

DATE: June 22, 2014
CITY OF RIO COMMUNITIES
ORDINANCE # 2014-24

CHAPTER 17: STREETS, SIDEWALKS AND EASEMENT

ARTICLE 4: REGULATING PROCEDURES FOR DISTURBING AND REPAIRING CITY PROPERTY AND RIGHTS OF WAY.

17-4-1 Short Title This Ordinance shall be referred to as the City Road Cut Ordinance.

17-4-2 Statement of 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 excavations and restorations thereof.

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17-4-4 Definitions. For purposes of this Ordinance, the following definitions shall apply.

- A. **APPLICANT** means any person required by this Ordinance to apply for a permit to make a road cut.

- B. BORE DRILLING means that the applicant is boring underneath the existing road or city property and will not be affecting either the sub-base on said road or city property. Boring and receiving pits should be identified work in the application.
- C. CITY means the City of Rio Communities, New Mexico as represented by its City Council.
- D. CITY FACILITIES PROJECT means any road cut undertaken as a part of a project initiated by the City and includes related action taken by the utility company to further the City facilities project.
- E. EMERGENCY means any situation or condition existing in which there is an interruption or disruption of gas, electric, 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.
- F. 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 or other material.
- G. EASEMENT means the land owned by the City which parallels the existing roadway, thus allowing limited access for utility implementation by a person/utility company.
- H. FACILITIES are and include, but are not limited to: plants, works, systems, improvements and equipment of the utility company such as pipes, electric substances, mains, conduits, transformers, wires, cables, poles, underground links and meters.
- I. LONGITUDINAL means a cut that is placed lengthwise in its dimension.
- J. JOINT TRENCHING where one or more utility company has joined to install its facilities in a common trench.
- K. PERMIT means the written form provided by the City in which a person describes the road cut which will be performed on public property and in which are contained special conditions required of the person by the City in the execution of the work.
- L. PERMITTEE means a person that has received a road cut permit from the City.

This person/entity will be held responsible for all work described in the application and permit requirements.

- M. PERSON means any individual, estate, trust, receiver, cooperative association, club, corporation, utility company, firm, partnership, joint venture, syndicate or other entity.
- N. PUBLIC FACILITY means any designed, engineered or constructed road structures or engineered drainage facilities owned or maintained by the City located on public rights of way.
- O. PUBLIC RIGHTS OF WAY or PUBLIC PROPERTY means those properties or sites within the City for which the City possesses a real property estate or interest, such as fee simple title, prescriptive easement or dedicated easement, and includes easements, rights of ways, highway or roads, paved or unpaved, curbs, gutters, sidewalks, or other paved, unpaved, un-surfaced or concrete property which the City owns or maintains.
- P) PUBLIC WORKS DIRECTOR means the person employed by the City who is designated by the City Council to hold this position, and/or their designate. If the position of Public Works Director is not filled, the Council may appoint a replacement to act in their place in all phases of this Ordinance.
- Q) RECLAMATION means returning disturbed soils and vegetation back to the original state prior to disturbance.
- R) ROAD is considered the asphalted/graveled area and the utilization of City right-of- way.
- S) ROAD USE means any activity in or adjacent to the roadway (including easement) that affects traffic and pedestrian flow.
- T) ROAD CUT means:
 - 1. The act of cutting a hole, trench, ditch or tunnel in, on, under, or through the surface of a public facility: or
 - 2.The act of drilling, boring, tunneling under or jacking up the surface of a public right of way.
- U) TRAVERSE means a cut that lies across the road.
- V) UTILITY COMPANY means any person, entity, or corporation which provides water, sewer, electric, gas, telephone, or cable television services

to five (5) or more hook ups in the City, 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.

17-4-5 Permit.

