

**LEA COUNTY, NEW MEXICO
RIGHT OF WAY ORDINANCE
ORDINANCE NO. 100**

**AN ORDINANCE ESTABLISHING RULES AND PROCEDURES GOVERNING USE OF
COUNTY RIGHT-OF-WAY, REPEALING AND SUPERSEDING ORDINANCE NO. 86**

Section 1. SHORT TITLE

This Ordinance will be known as the Right-of-Way Ordinance.

Section 2. PURPOSE AND INTENT

This Ordinance establishes the administrative process utilities and other persons must follow to gain permission to use County right-of-way, and the engineering and design standards a utility must satisfy to perform any work or place any facilities within the right-of-way and the fees to be paid therefor.

Section 3. AUTHORITY

- A. Lea County (hereinafter "County") owns, maintains, or is responsible for approximately 1,250 linear miles of right-of-way, including, but not limited to, roadways and easements, within the unincorporated areas of the County. From time to time, utilities and other persons desire to occupy, use, construct or excavate within the County right-of-way.
- B. The Board of County Commissioners has the statutory authority and responsibility to make such orders concerning County property, including right-of-way, as it may deem expedient. (NMSA § 4-38-13) The Board of County Commissioners must grant the use of County-owned property pursuant to New Mexico statutes and the New Mexico Constitution. In the absence of specific statutory provision to the contrary, the Board of County Commissioners "represents the county and has the care of the county property and management of the interest of the County in all cases where no other provision is made by law." (NMSA § 4-38-18)
- C. The New Mexico Constitution requires that the County receive full compensation for the use of its property. "Neither the state nor any county, school district or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation. . .". (New Mexico Constitution, Article IX, Section 14)

- D. While regulated public utilities are "authorized to place their pipes, poles, wires, cables, conduits, towers, piers, stations and other necessary fixtures, appliances and structures, upon or across any of the public roads, streets, alleys, highways and waters in the state," such use of County property is "subject to the regulation of the County commissioners...". (NMSA § 62-1-2) Additionally, nonregulated mutual domestic water associations and water and sanitation districts also require access to County right-of-way. The Board of County Commissioners wishes to foster the continued expansion of utility service throughout the unincorporated areas of the County. The Board also wishes to provide that the County be compensated for the reasonable costs involved in the use of the right-of-way, for administrative expenses incurred in the processing of the necessary permits, as well as for the required monitoring of the progress of the work and protection of the public health, safety and welfare. Further, under NMSA § 62-1-3, the Board of County Commissioners is authorized to impose charges for reasonable actual expenses incurred in the granting of such right-of-way use to a utility for use of County right-of-way. Harmonizing the language of Article IX, Section 14, of the New Mexico Constitution with the aforementioned statutes, it is manifest that the County must take the proper steps to ensure that utilities and other persons wishing to use County right-of-way compensate the County for actual reasonable expenses relating to their use of the County's property.
- E. Therefore, pursuant to the conditions of this Ordinance, the Board of County Commissioners will require parties wishing to use County right-of-way to compensate the County for all the County's reasonable costs incurred directly and indirectly in permitting the use of County right-of-way, including, but not limited to, the costs of mapping, managing, and coordinating the use of the right-of-way by the various parties, along with the administrative and general costs related to processing applications for use of the right-of-way and the enforcement of the terms of this Ordinance.
- F. Further, the Board of County Commissioners will require utilities or persons using County right-of-way to adequately indemnify, hold harmless and defend the County against all possible claims of loss or damage arising out of the use of the right-of-way.
- G. All uses of County right-of-way must be coordinated to ensure the maintenance of public health, safety and welfare pursuant to NMSA § 4-37-1; to allow the Board of County Commissioners, to the extent permitted by law, to prioritize the use of County right-of-way; and to achieve County goals. It is a goal of the Board of County Commissioners to reduce the possibility of unnecessary duplication and economic waste in the use of County right-of-way and to use and grant the use of its right-of-way consistent with the best interests of the County and its inhabitants. Therefore, consistent with New Mexico law, the County may deny any application for use of County right-of-way that the Board of County Commissioners finds would or may interfere with an existing use of the right-of-way by those utilities which have valid permits issued by the County, or which have entered into a right-of-way use agreement with the County, pursuant to terms of this Ordinance. In addition, consistent with New Mexico law, the Board of County Commissioners may deny any application for use of County right-of-way that the Board finds would or may

duplicate the County's own planned or actual use, would negatively affect a County purpose or project, or may be harmful to the health, safety and welfare of the public.

- H. The Board of County Commissioners may by separate resolution establish and appoint a Utility Advisory Planning Council for the purpose of advising and assisting the Board with the creation of a County-wide utility plan for the orderly and coordinated growth and expansion of utilities within the County.
- I. Nothing in this Ordinance should be construed or interpreted to affect or to impair the jurisdiction of the New Mexico Public Utility Commission or other statutorily created agency having jurisdiction over public or nonpublic entities or to affect or to impair a regulated public utility's rights and obligations under the New Mexico Public Utility Act, NMSA § 62-3-1 et seq., or any other state act.

