

# CHAPTER 10

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## MUNICIPAL PROPERTY

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- ARTICLE 2. Limiting Encroachment in Public Right-of-Ways

### ARTICLE 1. STREET EXCAVATION

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#### § 10.1.1 SHORT TITLE

This Article may be cited as the “Street Excavation Ordinance.”

#### § 10.1.2 DEFINITIONS

For the purpose of this Article, the following words and phrases mean:

**(A) BARRICADING ONLY PERMIT** means a permit issued by the Mayor allowing the temporary obstruction of the surface of the public right-of-way. Such permits shall not include or allow excavation activities.

**(B) EMERGENCY REPAIR** means repair, restoration, or replacement of an existing structure made necessary because of a sudden unexpected event which has created an immediate and continuing threat to the safety of property or persons.



**(C) EXCAVATION** means any hole, trench, ditch or depression which penetrates through or under paved or unpaved surface in a public place resulting from the removal by a person of pavement, dirt, or other material, except a substructure opening.

**(D) PUBLIC PLACE** means all property owned, maintained, or controlled by the Village including, but not limited to, streets, highways, alleys, bicycle paths, pedestrian or equestrian paths, ways, places, sidewalks, plazas, parks, easements, and rights-of-way.

**(E) PUBLIC RIGHT-OF-WAY** means the total area of land deeded, reserved by plat, or otherwise acquired by the City, the County, or the State of New Mexico, primarily for the use of the public for the movement of people, goods, and vehicles.

**(F) SUBSTRUCTURE** means any facility located below the surface of any public place.

**(G) SURFACE RIGHT-OF-WAY USE** means the use of any surface area within the public right-of-way allowed by an excavation or barricade permit issued by the Mayor which permits the temporary obstruction of a public right-of-way.

### § 10.1.3 APPLICATION PERMIT REQUIREMENTS

**(A)** Every person required to obtain a permit by this Article must make written application to the Mayor on forms provided by the Mayor prior to the performance of any work. The written application must state the name, telephone number, address, and principal place of business of the applicant, an estimate of the location and dimension of the installation or removal for which the excavation is to be made, the purpose of the facility and the estimated length of time (calendar days) which will be required to complete the work, including backfilling the excavation and removing all obstructions, material, and debris. This approved permit shall give the applicant authority to occupy the public place for which the permit was sought. Normally this permit will be issued within seventy-two (72) hours. The application, when approved and signed by the Mayor, constitutes a permit.

**(B)** In the event of an emergency, excavations may be made without first obtaining a permit, provided that each person so making an excavation file his application for permit during the first work day immediately following the date of the commencement of excavation.

**(C)** No person may be issued an excavation permit until the following actions are completed:

**(1)** The applicant must complete and sign a permit application.

**(2)** The applicant must present evidence that insurance requirements have been met in accordance with § 10.1.5.

**(3)** The Applicant must post bond in the amount of five thousand dollars (\$5,000.00) except for Village franchised utilities. This bond will ensure completion of all phases of the work, including corrective work under the one (1) year warranty provision of this Article.

**(4)** The applicant must certify in writing that he has read and understands the contents of this Article.

**(5)** The applicant must agree to the following:

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

**(b)** Complete any specific item within five (5) days after written notice is given by the Village to do so;



(c) Should the work not be completed within this period, the Village will complete it and bill the applicant at established charges for such work;

(d) Repair or correct incomplete work or defective materials and workmanship which occur within a period of three (3) years from the acceptance date by the Village of such work.

(6) Persons responsible for work, including the applicant's employees, must be licensed by the State of New Mexico for the excavation work, except for Village franchised utilities.

(D) All requirements outlined above must be kept current, including insurance policies. These policies will be reviewed periodically and no permits will be issued when insurance policies are not in effect. The permit remains valid for as long as bonds and insurance remain current and so long as permit requirements are met. Fees for this permit shall be established by Rule, pursuant to the procedures set forth in § 10.1.6 of this Article.

#### **§ 10.1.4 PERMITS AND APPROVALS**

(A) No person may excavate in a public right-of-way without first obtaining a permit from the Mayor to do so, except as otherwise provided in this Article. An excavation permit shall be required for the underground installation in a public right-of-way of any facility by trenching, boring, jacking, or tunneling.

(B) Construction methods for installations in which trenching, boring, jacking, or tunneling under a public right-of-way are involved require specific prior approval of the Mayor. Construction methods may be reviewed and approved for the purpose of protecting public improvements and right-of-way.

