

ROAD CUT AND INFRASTRUCTURE

PLACEMENT

§ 94.025 SHORT TITLE.

This subchapter may be referred to as the “Road Cut and Infrastructure Placement Subchapter of the Road Ordinance.”
(Ord. 2006-02, passed 3-17-2006)

§ 94.026 PURPOSE.

The purpose of this subchapter is to establish and define responsibilities and standards for the use of public property and rights of way, especially regarding road use, excavations and restorations thereof.

(Ord. 2006-02, passed 3-17-2006)

§ 94.027 PERMIT.

(A) *Permit application.*

(1) Every person desiring to make a road cut, bore or utilize public right of way is required to obtain a permit. In addition, a National Pollutant Discharge Elimination System (NPDES) permit may be required. The applicant must be licensed and bonded, or the applicant must be a utility company or an agent for the utility company. In extenuating circumstances where the applicant is a private party or not licensed, bonded or a utility company the applicant shall be required to comply with guidelines established by the Department. The person shall make written application on forms provided and approved by the Public Works Director prior to the performance of any road cut work or activity on public property. County staff has 5 days to review and process submitted applications, unless the applicant is notified that a longer time period will be required.

(2) No person shall make any road cut on public property or utilize public rights-of-way until the person or designated agent obtains an appropriate permit from the county, except in an emergency. In the event of an emergency, the person may proceed with such activity immediately but notify the county by phone that such an emergency is being repaired and thereafter file an application within 2 business days. The application must state the description of the emergency and a summary of the repairs. The applicant must comply with any reasonable repair directions set forth by the county.

(3) The applicant shall agree to the following;

(a) Complete all work required by this chapter, covered by the permit;

(b) Complete any specific item required by the county in conjunction with the permit within 5 days after written notice is given by the county to do so. The Department is authorized to grant an extension if necessary. Evidence shall be presented that insurance requirements have been met in accordance with § 94.030, except for governmental agencies. Evidence shall be presented that any “tie in” or “extension of utilities,” is authorized by the applicable utility company, utility association or provider of services.

(B) *Faxing permit applications; billing.*

(1) A utility company may file application for a road cut, right-of-way use permit and all supporting information through use of the facsimile transmission (fax) machine located in the Public Works Department, in accordance with procedures established by the Public Works Director. An approved permit maybe sent to the applicant in accordance with similar procedures.

(2) The Public Works Director, in his or her discretion, may allow a person to be billed for fees due and payable under the terms of this chapter on a monthly basis, provided the person is not more than 60 days delinquent in payments due under this chapter. No further permits will be issued if payments are more than 60 days delinquent.

(C) *Permit fees.* The permit fees are set forth in §94.033.

(D) *Length of road cuts; use of right-of-way.* By issuance of a road cut permit, the county authorizes the cutting or excavation of a road or right-of-way by approved methods as listed in the New Mexico Standard Specifications for Public Works Construction (NMSSPWC) and only for the single road cut specified on the permit. When the project involves the excavation of the road or right- of-way in a manner that runs roughly parallel to the roadway, the permit shall authorize up to 600 lineal feet of excavation. No open trenches will be allowed when the job site is left unattended.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.028 EXCAVATIONS; ROAD CUTS; BORING.

(A) *Purpose.* It is the primary purpose of this subchapter to achieve maximum public use of public rights-of-way, consistent with the laws of New Mexico and county policy or law to insure that utility relocations on or in county rights-of-way

are accomplished in accordance with New Mexico statutes, state and local regulations and federal codes and regulations while providing for maximum public safety, maintenance of the roadways, and minimizing future conflicts between the county roadways, highway systems of the state and utilities serving the general public in the county.

(B) *Preferred means.* In all circumstances, best efforts shall be made to install utility facilities using existing overhead facilities or bore under the roadway instead of excavating in an attempt to limit patches on the road surface. Road cuts shall be the least desirable means of utility facility installation.

(C) *Clearance of vital structures.* Work under these provisions must be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, bridges, traffic control devices, and all other vital permanent structures or equipment.

(D) *General utility design requirements.* Except when a higher degree of protection is required by industry or governmental codes, laws, or orders of the public authority having jurisdiction over the utility, all utility facility installations on, over, along or under the surface of the rights-of-way of county roadways, including attachments to highway structures shall, as a minimum, meet the following utility industry and governmental requirements:

(1) Electric power and communication facilities installations shall conform to the current applicable National Electric Safety Code.

(2) Water, sewage and other effluent lines shall conform to the requirements of the Public Works Association, the American Water Works Association and county standards.

(3) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the National Standards Institute, 49 CFR sections 192, 193 and 195, and /or applicable industry codes.

