ORDINANCE NO. 17-0488

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGECOOD, WASHINGTON, REGULATING THE USE OF THE RIGHT-OF-WAY, FOR PUBLIC AND PRIVATE UTILITIES; ADDING AN ALTERNATIVE, ANNUAL PERMITTING PROCESS FOR WORK WITHIN THE CITY RIGHT OF WAY; ADDING COST REIMBURSEMENT PROVISIONS; CLARIFYING WHEN APPLICATION FOR RIGHT OF WAY PERMITS ARE REQUIRED; REFERENCING THE CITY’S FEE RESOLUTION AS ESTABLISHED BY THE CITY COUNCIL, AMENDING SECTIONS 12.06.010, 12.06.020, 12.06.060, 12.06.070, 12.06.080, 12.06.090, 12.06.095, 12.06.100, 12.06.110 AND 12.06.120 OF THE EDGECOOD MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, current City of Edgewood municipal code regulates permits for public and private utilities within the City’s right of way in Chapter 12.06 of Edgewood Municipal Code; and

WHEREAS, this City Council has been made aware of the potential time/cost burden placed on a local water purveyor as it pertains to the traditional right of way permitting process, as it pertains to routine, maintenance of service related infrastructure, outside areas of significant public use within the right of way within the City of Edgewood; and

WHEREAS, it is the Council’s desire to continue to regulate activities within the City’s right of way, in the protection of health and life safety in the public interest, but to do so for less critical items in a more streamlined, effective manner, that otherwise are not being reported, observed or recorded due to the limitations associated with the current permitting system; and

WHEREAS, the Council of the City of Edgewood desires to provide this flexibility, protect the City’s infrastructure, report all activities/work within the City’s right of way and provide a cost recovery mechanism in order to help the City meet these objectives, and

WHEREAS, this Ordinance was presented to the City Council for first reading on January 10, 2017; and

WHEREAS, this Ordinance was presented to the City Council for second reading on January 17, 2016; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGECOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals above are hereby adopted as legislative findings in support of this ordinance. The City Council further adopts by reference previously held study session staff reports and the agenda bill dated January 17th, 2017 as additional findings.
Section 2. Section 12.06.010 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.010 Purpose.
The purpose of this chapter is to regulate the use of the public right of way, to establish standards for the granting of city right-of-way franchises for public and private utilities, and to ensure consistency of such franchises with the city comprehensive plan, sound engineering and design standards, health and sanitation regulations, and the public interest. The provisions of this chapter shall apply to all franchisees unless otherwise specified; provided, that, should the provisions of a specific franchise conflict with the provisions of this chapter, the provisions of the franchise shall control.

Section 3. Section 12.06.020 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.020 Franchises required.
Persons and private or municipal corporations are required to obtain a right-of-way franchise approved by the Edgewood city council in order to use the right-of-way for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric lines, sewers, petroleum products, and any other such public and private utilities, except that:

A. The Edgewood department of public works and any entity under contract with Edgewood shall be exempt from this requirement.

B. The waterworks, specifically including without limitation any pipelines owned and/or operated by any municipal utility for which a valid recorded easement or use right has been granted by the city council, shall be exempt from this requirement.

C. A service provider of “cable television service,” “personal wireless services,” and “telecommunications service”, as these services are defined in chapter 35.99 RCW, shall be required to follow the procedures adopted by the City for franchises, master use permits and/or the issuance of use permits for these services in the City’s right-of-way, as required by chapter 35.99 RCW.
D. In lieu of a franchise, site-specific facilities may be authorized through a right of way use agreement approved by the City Council.

Section 4. Section 12.06.060 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.060 Application.
Applications for right-of-way franchises shall be submitted in the form approved by the Public Works Director to the Edgewood department of public works.

Section 5. Section 12.06.070 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.070 Franchise fees.
There is established a fee for each franchise application, as established by resolution within the fee schedule, described in EMC 3.35.010. Said fee will provide reimbursement to the city of Edgewood for the administrative costs and expenses associated with processing the application. The fee shall be payable in its entirety at the time each separate application for a new franchise or franchise renewal, amendment, supplement, or assignment is filed with the department of public works. Each applicant shall reimburse the city for public notice advertising and publication costs incurred in respect to each application in addition to the established fee. Further, to the fullest extent allowed by law, all grantees shall reimburse the city for all direct and indirect costs and expenses over and above the established fee incurred by the city in connection with any grant, modification, amendment, renewal, or transfer of any franchise, within 30 days after written demand thereof.