(C) The Mayor may issue such rules, standard details, and regulations as are required to enforce this Article. Copies shall be mailed to each licensee.

(D) No person shall barricade a public right-of-way without first obtaining a Barricade Only Permit issued by the Mayor. A separate Barricade Only Permit shall not be required for barricade activities included within an excavation permit.

(E) Every person who barricades a public right-of-way surface use shall obtain from the Mayor a Barricade Only Permit. A written application in a form acceptable to the Mayor shall be submitted as an application to obtain a Barricade Only Permit. The fee for the Barricade Only Permit shall be established pursuant to § 10.1.6 of this Article. Such permit shall not be valid until signed by the Mayor and all fees have been paid and shall not be valid after the expiration date on the permit.

(F) Any person obtaining a permit under this Article shall have knowledge of and comply with all applicable OSHA and state safety rules and regulations.

#### **§ 10.1.5 LIABILITY INSURANCE OR SELF INSURED PUBLIC UTILITY COMPANIES**

Whether or not required to apply for a permit under this Article, no person shall make an excavation or perform work under such a permit, or perform earthwork in a public place, until a certificate of insurance satisfactory to the Mayor is provided indicating that he is insured against claims for damages for personal injury and for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him or his subcontractor. Such insurance must cover



collapse, explosive hazard damage to nearby utilities and underground work by equipment on the street, and must include protection for a period of one (1) year from the date of completion of an excavation against liability arising from completed operations. The liability insurance for bodily injury must be in an amount not less than five hundred thousand dollars (\$500,000) for each person and one million dollars (\$1,000,000) for each occurrence, for property damage in an amount not less than two-hundred fifty thousand dollars (\$250,000) with an aggregate of five hundred thousand dollars (\$500,000) for each occurrence. Each such certificate must provide that the Mayor be given ten (10) days notice of cancellation in writing from the insurance company.

Any public utility company having a net worth in excess of ten million dollars (\$10,000,000) is not required to comply with the insurance requirements of this Section, if it furnishes to the Mayor its written election to be self-insured and satisfactory proof annually of such net worth. The self-insured company shall agree to be responsible for and shall hold the Village harmless against all claims and liabilities arising from the excavation or for entering into a substructure opening by the company, or its subcontractor, or anyone directly or indirectly employed by the company or its subcontractor for the same periods of time and types of acts or failure to act for which insurance coverage would otherwise be required by this Section.

#### **§ 10.1.6 EXCAVATION, ADMINISTRATION AND INSPECTION FEE**

The Mayor shall periodically adopt rules which amend the fee for excavation administration and inspection so that fees are set at Village cost. In setting fees, the Mayor shall publish notice of his proposed action and give interested persons an opportunity to comment prior to action.

#### **§ 10.1.7 EXCAVATION PERMIT WARRANTY AND RESTRICTIONS**

**(A)** The Village will not accept for maintenance any street the construction of which is funded by private sources and which has been cut by excavation of any bituminous or concrete layer of pavement unless permits and restoration fees required by this Article for each such excavation were obtained by: (1) the developer contracting for such pavement; (2) any builder or subcontractor for such builder to whom the developer has sold a lot contiguous to such pavement; or (3) paving contractor for the developer.

**(B)** The applicant is required to correct incomplete or defective materials and workmanship performed under each permit for a period of one (1) year from the date the work was completed and accepted by the Village.

**(C)** During the three (3) year period following acceptance by the Village of a street or a portion of a street which has been newly constructed or has received major reconstruction, overlay heater-remix, or other types of major maintenance, excavation permits other than those for emergency work will not normally be issued for that street or section of street. Lines may be placed by boring, jacking, or tunneling so long as major cuts in the streets are not required and provided the permits and prior approval of the Mayor are obtained as required in § 10.1.4 of this Article.

**(D)** When work is performed on a street for which Federal Highway funds are contributed, the period described in § 10.1.7.(B) is extended to five (5) years.

**(E)** The warranty and restrictions described in § 10.1.7(B) and §10.1.7(C) do not apply when the work performed does not cut the street surface.



### **§ 10.1.8 MAINTAINING AND ROUTING OF TRAFFIC AND PEDESTRIAN FLOW**

**(A)** During the entrance into a substructure opening or performance of excavation work, the applicant 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 property and to the public.

**(B)** The Mayor may at his sole discretion require in writing that any applicant notify various public agencies and the public of proposed work prior to issuance of a permit or as a condition of issuance, prior to proposed work.

