the ordinance conceivably places an additional burden on ACS as compared with its competitor, and because he did not have a good sense of what would be that additional financial burden, he could not support the ordinance.

CHAIR POULTON stated he would not support the motion. He indicated that the requirement to underground is not a burden, but the fact the burden would not be shared equitably is of concern.

AYE: Simonian

NAY: Pease, T. Jones, Gibbons, Poulton, Lottsfeldt, Isham

**FAILED**

## **I. REPORTS**

### **1. Chair**

CHAIR POULTON welcomed Tom Nelson into his position as Planning Director. He noted that all commissioners had been emailed pre-agenda items.

### **2. Secretary**

TOM NELSON stated some members joined the Commission during his recent absence and he wished to welcome them to the body. He stated he has worked for 29 years with the Municipality's Planning Department. He indicated he does not anticipate making any significant, immediate changes to the Department or its operation, but he encouraged open lines of communication with the Commission to rectify any concerns and address any issues. He remarked that earlier this evening the Commission delayed a case, which he wished to discuss.

# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

FRANK H. MURKOWSKI, GOVERNOR

CENTRAL REGION - PLANNING

4111 AVIATION AVENUE  
P.O. BOX 196900  
ANCHORAGE, ALASKA 99519-6900  
(907) 269-0520 (FAX 269-0521)  
(TTY 269-0473)

**RECEIVED**

**MAR 08 2004**

**MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION**

March 5, 2004

RE: Ordinance 21 amending to remove  
nonconforming overhead utilities  
Zoning Case No.: 2004-070

Mr. Jerry Weaver, Platting Officer  
Department of Development & Planning  
Municipality of Anchorage  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

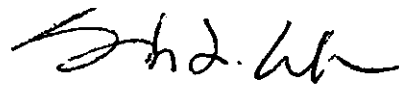
Dear Mr. Weaver:

The Alaska Department of Transportation and Public Facilities (ADOT&PF) reviewed the Zoning Case No. 2004-070 Ordinance 21 amending to remove nonconforming overhead utilities. We object to the proposed ordinance because of the requirement to underground services will result in additional costs to transportation projects.

The requirement to underground utilities will result in additional right-of-way acquisition, overhead to underground service conversions, as well as additional trench costs on State relocation projects. Undergrounding utilities will cause additional expense to highway/road projects with already limited funding. Further, ADOT&PF routinely denies requests to open cut State routes that have been resurfaced within the last five years. Without the option of overhead installation of utilities, the number of requests for open cuts will increase substantially. The only other option to underground utilities is to bore under our route, which isn't always successful, adding more expense to the developer, utilities, and the Department. The utilities will be passing their increased expenses on to the customer regardless of the 2% requirement.

Thank you for the opportunity to comment. If you have any questions, please contact me at 269-0522.

Sincerely,



Sandra L. Cook  
Area Planner

/eh

4-12-04

ordinance reviewed by  
the Commission on 5/3/04

Submitted by: Assemblymember Shamberg  
Prepared by: Department of Assembly  
For reading: February 17, 2004

**ANCHORAGE, ALASKA**  
**AO NO. 2004- 60**

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
2 ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION  
3 FACILITIES, SECTION 21.90.030, VARIANCES, AND SECTION 21.90.070,  
4 NONCONFORMING OVERHEAD LINES, TO AUTHORIZE THE DIRECTOR OF THE  
5 OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT TO GRANT  
6 VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND TWO  
7 PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM SALES WITHIN  
8 THE MUNICIPALITY OF ANCHORAGE TO REMOVE POLES SUPPORTING  
9 NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE LINES  
10 UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE LINES  
11 UNDERGROUND.  
12

13  
14 THE ANCHORAGE ASSEMBLY ORDAINS:

15  
16 Section 1. Anchorage Municipal Code section 21.90.030 is hereby amended to read as  
17 follows: (*Other portions of the section are not affected and therefore not set out.*)  
18

19 **21.90.030 Variances.**

20  
21 A. The director of the office of economic and community development [PLANNING  
22 AND ZONING COMMISSION] may grant a variance from Section 21.90.020.A when  
23 [THE COMMISSION FINDS] any of the following is found:  
24

25 1. Placing a utility distribution line underground would cause an excessive  
26 adverse environmental impact;

27  
28 2. Placing a utility distribution line underground would threaten public health  
29 and safety, because the placement cannot be shown to meet acceptable technical  
30 standards for safety; or

31  
32 3. Placing a utility distribution line underground in an environmentally sound  
33 and safe manner would cost more than three times the cost of placing the line  
34 overhead, where the applicant demonstrates the relative cost to the satisfaction of

the director of the office of economic and community development  
[COMMISSION].

\*\*\*\*

\*\*\*\*

\*\*\*\*

[The Revisor of Ordinances is instructed to change all subsequent references to  
"Department of Community Planning and Development" in this section to "Director of  
the Office of Economic and Community Development".]

(AO No. 156-76; AO No. 84-62; AO No. 86-17)

**Section 2.** Anchorage Municipal Code section 21.90.070 is hereby amended to read as  
follows:

**21.90.070 Nonconforming overhead lines [-CONFORMANCE WITH TEN-YEAR  
PLAN].**

**A. An electric utility that owns poles that support nonconforming utility distribution  
lines shall remove the poles and place those lines underground. Any other utility  
that attaches to such poles shall place its lines underground at the same time that  
the pole owner places lines underground. [OWNING OR OPERATING  
NONCONFORMING UTILITY DISTRIBUTION LINES SHALL PLACE  
THOSE LINES UNDERGROUND IN ACCORDANCE WITH THE TEN-  
YEAR PLAN APPROVED UNDER SECTION 21.90.060; PROVIDED THAT  
A UTILITY NEED NOT EXPEND, EXCEPT BY SPECIAL AGREEMENT,  
DURING ANY FISCAL YEAR OF THE UTILITY, MORE THAN FOUR  
PERCENT OF ITS GROSS REVENUES DERIVED FROM SERVICE  
CONNECTIONS WITHIN THE MUNICIPALITY, EXCLUDING TOLL  
REVENUES AND REVENUES FROM SALES OF ELECTRIC POWER FOR  
RESALE, DURING ITS PRECEDING FISCAL YEAR TO COMPLY WITH  
THIS SUBSECTION.]**

**1. The electric utility that owns poles shall, in each fiscal year, expend two  
percent of a three-year average of its annual gross retail revenues derived from  
utility service connections within the municipality, excluding toll revenues,  
revenues from sales of natural gas to third parties, and revenues from sales of  
electric power for resale. An electric utility's expenditures, pursuant to AS  
42.05.381(h), within the Municipality of Anchorage, shall be counted toward  
satisfaction of the two percent expenditure required by this subsection.**

**2. A utility with lines attached to a pole that is to be removed under this  
subsection shall place its lines underground at the same time that the pole owner  
places its lines underground. An attached utility shall not be required to expend**

1 more than two percent of its annual gross retail revenues derived from utility  
2 service connections within the municipality, excluding toll revenues. For the  
3 purpose of satisfying 21.90.070, the utility's expenditures pursuant to AS  
4 42.05.381(h) within the Municipality of Anchorage are counted toward this two  
5 percent expenditure limit.

6  
7 3. The electric utility that owns poles may choose which existing lines to  
8 underground in order to fulfill the two percent expenditure requirement, in  
9 consultation with any other utilities with facilities attached to such poles.

10  
11 4. Each year that an attached utility has spent 2% of its annual gross retail  
12 revenues, the electric utility is not required to remove its poles, which support  
13 lines owned by the attached utility. It may, instead, transfer pole ownership per  
14 any pole attachment agreement in effect between the electric utility and the  
15 attached utility.

16  
17 5. An electric utility that owns poles that does not expend the amount  
18 required in subsection A. of this section, or that expends more than that amount,  
19 may carry over the under or over expenditure as an adjustment to the following  
20 year's obligation.

21  
22 B. The electric utility that owns poles shall notify the Municipality of Anchorage  
23 Director of Economic and Community Development, and utilities or entities with  
24 lines attached to such poles, of the approximate date that the owner plans to  
25 remove the poles. Such notice, where possible, shall be given at least four months  
26 in advance of the undergrounding except where an emergency or other unforeseen  
27 circumstances preclude such notice, in which case such advance notice as is  
28 reasonable under the circumstances shall be provided.

29  
30 C. A utility shall annually submit a report of its undergrounding projects and  
31 expenditures to the director of the office of economic and community  
32 development within 120 days of the end of the preceding calendar year.

33  
34 D.[B] All n[N]ew service connections shall be placed underground in the same manner  
35 as required for utility distribution lines under Section 21.90.020, [IN TARGET  
36 AREAS DESIGNATED UNDER SECTION 21.90.060; PROVIDED THAT]  
37 New service lines [CONNECTIONS] may be temporarily installed above ground  
38 [OVERHEAD] from October through May, if placed underground within one  
39 year of installation.