(4) Liquid petroleum pipelines shall conform to the applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(5) Any pipeline carrying hazardous commodities shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of such materials. Pipelines located in casings, galleries, utility tunnels or highway structures shall be designed to withstand expected internal pressures as well. Joints in carries pipelines operating under pressure shall be of a mechanical or welded leak-proof construction. Ground mounted utility facilities shall be of a design that minimizes, to the extent practicable, the impact on the scenic quality of the specific highway segment being traversed and/ or of a design approved by the Public Works Director. All utility installations on, over, along or under roadway rights-of-way, and attachments to roadway structures, shall be of durable materials, designed for a relocation of existing facilities. Provisions shall be made for expansion of the facilities, particularly those underground or attached to highway structures. These provisions shall be planned so as to avoid interference with highway traffic additional facilities that are installed in the future.

(6) The facility owner shall be responsible for compliance with industry codes, the conditions and/or special provisions specified in the permit, applicable statutes and regulations of the state, and the U.S. Department of Transportation Code of Federal Regulations.

(7) The utility company shall be responsible for the design, construction, and maintenance of all facilities to be installed within the county or public right-of-way. All elements of these facilities are subject to review and approval by the Department, particularly the materials, location, and method of installation. The utility is responsible for, and will provide all measures as required to preserve the safe and free flow of traffic and the structural integrity of the roadway, roadway structures, ease of roadway maintenance and appearance of the roadway resulting from their installation. Prior to any utility work within the county or public right-of-way, the Department shall approve all submitted traffic control plans.

(8) All underground utilities shall be placed at a minimum of 32 inches below adjacent grade surface.

(E) *Maintenance of traffic and pedestrian flow.* The permittee shall maintain safe and adequate passage of vehicle and pedestrian traffic on all its property on which the permittee is conducting its activities under its permit. When a public facility has been closed or detoured because of the permittee's work, the Department shall be notified by the permittee prior to removal of existing barricades and other traffic control devices.

(F) *Permittee's obligation to protect property.* It is the permittee's responsibility to verify no known cultural properties exist in the permit area. Should known cultural properties occur in a permit area, a permit shall not be issued until the applicant submits notification from the state Historic Preservation Division certifying that the properties have received sufficient consideration. Should unknown cultural properties be encountered during work conducted under a permit, work in the immediate vicinity of the cultural property shall cease and the county shall be notified.

(G) *Restoration and repair.*

(1) The permittee shall take whatever measures necessary to protect the road surface from damage by equipment used in the excavation process. Any damage to the road surface such as tearing or scaring of the pavement caused by the permittee's equipment shall be repaired to county requirements by the permittee. Traffic markings removed, as a part of the road cut shall be replaced by the permittee with materials similar to those originally displaced, in a place and in a manner satisfactory to the county.

(2) The permittee shall, at his or her own expense, support and protect all utilities which may be in any way affected by the road cut or other permitted work and will do everything necessary to support, sustain and protect them under, over,

along or across that work. Before commencing a road cut, the permittee shall ascertain the location of all utilities by notifying the New Mexico "One Call System" in or near the area of the proposed cut. The confirmation number from the One Call System shall be listed on the permit prior to issuance of the permit. In the event said utilities are damaged, including damage to pipe coating or other encasement devices, the permittee shall immediately notify the facility owner of the damage. The permittee shall be liable for all costs associated with the damage and repair if the permittee was negligent and the facilities were properly marked and located. The permittee shall protect the road cut from surface water flows by appropriate diversions or ponding devices. The permittee shall repair asphalt or other road surfaces and other public facilities and public property to reasonable construction and engineering standards in order to approximate the condition that existed before the work.

(H) *Protection of adjoining property.* The permittee shall at all times and at his or her own expense preserve and protect from injury all private property adjoining the public property on which the road cut work is being performed by taking suitable measures for that purpose. Where in the protection of such property, it is necessary to enter upon private property for the purposes of taking appropriate protection measures, the permittee, shall unless otherwise provided by law, obtain appropriate permission from the owner of such private property to enter thereupon. The permittee must at his or her own expense shore up and protect all structures, facilities, walls, fences or other property that may be affected or damaged during the progress of the road cut work and be responsible for all damages on other property resulting from his or her failure to properly protect and carry out such work.

(I) *Care of excavated material.* All materials excavated and piled adjacent to the road cut or in any public place by the permittee must be piled and maintained so as to not endanger the public and those working in the excavation, and so as to cause as little inconvenience as possible to those persons using the public property and adjoining property. All material excavated must be laid completely along side of the cut and kept trimmed so as to cause little inconvenience as is reasonably possible to vehicle and pedestrian traffic. In order to expedite flow of traffic and to keep dirt and dust from spreading or flying, the permittee shall use guards or other methods and/or shall water the excavated material.