Section 4. APPLICABILITY

This ordinance shall be effective and enforced within the geographical boundaries of Lea County, except for those areas that lie within the boundaries of any incorporated municipality.

Section 5. DEFINITIONS

As used in this Ordinance, the following terms shall have the meanings indicated:

- A. "actual and reasonable expenses"

All expenses directly or indirectly incurred by the County related to permitting the use of County right-of-way by utilities or persons, including but not limited to, the costs of mapping, managing, and coordinating the use of the right-of-way by the utilities or persons, along with the administrative and general costs related to the processing of application for use of the right-of-way, and the enforcement of the terms and conditions of this Ordinance, and any other cost or expense reasonably associated with the maintenance of the right-of-way in a manner that protects the health, safety and welfare of the public.

- B. "aerial"

Installation of new facilities suspended above ground level.

- C. "applicant"

Any utility or person required to obtain a permit pursuant to the terms and conditions of this Ordinance.

- D. "county"

Lea County or the Board of Commissioners of Lea County, as the context requires.

E. "emergency"

Any situation necessitating excavation of, use of, or entrance onto the County right-of-way for the purpose of locating a problem area or to make repairs in a facility when circumstances are such that delay in correcting the problem or making the repair would present a substantial and real threat of injury, would harm the health, safety and welfare of the public, or would likely result in serious property loss or damage.

F. "excavation"

A hole, trench, ditch or depression in a right-of-way resulting from the removal or moving of the pavement, or dirt or other material; not a substructure opening.

G. "facility"

Any pipe, pipeline, tube, main, service vent, vault, manhole, meter, regulator, valve, conduit, pole, line, cable, anchor, structure, or object of any kind, type, manner or character, whether listed herein or not, which is or may be lawfully constructed, left, placed or maintained upon, along, above, across, under or within the right-of-way.

H. "maintenance"

Repair of existing facility that does not include system rehabilitation.

I. "meter replacement"

Replacement of an existing meter located within a County right-of-way.

J. "permit"

A permit issued by the County pursuant to the terms and conditions of this Ordinance which allows the use of County right-of-way by utilities and other persons.

K. "permittee"

An applicant whose permit request has been approved and who holds a valid permit.

L. "person"

Any individual, estate, trust, utility, receiver, association, subdivision of the state, cooperative, club, public or private corporation, company, firm, partnership, joint venture, syndicate, municipality or any other entity.

M. "public place"

All property owned by or maintained by the County, including, but not limited to, streets, highways, alleys, planes, sidewalks, plazas, parks, easements, curbs, and drainage ways, which constitute County right-of-way.

N. "right-of-way"

See "public place."

O. "right-of-way administrator"

The individual designated by the County Manager to administer this Ordinance and the County right-of-way permit operation, to include, but not be limited to, the receipt, review, processing, approval or denial of permit applications, approval and denial of administrative variances and maintenance of County right-of-way records.

P. "right-of-way use agreement"

An agreement entered into between a utility or other person and the County for use of County right-of-way.

Q. "right-of-way use fee"

The fee paid by persons or utilities utilizing County right-of-way pursuant to the terms and conditions of this Ordinance.

R. "service hook-up"

Any excavation, not exceeding the width of the affected County right-of-way, necessary to allow a single meter hook-up for a single property owner to tie into an existing utility line for the purpose of securing utility service, but does not include line extensions.

S. "substructure"

Any facility located below the surface of a County right-of-way.

T. "substructure opening"

An opening into a lawfully permitted substructure, the top of which is required to be flush with the adjoining surface within a County right-of-way, and which is constructed so as to permit frequent utilization, without requiring the removal of pavement, dirt, or other material, while maintaining the health, safety and welfare of the public.

U. "trenching"

Installation of new facilities below ground level.

V. "use"

Performance of work within and/or occupation of County right-of-way, including, but not limited to, the excavation of materials, boring, maintenance and checking of substructures and substructure openings; and/or the use of the right-of-way to place any facility thereon or therein.

W. "utility"

A person, as defined in this Ordinance, whose primary function is the provision of certain services of a somewhat permanent nature to the public or third parties, which services include, but are not limited to, electrical, gas, water, wastewater, and telecommunications services. This does not include persons whose primary function is the provision of services of a more temporary nature to the public or third parties, which services include, but are not limited to, water provided for "fracking"/oil/gas production or removal of water that has been used for "fracking"/oil/gas production.

Section 6. PERMIT APPLICATIONS; INSURANCE; FEES; ISSUANCE/DENIAL; APPEALS.