40  
41 Section 3. This ordinance shall become effective immediately upon its passage and approval.  
42

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_ day of  
\_\_\_\_, 2004.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk

# Zoning and Platting Cases On-line

## View Case Comments

[Submit a Comment](#)

**\*\* These comments were submitted by citizens and are part of the public record for the cases \*\***

**Questions?** If you have questions regarding a case, please contact Zoning at **907-343-7943** or Platting & Variances at **907-343-7942**.

1. Select a Case:

[View Comments](#)

2. View Comments:

### Case Num: 2004-070

An ordinance amending Title 21 for utilities under AMC 21.90

**Site Address:** MUNICIPALITY WIDE

**Location:** An Ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, Section 21.90.030, Variances, and Section 21.90.070, Nonconforming Overhead Lines, to authorize the Director of the Office of Economic Development and Community Development to grant variances to require a utility owning poles to expend two percent of its gross annual retail revenues from sales within the Municipality of Anchorage to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

[Details](#) | [Staff Report](#) | [submit a comment](#)

## Public Comments

**4/14/04**

Mikal Hendee

13310 Glen Alps Road

Anchorage AK 99516

The neighborhoods and community councils that would be affected by any variances issued by the Director of the Office of Economic Development and Community Development should have a voice as to whether the variance should be issued.

[Zoning & Platting Cases On-line website](#)



Jerry T. Weaver, Jr., Zoning Division Administrator  
November 1, 2004 Zoning Cases  
Physical Planning Division Comments  
Page 2

development located to the south and east, as required in the special limitations of that development (A.O. 2003-7).

**2004-163      Rezoning to B-3 General Business District**

The Division will submit comments regarding this case under separate cover.

**2004-164      Minor Amendment to a CUP 99-152**

This item was not routed for review.

The Division has no comment on the following cases.

2004-159      **An Ordinance Amending Title 21 for Tax exempt Charitable Organizations**

2004-160      **An Ordinance Amending Title 21 for Utilities Under AMC 21.90**

2004-165      **An Ordinance Amending Title 21 for AMC 21.55 Nonconforming Uses**

2004-168      **An Ordinance Amending Title 21 for Temporary Uses in the PLI Zoning District**

2004-171      **An Ordinance Amending Title 21 Standards for Conditional Uses and Site Plans**



# MUNICIPALITY OF ANCHORAGE

Development Services Department  
Right of Way Division



## MEMORANDUM

**DATE:** October 3, 2004  
**TO:** Planning Department, Zoning and Platting Division  
**THRU:** Jack L. Frost, Jr., Right of Way Supervisor  
**FROM:** Lynn McGee, Senior Plan Reviewer  
**SUBJ:** Request for Comments on Planning and Zoning Commission case(s) for the Meeting of November 1, 2004.

RECEIVED

OCT 04 2004

RECEIVED  
OCT 04 2004

Right of Way has reviewed the following case(s) due October 4, 2004.

- 04-070 Ordinance Amendment  
(Title 21 for Utilities Under AMC 21.90)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**
- 04-157 Arlon, Lot 3A, grid 2333  
(Rezoning Request, R-OSL to B-3SL)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**
- 04-158 Skyview Estates, Lots 9 & 10, grid 2634  
(Rezoning Request, R-6 to R-1SL)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**
- 04-159 Ordinance Amendment  
(Title 21 for Tax Exempt Charitable Organizations)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**
- 04-163 Debora, Block D, Lots 1, 2, 3, 4, 5, 10, and Relinquished Portion of Old Glenn  
Highway (NE4 SE4 NW4) Section 1, T14N R2W, grid NW0352  
(Rezoning Request, R-1A to B-3)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**
- 04-164 Ordinance Amendment  
(Title 21 for AMC 21.55 Nonconforming Uses)  
Right of Way Division has no comments at this time.  
Review time 15 minutes.**



**MUNICIPALITY OF ANCHORAGE**  
Traffic Department



**MEMORANDUM**

**RECEIVED**

**SEP 15 2004**

**MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION**

**DATE:** September 13, 2004  
**TO:** Jerry T. Weaver, Platting Supervisor, Planning Department  
**THROUGH:** Leland R. Coop, Associate Traffic Engineer  
**FROM:** Mada Angell, Assistant Traffic Engineer  
**SUBJECT:** Comments, Planning & Zoning Commission November 1, 2004

**04-157** Arlon; Rezone from R-O SL to B-3 SL; Grid 2333

Traffic has no comment.

**04-158** Skyview Estates Lots 9 & 10; Rezone from R-6 to R-1SL; Grid 2634

Traffic has no comment.

**04-159** An Ordinance amending Title 21; tax exempt charitable organizations

Traffic has no comment.

**04-163** Debora, Lot 1, 2, 3, 4, 5 & 10 Block D; Rezone from R-1A to B-3; Grid NW 352

Traffic has no comment.

**04-164** Ordinance amending Title 21 for nonconforming uses

Traffic has no comment.

**04-070** Ordinance amending Title 21 for utilities ordinance

Traffic has no comment.

**Long, Patty R.**

---

**From:** Staff, Alton R.  
**Sent:** Thursday, October 14, 2004 4:03 PM  
**To:** Pierce, Eileen A; Long, Patty R.  
**Cc:** Taylor, Gary A.  
**Subject:** Plat Comments/ Zoning Comments

The Public Transportation Department has no comment on the following plats:

S10933-5  
S11106-2  
S11302-1  
S11308-1  
S11310-1  
S11311-1  
S11312-1  
S11313-1  
S11314-1  
S11315-1  
S11316-1  
S11317-1  
S11813-2

Zoning case # 2004-166                      our bus stops are located on Penland and on Northway. We do not drive up to this major retail location.

No comment on the following zoning cases:

2004-157  
2004-158  
2004-159  
2004-163  
2004-166  
2004-070  
2004-171  
2004-172  
2004-175

Thank you for the opportunity to review.

**Alton Staff**  
Operations Supervisor  
People Mover  
907-343-8230

MUNICIPALITY OF ANCHORAGE  
Anchorage Water & Wastewater Utility

RECEIVED

MEMORANDUM

SEP 13 2004

MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION

DATE: September 10, 2004  
TO: Zoning and Platting Division, OPDPW  
FROM: Hallie Stewart, Engineering Technician, AWWU *H Stewart*  
SUBJECT: Planning & Zoning Commission Hearing November 1, 2004  
AGENCY COMMENTS DUE October 4, 2004

AWWU has reviewed the case material and has the following comments.

**04-070 Title 21 (amendment)**

1. AWWU has no comments on the ordinance to amend ordinances on overhead electric.

**04-157 Arlon, Lot 3A (rezone) Grid 2333**

1. AWWU water and sanitary sewer mains are available to the referenced lot.
2. AWWU has no comments on the rezone.

**04-158 Skyview Estates, Lots 9 & 10 (rezone) Grid 2634**

1. AWWU has no objection to the proposed rezone.

**04-159 Title 21 (amendment)**

1. AWWU has no comments on the amendment.

**04-163 Debora, Block D, Lots 1, 2, 3, 4, 5 & 10 (rezone) Grid NW352**

1. AWWU has no comments on the rezone.

If you have any questions, please call me at 343-8009 or the AWWU Planning Section at 564-2739.

**RECEIVED**

SEP 13 2004

MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION



## FLOOD HAZARD REVIEW SHEET for PLATS

Date: 9-10-04

Case: 2004-070

Flood Hazard Zone: NA

Map Number: NA

☐ Portions of this lot are located in the floodplain as determined by the Federal Emergency Management Agency.

☐ AMC 21.15.020 requires that the following note be placed on the plat:

"Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of Section 21.60.020 (Anchorage Municipal Code). All construction activities and any land use within the flood hazard district shall conform to the requirements of Chapter 21.60 (Anchorage Municipal Code)."

☐ A Flood Hazard permit is required for any construction in the floodplain.

☒ I have no comments on this case.

Reviewer: Jack Puff

**PLANNING & ZONING  
COMMISSION  
PUBLIC HEARING  
November 1, 2004**

**LATE COMMENTS**

**G.1. Case 2004-070  
Ordinance - Underground**

Double-sided

# Rabbit Creek Community Council

P.O. Box 112354, Anchorage, AK 99511-2354

January 15, '04

Assembly  
Municipality of Anchorage  
PO Box 196650  
Anchorage, AK 99519



RE: #2003-67 (S) Undergrounding Ordinance

The Council discussed this ordinance at the January general membership meeting and voted unanimously to support it.

The ordinance is appropriate for many reasons and especially for certain parts of the city. High winds are common in SE Anchorage and undergrounded lines lessen the chance of power outages due to trees and limbs falling on lines. Additionally, *2020 Plan* policies 41, 42, 48, and 53 stipulate that land use designs should consider northern city concepts, the natural setting, as well as the protection of scenic views.

