

Proposed by:	Planning & Zoning Commission
Attorney Review:	02/24/2021; 03/10/2021
First Reading:	03/18/2021
Second Reading:	04/01/2021

MUNICIPALITY OF SKAGWAY, ALASKA ORDINANCE NO. 21-02

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC SECTION 16.06.010 EASEMENTS TO ALLOW FOR PLANNING AND ZONING COMMISSION CONSIDERATION OF EASEMENT APPLICATIONS, AND TO CLARIFY THE EASEMENT APPLICATION PROCESS.

WHEREAS, at its meeting of February 11, 2021, the Planning and Zoning Commission held a public hearing on these proposed amendments to SMC 16.06.010, and voted to recommend this ordinance to the Assembly;

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. Section 3 of this ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend SMC Section 16.06.010 Easements to allow for Planning and Zoning Commission consideration of easement applications, and to clarify the easement application process.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. SMC Section 16.06.010 Easements is hereby amended as follows:

16.06.010 Easements.

- A. Authorized. The borough manager may convey or lease an easement in municipally owned land **after review and approval by the Planning and Zoning Commission and** upon approval by the borough assembly **by resolution.** Easements shall be nonexclusive unless otherwise provided in the easement document.
- B. Application and Fee. The applicant for an easement shall apply to the **Planning and Zoning Commission** ~~borough manager or his designee~~ on a form prescribed by the ~~borough manager~~ **clerk of the planning commission.** The application shall be accompanied by **35-percent (35%) drawings and other** plans, reports, a narrative, and other material sufficient to permit the ~~municipality~~ **Planning and Zoning Commission** to evaluate need for and use to be made of the requested easement. The application shall also be accompanied by a base fee of ~~fifteen~~ **fifty** dollars (\$~~15~~**50**.00) ~~plus an amount determined by the borough manager or his designee to cover the cost of an appraisal of the value of the easement.~~ From time

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 21-02

Page 2 of 3

- to time, ~~t~~The borough manager shall adjust the base fee to reflect changes in the cost of municipal services.
- C. Departmental Action. **Prior to consideration by the Planning and Zoning Commission,** ~~t~~the application for the easement shall be referred for comment to municipal departments which may have an interest in the parcel subject to the proposed easement. Upon receipt of the comments of the departments, the ~~borough manager~~ **Planning and Zoning Commission** shall **review the application, materials submitted with the application, and** ~~refer the application and departmental comments.~~ **The Planning and Zoning Commission may then approve the easement application and recommend its approval** to the borough assembly. Upon receipt of the ~~borough manager's recommendation~~ **if approved and recommended by the Planning and Zoning Commission,** the borough assembly may, by resolution, **approve the easement and** authorize the borough manager to execute the easement under such terms and conditions as are **specified and** authorized by the borough assembly. **Before the borough manager will execute an easement agreement, the applicant shall submit 100% designs for borough manager approval. The resolution of the borough assembly approving the easement shall state that the resolution and approval are automatically revoked if the applicant fails to provide the 100% designs to the borough manager within ninety (days) of the effective date of the resolution.**
- D. Survey **and appraisal.** Prior to the execution of an approved easement, the applicant shall provide a survey of the easement to the standards required by the borough manager, **and shall pay the cost of the appraisal required to determine the sale or lease price of the easement.**
- E. Easement Price. The sale or lease price of an easement shall be the appraised value established not more than six (6) months prior to borough assembly authorization of the easement. Upon execution of the easement by the municipality, the applicant shall pay to the municipality the market value of any marketable materials, timber or other resources within the easement area which will be destroyed, cut or removed. The borough manager shall determine the value of resources of any marketable materials, timber or other resources within the easement area which will be destroyed, cut or removed.
- F. Improvements and Changes. No improvements or changes in improvements may be made within an easement unless first approved by the borough manager.
- G. As-Built Plans. Immediately upon completion of the construction of any improvements within the easement area, the easement holder shall provide the borough manager with accurate, complete and legible as-built drawings of such improvements. Upon making any changes or additions to such improvements, the ~~permittee~~ **easement holder** shall provide the borough manager with as-built drawings showing such changes or additions.
- H. Restoration. The borough manager **or the Planning and Zoning Commission** may require restoration and the posting of such security for restoration as ~~he~~ **determines** necessary.
- I. Appeals.**

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 21-02

Page 3 of 3

1. Any interested party may file with the borough assembly a notice of appeal of the denial of an application for an easement by the Planning & Zoning Commission, specifying in detail the basis for appeal. Only such grounds for appeal as specified in detail in the notice of appeal shall be considered. All such appeals shall be filed in writing with the borough clerk within ten (10) days of the date of the decision of the planning commission. Any attempt to file an appeal after ten (10) days shall not be considered by the borough assembly. If the final day to file an appeal falls on a week-end (Saturday or Sunday) or a holiday, the final day to file an appeal shall be the next working day of the week.
2. The borough clerk shall transmit the record before the planning commission and the appeal and materials attached to the appeal to the borough assembly within 30 days of the filing of the appeal. The borough assembly shall make a reasonable effort to decide whether to affirm or reverse the denial of the application by the planning commission within sixty (60) days after receipt of the record and the appeal from the borough clerk at a regular meeting of the assembly. The borough assembly may extend the time for decision in its discretion. Failure by the borough assembly to render a decision within sixty (60) days, or as extended by the borough assembly, shall mean that the decision of the planning commission is affirmed. If the borough assembly upholds the planning commission's denial of the application for an easement, the appellant may appeal to the Superior Court as outlined in SMC 19.04.070(F) in accordance with the Alaska Rules of Appellate Procedure for appeals from an agency decision.


Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 1st day of April, 2021.


Andrew Cremata, Mayor

ATTEST:


Emily A. Deach, Borough Clerk
(SEAL)