A. Permit Application:

1. Every person desiring to make a road cut or utilize City right of way is required to obtain a permit, and must be licensed and bonded, or must be a utility company. 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.
2. No person shall make any road cut on public property until they or designated agent obtains an appropriate permit from the City, except in an emergency. In the event of an emergency, the person may proceed with such activity immediately. An application must be filed 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 City. The emergency work must be conducted in a manner that will not adversely affect the road condition or cause undue hardship to the residents of said location of work.
3. Submittal(s) must include a site map of the proposed road cut that indicates exact path of cut.
4. Submittal must include pre work photos. Post work photos must be submitted in order to close out work permit. Permit will be considered "out of compliance" if post photos are not submitted.
5. Evidence must be presented that insurance requirements have been met in accordance with Section 8, except for City agencies.
6. Contractors working for area utility companies must be on authorized list provided by such utility company or evidence must be presented that any "tie in" or extension of utilities is authorized. This includes but not limited to sewer, gas, water or electric. The authorization must be from the applicable utility company, provider or utility association that services will be provided to the extension or "tie in".
7. A request for a road cut (excavation) permit may be obtained

from the city webpage (www.riocommunities.net). The completed permit and all supporting information can be e-mailed to City Hall (admin@riocommunities.net) or mailed to the city of Rio Communities, PO Box 565, Rio Communities, NM 87002. You must come to City Hall to pay the fees and to pick up the approved forms or make other plans through the City Clerk (505-861-6803). Please check City Hall hours of operation on the webpage.

17-4-6 Excavation and Cuts.

- A. Depth of Cuts: Installation of utility line(s) shall be a minimum of thirty-six inches (36"). Applicant must submit information on all existing culverts bridges, drainage areas that may be affected with the road cut.
- B. 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 structures or equipment.
- C. Length of cut, number of cuts, use of R.O.W.: Upon issuance of the road cut permit, the City 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 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 on an emergency basis.
- D. Maintenance of Traffic and Pedestrian Flow: The permittee must 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 Public Works Director must be notified by the permittee prior to removal of barricades and other traffic control devices.
- E. Permittee's Obligation to Protect Property: The permittee must, at his own expense, support and protect all utilities which may be in any way affected by the road cut and other permitted work, and does everything necessary to support, sustain, and protect them under, over, along or across said work. Before commencing a road cut, the permittee shall determine the location of all utilities by notifying the New Mexico One Call System at 1-800-321-2537 (811 or NM811.org) with the area of the proposed cut. One call notifies the telephone, water, sewer and gas companies. The applicant will need to notify the electric and the cable company on their

own. In the event said utilities are damaged, including damage to pipe coating or other encasement devices, the permittee must immediately notify the utility company of the damage. The permittee shall pay the other utility company for all costs associated with the repair if the permittee was negligent and the facilities were properly marked and located. The permittee must also protect the road cut from surface water flows by appropriate diversions or ponding devices. The permittee must repair asphalt or other road surfaces and other public facilities and public property to reasonable construction and engineering standards to approximate the condition that existed before the work.

- F. Protection of Adjoining Property: The permittee must at all times and at his own expense preserve and protect from injury any property adjoining the 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 must, 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.
- G. 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 place 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. 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 City.
- H. Cleanup: Each permittee must thoroughly clean up from the public place all rubbish, excess earth, rock and other debris resulting from road cut work. All cleanup operations at the location of such 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 City may cause to have such work done, and the permittee shall pay for such at reasonable cost.

- I. Protection of Water Course: The permittee must 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. When crossing a watercourse all utilities must be embedded 48 (forty-eight) inches at a minimum. The City may require the utility to be buried at a greater depth, depending on the type of utility and the condition of the watercourse. All State and Federal permits must be obtained prior to the issuance of the road cut permit and must accompany application at the time of submittal. Failure to do so will delay permit processing.
- J. Cultural Resource: The permittee must obtain clearance from the New Mexico State Historic Preservation Office (NMSHPO) for any work believed to be located on/near a historic site. Requirements from NMSHPO are the sole responsibility of the permittee. Clearance of said work at these sites must accompany the application at the time of submittal. Failure to do so will delay permit processing.