- A. Any person or party wishing to obtain a permit from the County pursuant to this Ordinance must submit the following information to the Right-of-Way Administrator:
- (1) The name, telephone number, address, and place of business of the applicant and their engineers and/or contractors.
 - (2) A detail drawing and written description of the location and dimensions of the proposed use of the County right-of-way, including a plan view and cross-section view of the proposed use, which are sufficient to indicate the placement of any facilities or to locate the work to be performed. (Five complete sets shall be submitted for review.)
 - (3) The method by which the proposed use within the right-of-way will be accomplished, including an estimate of the amount of time required to complete any actual work to be performed within the right-of-way, including backfilling and removal of all obstructions, materials and debris, and restoration of the surface. The applicant's authority to use the County right-of-way shall be limited to the purposes and work plan specifically authorized by the permit.
 - (4) The purpose and function of any facility to be located within the right-of-way.
 - (5) All road crossings on paved roads shall be performed by boring rather than excavating, except where boring is not reasonably justified as determined by the County. In situations where the applicant wishes to perform a road crossing by excavation in lieu of boring, the applicant shall provide written justification therefor to the Right-of-Way Administrator. Some examples of conditions where boring may not be justified are lack of adequate room in the County right-of-way to operate boring equipment; boring on gravel or dirt roads.
- B. In all cases where the work to be done in the County right-of-way is to be done by a utility, the utility must be the applicant.
- C. The applicant shall be required to provide proof of adequate insurance in an amount satisfactory to the County indicating that the applicant has sufficient insurance to protect both the County and the applicant for any and all claims or damages arising out of bodily injury, including death, to any party, including the applicant, and his employees and agents and the County employees

and agents, and from claims for damaged property, which may arise out of, or result from, the applicant's use of the County right-of-way, including completed or ongoing operations performed within the County right-of-way. At a minimum, the policy coverage and limits shall be those set forth in NMSA § **41-4-19**. To simplify this requirement, utilities that operate in the County may file with the Right-of-Way Administrator a copy of the utility's master or applicable insurance policy which provides the above-delineated coverage. Such policies must be refilled yearly. The utility is obligated to provide the County with notice of cancellation of its policy, if that event should occur. The applicant must agree to defend, hold harmless, and indemnify the County and its officers, agents and employees against all claims, losses and damages to persons or property on account of or resulting from the intentional or negligent conduct on the part of the permittee in the permittee's use of the County right-of-way, or any work, duties, or obligations performed pursuant to the terms of this Ordinance and the duly issued permit.

- D. No permit shall be issued until proof of adequate insurance has been provided by the applicant to the Right-of-Way Administrator. No permit shall be issued until the applicant signs agreements required by the County or its insurance carrier to signify the applicant's willingness and ability to defend, indemnify and hold the County harmless as required by this Ordinance.
 - E. Upon receipt of the application, and, except as specifically hereinafter set forth, the nonrefundable application fee as set forth in this Ordinance, Fees and Permits, the County will review the request. The Right-of-Way Administrator will verify the information provided in the application and will process the application through relevant County departments. The application will be further reviewed to determine if it is consistent with the terms and conditions of this Ordinance and will not impact upon or impair other permitted uses or planned projects and is not detrimental to the health, safety and welfare of the public.
 - F. The Right-of-Way Administrator will also review the work plan to determine whether the use of the right-of-way can be accomplished pursuant to the engineering and construction standards set forth in this Ordinance, and as may be amended and promulgated by the County in the future, and set forth in subsequent ordinances or resolutions.
 - G. In most cases, within a maximum of 21 days of receipt of the completed application and nonrefundable application fee, the Right-of-Way Administrator will notify the applicant by e-mail, regular mail and/or by telephone of the acceptance or denial of the application. If the application has been approved, the applicant will be notified in writing of the terms and conditions of the permit, including the right-of-way usage fee. The permit will be valid only upon payment of all applicable fees. Where the proposed project is expansive or complex, as determined by the Right-of-Way Administrator, more than 21 days may be required. In that event, the Administrator will notify the applicant and will inform the applicant of the estimated additional time needed.
 - H. Except as otherwise specifically provided for in this Ordinance, the fees for which are hereinafter set forth, usage fees shall be based upon the lineal feet of right-of-way to be used by the applicant.
- (1) The fees for trenching and all uses of the right-of-way placed below ground level shall be as set forth in this Ordinance, Fees and Permits.

- (2) The charge per lineal foot for placement of facilities in the right-of-way above ground level shall be as set forth in this Ordinance, Fees and Permits.
 - (3) If, concurrent with the installation of a new utility line, service connections are being made to customers from that new line, there will be no additional fee to be paid for each hookup. The fees paid for the permit and lineal-foot usage shall include those service connections.
- I. No fee shall be required for work within the County right-of-way performed at the request of the County for a County project, unless it is a County water or wastewater utility project where the County will be providing water or wastewater utility to customers who will pay fees and other charges to the County.
 - J. Fees for service hook-ups shall be as set forth in this Ordinance, Fees and Permits. Service hook-ups do not require an additional application permit fee beyond the fees provided-for in this Subsection J. However, a permit must be secured.
 - K. A maintenance/repair permit must be obtained by any utility or person for any maintenance or repair work to be done on its lines or facilities where excavation will be required into the County right-of-way to perform the maintenance or repair. The fee for said permit shall be as set forth in this Ordinance, Fees and Permits. Such maintenance/repair excavations may be subject to the provisions, reviews, inspection and testing provisions of this Ordinance. If the maintenance/repair excavation is to exceed 250 feet, then the full permit fee and the fee schedule per lineal foot provided for in Subsection H above shall apply in lieu of the permit fee. A maintenance/repair permit shall not require any fee beyond that set forth in this Subsection K. However, a permit must be secured. System rehabilitation is not considered maintenance/repair.
 - L. Exception to permit requirement.
 - (1) Where a utility or other person wishes to replace or exchange a water, sewer, electric or other utility meter, a permit from the County will not be required if the following apply:
 - a. The meter is above ground, and there will be no impact on the County right-of-way.
 - b. The meter is underground and encapsulated in a manhole, but there will be no further impact on the County right-of-way.
 - c. The meter is underground, but will involve minimal ground disturbance, as determined by the Right-of-Way Administrator.
 - d. If the meter is underground and will involve substantial trenching or ground disturbance, as determined by the Right-of-Way Administrator, a maintenance/repair permit as provided for in Subsection K above is required.
 - (2) If a permit is not required, it is still incumbent upon the utility to meet all other applicable standards and to inform the Right-of-Way Administrator of such work within 24 hours prior to work commencement.