Strengthening the undergrounding regulation is appropriate and overdue; it does not unduly burden the utility companies. The Council supports the passage of this ordinance.

Sincerely,

A handwritten signature in cursive script, reading "Dianne Holmes". The signature is written in black ink.

Dianne Holmes, Chair



**PLANNING & ZONING  
COMMISSION**

**November 8, 2004**

**RECONSIDERATION  
SUPPLEMENTAL INFORMATION**

**C.2. Case 2004-070  
Ordinance Utility Distribution  
Facilities**

Double-sided

State and Municipality Undergrouding Requirements  
Summary Sheet

| Year                   | 2000        | 2001        | 2002      | 2003      | Total       |
|------------------------|-------------|-------------|-----------|-----------|-------------|
| O/H Line Miles Retired | 0.656       | 0.258       | 1.37      | 1.45      | 3.734       |
| Dollars Spent          | \$998,254   | \$485,762   | \$565,642 | \$365,039 | \$2,414,697 |
| Dollars per Mile       | \$1,521,729 | \$1,882,798 | \$412,877 | \$251,751 | \$646,678   |

This information is provided by Ed Jenkin of Chugach Electric Association. This is the amount of money spent by CEA since 2000 in compliance with State Statute.

The commission is reviewing an ordinance on undergrounding of utilities. Specifically, the question of how this proposal will affect one particular utility, ACS, has arisen. What follows is an analysis using numbers provided by ACS and the electric utilities.

### **The Electric Utilities**

The ordinance under review by the Commission will impact three electric utilities that operate within the municipality: Anchorage Municipal Light and Power (ML&P), Chugach Electric Association (CEA), and Matanuska Electric Association (MEA). The ordinance calls for each to spend at least (2%) of their retail revenues from service within the Municipality of Anchorage to remove poles and place non-conforming distribution lines underground. Any other utilities with lines attached to these poles must also go underground at the same time. State law already requires utilities to spend at least 1% of revenues per year on undergrounding, which would count toward the proposed municipal requirement.

Of the three, Chugach Electric Association has the highest retail revenue derived from service within the Municipality, with a total of approximately \$100 Million annually. This means CEA will be required to spend approximately \$2 Million annually to underground non-conforming lines. Anchorage Municipal Light and Power expects that it will be required to spend approximately \$1.5 Million undergrounding non-conforming lines in FY 05. Finally, MEA anticipates that it

will need to spend about \$400,000 in order to meet its Municipal undergrounding obligation.

### **The Cost of Undergrounding Electric Facilities**

It is difficult to predict the exact cost for undergrounding any utility. The cost is affected by a wide range of factors. However, the affected electric utilities agree that an average figure of \$1 million per mile is reasonable. Some costs of undergrounding will be somewhat less; others will be more. But, on average, \$1 million per mile is a reasonable estimate.

Given this cost we can say, on average, that the electric utilities will be able to underground slightly less than four miles of lines each year under this proposal.

|                 | <b>2% of Revenue</b> | <b>Estimated Miles to<br/>be Placed<br/>Underground</b> |
|-----------------|----------------------|---|
| <b>CEA</b>      | \$2,000,000          | 2.0   |
| <b>ML&amp;P</b> | \$1,500,000          | 1.5   |
| <b>MEA</b>      | \$400,000            | 0.4   |
| <b>TOTAL</b>    | <b>\$3,900,000</b>   | <b>3.9</b>  |

### **ACS Maximum Cost**

At the November 1, 2004 Planning and Zoning Commission meeting, ACS estimated the cost of placing their telecommunications facilities under ground ranges between \$150,000 to \$600,000 per mile. To estimate the maximum cost that ACS might face, we will assume that *every foot* ACS will be required to underground as a result of the ordinance *will be at the highest cost* (\$600,000 per mile) estimated by ACS.

At \$600,000 per mile, given roughly 3.9 miles of undergrounding each year, the maximum exposure to ACS would be \$2.34 million. This \$2.34 million figure assumes that *every single foot* of the 3.9 miles will be at *the most expensive* estimated cost for ACS. It is virtually inconceivable that the entire 3.9 miles will be at the most expensive rate for ACS.

ACS confirmed on November 1 that the State of Alaska requires spending of 1% of retail revenues on undergrounding. ACS testified that this amounts to between \$2 million and \$2.5 million annually. Under the proposal before the Commission, any spending on the part of a utility to meet its state obligation is credited toward its obligation to the Municipality. That means that if ACS has a statutory obligation to spend \$2.5 Million per year, this proposal will not impose any additional cost beyond the amount it is currently required to spend by state law.

## Conclusion

As previously stated, it is highly unlikely that every mile of undergrounding will be at ACS's highest cost. Likewise, it is not reasonable to assume that every mile will be at the least expensive end of the range (\$150,000 per mile). The median between ACS's low and high per-mile estimates is \$375,000. If we assume that median figure to also represent the mean cost, ACS would end up spending just under \$1.5 million under this proposal ( $\$375,000 \times 3.9$  miles of lines underground). That is currently \$1,000,000 less than ACS is required to spend under state law.

ACS has stated repeatedly that they are in compliance with statute. Since ACS is already complying with AS 42.05.381 (h), the state undergrounding requirement, no additional spending under this ordinance, beyond the amount already required by state law, would be required, even using ACS' own most expensive estimate. Therefore this ordinance will not impact ACS's costs beyond the current requirements of state law.

Analysis provided by  
Mike Gutierrez  
Utility Budget Analyst  
Office of Budget and  
Legislative Services

## Pierce, Eileen A

---

**From:** Weaver Jr., Jerry T.  
**Sent:** Friday, November 05, 2004 4:06 PM  
**To:** Ferguson, Sharon D.  
**Cc:** Pierce, Eileen A  
**Subject:** FW: Utility Undergrounding Ordinance Amendments



Gutierrez, Richard  
M..vcf (3 K...

Make sure the commission gets this information before their meeting in addition to what has been sent them.

-----Original Message-----

**From:** Gutierrez, Mike  
**Sent:** Friday, November 05, 2004 3:53 PM  
**To:** Weaver Jr., Jerry T.; Shamborg, Janice  
**Cc:** Ferguson, Sharon D.; 'don.poulton@conocophilips.com'  
**Subject:** RE: Utility Undergrounding Ordinance Amendments

I read the letter from ACS to the commission. The numbers that formed the basis of my analysis came directly from ACS. They testified on the record that the high end of the range was \$600,000. Now ACS asserts that their engineer grossly underestimated the high end of that range. It is difficult for me to hit a moving target with my analysis.

I stand by this conclusion: If ACS is fulfilling its statutory obligations, this proposal will not impact them. If ACS is not fulfilling its statutory obligations, then this proposal could impact them to the extent they are failing to meet said obligations.

Mike Gutierrez  
Anchorage Assembly  
Office of Budget and Legislative Services

-----Original Message-----

**From:** Weaver Jr., Jerry T.  
**Sent:** Friday, November 05, 2004 2:06 PM  
**To:** Gutierrez, Mike; Shamborg, Janice  
**Cc:** Ferguson, Sharon D.  
**Subject:** FW: Utility Undergrounding Ordinance Amendments

This information was made available to the Planning and Zoning Commission and Mr. Poulton asked that I forward it on to you for your review and evaluation.

Jerry

-----Original Message-----

**From:** Poulton, Don [mailto:Don.Poulton@conocophillips.com]  
**Sent:** Friday, November 05, 2004 1:59 PM  
**To:** Weaver Jr., Jerry T.  
**Subject:** FW: Utility Undergrounding Ordinance Amendments

Jerry

Please pass this on to Ms. Shamburg and Mr. Gutierrez for information and analysis. I hoping that Mr. Gutierrez can incorporate this into his overall review for the Commission's benefit.

Don

ConocoPhillips Alaska, Inc.

Email don.poulton@conocophillips.com  
Phone (907) 263-4658  
Fax (907) 263-4731  
Mail ATO/1896

-----Original Message-----

From: Thomas Klinkner [mailto:tklinkner@BHB.com]  
Sent: Friday, November 05, 2004 1:27 PM  
To: jones.toni@dorseylaw.com; isham@gci.net; wielechowski@yahoo.com; Poulton, Don;  
gjones@gci.com; jim@lottsfieldt.com; jogibbons@dickerson-gibbons.com; msimonian@frwlaw.us;  
nancypease@alaska.net; FergusonSD@ci.anchorage.ak.us  
Cc: Mary Ann Pease (E-mail); Max Garner  
Subject: Utility Undergrounding Ordinance Amendments

Ladies and Gentlemen:

Alaska Communications Systems submits the following comments in opposition to the reconsideration of this matter. Thank you for your consideration.

