CITY OF RIO RANCHO
ORDINANCE

ORDINANCE NO. 21 **ENACTMENT NO.**

AN ORDINANCE AMENDING CHAPTER 96 OF THE CODE OF REVISED ORDINANCES TO CLARIFY PERMIT PROCESSES AND UPDATE FEES.

WHEREAS: Chapter 96 of the City's Code of Revised Ordinances (R.O. 2003) sets forth the City's regulations for streets and utilities installed in the public right-of-way; and

WHEREAS: Chapter 96 includes obsolete language and procedures; and

WHEREAS: the fee structure currently provided for work in the right-of-way is years out-of-date and does not reflect the City's costs for permitting, traffic control, interruption of traffic, and related matters;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

Section 1. Chapter 96, R.O. 2003, is hereby repealed and replaced with the following:

CHAPTER 96: USE OF PUBLIC RIGHT-OF-WAY

Section

96.01 Purpose

96.02 Definitions

96.03 Requirements

96.04 Specific Circumstances

96.05 Restoration

96.06 Violations

96.07 Fees

§ 96.01 PURPOSE.

The purpose of this Chapter is to preserve the safety of the inhabitants of the city and to preserve, protect and improve the esthetic quality of the city by regulating the uses of and construction in the public right-of-way.

§ 96.02 DEFINITIONS

For the purpose of this Chapter, the following definitions shall apply:

APPLICANT. Person applying for a Right-of-Way Use Permit.

BARRICADE(*S*). Any MUTCD approved obstruction within the public right-of-way that impedes the traveling public, either vehicular or pedestrian.

BARRICADING. The placement of barricades as required by the MUTCD or to delineate activities such as the placement of construction dumpsters/drop boxes, piles of gravel/landscape materials, placement of storage containers, etc.

CITY. The City of Rio Rancho, New Mexico.

CITY ENGINEER. The chief administrative engineer of the city or that engineer's designee.

DIRECTIONAL DRILLING. Horizontal directional rotary drilling process.

EASEMENT. An acquired or granted right of use which one person may have in the land of another.

EMERGENCY REPAIR. The repair, restoration, or replacement of an existing structure or infrastructure made necessary because of a sudden unexpected event which has created a condition which is an immediate and continuing threat to the safety of property or persons, including loss of any public utility service.

EXCAVATION. Any hole, trench, ditch or depression which penetrates through or under paved or unpaved surface resulting from the removal by a person of pavement, dirt, or other material. EXCAVATION shall include removal of concrete, removal of asphalt, and grading or blading.

HOLE HOG. Horizontal pneumatic non-guided drilling process.

INFRASTRUCTURE. Physical features, including overhead and underground utilities, located within the public right-of-way used primarily for the benefit and enjoyment of the general public.

JACKING. Horizontal semi guided tunneling process.

MUTCD. Manual on Uniform Traffic Control Devices, latest edition.

PAVEMENT. Any improved traveling surface for vehicular, bicycle, or pedestrian traffic; including asphalt, portland cement concrete, brick, masonry, or other man-made materials.

PERMIT. The revocable written authorization from the city to use, work in, or otherwise occupy public right- of-way; detailing the specific time, place, and other restrictions for the allowed use.

PERMITEE. A person with a valid, approved Right-of-Way Use Permit who is doing

work pursuant to that permit.

PERSON. Any individual, estate, trust, receiver, association, club, corporation, company, firm, utility or other entity.

POTHOLE. A vertical nondestructive excavation for the intent of verifying the location of underground infrastructure.

RIGHT-OF-WAY. The total area of land deeded, reserved by plat, or otherwise acquired by the City, primarily for the use of the public for the movement of people, goods, and vehicles. For the purpose of this Chapter, City drainage or utility easements, and other City-owned easements, such as maintenance and service roads serving channels or arroyos, are also included.

TRENCHLESS EXCAVATION. Utility line installation, replacement, or rehabilitation through the use of boring, jacking, horizontal drilling or tunneling.

Technical terms not defined herein shall have the meaning given them in the MUTCD.

§ 96.03 REQUIREMENTS

A. Any person proposing to work in the right-of-way shall obtain a Right-of-Way Use Permit from the City Engineer.

(1) For the purposes of this Chapter work in the right-of-way shall include excavation, trenchless excavation or any activity which might reasonably require barricading. Additionally, activities adjacent to the right-of-way which could reasonably be expected to encroach into the right-of-way, such as the storage of spoils from an excavation or parking of vehicles, or to otherwise affect the flow of traffic by causing visual distraction, such as unusual or large equipment or large groups of people, are also included.