**(C)** Warning signs must be placed near each excavation or substructure opening being entered so as to give adequate warning to vehicular and pedestrian traffic both night and day. Cones or other approved devices must be placed to channel traffic, all in accordance with the Uniform Manual on Traffic Control Devices Section V, the New Mexico Manual and Specifications For a Uniform System of Traffic Control devices (latest edition), and such regulations as may be adopted by the Mayor from time to time.

**(D)** The Mayor may at his sole discretion require that the applicant provide traffic control of the type and duration required by the Mayor, at the cost of the applicant. The Mayor may require payment in advance.

**(E)** The applicant must maintain safe and adequate passage of vehicle and pedestrian traffic on all streets and at all street intersections. When a street has been closed or detoured because of an excavation, the Village must be notified prior to removal of barricades and other traffic control devices.

**(F)** Traffic markings removed as a part of the excavation shall be replaced by the applicant with materials similar to those originally in place and in a manner satisfactory to the Mayor, or the Village may elect to replace them at the applicant's expense.

### **§ 10.1.9 CLEARANCE OF VITAL STRUCTURES**

Work under the provisions of this Article must be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, and all other vital structures or equipment designated by the Mayor.

### **§ 10.1.10 PROTECTION AND RELOCATION OF UTILITIES**

The applicant must, at his own expense, support and protect all utilities which may be in any way affected by the excavation work and do everything necessary to support, sustain, and protect them under, over, along or across the excavation. In the event utilities are damaged (and for this purpose, pipe coating or other encasement or devices are to be considered as part of the utility), the owner of the utilities must be notified immediately and the damage repaired by the owner. Billing for such repair shall be made by the utility owner and paid for by the applicant. The applicant shall inform himself, before excavating, of the location of all utilities in or near the area of the excavation. The applicant is encouraged to use the services of the New Mexico One Call, Inc. ("NMOC") for location of existing utilities. The applicant must also protect the excavation from surface water flows by appropriate diversion or ponding devices. However, the applicant must prevent damage to property or structures of others as a result of the installation of such protection.



### **§ 10.1.11 NOISE, DUST, DEBRIS AND WORKING HOURS**

Each applicant must conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the public and occupants of neighboring property with respect to noise, dust, debris and working hours.

### **§ 10.1.12 PROTECTION OF ADJOINING PROPERTY**

The applicant must at all times and at his own expense preserve and protect from injury any adjoining property. The applicant must at his own expense shore up and protect all buildings, walls, fences, or other property including when damage results from the applicant's failure to take adequate protective measures. Where it is necessary to enter upon private property for the purpose of taking appropriate protection measures, the applicant must obtain permission from the owner of such private property. The applicant may not remove, cut or trim any trees or shrubs in any public place.

### **§ 10.1.13 CARE OF EXCAVATED MATERIAL**

All material excavated and piled adjacent to the excavation or in any public place, must be piled and maintained so as not to endanger the public and the persons 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 excavation and kept trimmed so as to cause as little inconvenience as is reasonably possible to vehicle and pedestrian traffic, unless otherwise directed by the Mayor. Excavated material may not be used as a barricade.

In order to expedite flow of traffic or to keep dirt and dust from spreading or flying, the applicant shall use guards or other methods or shall water the excavated material. Special care shall be taken to prevent excavated material from being placed in irrigation ditches, trench drains, catch basins, etc.

### **§ 10.1.14 CLEANUP**

Each applicant, at his own expense, must thoroughly clean up all rubbish, excess earth, rock and other debris resulting from excavation work. Immediately after completion of such work, the Mayor may order, in writing, the applicant to clean up and remove all refuse, dirt and unused materials of any kind resulting from the work. If the applicant fails to perform the work ordered by the Mayor within twenty-four (24) hours, the Mayor may have the work done and require payment by the applicant.

### **§ 10.1.15 PROTECTION OF WATER COURSE**

The applicant must maintain all gutters, easement crossings and related drainage water free and unobstructed for the full depth and width or provide adequate substitutes for any water courses which are blocked by the excavation.

### **§ 10.1.16 BREAKING THROUGH PAVEMENT**

(A) The use of pavement breakers which endanger existing structures or other property are prohibited.



**(B)** The Mayor may require saw-cutting of concrete when the nature of the job or condition of the street warrants. When required, the depth of the cut must be at least 1/3 the total thickness of the pavement.

**(C)** Sections of sidewalks or curb and gutter are to be removed to the nearest expansion joint, score line or saw-cut edge. Sidewalk cuts parallel to the street shall normally require removal of the entire sidewalk, unless other methods are approved in writing, in advance, by the Mayor.