<<tfk6737.pdf>> <<tfk6736.pdf>>  
Thomas F. Klinkner  
Birch, Horton, Bittner and Cherot  
1127 W. 7th Avenue  
Anchorage, AK 99501-3399  
(907) 263-7268 Telephone  
(800) 478-1550 Toll Free in Alaska  
(907) 276-3680 Fax

\* \* \* \* \*

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you are hereby notified that you have received this transmittal in error; any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (collect at (907) 276-1550) and immediately delete this message and all its attachments.

Thank you.



## MEMORANDUM

**TO:** Anchorage Planning and Zoning Commission

**FROM:** Mary Ann Pease, Vice President, External Relations  
Alaska Communications Systems

**DATE:** November 5, 2004

**RE:** Amendments to AMC Chapter 21.90, Utility Undergrounding

---

Alaska Communications Systems appreciates the time and effort that the Planning and Zoning Commission has spent on the important issue of undergrounding utility lines in our community. We continue to voice our support for undergrounding in a fair and equitable manner and without harm to ONE UTILITY – ACS. Because of that harm, ACS opposes the amendments to AMC 21.90.070 as they are now proposed. I will illustrate the unique adverse competitive effect on ACS from the proposed amendments.

As I have previously testified, ACS presently spends at least 1% of its retail revenues on undergrounding in accordance with State statutes. Under the proposed amendments, ACS could be required to double this expenditure to 2% of retail revenues, or to spend additional dollars on undergrounding. If Chugach will spend \$2 million and ML&P will spend \$1.5 million for a total expenditure of \$3.5 million, ACS could face the compound impact of undergrounding with both these utilities and spend more than our requirement under state statutes. ACS has approximately 89,000 retail access lines (telephone local subscribers) in the Municipality. ACS would incur about \$1 per line per month of additional costs for every \$1,000,000 of additional undergrounding we are required to do under this ordinance. ACS has historical experience to prove that any shift in local service prices for our customers results in customers switching to our competitor. Said another way--If ACS raises rates for its own retail customers to recover undergrounding costs, it will incur a pricing disadvantage in its competitive market because GCI will not have the same costs to pass on to their retail customers. Recall my previous discussion that GCI leases facilities from ACS at a fixed rate that will be in place for the next five years.

I know that the Assembly Budget Office has reported that the amendments actually will have no financial impact on ACS. The report bases its conclusion on an estimated maximum undergrounding cost for ACS of \$600,000 per mile. Unfortunately, this is a gross underestimate of ACS's actual undergrounding costs. I have included costs from projects completed over the past 2 years, which demonstrate that ACS' costs for the target projects could be substantially higher than the estimate used in the Assembly Budget Office report. These are HIGH COST, COMPLICATED projects.

The projects listed in this ordinance are in the highest cost areas – costing approximately \$800 per foot (\$4 million per mile) for conduit & manhole systems in the downtown / midtown areas. If the commission would like to see what ACS has already filed with the RCA, we would be happy to furnish to you all documents pertaining to costs of outside telephone construction and

maintenance. Below are some samples for you of major projects completed in Anchorage in the last 2 years that will show you cost in the range of \$575 to \$816 a foot. We also have some samples of projects that we did in very low cost areas with Chugach Electric, which range between \$15 and \$34 a foot. As you can see, there is a huge disparity between the costing estimates, but the target areas contained in this ordinance are NOT low cost areas.

**Project Cost Examples (from work completed over the past 2 years)**

**DeArmoun Road Reconstruction**

**SOA**

ACS W.O.# 001-0751

Project Length: 2,500 feet

Est. Cost: \$2,039,540.00

**Cost per Foot: \$816.00**

**Dowling Road Reconstruction/Old Seward to Lake Otis**

**SOA**

ACS W.O.# 002-0250

Project Length: 2,457 feet

Est. Cost: \$1,415,130.00

**Cost per Foot: \$576.00**

**King Street Reconstruction**

**MOA**

ACS W.O.# 000-0298

Project Length: 700 feet

Cost: \$135,055.00

**Cost per Foot: \$193.00**

If the Commission would find the amendments to AMC 21.90.070 acceptable if they would not cost ACS any more than it currently is spending under state statute, please amend the ordinance with the following language to limit ACS' adverse financial impact and direct competitive disadvantage. ACS, unlike the electric utilities, is not a monopoly and does not have the advantage of passing on these costs to ratepayers without losing competitive market share.

*E. Notwithstanding any other provision of this section, a local exchange telecommunications utility that is required by law to lease network elements to other carriers need not expend more than it is currently expending under state statutes, to place nonconforming utility distribution lines underground. This section shall not require the removal of any pole that supports a utility distribution line of such a local exchange telecommunications utility, if the removal would require an expenditure exceeding the limit in this subsection.*

Thank you for your consideration.

**TEMPTEL, INC.**  
1075 East 72<sup>nd</sup> Avenue  
Anchorage, AK 99518  
907-277-8367

November 5, 2004

Anchorage Planning and Zoning Commission  
Municipality of Anchorage  
4700 South Bragaw Street  
Anchorage, Alaska 99507

Dear Commissioners,

I, Jack Gamble, am a Senior Outside Plant Engineer presently employed by TempTEL, Inc. and Mid-state Consultants, Inc.

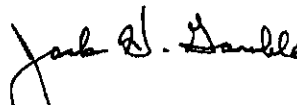
Our company has worked for most of the Alaskan Telephone Companies on projects including planning, budgeting, and detailed engineering with plans, specifications and inspection.

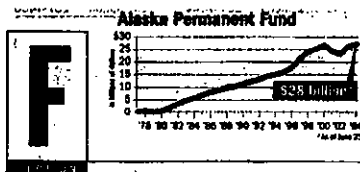
TempTEL, Inc. has worked on several ACS jobs that satisfy the state undergrounding ordinance and can testify that the costs indicated in ACS' memorandum to the Planning and Zoning Commission for the past and potential work are accurate.

List of Clients:

Alaska Fiber Star, LLC, Verizon, I.B.E.W., Cordova Telephone Cooperative, Inc., Alaska Power & Telephone Company, OTZ Telephone Cooperative Inc., Ketchikan Public Utilities, Adak Telephone Utilities, Mukluk Loan Design, Telalaska, Inc., Bush-Tell, inc., Arctic Slope Telephone Association Cooperative, Matanuska Telephone Association, Inc., GTE Alaska, Inc., Bristol Bay Telephone Cooperative and United Utilities, Inc.

Respectfully,

  
Jack Gamble  
O.S.P. Engineer



# MONEY Classified

ANCHORAGE DAILY NEWS • www.adn.com

TUESDAY, JUNE 23, 2004

## GCI to pay more for using ACS lines

**■ RULING:** \$265,000 hike per month won't be passed on to customers, GCI promises.

By RICHARD RICHTMYER  
Anchorage Daily News

State regulators have handed Alaska Communications Systems a significant victory in its long-running fight to get more money for the Anchorage phone lines it leases to cross-town rival General Communication Inc.

As the state's dominant local phone company, ACS is required to lease its copper phone lines to GCI at rates reg-

ulated by the state. GCI uses the lines to provide phone service to its own customers.

ACS has long argued that the rates are unfair and give GCI an unfair pricing advantage. On Monday, after eight years of regulatory wrangling, state regulators said ACS may raise the monthly Anchorage lease from \$14.92 to \$19.15, which it deemed a fair rate.

The ruling affects only the rate ACS charges GCI, not what GCI charges its customers.

GCI, which claims about 47 percent of the local phone market in Anchorage, said the new pricing scheme would

increase its costs by roughly \$265,000 a month. However, the company would "absolutely not" pass on those costs to its customers, said Dana Tindall, GCI's senior vice president of legal and regulatory affairs.

"It never even crossed our minds," she said.

Instead, it probably will prompt the company to move faster with plans to shift its local phone customers to GCI's own network, Tindall said.

In addition to phone service, GCI provides cable TV and high-speed Internet access. It recently upgraded parts of its cable network so it also

could be used to carry phone calls. The company began moving some of its Anchorage phone customers onto the cable system this year.

Ken Duncan, the company's chief executive, in a recent interview said GCI aims to have as many as 12,000 local phone customers on the cable system by the end of this year and as many as 48,000 on it by the end of 2006.

While GCI promises not to hike rates if it has to pay more for the lines, ACS says the ruling could benefit its customers.

"With additional revenue to operate and maintain our network, we'll have

the capability to be more aggressive in our pricing," said ACS vice president Mary Ann Pease.

Although ACS probably wouldn't reduce any of its current rates, Pease said, the added revenue would give the company more flexibility in the kinds of discounts it can offer when customers sign up for combinations of services, a marketing method called bundling.