(2) Each person must obtain their own permit and have their own insurance and bonding. A subcontractor may not work under the general contractor's permit.

(3) Work included within a City approved subdivision, prior to public access being granted to the subdivision, does not require a Right-of-Way Use Permit.

B. The permit application form and submittal requirements shall be in such form as prescribed by the Public Works Department.

C. All work shall conform to federal, state and City ordinances, codes, design criteria and standards. In the case of conflicting requirements, the most stringent shall apply.

D. The permittee shall be responsible for the protection of the public as follows:

(1) Appropriate traffic control, per the MUTCD, shall be utilized during the duration of the permit.

(a) Traffic control plans shall be included with all permit submittals.

(b) Traffic control plans shall be professionally produced utilizing appropriate computer software. Generic plans or hand drawn plans are not acceptable.

(c) Traffic control plans shall be designed and drawn, using MUTCD standards, by a trained/certified person. Said person shall have a bona fide business

presence in the greater Albuquerque/Rio Rancho metropolitan area, except as may otherwise be required by federal law (for projects funded by federal grants), and shall be certified by the City Engineer under applicable Department of Public Works policies and procedures.

(d) The City Engineer may require that revisions be made to proposed routes in order to cause as little inconvenience to the traveling public as possible.

(2) Excavations shall not be left open at the end of a shift unless continuous shifts are planned.

(a) Backfill, steel plate, security fencing and other safety options may be considered on a case-by-case basis by the City Engineer.

(b) Barricades, warning tape and plastic fence are not acceptable alternatives.

(3) Barricades shall be placed per the approved traffic control plan, by a person certified by the City Engineer.

(a) Barricades shall not be placed on sidewalks, pedestrians or bike paths, or dedicated bike lanes unless said pathways are permitted to be closed.

(b) Barricades, including supports shall be moved outside the clear zone when not in use.

(c) Inspection, preparation of shop drawings and record drawings, and reporting procedures shall be in accordance with the Department of Public Works procedures, the MUTCD and New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction.

(d) The City will inspect barricading for compliance with approved traffic control plans as it deems necessary.

E. All flaggers shall be trained and certified by a training agency normally engaged in the business of flagger training. Flaggers must show certification cards on request. Approved safety wear is required.

F. The permittee shall be responsible for the utility location service, surface (asphalt, concrete, other) cut, excavation, backfill, compaction, surface replacement, testing, any necessary remedial work, and materials incorporated in the work.

G. The applicant shall provide a $10,000 bond and proof of insurance prior to approval of a Right-Of-Way Use Permit. The purpose of this bond shall be to assure successful completion of the work required for the installation of the facility, should the applicant fail to comply with the plans and specifications of the permit. The City may also use this bond to correct any damage to existing infrastructure that is caused by the applicant.

(1) The bond may be written for a single event, a specific duration or it may be evergreen.

(2) The city reserves the right to request additional bonding should it be determined that the amount of the work or risk exceeds the capacity of the bond.

(3) The bond shall be returned to the permittee upon successful completion of the work, as determined by the City Engineer.

(4) This requirement is not in addition to the bonding/insurance requirements for a City capital improvement project.

H. Work hours shall be 9:00 AM to 3:00 PM, inclusive of set up and tear down of

traffic control devices.

(1) The City Engineer may authorize alternative work hours, if the scope of the work is such that the right-of-way can not be reopened safely.

(2) The applicant shall request the City Engineer's determination on alternative work hours with the initial submission of the permit.

(3) The City Engineer may require alternate hours, including nights or weekends, for operations that unduly disrupt traffic flows or represent potential safety hazards.

I. Roads less then five years old shall not be cut, except for the repair of leaking wet utilities buried under the roadway. A list of roads which cannot be cut may be obtained from the City Engineer.

J. The permittee shall maintain the work site in a clean and orderly manner. All debris, rubbish and excess material shall be removed from the right-of-way at the completion of each workday.

K. The permittee shall notify the City Engineer immediately upon completion of the work.

L. The City will provide any necessary inspections, during normal business hours, at no cost to the permittee. Should the permittee request inspections outside normal business hours, or should the City Engineer determine that such inspections are necessary to ensure public safety, the permittee will be responsible for paying the inspection cost, including overtime costs.