(J) *Cleanup.* Each permittee shall thoroughly clean up from the public place of rubbish, excess earth, rock, asphalt, concrete, tree branches or limbs and other debris resulting from road cut work. All cleanup operations at the location of such road cuts are to be accomplished at the expense of the permittee. During the progress of work or immediately after completion of such work, the permittee shall clean up and remove all refuse, dirt and unused materials of any kind resulting from the work. Upon failure to do so, the county may cause to have such work done, and the permittee shall pay for such reasonable cost.

(K) *Protection of water course.* The permittee shall maintain all gutters, easement crossings and related drainage structures free-flowing and unobstructed for the full depth and width of the water course, or provide adequate substitutes for any such water course that are blocked by the road cut. Required federal or state permits shall be acquired by the permittee.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.029 RESTORATION OF ROAD CUTS.

(A) *Compaction.* Any person holding a road cut permit shall undertake to restore each road cut, in accordance with the reasonable compaction and restoration standards required by the county. This shall include both the backfilling of the road cut and the restoration of the surface. All backfill must be compacted to 95% density under the road surface, and 90% density outside the road surface. Certified nuclear density test results must be submitted to the Department within 5 working days of completion of the work. Flow capacity and/or existing flow capacity shall be altered without the written approval of the Public Works Director. For any person who does not submit compaction test results to the county in a form and with results acceptable to the county, such person shall not be issued any future permits under this chapter until he or she complies with this chapter, and the county may take such other actions as it deems necessary to assure compliance with this section. The Public Works Director may waive the compaction tests for plow trenching only, provided the utility company demonstrates a method and operation of compaction acceptable to the Department.

(B) *Resurfacing.* In those instances when a permittee cannot resurface a public place with concrete or asphalt because the air temperature or moisture content is below the minimum standards contained in the compaction and restoration standards or the weather conditions are such that the permittee is unable to resurface the public place within a reasonable time after the county's acceptance of any density tests, the permittee shall immediately check with the Department concerning how and when the public facility shall be resurfaced. The county can require that the permittee cold patch the road cut on a temporary basis. The permittee shall restore the surface of the cut in accordance with reasonable compaction and restoration standards.

(C) *Cost.* The cost for restoration of the road surface shall be borne by the permittee.

(D) *County performance.* If a permittee makes a road cut that is not resurfaced by the permittee within a reasonable time, and the county has not granted an extension of time, the county may, upon giving notice to the permittee, resurface the road cut and bill the permittee for the reasonable cost.

(E) *Safety.* It shall be the responsibility of the permittee restoring the public property to keep the road cut or surface opening safe for pedestrians, workers and vehicular traffic until the pavement surface or opening has been restored.

(F) *Extension of time.* Any time periods may be extended by the county due to weather conditions or other circumstances beyond the control of the permittee, with written or oral permission of the Public Works Director or his or her designee.

(G) *State standards.* The permittee shall comply at all times with the appropriate construction standards set forth in state statutes or regulation or by local law or regulation.

(H) *Restoration.* The permittee shall restore as practicably as possible, the affected property to the condition it was immediately prior to excavation or development. This includes but is not limited to depth of base course or other materials used on road surfaces. All materials shall be inspected and approved by the Department prior to use of any such materials. In the case of trenching in the right-of-way that exceeds 600 lineal feet the county recommends the responsible party document the condition of the surface by means of videotaping the proposed work area. The Department can require the seeding of disturbed areas to offset possible erosion that may result from the area being disturbed during excavation.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.030 LIABILITY INSURANCE; SELF- INSURANCE; BONDING.

(A) *Certificate of insurance.* No person other than a utility company shall make a road cut, enter a substructure opening, perform road cut work or utilize county rights-of-way until filing with the county a certificate of insurance establishing that such person is adequately insured according to New Mexico Tort Claims Act, NMSA § 41-4-19, as amended against bodily injury or personal injury to any person, and against liability for damages, other than the work itself; because of injury to or destruction of tangible property, including loss of use resulting there from. Each insurance certificate shall provide that the county be given at least 30 calendar days' notice of cancellation in writing by the insurance company.

(B) *Form and type.* A utility company shall at all times maintain insurance or may self insure against all risks and perils set forth above for the reasonable limits of liability set by the NMSA § 41-4-19 as amended and the county, in a form and type acceptable to the county which approval will not be unreasonably withheld.

(C) *Performance bonding.* A performance bond in the amount of \$15,000 shall be kept on file at the Department along with the contractor's license and insurance documents.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.031 LOCATION AND RELOCATION OF FACILITIES.