ACS provides a full complement of communications services, including local, long-distance and wireless tele-

See Page F-3, PHONE LINES

Submitted by Assembly member  
Shamberg on November 1, 2004

# Municipality of Anchorage

# G.6.

## Planning Department

### MEMORANDUM

**DATE:** May 3, 2004

**TO:** Planning and Zoning Commission

**THRU:** *TN* Tom Nelson, Acting Director

**FROM:** *SF* Sharon Ferguson, Senior Planner

**SUBJECT:** Case 04-070; An Ordinance Amending Anchorage Municipal Code Chapter 21.90, Utility Distribution Facilities, Section 21.90.030; Variances, and Section 21.90.070, Nonconforming Overhead Lines, to Authorize the Director of the Office of Economic and Community Development to grant variances, to require a utility owning poles to expend two percent of its gross annual retail revenues from sales within the Municipality of Anchorage to remove poles supporting nonconforming overhead utility lines and place the lines underground, and to require placement of new service lines underground.

The proposed ordinance introduces an amendment to the Anchorage Municipal Code Chapter 21.90 Utility Distribution Facilities to amend two subsections. These subsections are 21.90.030 Variances and 21.90.070 Nonconforming Overhead Lines-Conformance with ten-year plan.

#### DISCUSSION:

The ordinance proposes the following amendments to the existing ordinance:

#### 21.90.030 Variances

1. Subsection 21.90.030.A. transfers responsibility for granting variances from the Planning and Zoning Commission to the Director of the Office of Economic and Community Development.
2. 21.90.030.A.3.transfers responsibility for evaluating the cost of placing a line underground as opposed to overhead from the Planning and Zoning Commission to the Director of the Office of Economic and Community Development.

In discussions with staff of Chugach Electric Association (CEA), it is their perspective that the granting of a variance should be an administrative decision. It is their belief that if the granting of a variance was done administratively, quicker response could be obtained. They further believe that the three factors involved in the granting of a variance are clear and can be performed administratively by the Director of the Office of Economic and Community Development. The transference of responsibility eliminates

the public hearing before the Planning and Zoning Commission and therefore the opportunity for public comment.

The third factor in evaluating the granting of a variance reads: "Placing a utility distribution line underground in an environmentally sound and safe manner would cost more than three times the cost of placing the line overhead, where the applicant demonstrates the relative cost to the satisfaction of the director of the office of economic and community development." The Planning Department would like to add the statement "where the applicant demonstrates the relative cost to the satisfaction of the director of the office of economic and community development *and which may include an evaluation by an independent third party.*"

#### 21.90.070 Nonconforming overhead lines

The proposed ordinance eliminates reference to conformance with the ten-year plan. The purpose of the ten year program or plan is the following: "The Director of the Department of Community Planning and Development shall submit to the Assembly a ten-year program designating target areas for the underground placement of nonconforming utility distribution lines. The ten-year program shall be resubmitted for Assembly review every five years. The Community Planning Director shall consult with the utilities and public agencies affected by the program. The ten-year program and its revisions shall become effective when adopted by the Assembly as part of this chapter."

By eliminating the ten year program provision from the ordinance, it enables the Municipality to implement removal of electric utility poles and placement of these lines underground without waiting for the Planning Department to develop the ten-year program. Due to other Department commitments and lack of staff resources development of the ten-year program has not occurred. Staff recommends the deletion of AMC 21.90.060 - *Nonconforming overhead lines-Designation of target areas* as it is not needed if reference to target areas and the ten-year plan is eliminated in AMC 21.90.070. The deletion will eliminate any confusion or conflict.

Assemblymember Shamberg held meetings to discuss the proposed ordinance with the affected utilities: Chugach Electric Association, Municipal Light & Power, Matanuska Electric Association, Alaska Communications Systems, and GCI. It is staffs' understanding that the proposed ordinance has gained consensus among these utilities.

The emphasis of the current ordinance focuses on developing a ten-year plan by the Planning Department designating target areas for the underground placement of nonconforming utility lines. These target areas centered on major traffic corridors throughout the Anchorage Bowl as well as roadways within the Central Business District and the Midtown area. With the recommendation above to delete AMC 21.90.060 the proposed ordinance leaves decisions regarding the location of utility undergrounding to the discretion of the electric utilities.

Under the proposed ordinance, electric utilities must remove poles and place those lines underground using two percent of revenue derived from utility service connections within the municipality. The electric utility that owns the poles may choose which existing lines

to underground in order to fulfill the two percent expenditure, in consultation with any other utilities with facilities attached to such poles. Discussions with staff of the Chugach Electric Association acknowledged that their priorities for placement of lines underground would be based on factors which benefit their rate payers. Priorities in determining which lines to underground will be based on a determination centered on which of their circuits need rebuilding and the upgrading of inadequate wire size. Decisions will not focus on undergrounding lines along major traffic corridors. The perspective of CEA is to spend their members' money on improvements which directly benefit its rate payers. Spending money on improving roadway aesthetics while benefiting the community may or may not benefit their rate payers. CEA did state they would entertain making a partial contribution toward undergrounding utility lines in conjunction with road improvements if the utility line needed upgrading and if they had 2 years advanced notice to enable sufficient planning. Anchorage Municipal Code - 21.90.080 states that "if municipal road construction requires the relocation of a nonconforming utility distribution line, the municipality, as part of the road construction project cost, shall reimburse the cost of the relocation."

The proposed ordinance states a utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. The attached utility shall not be required to expend more than two percent of its annual gross retail revenues derived from utility service connections within the municipality. However, if it should happen that the attached utility has spent two percent of its revenues, the electric utility is not required to remove its poles supporting the attached utility and may, instead, transfer pole ownership via a pole attachment agreement to the attached utility. It is the policy of CEA to cut the top of the pole off below the point where their lines were attached once pole ownership has been transferred. These shortened poles act as visual indicators that CEA no longer owns the poles. Although, given the significant cost differential between undergrounding electric lines as opposed to telecommunication lines, it is unlikely that attached utilities will have expended two percent of their revenues and will likely underground their lines at the same time. According to CEA, ACS indicated that the cost of undergrounding telecommunication lines is approximately one-sixth of the cost of undergrounding electric lines. CEA has indicated that two percent of its annual gross retail revenues derived from utility service connections would amount to approximately \$2 million. CEA has indicated that the cost of undergrounding one mile of electric line is approximately \$1 million. They further indicated that there are approximately 30 poles per mile.

The two percent figure was derived from the amount that utilities may amend its rates to recover the costs of undergrounding utility lines without going through a review process with the Regulatory Commission of Alaska, a process which can take approximately 18 months to complete. Beginning in 2000, state law [AS 42.05.381(h) (see attached)] required "an electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend a least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground...This subsection applies to an undergrounding program to the extent that the costs do not exceed two percent of the utility's annual gross revenue. If an undergrounding program's costs exceed two percent, the commission may regulate rate

increases proposed for the recovery of the amount above two percent.” The two percent annual expenditure by the electric utilities includes the above mentioned state obligation of one percent.

**AGENCY AND PUBLIC COMMENTS:** See attachments for all agency comments. The following is an abbreviated account of their primary concerns.

Alaska Department of Transportation and Public Facilities objects to the proposed ordinance because the requirement to underground services will result in additional costs to transportation projects.

Staff received the following comment: Public Comment – The neighborhoods and community councils that would be affected by any variances issued by the Director of the Economic Development and Community Development should have a voice as to whether the variance should be issued.

#### **DEPARTMENT RECOMMENDATION**

The Department recommends APPROVAL of the Ordinance Amending Anchorage Municipal Code – 21.90.030 and 21.90.070, subject to the minor revisions in the attached proposed ordinance and the recommendation below:

1. Delete AMC 21.90.060 Nonconforming overhead lines-Designation of target areas.



4-12-04

Submitted by: Assemblymember Shamberg  
Prepared by: Department of Assembly  
For reading: February 17, 2004

**ANCHORAGE, ALASKA  
AO NO. 2004- 60**

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
2 ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION  
3 FACILITIES, SECTION 21.90.030, VARIANCES, AND SECTION 21.90.070,  
4 NONCONFORMING OVERHEAD LINES, TO AUTHORIZE THE DIRECTOR OF THE  
5 OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT TO GRANT  
6 VARIANCES, TO REQUIRE A UTILITY OWNING POLES TO EXPEND TWO  
7 PERCENT OF ITS GROSS ANNUAL RETAIL REVENUES FROM SALES WITHIN  
8 THE MUNICIPALITY OF ANCHORAGE TO REMOVE POLES SUPPORTING  
9 NONCONFORMING OVERHEAD UTILITY LINES AND PLACE THE LINES  
10 UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE LINES  
11 UNDERGROUND.  
12

13  
14 THE ANCHORAGE ASSEMBLY ORDAINS:  
15

16 Section 1. Anchorage Municipal Code section 21.90.030 is hereby amended to read as  
17 follows: *(Other portions of the section are not affected and therefore not set out.)*  
18

19 **21.90.030 Variances.**  
20

21 A. The director of the office of economic and community development [PLANNING  
22 AND ZONING COMMISSION] may grant a variance from Section 21.90.020.A when  
23 [THE COMMISSION FINDS] any of the following is found:  
24

- 25 1. Placing a utility distribution line underground would cause an excessive  
26 adverse environmental impact;
- 27 2. Placing a utility distribution line underground would threaten public health  
28 and safety, because the placement cannot be shown to meet acceptable technical  
29 standards for safety; or
- 30 3. Placing a utility distribution line underground in an environmentally sound  
31 and safe manner would cost more than three times the cost of placing the line  
32 overhead, where the applicant demonstrates the relative cost to the satisfaction of  
33  
34

the director of the office of economic and community development  
[COMMISSION].