M. Except as otherwise expressly provided herein, all costs of complying with this Chapter shall be borne by the applicant/permittee.

§ 96.04 SPECIFIC CIRCUMSTANCES

Without limiting the generality of the foregoing, the following special circumstances require Right-of-Way Use Permits. The absence of mention in this section does not exempt an activity from the requirement to obtain a Right-of-Way Use Permit.

A. Right-of-Way Crossing

(1) Crossings shall not unreasonably interfere with or unduly impair the proper and safe use of the Right-of-Way or adjacent properties.

(2) The legal owner of the property benefiting from the crossing shall be signatory to the permit.

(3) If a crossing is being proposed in conjunction with the construction of a new building or the remodel or renovation of an existing building, approval for the crossing shall be obtained prior to the City's issuance of the building permit. The Right-of-Way permit must be obtained prior to starting construction of the crossing.

B. Curb Cuts. If the proposed crossing includes a curb cut, the following shall apply:

(1) Residential areas:

(a) The minimum width of curb cuts shall be 12 feet and the maximum width shall be 24 feet.

(b) A minimum of 22 feet of standing curb must remain between any two curb cuts on the same lot or single parcel of land or if more than one lot or parcel of land is being put to a single land use, then the requirement shall apply to the land use.

(c) No double or circle drives shall be installed or maintained unless the property shall have a minimum of 60 feet frontage on the street affected thereby.

(d) No curb cuts shall be closer than 2½ feet from side property lines.

(e) Corner property curb cuts shall be no closer to the intersecting street than either:

(i) Twenty-five feet from the curb face of the intersecting street or extension thereof; or

(ii) Ten feet from the property line of the intersecting street.

(f) No dual frontage access (access to more then one street from a residential lot) shall be allowed.

(2) In all light traffic commercial areas, which shall include all office building or other commercial buildings not more than two stories in height, the gutter line width of curb cuts shall be a minimum of 12 feet and a maximum of 25 feet. All other requirements shall be the same as in residential areas.

(3) In all heavy traffic commercial areas which include, but are not limited to, all drive-in type establishments, the gutter line width of curb cuts shall be a minimum of 20 feet and a maximum of 35 feet in width, as justified after a complete study of traffic volume, pedestrian volume, one-way streets, and type of business making request. All other requirements shall be the same as in residential areas.

(4) When conformance to the standards as set forth in this subsection would cause harm to the community or exceptional and undue hardship to any person, the City Engineer may vary design standards to the extent that substantial justice may be done. However, the relief may not be granted if it is detrimental to the public good or impairs the intent and purpose of this subchapter or the desirable general development of the community. Any modification thus granted shall be entered in the records of the Development Services Department setting forth the reasons which justified the modification.

C. Emergency repair work. If the applicant calls New Mexico One-Call between 8:00 AM and 5:00 PM Monday through Friday (except City Holidays), the Right-of-Way Use Permit application and associated traffic control plan must be submitted to the City Engineer prior to the start of work. For emergency repairs that require notification to New Mexico One-Call at any other time, the Right-of-Way permit application is due to the City Engineer by noon the following business day.

D. Persons who use the right-of-way for short duration operations, including but not limited to: landscaping/landscape maintenance, lifting with crane or boom truck, concrete delivery, concrete cutting, asphalt repair, utility repair, and utility locators using destructive methods, must obtain Right-of-Way Use Permits. The level complexity required for traffic control will be commensurate with the duration of work and location of work as defined in the MUTCD.

E. Builders shall obtain Right-of-Way Use Permits for placement of construction dumpsters/drop boxes in the right-of-way.

F. Heavy haulers, persons proposing to drive non-street-legal construction equipment, and persons proposing to haul spoils, rock, debris, fill dirt or the like to or from an excavation or construction site shall obtain a Right-of-Way Use Permit. The City Engineer may dictate the haul route and the hours of operation for the haul.

(1) All costs associated with the haul, including moving and reinstalling existing structures and infrastructure shall be borne by the applicant.

(2) Water wagons and scrapers are prohibited from being driven on paved roads.

G. Persons requesting Special Event permits pursuant to § 154.25, R.O. 2003, must also obtain Right-of-Way Use Permits if their events affect the right-of-way. Satisfying the insurance and bonding requirements for the Special Event permit shall not relieve the applicant from meeting the requirements of this Chapter.

H. Buried Utilities

(1) The placement of buried utilities within the right-of-way shall be approved by the City Engineer prior to installation.