- M. For projects that will require a deviation from the nature, scope or amount of right-of-way use envisioned within this Ordinance, the County reserves the right to exact higher fees which will be mutually agreed upon by the County and the applicant.
- N. As an alternative to payment up-front on each project for which it seeks a permit, a utility operating in the County may establish a credit account with the County under which it would be billed monthly for charges incurred in the previous month, with payment due within 30 days after billing. This credit arrangement may be withdrawn by the County in the event that a utility becomes delinquent in its payments to the County or in the event that a utility continues to be in violation of this Ordinance after notice of violation. If the County is required to commence litigation against a utility to collect unpaid and delinquent balances, the County shall have the rights and remedies available to it by New Mexico statute, including the award of prejudgment interest and of attorney fees.
- O. Further, a utility involved in a project which is being funded by state or federal grants and/or loans may apply for a permit without the up-front payment of fees upon a showing that the permit needs to be acquired as a condition of approval and/or receipt of the public funding. In such a case, payment of the fees due the County will be deferred until the public funds are available for the project.
- P. An applicant may appeal the denial of a permit to the Board of County Commissioners pursuant to the procedures set forth in Appeals, of this Ordinance.

Section 7. FEES AND PERMITS

A.

Above Ground Use Pipeline Right-of-Way Price Schedule

Base Cost per mile or portion thereof

Non-refundable application fee for initial application and any renewal thereof	\$500.00
Initial 90-day (or portion thereof) permit	\$1,000.00
Second 90-day(or portion thereof) permit	\$2,400.00
Third 90-day (or portion thereof) permit	\$7,200.00

*note: No initial permit by the same person, or agent thereof, may be approved for the same route for 210 days.

Underground Pipeline Right-of-Way Price Schedule

Base cost per Linear Foot for 20 years

Non-refundable Application fee for use of County right-of-way	\$200.00
12" by 36" to 24" by 48"	\$2.25
Greater width or Depth	\$2.60
Service hook-ups (No pavement cut necessary)	\$100.00
Service Hook-ups (Pavement cut necessary)	\$150.00
Maintenance/Repair Permit	\$150.00
Excavation to exceed 250 feet	\$250.00 plus usage

Telecommunication Right of Way Price Schedule

Non-refundable Application fee for use of County right-of-way	\$200.00
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First Conduit, Buried Line or overhead Line	Each Additional conduit, buried or overhead line
\$0.20	\$0.10

Electric Line Right-of-Way Price Schedule

Base cost per Linear Foot or 20 years

Non-refundable Application fee for use of County right-of-way	\$200.00
Overhead, buried, or overhead line	\$0.17

B. Insurance Requirements:

- (1) Personal injury/property damage. Limits of no less than \$1,000,000 per occurrence.
- (2) Coverage for pollution, including sudden and accidental spills, with limits of no less than \$1,000,000 per occurrence.

- a. Agreement to defend, hold harmless, and indemnify Lea County. The application form for these permits shall include a provision that the applicant agrees to defend, hold harmless, and indemnify Lea County for any claim of any type arising from applicant's use of the County right-of-way.
- b. Reinstatement of suspended permit \$250.00
- c. Appeal from decision of Right-of-Way Administrator \$100.00

Section 8. CONDITIONS OF USE OF RIGHT-OF-WAY

- A. Except as otherwise provided in this Ordinance, no utility may commence any use of the County right-of-way unless and until a permit for such use is first obtained from the County. Ordinarily, permits shall be valid for 90 days. However, if a longer period of time is necessary, the permittee may submit a written request for additional time justifying the additional requested time.
- B. A permit shall be required for any use of a County right-of-way, including but not limited to excavation within the right-of-way, boring of any substructure opening, aerial use of a County right-of-way, or placement of any facility within a County right-of-way.
- C. It shall be unlawful for any person or party to use a County right-of-way without first securing a permit from the County and complying fully with all the provisions of this Ordinance, and any related regulations that may be adopted by the County.
- D. All utility construction and road restoration shall be in accordance with the Lea County Standard Specifications for Road Construction in effect at the time of application. The County may promulgate and adopt such further additional rules and regulations as may be required to fully implement this Ordinance. Copies of such rules and regulations shall be available to applicants at the County Clerk's office. In addition, all work shall be performed in accordance with state and federal requirements including but not limited to OSHA.
- E. The permittee is required to correct substandard work or work performed with defective materials and/or workmanship, as directed by the Right-of-Way Administrator. The permittee must restore the street subbase, base and surface to its original condition upon completion of the work within the right-of-way. Upon failure of the permittee to begin repairs within 24 hours after written notice by the County and to complete the required work within a reasonable time, as determined by the County, the County shall cause such work to be done and the cost thereof charged to the permittee. In addition, the County may declare the permittee to be in default of the terms of the permit, and take steps pursuant to this Ordinance to suspend the permit.
- F. The permittee must take appropriate measures to maintain safe and adequate passage of vehicle and pedestrian traffic as required by the County while performing any work within the right-of-way.