17-4-7 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 City. This shall include both the backfilling of the cut and the restoration of the surface. All backfill must be compacted to 95% proctor under the road surface, and 90% proctor outside the road surface. **Certified density test results must be submitted to the Public Works Director within five (5) working days of completion of said work.** For any person who does not submit compaction test results to the City in a form and with results acceptable to the City, such person shall not be issued any further permits under this Ordinance until the person complies with this Ordinance, and the City 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 of operation of compaction acceptable to the Public Works Director.
- B. Permittee shall restore the surface of the cut in accordance with reasonable compaction and restoration standards. 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 2 weeks after the City's acceptance of any density tests, the permittee shall immediately check with the Public Works Director concerning how and when the public facility shall be resurfaced. The City may require that the permittee cold patch the road cut on a temporary basis.

- C. Cost: The cost for restoration of the road surface shall be borne by the permittee.
- D. City Performance: If a permittee makes a road cut that is not resurfaced within 14 days, and the City has not granted an extension of time, the City may, upon giving notice to the permittee, resurface the road cut and bill the permittee for the reasonable cost. **Unsatisfactory work will result in additional fees of up to \$300.00 per incidence.**
- E. Safety: It shall be the responsibility of the permittee restoring the public place to keep the road cut or surface opening safe for pedestrian and vehicular traffic until the pavement surface or opening has been restored.
- F. Extension of Time: Approval of this permit is valid for a maximum of 28 days. Any time periods may be extended by the City due to weather conditions or other circumstances beyond the control of the permittee, with written permission of the Public Works Director or his/her designee. Extension is not considered approved until permittee has received a written notice signed by the Public Works Director or his/her designee.
- G. State Standards: The permittee shall comply at all times with the appropriate construction standards set forth in New Mexico State Statutes.
- H. Reclamation: The permittee shall restore as practicably as possible, the affected area to the condition it was immediately prior to excavation or development. If the area is fully vegetated, it must be returned to a fully vegetated state. This includes but is not limited to depth of base course or other materials used on road surfaces City will provide standards for materials. Materials may be obtained from an approved supplier or vendor. The City may require additional seeding and restoration work at sites where soils are typified as "highly erosive soils" through the Natural Resource Conservation Service soils guidelines. The applicant may be required to submit a restoration plan and time frame of activities involved for the reclamation depending on the scope of the work.

17-4-8 Liability Insurance or Self Insurance and Bonding.

- A. Certificate of Insurance: No person other than a utility company shall make a road cut or enter a substructure opening or perform road cut work until filing with the City 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 City 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 and the City, in a form and type acceptable to the City, which approval will not be unreasonably upheld.
- C. Performance bonding: A performance bond in the amount of \$15,000.00 (fifteen thousand) must be kept on file at the Public Works Department along with the contractor's license and insurance documents. This section shall not apply to franchised utility companies.

17-4-9 Location and Relocation of Facilities. The City expressly reserves the right to change the grade, install, relocate, or widen the public right of ways within the City and subject to all regulatory approvals. The utility company 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, relocation facilities to a sufficient distance within the right of way 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.

17-4-10 Fees. Fees shall be established by and adopted through resolution by the City Council. Please refer to Exhibit A for fees. The City is not required to obtain a permit for any of its projects. An applicant may appeal the fee process to the City Council. Permits will not be issued until the City Council determines ruling.

17-4-11 Road Cut Warranty. Any person, including a utility company making a road cut is required to correct defective materials and workmanship performed under each road cut permit for a period of one (1) year from the date the work performed under such permit is completed.

17-4-12 Routing of Traffic.

- A. Traffic Conditions: When road cut work is being performed, the person making the road cut must 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.
- B. Notice: The City may require the permittee to notify various public agencies, emergency services, and the public of proposed work prior to issuance of a permit prior to commencement of the proposed work, depending on the scope of work.
- C. Warning Signs: No permits will be issued without the submission of a traffic control plan unless waived by the City. Waiver is not considered valid unless it is signed by the Public Works Director or his/her designee. Warning signs must 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 must 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 part VI and reasonable traffic standards as directed, by the Public Works Director or his/her designee.
- D. Identification Signs: The City 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 street 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.

17-4-13 Noise, Debris and Working Hours. Each permittee must 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 City noise standards. (Emergency conditions may cause exception to this section.)