**(D)** Unstable pavement must be removed over cave-ins and the subgrade is to be treated in the same manner as the main excavation.

**(E)** Pavement edges must be trimmed to a vertical face and neatly aligned with the center line of any trench. All cuts shall be parallel or perpendicular to the street except for drop inlet connection lines.

**(F)** The applicant is not required to repair damage existing prior to excavation, unless his cuts leave small floating sections that may be unstable; in which case, the applicant must remove such sections and backfill such areas as well as the area of the excavation.

**(G)** All such excavations shall be accomplished in accordance with standard details approved by the Mayor.

**(H)** Applicant shall take reasonable steps to minimize noise levels.

#### **§ 10.1.17 DEPTH OF STRUCTURES**

The minimum cover of any new substructure excepting lawful entrances thereto, shall be in accordance with the currently approved primary utility location drawings for such streets, unless otherwise permitted in writing by the Mayor. Nothing in this Section imposes a duty upon any person owning a utility to maintain the depth required herein upon subsequent changes in grade in the surface unless, in the opinion of the agency or political subdivision of the State (including the Village), the grade of said substructure interferes with the public safety or maintenance of or travel on a public place in which case the substructure must be lowered by the owner.

#### **§ 10.1.18 BACKFILLING**

Unless specifically exempted in writing by the Mayor, any person who trenches or excavates on or within a public place for any purpose whatsoever is required to backfill the trench or excavation as follows:

**(A)** In all trenches or excavations, the material used in backfilling must consist of the original excavated material or other material as required by the Mayor in finely-divided form free from large lumps, large stones, rocks, pieces of old concrete or asphalt pavement, or large wet or gummy masses and must be placed compacted in layers or lifts as hereinafter provided from the bottom of the trench or excavation to the top of the trench or excavation.

**(B)** Each layer or lift is to be placed evenly, level, and of such a depth that the degree of compaction as required herein may be obtained throughout the entire backfill, without exceeding the depth of layer or lift as recommended by the manufacturer of the compaction equipment being used, for various soil types encountered, or as determined by actual compaction tests of the lift or layer in place, or as directed by the Mayor. In no case is the method of compaction being used to cause damage to the pipe line or other subsurface structures in the trench, excavation or adjacent thereto.



**(C)** The backfill material when placed in the trench must be thoroughly compacted to a minimum of ninety percent (90%) of maximum density throughout the entire depth of the excavation or trench, with the exception that the top six inches (6”) in residential streets and the top twelve inches (12”) in arterial streets must be compacted to a minimum of ninety-five percent (95%) of maximum density. Tests for compliance with this Article shall be performed by a laboratory approved by the Village. The ninety-five percent (95%) of maximum density requirement may be waived if the backfill or subgrade material contains thirty-five percent (35%) or more of material passing the No. 200 sieve, in which case the compaction must not be less than ninety percent (90%) of maximum density. The moisture content of the backfill material in place must not exceed the optimum by more than two percent (2%) nor be less than the optimum by more than five percent (5%) unless otherwise directed by the Mayor. The obtaining of the correct moisture content is the responsibility of the person doing the trench or excavation backfill. Optimum moisture and maximum density shall be determined in accordance with American Society for Testing and Materials (ASTM) D-1577 including all revisions thereof. Costs for such testing shall be paid by the applicant.

**(D)** When a trench or excavation has been cut through existing pavement, the compaction for the top six inches (6”) and twelve inches (12”) (as referred to in paragraph D above) means the six inches (6”) or twelve (12”) of material placed immediately below the bottom or base of the existing pavement slab. The remainder of the backfill up to the top of the existing pavement surface is to be compacted sufficiently to provide a level and safe riding surface and maintained in that condition by the applicant, until the permanent pavement patch can be placed. The permanent pavement patch shall be placed within twenty (20) days.

**(E)** In the event the completed backfill fails to meet the density requirements of this Section when tested, or otherwise fails as evidenced by settlement of the trench or excavation, the Mayor may order the faulty backfill material removed, replaced, and recompact to the required density specified herein and re-tested at the applicant’s expense. He may also order the replacement of all pavement destroyed or damaged as the result of the backfill failure settlement.

**(F)** In the event an applicant fails to comply with the requirements of this Section, the Mayor may, with proper notice and a hearing, refuse to permit the applicant to thereafter engage in trenching or excavation work in any public place. The Mayor is authorized and empowered after a hearing to suspend, cancel or withdraw the license or permit issued by him for the performance of any work which is not being done in accordance with this Article or to the reasonable satisfaction of the Mayor. The decision of the Mayor may be appealed to the Board within ten (10) days of the decision.