- G. In the event the permittee causes damage to existing utilities or facilities located within the right-of-way, including pipe coating or other encasement or devices, the permittee must notify the Right-of-Way Administrator or his designee and the owner of the damaged facility immediately, and take immediate steps to arrange for the repair of the damage. The permittee is responsible for the cost of said repairs. Further, the County may declare the permittee to be in default of the terms of the permit and may take steps pursuant to this Ordinance to immediately suspend the permit.
- H. The permittee is responsible for the proper installation of any diversion or ponding devices necessary for protection of property and structures, and shall be responsible for repair or payment of damages caused to property or structures by the permittee's failure to properly provide such devices.
- I. Prior to making any excavation or paving cut, the permittee shall adequately barricade the area to be excavated and shall adequately provide light devices at night in compliance with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). Barricading and lighting shall be maintained by the permittee until all work has been finished, including the replacement of paving.
- J. After completing excavation within the right-of-way, the permittee shall install all facilities at least 36 inches below the road surface, or deeper, if necessary, to meet the more stringent requirements of other governmental agencies or County ordinances. All parallel and lateral depths shall be a minimum of 36 inches beneath ground surface.
- K. Ditches paralleling County roads that exceed 350 feet in length shall not be left open for more than 72 hours, unless for good cause shown the Right-of-Way Administrator permits a longer period of time.
- L. All material excavated must be piled and maintained so as not to endanger the public health, safety and welfare. 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 excavation material. The permittee shall remove all rubbish, excess earth, rock and other debris resulting from excavation work immediately upon completion of backfilling as required by this Ordinance. If the permittee fails to do the required work, the County has the option, but not the obligation, to cause the work to be performed and to charge the cost of the work to the permittee.
- M. Unless specifically exempted in writing, any person who trenches or excavates within the right-of-way for any purpose is required to backfill the trench or excavation as follows:
 - (1) All trenches and ditches will be backfilled and compacted.
 - (2) In all trenches and excavations, the material used in backfilling must consist of the original, excavated material or other similar material, in a finely divided form free from large lumps, large stones, rocks, pieces of old concrete, or asphalt pavement or large or wet gummy masses, and must be placed and compacted to the top of the trench or excavation.

Compaction shall be in conformance with specifications of AASHTO, T-180 (American Association of State Highway and Transportation Officials) to 95% maximum density.

(3) Backfill and compaction inspections shall be made by the permittee. The County reserves the right to perform additional inspections and/or testing at its own cost. In the event the compacted backfill fails to meet the density requirements of this Ordinance, or otherwise fails as evidenced by settlement of the trench or excavation, the County will notify the permittee in writing and the permittee will correct the defect within 72 hours, and the permittee is responsible for the cost of the failed test, which cost shall be in addition to the right-of-way use fees provided for herein. If the permittee fails to correct the situation, the County has the option but not the obligation to order the work performed to meet the required density specified herein. The County may also order the replacement of all pavement destroyed or damaged as a result of the backfill failure settlement. The costs incurred by the County shall be paid by the permittee.

- a. Testing shall be conducted by the permittee on every lift up to and per 250 lineal feet thereafter of material disturbed. Lifts shall be 12 inches to 18 inches in depth and/or of sufficient depth to obtain required density.
- b. Prior to any testing of compacted backfill, the permittee shall inform the County within 24 hours of the scheduled testing.
- c. All testing certificates shall contain the following minimum information: date, location, percentage compaction, permit number and other information applicable to the task. Testing certificates shall be furnished to the County within five working days of completion of the testing.
- d. Testing shall be accomplished by a certified independent testing laboratory.

N. The standard utility requirements are as follows:

- (1) Water lines shall be installed within the right-of-way parallel to the edge of pavement on the east or north side of the right-of-way outside the paved area at a minimum of three feet beyond the edge of the pavement.
- (2) Gas lines shall be installed within the right-of-way parallel to the edge of pavement on the west or south side of the right-of-way outside the paved area at a minimum of three feet beyond the edge of pavement.
- (3) Sewer lines shall be located within easements on the west or south side of the right-of-way on newly platted subdivisions or along the center line of the right-of-way on existing roadways if an easement does not exist.
- (4) Water lines and gas lines shall in all cases be separated from sewer lines by a minimum of 10 feet and all other underground lines (including other existing water and gas lines) by a minimum of five feet.