Section 6. Section 12.06.080 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.080 Review of applications.
The Edgewood department of public works shall be responsible for the administration and enforcement of franchises, right-of-way permits and alternative annual utility right-of-way permits.
Section 7. Section 12.06.090 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

12.06.090 Utility right-of-way permit or alternative annual utility right of way permit required.
Persons and private or municipal corporations are required to obtain a utility right-of-way permit or an alternative annual utility right of way permit, approved by the Edgewood Public Works Director for construction and maintenance of utility facilities in the public right-of-way of city roads, as outlined in EMC 12.06.020, except as noted in EMC 12.06.120 and 12.06.160.

Section 8. A new section 12.06.095 is hereby added to the Edgewood Municipal Code, which shall read as follows:

12.06.095 Alternative, annual utility right-of-way-permit.

A. PURPOSE. It is the intent of this section to establish an alternative, streamlined permitting process under which franchisee may obtain a single, annual permit collectively authorizing repetitive, marginally intrusive activities by utilities within the city right-of-way that individually are of very short duration, do not entail disruption to traffic or pedestrian flows, and are objectively minor in nature. Such activities include:

1. Minor utility service adjustments or repair located within the right of way, but outside the paved roadway, shoulder, sidewalk and/or ditchlines.

2. Other, similarly minor and marginally-intrusive activities within the right of way, as may be approved by the Public Works Director.

B. DURATION. An alternative annual utility right of way permit will be valid for a maximum of one calendar year and will serve as a blanket, collective authorization for all of the activities referenced above and as further approved by the Public Works Director.

C. COST REIMBURSEMENT. The permittee shall reimburse the city for all of the City’s direct and indirect costs and expenses in review, inspection and documentation of activities with this permit, establishing an initial cash reserve balance in the amount of $1,000, to be drawn upon as staff, consultant and/or legal expenses are for these activities, at hourly rates established
within the city of Edgewood's adopted Fee Schedule. Said cash reserve balance shall be replenished when the balance reaches a level below $200, within 30 days after written notice thereof by the Finance Director.

D. **NOTICE.** The permittee shall provide no less than two (2) business working days written notice to the Public Works Director before performing any of the activities authorized under an alternative annual utility right of way permit. Said notice shall include the nature, commencement date, location, duration and anticipated completion date of the activities. Once the activity is completed, the permittee shall notify the City of work completion and readiness for final inspection by the City.

E. **REQUIREMENTS; CONDITIONS.** Except as otherwise provided under this section, all other applicable requirements of this chapter shall apply with respect to alternative annual utility right of way permits. Without limitation of the foregoing, the Public Works Director may impose such reasonable conditions of approval upon any such permit as deemed necessary or appropriate by the Director in order to protect the public health, safety and welfare.

**Section 9.** Section 12.06.100 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

**12.06.100 Application.**

Applications for utility right-of-way permits and alternative annual utility right-of-way-permits shall be submitted to the Edgewood department of public works in the form approved by the Public Works Director.

**Section 10.** Section 12.06.110 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

**12.06.110 Utility right-of-way permit fees.**

All permit applications to perform work on any city-owned and maintained public road surface shall be accompanied by an application fee, as indicated within the most current version of the City's Fee Schedule. In addition, any excavation work on any city-owned and maintained public road surface shall be accompanied with a cash deposit as identified below:
On chip sealed surfaces where estimated pavement cuts are less than 180 square feet, a cash deposit toward the final fee of a sum equal to $4.60 per square foot, times the estimated paved surface on each excavation to be made is required. For estimated pavement cuts greater than 180 square feet on chip sealed surfaces, the cash deposit shall be the sum equal to $828.00, plus an additional $828.00 per 100 lineal feet, or portion of trench length exceeding the first 100 feet.

On full depth asphalt or concrete surfaces where estimated pavement cuts are less than 960 square feet, a cash deposit is required toward the final fee of a sum equal to $4.00 per square foot, times the estimated paved surface on each excavation to be made. For estimated pavement cuts greater than 960 square feet, the cash deposit shall be the sum equal to $3,840 per 100 lineal feet or portion of the trench length exceeding the first 100 feet.

**Section 11.** Section 12.06.120 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

**12.06.120 Permit Exception.**

A. Any utility performing work as a result of a city construction or maintenance project shall be exempt from any applicable permit fee.

B. A right-of-way use permit shall not be required of utilities or franchised utilities when responding to emergencies that require work in the right-of-way, including without limitation water or sewer main breaks, gas leaks, downed power lines or similar emergencies; provided, that the department shall be notified by the responding utility or city contractor verbally or in writing, as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or city contractor from the requirement to apply for a right-of-way use permit within 48 hours after beginning emergency work in the right-of-way.

**Section 12.** Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.
Section 13. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL ON JANUARY 24th, 2017

Mayor Daryl Eadinger

ATTEST/AUTHENTICATED:

Rachel Pitzel
City Clerk Rachel Pitzel

APPROVED AS TO FORM:

Carol Morris, City Attorney

Date of Publication: January 26, 2017
Effective Date: January 31, 2017