(2) Non-City owned utilities installed parallel to a roadway shall be located in the Public Utility Easement.

(3) Buried utilities shall cross the roadway at an angle of 90 degrees to the roadway centerline.

(4) Barrier devices shall be installed where necessary to protect surface components and the traveling public.

(5) Where buried facility requires the removal or replacement of existing curbs, gutters or pavement surfaces, the same shall be replaced in accordance with the plans and specifications accompanying and made a part of the permit application.

(6) The City Engineer may require that the utility be installed using boring or jacking methods. This requirement shall be based on considerations such as the type of roadway, traffic conditions, length of construction time, existing utilities or other conditions as relevant.

I. Persons proposing to install culverts or make other storm water management revisions in the right-of-way must obtain both the City Engineer's approval for the work and a Right-of-Way Use Permit.

§ 96.05 RESTORATION

A. Any damage to existing infrastructure, landscape or structures within the right-of-way or properties adjoining the work shall be repaired to City standards, by the applicant. This includes pavement damaged by dumpsters or construction drop boxes.

B. Work areas, including adjacent areas that were cleared/grubbed or damaged shall be stabilized and reseeded within 14 calendar days after the permit completion date.

C. All excavations within the right-of-way shall be backfilled with consecutive lifts not

exceeding eight inches of loose material and shall be compacted to 95% of maximum density, plus two percentage points of optimum moisture content and shall be tested in accordance with ASTM D-1557.

D. Pavement surfaces shall be tested in accordance with applicable testing methods based on the type of material to be placed. Whenever a pavement cut is required, pavement shall be cut to a neat true line. Width of pavement cut shall be sufficient to remove any broken or cracked pavement and wide enough to allow for the equipment required to obtain the required compaction. Edges of pavement cuts for asphalt concrete surfaces shall receive an application of tack coat prior to placing the new pavement. All asphalt patches shall match existing road sections, including base depth and material

E. Sidewalks, curbs gutters or combination curbs and gutters shall be removed to nearest joint. All concrete used to replace curbs and gutters shall obtain a minimum compression strength of 3,000 p.s.i. at 28 days. Curbs and gutters shall be replaced to conform to the same shape, size and continuous gradient as existing curbs and gutters.

F. Testing

(1) The permittee shall submit all test results to the City Engineer within 14 calendar days of the date of completion of the test.

(2) Right-of-Way Use Permits will not be issued to persons who are delinquent in providing test results.

(3) If test results show that the work was not compliant with City standards, the applicant shall repair and retest the work at no cost to the City.

G. The permittee shall warranty all restoration work to the City for a period of one year from completion and acceptance by the City.

§ 96.06 ABANDONED AND NONCONFORMING CROSSINGS

A. If any crossing is clearly abandoned or no longer used for its intended purpose, any permit heretofore granted for the use of the crossing as such shall be subject to revocation by the City Engineer after 30 days' written notice of the proposed revocation has been given to the owner of the property to which the crossing is appurtenant. Written notice to the occupant of the premises, if any, will also be considered sufficient if the occupant is other than the owner and the owner's current contact information can not reasonably be ascertained from County tax records.

B. It shall be sufficient notice under the provisions of this and the following section to make delivery of the notices by certified or registered mail.

C. In the event the name and address of the owner cannot be reasonably ascertained from the current county tax rolls and the premises are unoccupied, it shall be sufficient notice under this and the following section to publish the notice in English in a newspaper of general circulation in the City once a week for four consecutive weeks.

D. All curb cuts on designated thoroughfares which are determined by the City Engineer to constitute a traffic hazard, and which become nonconforming upon passage of this subchapter, shall be subject to revocation as provided in subsection B above.

E. In the event the City Engineer has revoked any permit under the provisions of this section, the crossings shall be removed by and at the expense of the owner of the property to which the crossing is appurtenant and the right-of-way restored to current City standards. The removal and restoration shall be completed within sixty days after the notice provided for in this section has been given.

F. If conformance is not attained within the required time, the City may perform the necessary removal and restoration at the cost of the owner, and the cost thereof shall constitute a lien on the property to which the crossing is appurtenant.

§ 96.07 VIOLATIONS.

Whenever the City Engineer shall find probable cause to believe violation of any of the provisions of this Chapter exists, the City Engineer shall notify the person responsible for the alleged violation in writing and shall order the necessary corrections to be made.

A. The City Engineer shall notify any person found to be in violation with this Chapter of the scope of violation, the provisions violated, the date of violation (if known), and the required correction.