- (5) Each sewer, water, and gas line shall in all cases be placed in its own separate trench.
- (6) The utility separations as specified above shall also cover back-lot easements or other easements as required. Easements shall be wide enough to allow for utility separations as specified above, with all utilities being at least five feet inside the edge of the easement.
- (7) Where used, fire hydrants shall be located no closer than 18 inches to the right-of-way boundary within the right-of-way and as far as possible from the edge of pavement.
- (8) All valves and manholes shall have a concrete collar placed at finish grade if located within a paved surface and no less than 12 inch below the surface if located in an area where no paving exists.
- (9) Water, sewer and gas mains shall be marked with tracing/warning tape installed above the pipe, 15 inches below the top of the trench in the case of gas and water, and 12 inches below the top of the trench in the case of sewer.
- (10) The tracing tape to be buried over all lines throughout their entire lengths shall have the following specifications:
 - a. Tape shall be three inches wide and shall consist of one layer of metalized foil laminated between two layers of inert plastic film.
 - b. Laminated bonding that can be separated by hand is not acceptable.
 - c. Tape shall be a minimum of five mils thick with a minimum tensile strength of 84 pounds per three-inch-wide strip.
 - d. Tape shall be imprinted with a continuous warning message repeated a minimum of every 30 inches as follows:
 - i. Yellow colored tape: "Caution Gas Line Buried Below."
 - ii. Blue colored tape: "Caution Water Line Buried Below."
 - iii. Green colored tape: "Caution Sewer Line Buried Below."
 - e. Tape shall be inductively locatable and conductively traceable using a standard pipe and cable locating device for a minimum of eight years after direct burial.
 - f. Test results showing a minimum of eight years' life and full compliance with these specifications and a sample of the tape may be required to be furnished to the Right-of-Way Administrator.
- (11) Replacement of pavement, when necessary, shall follow the backfill by not more than three days or not more than 1,000 lineal feet.

(12) Gas lines shall at all times be separated from any other parallel underground line by a minimum of 10 feet and shall in all cases be placed in their own separate trench. When crossing other underground lines, there shall be a minimum clearance of 18 inches between the gas line and the line being crossed. The minimum specified gas line depth (cover) shall in all cases be maintained.

(13) Thrust, anchorage, support and encasement:

- a. At points where the vertical or horizontal hydraulic thrust exceeds the resisting capacity of a single pipe joint and at cast-iron fitting and valves, place concrete anchor blocks, thrust blocks, concrete supports, or concrete encasement in a manner that will counteract the thrust or transfer the thrust from the pipe or fitting to ground which will not yield.
- b. Place concrete in a manner that will leave rubber ring joints free to permit minor deflection, except where extended encasement is called for. Before placing concrete encasement, wrap PVC pipe with a layer of building felt or with polyethylene wrap to prevent bond and the possible transmission of cracks from the encasement to the pipe.
- c. When the ground is soft and cannot be compacted to resist the thrust from the pipe or fitting to unyielding ground, an increase in the amount of concrete, or the bearing area, shall be made. Do not weaken the supporting soil by permitting water in the trench.
- d. Use concrete of a minimum of 3,000 psi compressive strength design for anchor and thrust blocks and encasement, and where reinforcement is shown, use deformed billet steel, conforming to ASTM A615, Grade 40

(14) Protection of equipment. Equipment that is part of the facility (risers, control boxes, hydrants, etc.) may be protected from impact as long as the impact upon the protection device is not greater than the impact if the protection device is not in place.

(15) Public convenience and access.

- a. The permittee shall conduct and schedule his work at all times so that a minimum of obstructions to traffic and other inconveniences to the public occurs. The testing, purging, transfer of service, chlorination of lines, and backfill of each section of line shall follow the installation within a reasonable time.
- b. Where the pipeline routes cross secondary streets, the excavation shall be backfilled to provide a roadway prior to the end of the work day. Construction by open excavation across major streets and thoroughfares shall be carried and completed to approximately the roadway center line and the trench backfilled prior to excavation across the remaining roadway section so that traffic will not be interrupted.

- c. The permittee shall provide and set barricades and flashing lights along all open excavations and at points where the construction operation creates hazards to the public. Spacing of barricades and lights shall be adequate to insure the public a warning of the hazard, and shall be in compliance with the directions of the Manual on Uniform Traffic Control Devices and all other County, state and federal regulations. Flares and/or lights shall be kept burning from sunset to sunup. Barricades shall be painted and fitted with reflective paint and reflectors, respectively, to increase visibility, in compliance with requirements of the latest edition of the MUTCD.
- (16) Wire utilities shall be placed no farther than five feet from the edge of the right-of-way on the east and/or north side of the center line of the right-of-way Public convenience and access.
- (17) Wire utilities shall be placed no farther than five feet from the edge of the right-of-way on the east and/or north side of the center line of the right-of-way.
- (18) It shall be the responsibility of the applicant to properly conduct a construction survey and to determine the limits of the Lea County right-of-way prior to any excavation.
- (19) Prescriptive easements are observed as 30' from centerline of road or fence line, whichever is greater.
- (20) All roadway crossings must be cased, with a minimum of 3' cover depth at the lowest right-of-way elevation. All casing shall be installed with vents at each end, and pipeline markers showing the owner, address, and phone number.
- (21) If a utility owner elects not to case crossing, a API 1102 Liquid Pipeline Crossing Highway analysis can be completed. The analysis must be signed and stamped by a professional engineering licensed in New Mexico.
- O. The County may make any and all inspections and random tests as it deems necessary to enforce the terms and conditions of this Ordinance. Acceptance or approval of ditching, excavation, backfilling, and restoration of surface by the County does not prevent the County from asserting claims against the permittee for incomplete or defective workmanship or materials. The presence or absence of a representative of the County during the performance of the work does not relieve the permittee of his/her responsibilities hereunder.
- P. The permittee shall have available the original or a photocopy of the permit on site at all times during construction.
- Q. The permittee is required to notify the Right-of-Way Administrator to advise it of the commencement date of construction at least 24 hours prior to commencement. In addition, the permittee is required to notify the Administrator within 24 hours of completion of construction to arrange for a final County inspection. Within 30 days of completion of construction, the permittee shall furnish the County a complete set of vellum as-built drawings, with the permit number on the drawings.