\*\*\*\*

\*\*\*\*

\*\*\*\*

[The Revisor of Ordinances is instructed to change all subsequent references to "Department of Community Planning and Development" in this section to "Director of the Office of Economic and Community Development".]

(AO No. 156-76; AO No. 84-62; AO No. 86-17)

**Section 2.** Anchorage Municipal Code section 21.90.070 is hereby amended to read as follows:

**21.90.070 Nonconforming overhead lines [-CONFORMANCE WITH TEN-YEAR PLAN].**

**A. An electric utility that owns poles that support nonconforming utility distribution lines shall remove the poles and place those lines underground. Any other utility that attaches to such poles shall place its lines underground at the same time that the pole owner places lines underground.** [OWNING OR OPERATING NONCONFORMING UTILITY DISTRIBUTION LINES SHALL PLACE THOSE LINES UNDERGROUND IN ACCORDANCE WITH THE TEN-YEAR PLAN APPROVED UNDER SECTION 21.90.060; PROVIDED THAT A UTILITY NEED NOT EXPEND, EXCEPT BY SPECIAL AGREEMENT, DURING ANY FISCAL YEAR OF THE UTILITY, MORE THAN FOUR PERCENT OF ITS GROSS REVENUES DERIVED FROM SERVICE CONNECTIONS WITHIN THE MUNICIPALITY, EXCLUDING TOLL REVENUES AND REVENUES FROM SALES OF ELECTRIC POWER FOR RESALE, DURING ITS PRECEDING FISCAL YEAR TO COMPLY WITH THIS SUBSECTION.]

**1. The electric utility that owns poles shall, in each fiscal year, expend two percent of a three-year average of its annual gross retail revenues derived from utility service connections within the municipality, excluding toll revenues, revenues from sales of natural gas to third parties, and revenues from sales of electric power for resale. An electric utility's expenditures, pursuant to AS 42.05.381(h), within the Municipality of Anchorage, shall be counted toward satisfaction of the two percent expenditure required by this subsection.**

**2. A utility with lines attached to a pole that is to be removed under this subsection shall place its lines underground at the same time that the pole owner places its lines underground. An attached utility shall not be required to expend**

1 more than two percent of its annual gross retail revenues derived from utility  
2 service connections within the municipality, excluding toll revenues. For the  
3 purpose of satisfying 21.90.070, the utility's expenditures pursuant to AS  
4 42.05.381(h) within the Municipality of Anchorage are counted toward this two  
5 percent expenditure limit.

6  
7 3. The electric utility that owns poles may choose which existing lines to  
8 underground in order to fulfill the two percent expenditure requirement, in  
9 consultation with any other utilities with facilities attached to such poles.

10  
11 4. Each year that an attached utility has spent 2% of its annual gross retail  
12 revenues, the electric utility is not required to remove its poles, which support  
13 lines owned by the attached utility. It may, instead, transfer pole ownership per  
14 any pole attachment agreement in effect between the electric utility and the  
15 attached utility.

16  
17 5. An electric utility that owns poles that does not expend the amount  
18 required in subsection A. of this section, or that expends more than that amount,  
19 may carry over the under or over expenditure as an adjustment to the following  
20 year's obligation.

21  
22 B. The electric utility that owns poles shall notify the Municipality of Anchorage  
23 Director of Economic and Community Development, and utilities or entities with  
24 lines attached to such poles, of the approximate date that the owner plans to  
25 remove the poles. Such notice, where possible, shall be given at least four months  
26 in advance of the undergrounding except where an emergency or other unforeseen  
27 circumstances preclude such notice, in which case such advance notice as is  
28 reasonable under the circumstances shall be provided.

29  
30 C. A utility shall annually submit a report of its undergrounding projects and  
31 expenditures to the director of the office of economic and community  
32 development within 120 days of the end of the preceding calendar year.

33  
34 D.[B] All n[N]ew service connections shall be placed underground in the same manner  
35 as required for utility distribution lines under Section 21.90.020, [IN TARGET  
36 AREAS DESIGNATED UNDER SECTION 21.90.060; PROVIDED THAT]  
37 New service lines [CONNECTIONS] may be temporarily installed above ground  
38 [OVERHEAD] from October through May, if placed underground within one  
39 year of installation.

40  
41 Section 3. This ordinance shall become effective immediately upon its passage and approval.  
42

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk

Submitted by: Assemblymember Shamberg  
Prepared by: Department of Assembly  
For reading: 2004

**ANCHORAGE, ALASKA  
AO NO. 2004-**

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
2 ANCHORAGE MUNICIPAL CODE CHAPTER 21.90, UTILITY DISTRIBUTION  
3 FACILITIES, SECTION 21.90.030, VARIANCES, AND SECTION 21.90.070,  
4 NONCONFORMING OVERHEAD LINES, TO AUTHORIZE THE DIRECTOR OF THE  
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10 UNDERGROUND, AND TO REQUIRE PLACEMENT OF NEW SERVICE LINES  
11 UNDERGROUND.  
12

13  
14 THE ANCHORAGE ASSEMBLY ORDAINS:

15  
16 Section 1. Anchorage Municipal Code section 21.90.030 is hereby amended to read as  
17 follows: *(Other portions of the section are not affected and therefore not set out.)*  
18

19 **21.90.030 Variances.**  
20

21 A. The director of the office of economic and community development [PLANNING  
22 AND ZONING COMMISSION] may grant a variance from Section 21.90.020.A when  
23 [THE COMMISSION FINDS] any of the following is found:  
24

- 25 1. Placing a utility distribution line underground would cause an excessive  
26 adverse environmental impact;  
27
- 28 2. Placing a utility distribution line underground would threaten public health  
29 and safety, because the placement cannot be shown to meet acceptable technical  
30 standards for safety; or  
31
- 32 3. Placing a utility distribution line underground in an environmentally sound  
33 and safe manner would cost more than three times the cost of placing the line  
34 overhead, where the applicant demonstrates the relative cost to the satisfaction of

AM -2004

the director of the office of economic and community development  
[COMMISSION].

Comments: and which may include an  
evaluation by an independent third party.

\*\*\*\*

[The Revisor of Ordinances is instructed to change all subsequent references to  
"Department of Community Planning and Development" in this section to "Director of  
the Office of Economic and Community Development".]

(AO No. 156-76; AO No. 84-62; AO No. 86-17)

**Section 2.** Anchorage Municipal Code section 21.90.070 is hereby amended to read as  
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**21.90.070 Nonconforming overhead lines [—CONFORMANCE WITH TEN-YEAR  
PLAN].**

A. An electric utility that owns poles that support nonconforming utility distribution  
lines shall remove the poles and place those lines underground. Any other utility  
that attaches to such poles shall place its lines underground at the same time that  
the pole owner places lines underground. [OWNING OR OPERATING  
NONCONFORMING UTILITY DISTRIBUTION LINES SHALL PLACE  
THOSE LINES UNDERGROUND IN ACCORDANCE WITH THE TEN-  
YEAR PLAN APPROVED UNDER SECTION 21.90.060; PROVIDED THAT  
A UTILITY NEED NOT EXPEND, EXCEPT BY SPECIAL AGREEMENT,  
DURING ANY FISCAL YEAR OF THE UTILITY, MORE THAN FOUR  
PERCENT OF ITS GROSS REVENUES DERIVED FROM SERVICE  
CONNECTIONS WITHIN THE MUNICIPALITY, EXCLUDING TOLL  
REVENUES AND REVENUES FROM SALES OF ELECTRIC POWER FOR  
RESALE, DURING ITS PRECEDING FISCAL YEAR TO COMPLY WITH  
THIS SUBSECTION.]

1. The electric utility that owns poles shall, in each fiscal year, expend two  
percent of a three-year average of its annual gross retail revenues derived from  
utility service connections within the municipality, excluding toll revenues,  
revenues from sales of natural gas to third parties, and revenues from sales of  
electric power for resale. An electric utility's expenditures, pursuant to AS  
42.05.381(h), within the Municipality of Anchorage, shall be counted toward  
satisfaction of the two percent expenditure required by this subsection.