17-4-14 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 City may not be removed or disturbed without first obtaining permission in writing from the City. Permission to remove or disturb such monuments, reference point or bench marks will be granted only upon condition that the person applying for such permission pay all expenses incident to the proper

replacement of the monument.

17-4-15 Non-Compliance by Permittee. In the event a permittee fails to comply with the requirements of this Ordinance, the Public Works Director may issue written notice of noncompliance and stop all work until the permittee is in compliance. Written or verbal notice will be issued and a fee of \$300.00 may be assessed for non-compliance of this Ordinance. The Public Works Director is authorized and empowered to suspend, cancel or withdraw any license or permit issued by the City to the permittee, within ten (10) business days of the Public Works Director's written decision. The permittee may appeal the Director's decision to the City Council by filing written notice with the Mayor or City Manager. Work is required to cease during the time of appeal and will not be considered in compliance until the Council has made its decision.

17-4-16 Penalty. Any person violating the provisions of the City Road Cut Ordinance shall, upon conviction, be punished by a fine of up to \$300.00 per day for each day of violation.

17-4-17 Severability. If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any portion of the ordinance. Upon signature by the City Council, the governing body of the City of Rio Communities, this Ordinance has been passed and accepted each section, subsection, sentence, clause, word, or phrase and paragraph separately. The City of Rio Communities reserves the right to issue or revoke any permit upon its own discretion for any reason deemed reasonable by the Public Works Director. The City may also deny issuance of a permit to any applicant if there are delinquent compaction test results from previously performed road cuts exceeding 30 days or greater.

17-4-18 Variance procedures. Where it is shown that strict compliance with the requirements of this ordinance would result in extraordinary hardship to the applicant and it can be demonstrated that the applicant is a non-profit organization and is acting in the best interest of the public, an applicant may file a written request for a variance.

- A. A variance in no way absolves the parties from repairing the road to its original state of condition.
- B. Conditions of Variances: In granting variances, the City Council may impose conditions regarding burial of utility lines, reclamation, re-asphalting, re-surfacing and compaction requirements as will ensure that the use of the property to which the variance applies will be as compatible as practicable with and not adversely affect

properties within the work area for the requested variance.

- C. An application for a variance shall be submitted to the Director of Public Works in writing by the applicant indicating the subject of the variance request, or by the applicant's agent, by filing a completed copy of the application, submittals which support the request and a non-refundable filing fee of \$75.00 with the Public Works Department.
- D. Hearing Variance Requests: The City Council shall decide all variance requests within 60 days following the request. Decisions on requests for variances shall be approved by a majority vote of the Council.
- E. Required Findings: Before recommending approval of a variance to the City Council, the Director and his/her designee shall make findings of fact with the respect to the following:
 - 1. Granting of the variance shall not constitute a grant of special privilege inconsistent with the limitations on other road cuts in the area of notice.
 - 2. Granting of the variance shall not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice.
 - 3. Granting the variance upholds the spirit and intent of this Road Cut Ordinance.
- F. Before recommending approval of a variance to the City Council, the Director shall make conclusions of law with respect to the following:
 - 1. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this ordinance.
 - 2. Exceptional or extraordinary circumstances or conditions that are applicable to the site of the variance don't apply generally to other road-cuts in the vicinity.
 - 3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would deprive the applicant of privileges enjoyed by the applicant or other citizens in the area of the proposed cut.

17-4-19 Effective Date. This ordinance shall become effective on the, 2nd day of August 2014.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF RIO COMMUNITIES, NEW MEXICO THIS 22nd day of July 2014 .

Mayor _____ Date: _____

Mayor Pro-Tem _____ Date: _____

ATTEST:

City Clerk

(SEAL)

Addendum A:

The Fee for “Regulating Procedures For Disturbing And Repairing City Property and Rights of Way” is \$125.00 for the permit plus \$1.00 per square foot of disturbed street or roadway. This fee is payable at the City Clerk’s office at the time the permit is issued. An additional 3% service charge is required for Credit Card Charges.