Section 9. RELOCATION OF FACILITIES

In the event changes are made in the County right-of-way that necessitate relocation of any installation or facility, the affected utilities will receive written notice from the County and are required to contact the Right-of-Way Administrator to coordinate relocation of their facilities. Relocation of the facilities shall be completed by the utilities within a reasonable time, usually 60 days. The expense of the relocation shall be borne by the requesting party or the party at fault or pursuant to terms and conditions mutually acceptable to the County and the utilities, unless other non-County funds are available to pay utility relocation expenses.

Section 10. ALTERNATIVE TO PERMIT PROCESS: RIGHT-OF-WAY USE AGREEMENT

- A. As an alternative to complying with all of the permit procedures set forth herein, a person or utility may enter into a comprehensive agreement with the Board of County Commissioners for the purpose of coordinating the person or utility's use of County right-of-way in multiple and various locations and, in some circumstances, for varying purposes. This agreement would eliminate the requirement for payment of right-of-way fees for each distinct and separate pipe, or location, or use of County right-of-way. However, the permittee shall comply with all other requirements for use of County right-of-way set forth herein, including making application for a permit.
- B. Except where there is a need for individualization based on the type of utility involved, the terms and conditions of the right-of-way agreement, including fees therefor, and standards will be common for all. The term of a right-of-way agreement shall not exceed 25 years.

Section 11. PENALTY; ENFORCEMENT

Pursuant to NMSA § 4-37-3, a violation of this Ordinance shall be punishable by a fine of three hundred dollars (\$300) or imprisonment for ninety (90) days or both the fine and imprisonment. In addition, the County may pursue other legal and equitable remedies allowed by law, including injunctive relief, in cases of unauthorized use of County right-of-way by any utility or person. See also, Treble fees below.

Section 12. EMERGENCY USE OF RIGHT-OF-WAY

In the event of any emergency which threatens the health, safety or welfare of the public, use of the County right-of-way may be commenced without first obtaining a permit, provided that the utility making the emergency use files such application for a permit, as required by this Ordinance, during the first working day immediately following the date of commencement of the emergency use.

Section 13. VARIANCES

- A. Administrative. The County Right-of-Way Administrator, upon written application therefor, shall have the authority to grant administrative variances from the technical standards provided for in this Ordinance upon a demonstrated showing that a strict application of the established technical standards is impractical or not feasible because:
- (1) There is insufficient room within the County right-of-way to meet standards; or
 - (2) Adherence to the standards would be incompatible with the nature or placement of facilities presently existing in the County right-of-way to be used; or
 - (3) Adherence to standards is not reasonably-justified based on other factors, to include, but not limited to, extent of proposed project, physical conditions of the County right-of-way or physical hardship; and that the variation in standards proposed by the applicant/permittee will not result in an inferior work product.
- B. Appeals from variance denials shall be pursuant to Appeals, of this Ordinance.
- C. There will be no variances from the required fees.

Section 14. TREBLE FEES; REMOVAL OF UNLAWFUL FACILITIES

Except as provided for in this Ordinance, if a utility or person commences use of a County right-of-way or work within the right-of-way for which a permit would be required pursuant to the terms of this Ordinance prior to the use being made, the County may require the payment of treble the amount of application and lineal fees that would have been charged absent the unauthorized commencement of use of the right-of-way. The payment of treble fees shall not relieve any such utility or person from complying with all of the requirements of this Ordinance, including the filing of an application for use of the right-of-way and County review for approval or denial. In the alternative, the County, in its sole discretion, may require the unauthorized user to remove the facilities unlawfully placed in the right-of-way.

The County Right-of-Way may not be used for any commercial or industrial use including vending of any type.

Section 16. SUBDIVISION EXCLUSIONS FOR FEES

Permits, or the payment of application or lineal fees, will not be required for use of right-of-way within a subdivision which has been platted and approved by the County pursuant to the terms of the County's zoning and subdivision regulations provided that the appropriate fees have been paid to the County in full, as required by the aforementioned Ordinances. The technical standards of this Ordinance are, however, applicable to utility use of County right-of-way within a subdivision.

Section 17. CONFLICT WITH OTHER PROVISIONS

In the event the terms and/or the conditions of this Ordinance conflict with those found in any other County or local ordinance, or state or federal statute or regulation, the more stringent terms and/or conditions shall apply.