Comments: prior to construction year

2. A utility with lines attached to a pole that is to be removed under this  
subsection shall place its lines underground at the same time that the pole owner  
places its lines underground. An attached utility shall not be required to expend

1 more than two percent of its annual gross retail revenues derived from utility  
2 service connections within the municipality, excluding toll revenues. For the  
3 purpose of satisfying 21.90.070, the utility's expenditures pursuant to AS  
4 42.05.381(h) within the Municipality of Anchorage are counted toward this two  
5 percent expenditure limit.

6  
7 3. The electric utility that owns poles may choose which existing lines to  
8 underground in order to fulfill the two percent expenditure requirement, in  
9 consultation with any other utilities with facilities attached to such poles

10  
11 4. Each year that an attached utility has spent 2% of its annual gross retail  
12 revenues, the electric utility is not required to remove its poles, which support  
13 lines owned by the attached utility. It may, instead, transfer pole ownership per  
14 any pole attachment agreement in effect between the electric utility and the  
15 attached utility.

16  
17 5. An electric utility that owns poles that does not expend the amount  
18 required in subsection A. of this section, or that expends more than that amount,  
19 may carry over the under or over expenditure as an adjustment to the following  
20 year's obligation.

21  
22 B. The electric utility that owns poles shall notify the Municipality of Anchorage  
23 Director of Economic and Community Development, and utilities or entities with  
24 lines attached to such poles, of the approximate date that the owner plans to  
25 remove the poles. Such notice, where possible, shall be given at least four months  
26 in advance of the undergrounding except where an emergency or other unforeseen  
27 circumstances preclude such notice, in which case such advance notice as is  
28 reasonable under the circumstances shall be provided.

29  
30 C. A utility shall annually submit a report of its undergrounding projects and  
31 expenditures to the director of the office of economic and community  
32 development within 120 days of the end of the preceding calendar year.

33  
34 D.[B] All n[N]ew service connections shall be placed underground in the same manner  
35 as required for utility distribution lines under Section 21.90.020, [IN TARGET  
36 AREAS DESIGNATED UNDER SECTION 21.90.060; PROVIDED THAT]  
37 New service lines [CONNECTIONS] may be temporarily installed above ground  
38 [OVERHEAD] from October through May, if placed underground within one  
39 year of installation.

40  
41 **Section 3.** This ordinance shall become effective immediately upon its passage and approval.  
42

Comments: and coordinate the placement of line underground with planned road improvements through Project Management & Engineering and the Alaska Department of Transportation and Public Facilities.

Comments: The electric utility

Comments: All affected utilities

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_ day of  
\_\_\_\_\_, 2004.

Chair

ATTEST:

Municipal Clerk



(c) The commission may reject the filing of all or part of a tariff that does not comply with the form or filing regulations of the commission. A tariff or provision so rejected is void. If the commission rejects a filing, it shall issue a statement of the reasons for the rejection. Unless the utility and the commission agree to an extension of time, the commission may not reject a filing under this subsection after 45 days have elapsed from the date of filing. (§ 6 ch 113 SLA 1970; am § 2 ch 104 SLA 1986)

**Opinions of attorney general.** — Where public utility company entered into contract to sell natural gas to federal military installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2)

from asserting its jurisdiction over the sale. August 4, 1976, Op. Atty Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to subsection (a) of this section. August 4, 1976, Op. Atty Gen.

#### NOTES TO DECISIONS

Stated in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Cited in *Stepanov v. Homer Elec. Ass'n*, 514 P.2d 731 (Alaska 1991).

**Collateral references.** — Variation of utility rates based on flat and meter rates. 40 ALR2d 1331.

**Sec. 42.05.365. Interest on deposits.** (a) A public utility may collect and retain a deposit for contracted recurring monthly service. A public utility that collects and retains a deposit of over \$100 for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service. (§ 1 ch 50 SLA 1986)

**Cross references.** — For legal rate of interest, see AS 45.45.010.

**Sec. 42.05.370. [Repealed, § 5 ch 113 SLA 1970.]**

**Sec. 42.05.371. Adherence to tariffs.** The terms and conditions under which a public utility offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. A legally filed and effective tariff rate, charge, toll, rental, rule, regulation, or condition of service may not be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

**Failure to hold hearing nonjurisdictional and subject to waiver.** — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before

the commission. *Far N. Sen., Inc. v. Alaska Pub. Util. Comm'n*, 825 P.2d 867 (Alaska 1992).

Applied in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

**Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]**

**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service

furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers.

(e) The commission shall adopt regulations for electric cooperatives and for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative or telephone utility may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative or telephone utility satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error.

(f) A local exchange telephone utility may adjust its rates in conformance with changes in jurisdictional cost allocation factors required by either the Federal Communications Commission or the Regulatory Commission of Alaska upon a showing to the Regulatory Commission of Alaska of

- (1) the order requiring the change in allocation factors;
- (2) the aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factors; and
- (3) the rate adjustment required to conform to the required shift in local revenue requirement.

(g) The commission shall allow, as a necessary and reasonable expense, all payments made to the Department of Environmental Conservation under AS 46.14.240 — 46.14.250. The commission shall allow the public utility to recover these fees through a periodic fuel surcharge rate adjustment.

(h) An electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend at least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground. In determining the annual gross revenue under this subsection, only revenue derived from the utility's distribution lines in the municipality shall be considered.

(i) An electric or telephone utility that is implementing a program to place existing overhead utility distribution lines located in a municipality underground may amend its rates for services provided to customers in the municipality to enable the utility to recover the full actual cost of placing the lines underground. Notwithstanding AS 42.05.411 — 42.05.431, an amendment to a utility's rates under this subsection is not subject to commission review or approval. A utility amending its rates under this

subsection shall notify the commission of the amendment. This subsection applies to an undergrounding program to the extent that the costs do not exceed two percent of the utility's annual gross revenue. If an undergrounding program's costs exceed two percent, the commission may regulate rate increases proposed for the recovery of the amount above two percent.

(j) When an electric utility or a telephone utility is implementing a program to place existing overhead utility distribution lines located in a municipality underground, any other overhead line or cable in the same location shall be placed underground at the same time. Each entity whose lines or cables are placed underground shall pay the cost of placing its own lines or cables underground. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980; am § 3 ch 104 SLA 1986; am § 1 ch 87 SLA 1990; am §§ 1, 2 ch 81 SLA 1991; am § 11 ch 74 SLA 1993; am § 1 ch 73 SLA 1999; am § 89 ch 21 SLA 2000)

**Revisor's notes.** — In 1999, in subsection (f) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

**Cross references.** — For the Electric and Telephone Cooperative Act see AS 10.25.

**Effect of amendments.** — The 1993 amendment, effective June 28, 1993, added subsection (g).

The 1999 amendment, effective September 22, 1999, added subsections (h)-(j).

The 2000 amendment, effective April 28, 2000, deleted the former last sentence of subsection (e), which read: "The commission shall adopt the regulations concerning adjustment of rates by local exchange telephone utilities on or before October 1, 1991."

#### NOTES TO DECISIONS

**Separation of intrastate and interstate properties, expenses and revenues** is required for properly determining the adequacy of a utility's intrastate rates. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owtschek v. Guide Licensing & Control Bd.*, 637 P.2d 616 (Alaska 1981).

**Lobbying expenses excluded from revenue re-**

**quirement.** — The commission acted reasonably and within its statutory authority in excluding lobbying expenses as part of a utility's revenue requirement. *Homer Elec. Ass'n v. State, Alaska Pub. Utils. Comm'n*, 756 P.2d 574 (Alaska 1988).

Applied in *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549 (Alaska 1975).

**Collateral references.** — Charitable contributions by public utility as part of operating expense. 59 ALR3d 941.

**Fuel adjustment clauses: validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased costs of fuel to its customers.** 83 ALR3d 933.

**Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes.** 83 ALR3d 963.

**Affiliates: amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding.** 16 ALR4th 454.

**Injunctions — rates: validity, construction, and application of Johnson Act (28 USC § 1342), prohibiting interference by Federal District Courts with state orders affecting rates chargeable by public utilities.** 28 ALR Fed. 422.

**Sec. 42.05.385. Charges for water and sewer line extensions.** (a) A water or sewer line extension may not be constructed unless the legislative body of each municipality through which the extension passes has approved the extension. This subsection does not apply to an extension that will not create any charges or assessments against the adjacent property.

(b) Except as provided in (e) of this section, when utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the service through the extension shall notify the property owner, according to the procedure set forth for service of process in the Alaska Rules of Civil Procedure, of the charges and interest due the utility if the property owner elects to obtain the utility service through the extension. The property owner does not owe the charge for the extension until the property owner connects to the extension.