The County expressly reserves the right to change the grade, install, relocate, or widen the public rights-of-way within the county and subject to all regulatory approvals, the facility owner shall relocate, at its own expense, its facilities and appurtenances in order to accommodate the paving, installation, relocation, widening, or changing of the grade or location of any such public right-of-way, including if necessary, relocating facilities to a sufficient distance within the rights-of-way and to permit a reasonable work area for machinery and individuals engaged in such work, or to protect the health, safety, or welfare of the public.

(Ord. 2006-02, passed 3-17-2006)

§ 94.032 FEES.

A permit fee of \$75 shall be charged and collected for each proposed activity and for each permit issued up to 250 lineal feet. For permits in excess of 250 lineal feet the fee will be \$0.15 per lineal foot in addition to the initial fee. A \$20 per hole, bell hole fee will be required for drilling holes for poles, and the like. Except for the Department, which is not required to obtain a permit for any of its projects, all other county departments shall be required to obtain a permit.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.033 WARRANTY; PROPERTY TITLE.

(A) Any person or facility owner including a utility company making road cut shall be required to correct defective materials and workmanship performed under each road cut permit for a period of 3 years from the date the work performed under such permit is completed.

(B) No permit granted pursuant to this section shall in any way convey any property interest to the permittee, beyond simple permission to use the county's rights-of-way in the manner specified in this chapter. The permit shall not provide any guarantee or otherwise warrant the condition of the county's title to any particular easement or right-of-way, and shall not obligate the county in any way with respect to preserving the permittee's use of public prescriptive easements over private land.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.034 ROUTING OF TRAFFIC.

(A) When road cut work or use of the right-of-way is being performed, the person making the road cut or using the right-of-way shall take appropriate measures to maintain traffic conditions as near normal as practicable at all times so as to cause little inconvenience as possible to the occupants of the abutting properties and to the public. All applicants shall submit with the permit application a TCP or traffic control plan for approval by the Public Works Director or his or her designee along with the permit application. No permits shall be issued without the submission of a traffic control plan unless

waived by the county. State DOT regulations shall be used as the applicable regulations to follow.

(B) The county may require the permittee to notify various public agencies, emergency services and the public of proposed work prior to issuance of a permit or prior to commencement of the proposed work if the Department decides it is necessary for public safety.

(C) Warning signs shall be placed by the permittee near each road cut or substructure opening being entered so as to give adequate warning to vehicular and pedestrian traffic both night and day, and cones or other approved devices shall be placed to channel traffic. The traffic controls, including but not limited to the number, type, size and location of the signs shall be done in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) Part VI and reasonable traffic standards as directed by the Public Works Director or his or her designee.

(D) The county may require the permittee to place a visible sign at each end of the construction area which is visible from a distance and sets forth the name of the person making the road cut, or in the case of a utility company the name of the company together with a business telephone number to handle calls from the motoring public.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.035 NOISE; DEBRIS; WORKING HOURS.

Each permittee shall conduct and carry out road cut work in such manner as to avoid unnecessary inconvenience and annoyance to the public and occupants of neighborhood property and in compliance with the county noise standards.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.036 PRESERVATION OF SURVEY MONUMENTS.

Any survey monument set for the purpose of locating or preserving the lines of the road, property, subdivision, or a permanent survey bench mark within the county shall not be removed or disturbed without first obtaining written permission from the owner. Permission to remove or disturb such monuments, reference points or bench marks will be granted only upon the condition that the person apply for such permission and pay all expenses incident to the proper replacement of the monument.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.037 NON-COMPLIANCE BY PERMITTEE.

In the event a permittee fails to comply with the requirements of this subchapter, the Public Works Director or his or her designee shall notify the permittee of non-compliance and stop all work until the permittee is in compliance. Written or verbal notice of non-compliance shall be issued. Following a hearing on the matter, a fee of \$300 may be assessed for non-compliance with this subchapter if the Public Works Director decides it is justified. The Public Works Director, his or her designee, Code Enforcement Department employees, or County Safety Officer is authorized and empowered to suspend, revoke or refuse to issue any permit or future permit issued to a permittee provided that a hearing on the matter be conducted by the Public Works Director within 5 business days of the suspension, revocation or refusal to issue the permit unless based on failure to adequately complete an application. The permittee shall be granted 1 appeal to the Public Works Director following the decision if the permittee makes written request to do so. The county reserves the right to issue or revoke any permit for any reason deemed reasonable by the Public Works Director or his or her designee. The county may also deny issuance of a permit to any applicant if there are delinquent compaction test results from previously performed road cuts.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999

§ 94.038 NEW PAVEMENT FEE.

Any person, facility owner or utility excavating or cutting into new pavement (less than 2 years old) shall be charged a fee of \$200 to offset the impact of cutting the new pavement, which frequently leads to failure of new roadways installed by the county.

(Ord. 2006-02, passed 3-17-2006) Penalty, see § 94.999