(1) Said notice shall be in writing and may be hand delivered, faxed or e-mailed to the applicant.

(2) Should that person fail to correct the violation, written notice of any associated fine shall also be hand delivered, faxed or e-mailed to the person.

(3) All violations shall be corrected and all fines incurred must be paid prior to the City's issuance of another Right-of-Way Use Permit to such person.

B. Corrective actions:

(1) Failure to obtain a Right-of-Way Use Permit, failure to comply with an approved Right-of-Way Use Permit including compliance with traffic control plan, failure to comply with excavation or trench safety requirements or any other violation that creates an imminent public safety hazard shall be corrected immediately, and all work shall stop, and necessary safety precautions shall be taken until the violation is corrected. Failure to correct the violation by the end of the date of the notice of violation shall justify the issuance of a fine.

(2) Any other violation of non-conformance that does not constitute, in the determinate of the City Engineer, an imminent public safety hazard, shall be corrected within 30 days of issuance of the notice of violation.

§ 96.08 FEES.

A. All applicants and permittees subject to this Chapter shall pay permit fees and be subject to fines if they violate the requirements of this Chapter, except as provided below.

(1) City projects or crews that are funded out of the General Fund are exempt from paying permit fees, but must comply with the remainder of this Chapter.

(2) City projects or crews that are funded from Fund 270, Municipal Road Fund, are exempt from paying restoration fees but must comply with the

remainder of this Chapter.

(3) Both the applicant/permittee and the person responsible for their traffic control shall be equally responsible for complying with this Chapter and both shall be subject to fines in case of violation.

(4) Barricading fees shall be calculated on the area of closure required by the MUTCD.

(5) The maximum allowable lane drop per permit is 1600 feet. The maximum allowable excavation length per permit is 660 feet.

(6) Restoration fee area shall be calculated in square yards, as follows: Length of excavation in feet parallel to the centerline of the street, plus 30 feet, multiplied by the pavement width of the street in feet, divided by 9, and multiplied by $3.15.

B. The following fees shall apply to Right-of-Way Use Permits:

(1) Any work on within state rights-of-way – $50

(2) Base Fee (includes first day of barricading for 1 lane) – $50

(3) Work on dirt roads, shoulder work on paved roads – Base fee plus $21/day

(4) Barricading paved roads – Base fee plus $0.01/sq.ft./day of barricaded area. Minimum additional $21/day after first day.

(5) Other barricading fees – See Schedule A, below.

(6) Excavation of paved roads – Base fee plus Barricade Fees plus $3.15/sq.yd. Restoration Fee

(7) Other excavation fees – See Schedule B, below.

(8) Fines – Failure to comply with this Chapter - $500/day.

Schedule A - Other Barricade Fees	
Residential Sidewalk Closures	$21/month
Arterial/Collector Sidewalk Closures	$21/day
Special Events Barricading	$21/day/event
Arterial/Collector Shoulder/Bike lane Closures	$21/day
Bike Path Closure	$21/day
Drop Box or Construction Dumpster	$21/month

Schedule B - Other Excavation Fees	
Curb Cuts	$12.00 each
Drive Pads	$6.00 each
Curb & Gutter	$25.00 for first 100' ($0.25/foot there after)
Valley Gutter	$25.00 for first 100' ($0.25/foot there after)
Sidewalk	$25.00 for first 100' ($0.25/foot there after)
Sidewalk or Driveway Culvert	$25.00 each
ADA Ramp	$6.00 each

Other	
Failure to Comply with this Chapter	$500/day
Haul Route/Heavy Hauler	$50 plus actual~~ly~~ cost of necessary police support.
City inspection overtime	Actual Cost.

(C) Each applicant is responsible for providing the City Engineer with accurate work scope, work zone length and work duration as a basis of fee calculation.

Section 2. Severability Clause. If any section, paragraph, clause, or provision of this Ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder shall for any reason be held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the remaining portions of this Ordinance or the regulation so challenged.

Section 3. Compiling Clause. This Ordinance shall be incorporated in and compiled as part of the Revised Ordinances of the City of Rio Rancho, (R.O. 2003).

Section 4. Effective Date. This Ordinance shall become effective ten days after adoption.

ADOPTED THIS _____DAY OF _____, 2010.

_____
Thomas E. Swisstack, Mayor

_____
Date

ATTEST:

_____
Roman Montoya, City Clerk
(SEAL)