

**SANTA FE COUNTY
ORDINANCE 2003- 01**

2316057

(REPLACING SANTA FE COUNTY ORDINANCE NO. 1994-2)

**AN ORDINANCE REGULATING PROCEDURES FOR
WORKING IN, DISTURBING AND REPAIRING COUNTY PROPERTY AND
RIGHTS OF WAY**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA
FE, NEW MEXICO:

Section 1. Short Title

This Ordinance may be referred to as the Right of Way Use Ordinance.

Section 2. Purpose

The purpose of this Ordinance 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.

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Section 4. Definitions

- A. "Applicant" means any person required by this Ordinance to apply for a permit to make a road cut.
- B. "Boring," means the act of tunneling under the surface of the roadway or Right of Way.
- C. "Business day" means Monday through Friday.
- D. "Cultural Property" means a property as defined in the NM Cultural Properties Act 18-6-1 to 18-6-7 i.e., a structure, place, site or object having historic, archaeological, scientific, architectural or other significance.
- E. "County" means the County of Santa Fe, New Mexico as represented by its Board of County Commissioners.
- F. "County facilities project" means any road cut undertaken as a part of a project initiated by the County and includes related action taken by the utility company to further the County facilities project.
- G. "Emergency" means any situation or condition existing in which there is an interruption or disruption of gas, electricity, sewer, storm sewer, drainage structures, water, or telecommunications service to one or more customers being served by a utility company, or any situation or condition in which there is a danger of serious bodily injury, serious property damage, or prolonged disruption of service.
- H. "Excavation" means the act of making a hole, trench, or ditch, which penetrates through or under the surface in a public right of way or other public property, resulting in the removal of dirt, asphalt, concrete or other material.
- I. "Facilities" are and include, but are not limited to, plants, works, systems, improvements and equipment of the utility company such as pipes, electric substations, mains, conduits, transformers, wires, cables, poles, underground links, meters and concrete pedestals for any of the above and including postal service mail boxes.
- J. "Permit," means the written form provided by the County in which a person describes the use, excavation or road cut which will be performed on public property and in which are contained any special conditions required of the person by the County in the execution of the work. Permits are subject to the conditions and requirements contained in this Ordinance.
- K. "Permittee" means a person that has received a road cut permit from the County.

L. "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, utility company, firm, partnership, joint venture, syndicate or other entity.

M. "Public facility" means any designed, engineered, constructed road structures or engineered drainage facilities owned or maintained by the County located on public right of ways.

N. "Public right of way" or "public property" means those properties or sites within the County for which the County possesses a real property estate or interest, such as fee simple title, prescriptive easement or dedicated easement, and includes easements, right of ways, highways or roads, paved or unpaved, curbs, gutters, sidewalks, or other paved, unpaved, un-surfaced or concrete property which the County owns or maintains.

O. "Public Works Director" means the person employed by the County who is designated by the Board of County Commissioners to hold this position, and/or his designee.

P. "Road use" means any activity in or adjacent to the roadway that affects traffic and pedestrian flow.

Q. "Road cut" means the act of cutting a hole, trench, ditch or tunnel in, on, under, or through the surface of a public facility; or the act of drilling, boring, tunneling under or jacking up the surface of a public right of way.

R. "TCP" means a Traffic Control Plan or diagram showing the county how safe maintenance of traffic and Pedestrian flow will be conducted.

S. "Utility company" means any person, entity, or corporation, which provides water, sewer, electric, gas, telephone, or cable television services to five (5) or more hookups in the County. It also includes an independent contractor that has entered into a contract with the utility company to perform the road cut or excavation when the independent contractor is performing services for the utility company. Such an independent contractor must file a notarized affidavit with the County, executed by the utility company, setting forth the name, business address, and business telephone number of the independent contractor as an authorized agent of the utility company.

Section 5. 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. 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 Public Works 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.

2. No person shall make any road cut on public property or utilize Public right 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 two (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 ordinance, covered by the permit; (b) complete any specific item required by the County in conjunction with the permit within five (5) days after written notice is given by the County to do so. The Public Works Department is authorized to grant an extension if necessary.

4. Evidence shall be presented that insurance requirements have been met in accordance with section 8, except for governmental agencies.

5. 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.

A utility company may file its application for a road cut, right of way use permit and all supporting information through the use of telecopy machine located in the County Public Works Office, in accordance with procedures established by the Public Works Director. An approved permit may be sent to the applicant in accordance with similar procedures. The Public Works Director, in his discretion, may allow a person to be billed for fees due and payable under the terms of this Ordinance on a monthly basis, provided the person is not more than sixty (60) days delinquent in payments due under this Ordinance. No further permits will be issued if payments are more than 60 days delinquent

C. Permit Fees.

The permit fees are set forth in Section 10.

D. Length of Road Cut; Number 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 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 six hundred (600) lineal feet of excavation.

Section 6. Excavations, Road Cuts Or Boring.

A. Purpose: It is the primary purpose of this ordinance to achieve maximum public use of public right-of-way, consistent with the laws of New Mexico and to insure that utility relocations on or in County rights of way are accomplished in accordance with New Mexico Statutes, Regulations and Federal Codes while providing for maximum public safety, maintenance of the roadways, and minimizing future conflicts between the County roadways, highway systems of New Mexico and utilities serving the general public in the County of Santa Fe.

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 American 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 American National Standards Institute, 49 CFR section 192, 193 and 195, and/or applicable industry codes.

