

**CITY OF WASILLA
ORDINANCE SERIAL NO. 05-82**

AN ORDINANCE OF THE WASILLA CITY COUNCIL REPEALING WMC 9.08.010, STRICT LIABILITY FOR DAMAGE TO PRIVATE PROPERTY, AND WMC 9.08.020, REMEDIES.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

* **Section 2. Repeal of sections.** WMC 9.08.010, Strict liability for damage to private property, and WMC 9.08.020, Remedies, are repealed:

[9.08.010 STRICT LIABILITY FOR DAMAGE TO PRIVATE PROPERTY.

A. UTILITY COMPANIES AND PROPERTY OWNERS, WITHIN THE CORPORATE LIMITS OF THE CITY, SHALL BE STRICTLY LIABLE TO EACH OTHER FOR DAMAGE CAUSED TO THE OTHERS REAL OR PERSONAL PROPERTY, WITHOUT THE OTHER PERSON'S CONSENT.

B. FOR PURPOSES OF THIS CHAPTER, THE DEFINITION OF "PROPERTY" SHALL INCLUDE ANY REAL ESTATE INCLUDING IMPROVEMENTS THEREON, TANGIBLE PERSONAL PROPERTY, TREES, SHRUBS AND SURVEY STAKES AND MONUMENTS ERECTED FOR THE PURPOSE OF DESIGNATING PROPERTY BOUNDARIES.

C. EXCEPTION. NO PERSON SHALL BE LIABLE TO A UTILITY COMPANY FOR DAMAGE TO AN UNDERGROUND FACILITY IF THE UTILITY COMPANY HAS

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

FIRST BEEN REQUESTED TO PROVIDE A LOCATE OF THE UNDERGROUND FACILITY IN QUESTION AND HAS FAILED TO PROVIDE IT OR HAS PROVIDED AN INCORRECT LOCATE.

9.08.020 REMEDIES.

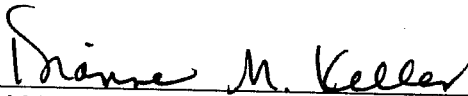
A. CIVIL REMEDY. ANY AGGRIEVED PARTY MAY INSTITUTE CIVIL ACTION TO PREVENT, ENJOIN, ABATE OR RECEIVE COMPENSATION FOR A VIOLATION OF THIS CHAPTER. AN ACTION TO ENJOIN ANY VIOLATION OF THIS CHAPTER MAY BE BROUGHT NOTWITHSTANDING THE AVAILABILITY OF ANY OTHER REMEDY. UPON APPLICATION FOR INJUNCTIVE RELIEF TO THE SUPERIOR COURT AND A FINDING OF AN EXISTING OR THREATENED VIOLATION, THE PARTY INSTITUTING THE ACTION SHALL BE ENTITLED TO INJUNCTIVE RELIEF.

B. NOTHING HEREIN SHALL PREVENT THE CITY OR ANY CITIZEN FROM TAKING SUCH OTHER LAWFUL ACTION AS IS NECESSARY TO PREVENT OR REMEDY ANY VIOLATION.

C. ALL REMEDIES PROVIDED FOR HEREIN SHALL BE CUMULATIVE AND NOT EXCLUSIVE.]


* **Section 3. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on November 14, 2005.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]

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**CITY OF WASILLA
LEGISLATION STAFF REPORT**

**RE: ORDINANCE SERIAL NO. 05-82: REPEAL OF 9.08.010 AND 9.10.020
REGARDING DAMAGE TO PRIVATE PROPERTY AND THE REMEDY**

Agenda of: October 24, 2005

Date: October 12, 2005

Originator: Kristie Smithers, City Clerk and Thomas Klinkner, Attorney

| Route to: | Department | Signature/Date |
|-----------|---|-----------------------------|
| X | Police | <i>[Signature]</i> 10/14/05 |
| | Recreational and Cultural Services Library, Museum | |
| | Public Works Planning | |
| X | Finance *signature required | <i>[Signature]</i> |
| X | Clerk | <i>[Signature]</i> |
| | | |

REVIEWED BY MAYOR DIANNE M. KELLER: *[Signature]*

FISCAL IMPACT: yes\$ or no Funds Available yes no

Account name/number:

Attachments:

SUMMARY STATEMENT:

The attorney and city clerk discussed the relationship of proposed WMC 9.08.030, concerning theft offenses (introduced as Ordinance Serial No. 05-71 and up for public hearing on October 24, 2005) to the existing sections of WMC Chapter 9.08, particularly WMC 9.08.020, which provides for remedies for violations "of this chapter."

WMC 9.08.020 clearly was intended to act only as a companion to WMC 9.08.010, which purports to establish strict liability for property damage by, and to, utility companies. To complement Ordinance Serial No. 05-71, the attorney is recommending the attached ordinance repealing WMC 9.08.010 and 9.08.020 for the following reasons.

First, WMC 9.08.010 probably is invalid because its subject matter has been preempted by state law. For example AS 42.30.400 -- 42.30.490 govern the location of underground utility facilities, and liability for damage to those facilities; and AS 09.45.730 governs liability for damaging trees or shrubs on another's property. Second, the reference to violations "of this chapter" in WMC 9.08.020 will be confusing once Ordinance Serial No. 05-71 has been enacted. Third, the only purpose of WMC

9.08.020 is to provide remedies for violations of WMC 9.08.010 which, as explained above, probably is invalid.

The repeal of WMC 9.08.010 and 9.08.020 can proceed independently of the enactment of Ordinance Serial No. 05-71. Once both have been accomplished, WMC Chapter 9.08 will consist only of WMC 9.08.030, and the title of the chapter, "Property Offenses" will be more appropriate.