(c) Except as provided in (e) of this section, and unless the property owner connects to the extension,

# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

FRANK H. MURKOWSKI, GOVERNOR

4111 AVIATION AVENUE  
P.O. BOX 196900  
ANCHORAGE, ALASKA 99519-6900  
(907) 269-0520 (FAX 269-0521)  
(TTY 269-0473)

CENTRAL REGION - PLANNING

**RECEIVED**

**MAR 08 2004**

**MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION**

March 5, 2004

RE: Ordinance 21 amending to remove  
nonconforming overhead utilities  
Zoning Case No.: 2004-070

Mr. Jerry Weaver, Platting Officer  
Department of Development & Planning  
Municipality of Anchorage  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

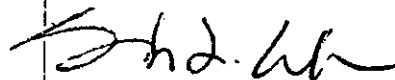
Dear Mr. Weaver:

The Alaska Department of Transportation and Public Facilities (ADOT&PF) reviewed the Zoning Case No. 2004-070 Ordinance 21 amending to remove nonconforming overhead utilities. We object to the proposed ordinance because of the requirement to underground services will result in additional costs to transportation projects.

The requirement to underground utilities will result in additional right-of-way acquisition, overhead to underground service conversions, as well as additional trench costs on State relocation projects. Undergrounding utilities will cause additional expense to highway/road projects with already limited funding. Further, ADOT&PF routinely denies requests to open cut State routes that have been resurfaced within the last five years. Without the option of overhead installation of utilities, the number of requests for open cuts will increase substantially. The only other option to underground utilities is to bore under our route, which isn't always successful, adding more expense to the developer, utilities, and the Department. The utilities will be passing their increased expenses on to the customer regardless of the 2% requirement.

Thank you for the opportunity to comment. If you have any questions, please contact me at 269-0522.

Sincerely,



Sandra L. Cook  
Area Planner

/eh

**RECEIVED**

APR 05 2004

**MUNICIPALITY OF ANCHORAGE**  
**OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT**

**MUNICIPALITY OF ANCHORAGE**  
**PLANNING & ZONING DIVISION**

**PARKS & RECREATION DIVISION**

**MEMORANDUM**

**DATE:** April 2, 2004  
**TO:** Jerry T. Weaver, Supervisor, Zoning and Platting Division, Planning Department  
**THRU:** John Rodda, Acting Manager  
**FROM:** Tom Korosei, Park Planner  
**SUBJECT:** Planning and Zoning Case Reviews

Parks and Recreation has the following comments:

**CASE NO.**      **CASE**

**2004-069**      **Plan amendment for an airport (changes to Height Zoning Map for Merrill Field).**

Several municipal park and trail facilities lie within the projected height zoning contours of the updated height zoning map; however, it appears that the changes would not affect these park and trail facilities.

**2004-070**      **Ordinance amending Title 21 (Chapter 21.90, regarding utility distribution facilities).**

No comment.

**Long, Patty R.**

**From:** Angus, George E.  
**Sent:** Monday, March 22, 2004 12:19 PM  
**To:** Long, Patty R.  
**Cc:** Wooley, Beverly K.  
**Subject:** Variance comments for DHHS

**RECEIVED**

**MAR 22 2004**

**MUNICIPALITY OF HOORAGE  
COMMUNITY PLANNING & DEVELOPMENT**

Patty:

The following Requests for Variance were reviewed by Environmental Health, Child and Adult Care, Health Promotion, Management Support and Safe Cities within the Department of Health and Human Services:

Case # 2004-068 No Department Comments

Case # 2004-070 No Department Comments

Case # 2004-073 No Department Comments

Case # 2004-074 No Department Comments

Plan Amendment for an Airport 0.72 acres: Case # 2004-069 No Department Comments

Thanks for your help, Patty. Please call with any questions

George Angus, DHHS  
343-4619

**Pierce, Eileen A**

**From:** Cartier, Richard D.  
**Sent:** Monday, March 15, 2004 1:35 PM  
**To:** Pierce, Eileen A  
**Subject:** FW: Planning and Zoning Commission case comments due 3/15/04

**RECEIVED**  
**MAR 15 2004**  
MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION

FYI

*Rich Cartier*

**Municipality of Anchorage**  
Planning Department  
Zoning-Platting Division  
4700 S. Bragaw Street 1st Floor  
Anchorage AK 99507  
**Email:** [cartierrd@muni.org](mailto:cartierrd@muni.org)  
907-343-7934 Fax: 907-343-7927

-----Original Message-----

**From:** Maddux, Cory L.  
**Sent:** Monday, March 15, 2004 1:31 PM  
**To:** Cartier, Richard D.  
**Cc:** Southard, Daniel R.  
**Subject:** Planning and Zoning Commission case comments due 3/15/04

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Text Box: Municipality<br>Of<br>Anchorage      | <input checked="" type="checkbox"/> Text Box: P.O. Box 196650<br>Anchorage, Alaska 99519-6650<br>Telephone: (907) 343-8277<br>Fax: (907) 343-8280<br><a href="http://www.muni.org">http://www.muni.org</a><br><br>Mark Begich, Mayor |
| <input checked="" type="checkbox"/> Text Box: STREET AND PARK MAINTENANCE DIVISION |  |

**DATE:** March 15, 2004  
**TO:** Community Planning and Development  
**THRU:** Dan Southard, Streets & Parks M&O Superintendent  
**FROM:** Cory L. Maddux, Control Center Supervisor  
**SUBJ:** Request for Comments on for the Meeting of April 12, 2004.

Street & Park Maintenance and Operations has reviewed the following case(s) due 03/15/2004.

**04-070** Amendment to 21.90, Section(s) 21.90.030 & 21.90.070

Street & Park Maintenance and Operations has no comments at this time.

Review time 15 minutes.



## *Right of Way*

Plat is not to be recorded until parcel(s) to the north are re-platted and recorded to ensure legal and physical accesses are provided and aligned from parcel to parcel for all trails and rights of way.

Review time 45 min.

**04-069**    **Merrill Field Airport, grids 1232, 1233, 1234, 1332, 1333, 1334, 1432, 1433, and 1434**

**(Plan Amendment for an Airport)**

Right of Way Division has no comments at this time.

Review time 15 minutes.

**04-070**    **Ordinance Amendment  
(Utility Distribution Facilities)**

Right of Way Division has no comments at this time.

Review time 15 minutes.

**RECEIVED**

**MAR 02 2004**

**MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION**



## **FLOOD HAZARD REVIEW SHEET for PLATS**

Date: 03-02-04

Case: 2004-070

Flood Hazard Zone: NA

Map Number: NA

☐ Portions of this lot are located in the floodplain as determined by the Federal Emergency Management Agency.

☐ AMC 21.15.020 requires that the following note be placed on the plat:

"Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of Section 21.60.020 (Anchorage Municipal Code). All construction activities and any land use within the flood hazard district shall conform to the requirements of Chapter 21.60 (Anchorage Municipal Code)."

☐ A Flood Hazard permit is required for any construction in the floodplain.

☒ I have no comments on this case.

Reviewer: Jack Puff

**Municipality Of Anchorage  
ANCHORAGE WATER & WASTEWATER UTILITY**

**RECEIVED**

**FEB 20 2004**

**MUNICIPALITY OF ANCHORAGE  
PLANNING & ZONING DIVISION**

**MEMORANDUM**

**DATE:** February 19, 2004  
**TO:** Zoning and Platting Division, OPDPW  
**FROM:** Hallie Stewart, Engineering Technician *H Stewart*  
**SUBJECT:** Planning & Zoning Commission Public hearing April 12, 2004  
AGENCY COMMENTS DUE March 15, 2004

AWWU has reviewed the revised case material and has the following comment.

**04-070** An ordinance amending Title 21 Chapter 21.90 Sections 21.90.030 and 21.90.070

AWWU has no objection to the amendment to the Anchorage Municipal Code Title 21 regarding variances and nonconforming overhead lines.

If you have any questions, please call me at 343-8009 or the AWWU Planning Section at 564-2739.

**Content Information****Content ID :** 002488**Type:** Ordinance - AOAN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY  
AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 21.90,**Title:** UTILITY DISTRIBUTION FACILITIES, SECTION 21.90.030,  
VARIANCES, SECTION 21.90.060, DESIGNATION OF TARGET  
AREAS, TO PROVIDE FOR A FIVE-YEAR PLAN DESIGNATI**Author:** gray-jacksone**Initiating Dept:** Assembly**Date Prepared:** 1/3/05 11:01 AM**Director Name:** Dick Traini**Assembly****Meeting Date** 1/11/05**MM/DD/YY:****Public Hearing****Date** 1/1/05**MM/DD/YY:**

2005 JAN -3 PM 3:07  
CLERK SERVICE  
11 P.M.

**Workflow History**

| <u>Workflow Name</u> | <u>Action Date</u> | <u>Action</u> | <u>User</u>   | <u>Security Group</u> | <u>Content ID</u> |
|----------------------|--------------------|---------------|---------------|-----------------------|-------------------|
| AllOrdinanceWorkflow | 1/3/05 11:04 AM    | Checkin       | gray-jacksone | Public                | 002488            |

2004 DEC 24 PM 11:28  
CLERK SERVICE  
11 P.M.