(4) Liquid petroleum pipelines shall conform to the current 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, and to resist internal and external corrosion; casings or uncased pipelines shall be designed to withstand external pressures as well. Joints in carrier 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 Department. 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 long service-life and relatively free from routine maintenance. On new installations or 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 when additional facilities 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 of New Mexico, 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 Santa Fe County or public right of way. All elements of these facilities are subject to review and approval by the County Public Works 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 County Public Works Department shall approve all submitted traffic control plans.

E. Maintenance of Traffic and Pedestrian Flow.

The permittee shall maintain safe and adequate passage of vehicle and pedestrian traffic on all public 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 Santa Fe County Public Works 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 said 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.

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 scarring 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.

The permittee shall, at his own expense, support and protect all utilities which may be in any way affected by the road cut or other permitted work and do everything necessary to support, sustain and protect them under, over, along or across said 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 conformation 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 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 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 failure to properly protect and carry out such work.

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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 the side of the cut and kept trimmed so as to cause as 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 all 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 said 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.

Section 7. 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 Public Works Department within five (5) working days of completion of said work. Flow capacity and /or existing flow capacity shall not 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 Ordinance until the person complies with this Ordinance, 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 Public Works Department.

B. Resurfacing.

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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 Public Works 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 designee.

G. State Standards.

The permittee shall comply at all times with the appropriate construction standards set forth in New Mexico state statutes.

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 Public Works Department prior to use of any such materials. In the case of trenching in the right of way that exceeds six hundred (600) lineal feet the county recommends the responsible party document the condition of the surface by means of videotaping the proposed work area. The Public Works Department can require the seeding of disturbed areas to offset possible erosion that may result from the area being disturbed during excavation.

Section 8: Liability Insurance, Self Insurance and 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 right of way until filing with the County a certificate of insurance establishing that such person is adequately insured according to NM 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 thirty (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 fifteen thousand dollars (\$15,000.00) shall be kept on file at Public Works along with the contractor's license and insurance documents.

Section 9. Location and Relocation Of Facilities

The County expressly reserves the right to change the grade, install, relocate, or widen the public right of ways 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 right of ways 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.

Section 10. Fees.

A permit fee of seventy-five dollars (\$75.00) shall be charged and collected for each proposed activity and for each permit issued up to 600 lineal feet. The seventy-five dollar (\$75) fee collected shall be distributed as follows: Sixty seven percent (67%) shall be designated to the County General Fund and Thirty three percent (33%) shall be designated to a road maintenance fund for repair of roadways. For permits in excess of 600 lineal feet the fee will be prorated by dividing the length by 600, then multiplying it by seventy-five dollars (\$75). Except for the Public Works 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.

Section 11. Road Cut Warranty.

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

Section 12. 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 as 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 designee along with the permit application. No permits shall be issued without the submission of a traffic control plan unless waived by the County.

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 Public Works 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 Manual on Uniform Traffic Control Devices (MUTCD) Part VI and reasonable traffic standards as directed by the Public Works Director or his 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.

Section 13. Noise, Debris and 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.

Section 14. 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, 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.

Section 15. Non-Compliance by Permittee.

In the event a permittee fails to comply with the requirements of this Ordinance, the Public Works Director or his 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 three hundred dollars (\$300.00) may be assessed for non-compliance of this ordinance if the Public Works Director decides it is justified. The Public Works Director, his designee, County Fire Department, 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 five (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 one appeal to the Public Works Director following the decision if the permittee makes written request to do so. The County of Santa Fe reserves the right to issue or revoke any permit for any reason

deemed reasonable by the Public Works Director or his 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.

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Section 16. Amendment To Ordinance 1993-8.

Sections 7 A, 7 E, 7 F, 8 B, and 9 of Santa Fe County Ordinance 1993-8 are hereby Repealed.

Section 17. New Pavement Fee and Penalty.

Any person, facility owner or utility excavating or cutting into new pavement (less than two yrs old) shall be charged a fee of two hundred dollars (\$200.00) to offset the impact of cutting the new pavement, which frequently leads to failure of new roadways installed by the County.

Section 18. Saving Clause.

If any of the sections, subsections, sentences, clauses, or phrases; of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be hereby affected since it is the express intent of the County Commission to pass each section, phrase, paragraph and word separately.

Section 19. Effective Date.

This ordinance shall take effect thirty days after the recording date.

SANTA FE COUNTY:

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[Handwritten Signature]

Paul D. Duran, Chairperson
Santa Fe County Board of Commissioners

ATTEST:

[Handwritten Signature]
Rebecca Bustamante, County Clerk

APPROVED AS TO LEGAL FORM:

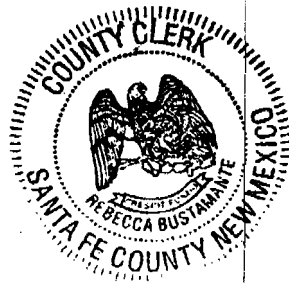
[Handwritten Signature]
Steve Kopelman, County Attorney

1-7-2003
Date

FINANCE DEPARTMENT APPROVAL:

[Handwritten Signature]
Katherine Miller, Finance Director

1-8-03
Date



1244 037
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 16 DAY OF July A.D.
2003 AT 11:07 O'CLOCK AM
AND WAS DULY RECORDED IN BOOK 2316
PAGE 257-070 OF THE RECORDS OF
SANTA FE COUNTY

WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.

[Handwritten Signature]
DEPUTY