### **§ 10.1.19 RESTORATION OF SURFACE**

**(A)** Upon completion of the backfilling of any excavation, the permittee must notify the Mayor. Permanent resurfacing may be done by the applicant, if qualified, or by a contractor approved by the Mayor, at the applicant’s expense. The applicant or other contractor must resurface the excavation within a period of ten (10) days after acceptance of density tests. The applicant remains responsible for keeping the excavation safe for pedestrian and vehicular traffic until the pavement surface has been accepted.

**(B)** Acceptance or approval of excavation work or backfilling by the Mayor does not prevent the Village from asserting a claim against the applicant for incomplete or defective



workmanship or materials if discovered within three (3) years from the completion and Village acceptance of the excavation work or backfilling. The presence of the Mayor during the performance of the work does not relieve the applicant of his responsibilities hereunder.

#### **§ 10.1.20 APPROVAL OF WORK PERFORMED PURSUANT TO SECTIONS 16, 17 AND 18**

Compliance with Sections 16, 17 and 18 requires the Mayor's written approval of the qualifications of the applicant, or of any person, firm or corporation performing the work.

#### **§ 10.1.21 TRENCHES IN PIPE LAYING**

The maximum length of open trench permissible at any time must not exceed one thousand (1,000) feet. No pavement may be scored or otherwise marked for removal in excess of the one thousand (1,000) foot limit.

#### **§ 10.1.22 PROMPT COMPLETION OF WORK**

The applicant must begin work at the site indicated upon the permit within ten (10) days from the date an excavation permit is issued. Should no work be started at the work site within that period, the permit shall be null and void, with no reimbursement of fees. The applicant shall obtain a new permit, including payment of required fees before any work is started. After an excavation is commenced, the applicant must pursue with diligence and expedition all excavation work covered by the excavation permit and must promptly complete work and restore the public place to its original condition, or as near as can be, so as not to obstruct the public place or travel thereon more than reasonably necessary. The excavation shall be backfilled and tested three (3) days after completion of work within the excavation and the site restored to original condition within ten (10) days after density tests are accepted. Should weather conditions prevent work completion, these deadlines may be extended by the additional time required by such conditions.

#### **§ 10.1.23 URGENT WORK**

If, in the judgment of the Mayor, traffic conditions, safety or convenience of the traveling public, or the public interest require that excavation work be performed speedily, the Mayor may, at the time the permit is granted, order that sufficient workers and adequate facilities be employed by the applicant twenty-four (24) hours a day for the purpose of completing such excavation work in the shortest time possible.

#### **§ 10.1.24 PRESERVATION OF SURVEY MONUMENTS**

Any survey monument set for the purpose of locating or preserving the lines of any street, property subdivision, precise survey reference point, or a permanent survey bench mark within the Village may not be removed or disturbed without first obtaining permission in writing from the Mayor. Permission to remove or disturb such monuments, reference points, 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.

#### **§ 10.1.25 INSPECTION**

The Mayor may make such inspections as are reasonably necessary in the enforcement of this Article.



### **§ 10.1.26 ENFORCEMENT AND ABATEMENT**

**(A)** Whenever the Mayor determines or has reasonable cause to believe that anyone has violated the terms and requirements of a permit or the provisions of this Article or other applicable law or regulation or rule, he shall notify that person, who shall cease all violations no later than the same day the notice is given.

**(B)** In the event a violation or violations present an imminent and substantial endangerment to the health, safety or welfare of persons or property, the Mayor shall give notice to the Permittee or to anyone involved with the violation that imminent danger exists, and that person shall cease at the time the notice is given all acts, errors or omissions resulting in the violation.

**(C)** Upon a determination that a situation poses an immediate threat to public health, safety or welfare, the Mayor may take all reasonable action necessary to protect the public. The Village shall not be liable to the Permittee for any damages or loss resulting from such actions. Permittee shall be responsible for all costs incurred by the Village.

**(D)** Failure of the Mayor to provide notice shall not in any way relieve the offender from any consequences resulting from the failure to comply with this Article, the permit and all applicable regulations, rules and laws.

#### **Ordinance and State Law References regarding Chapter 10, Article 1(f/k/a Chapter 25):**

Ordinance #107, October 14, 1992;

Ordinance #134, enacted Feb. 14, 1996, codified ORD #107 as Chapter 25, with modifications;  
American Society for Testing and Materials (ASTM) D-1577.