Section 18. SUSPENSION OF PERMIT

- A. The County reserves the right to suspend a permit for noncompliance by the permittee with the technical standards of this Ordinance or the terms of the permit. Immediate suspension of the permit may occur in circumstances where the County determines that a dangerous condition has been created by the permittee's noncompliance with the terms of this Ordinance or the permit, which condition would threaten the health, safety or welfare of the public.
- B. In situations where the permittee's noncompliance with the terms of this Ordinance or the permit does not create an immediate threat to the health, safety or welfare of the public, the County will notify the permittee in writing of the noncompliance, and will allow the permittee five days to demonstrate compliance. In the event the permittee fails to comply and fails to cease work, the County may seek injunctive relief to prevent the continued unauthorized use of its right-of-way.
- C. A permit, once suspended, may be reinstated by the County upon a showing of compliance by the permittee, along with payment of a reinstatement fee as set forth in this Ordinance, Fees and Permits.
- D. Permittees may appeal suspensions of permits to the Board of County Commissioners, which appeal will be considered at a public hearing of the Board pursuant to the procedures set forth in Appeals of this Ordinance.

Section 19. TIME EXTENSIONS FOR PERMIT

Upon written application to the Right-of-Way Administrator, and for good cause shown, or upon the Administrator's own initiative, the permittee may be granted, in writing, an extension of time for which the permit will be valid in order to allow the permittee more time to complete the permitted project.

Section 20. APPEALS

An applicant or permittee shall have the right to appeal an adverse decision of the Right-of-Way Administrator on any matter. All such appeals shall be made in writing to the County Manager or his designee no later than 10 days after receipt of written notice to the applicant, permittee or other person of an adverse decision and must be accompanied by a nonrefundable appeal fee as set forth in this Ordinance, Fees and Permits. Appeals shall be heard at a public meeting of the Board of

County Commissioners within 45 days of the filing of a written appeal and shall be quasi-judicial in nature. A decision of the Board of County Commissioners averse to the applicant or permittee may be taken by the applicant or permittee to the state district court pursuant to state district court rules of procedure. The decisions of the Board of County Commissioners shall be based upon findings of fact.

Section 21. WHEN EFFECTIVE; GEOGRAPHIC SCOPE

This Ordinance shall be effective 30 days after its adoption and enactment by the Board of County Commissioners and the filing of the signed original ordinance with the County Clerk. It shall be effective within the geographical limits of Lea County outside the boundaries of all incorporated municipalities.

Section 22. AGRICULTURAL AND INDIVIDUAL USE EXEMPTION

- A. The payment of fees for non-utility, non-business agricultural uses of County right-of-way shall be waived. However, these agricultural uses of County right-of-way shall comply with all other terms and provisions of this Ordinance, including but not limited to compliance with the permit application process and technical standards.
- B. Uses of County right-of-way by individuals for such purposes as driveways, curb cuts, sidewalks, and other similar improvements, that are non-utility, non-business related, are exempt from all of the requirements of this Ordinance. However, such uses are not exempted from other relevant County ordinances and resolutions.

Section 23. GRANDFATHER CLAUSE

The provisions of this Ordinance shall apply to the present use of County right-of-way by a utility or other person where such use was in place prior to the effective date of this Ordinance. Such utilities or other persons shall have no more than 180 days to become compliant with the terms and conditions of this Ordinance.

Section 24. NOTICES

All notices required to be delivered to the County pursuant to this Ordinance shall be sent, certified mail, to the following:

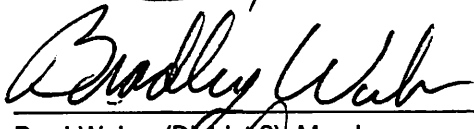
County Manager Lea County
100 North Main, Suite 4
Lovington, New Mexico 88260

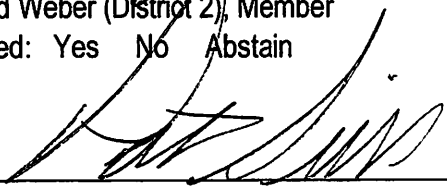
County Right-of-Way Administrator
5915 North Lovington Highway
Hobbs, New Mexico 888240

PASSED, APPROVED, SIGNED AND ADOPTED on this 23rd day of February, 2023, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

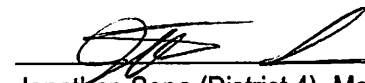

Dean Jackson (District 1), Chair
Voted: ☒ Yes ☐ No ☐ Abstain


Brad Weber (District 2), Member
Voted: Yes ☒ No ☐ Abstain


Pat Sims (District 5), Member
Voted: ☒ Yes ☐ No ☐ Abstain

Absent

Gary G. Eidson (District 3), Vice Chair
Voted: Yes ☐ No ☐ Abstain


Jonathan Sena (District 4), Member
Voted: ☒ Yes ☐ No ☐ Abstain

ATTEST: Keith Manes
Lea County Clerk

By: 
Cynthia Ramirez, Deputy Clerk

APPROVED AS TO FORM:

Absent

John W. Caldwell, County Attorney

