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**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 227**

**AN ORDINANCE REPEALING ORDINANCES 29, 34, AND 222 PERTAINING TO UTILITY
RIGHT-OF-WAY MANAGEMENT; PROVIDING FOR PROCEDURES; PROVIDING FOR
PENALTIES.**

NOW THEREFORE, BE IT ORDAINED, by the Governing Body of the City of Elephant Butte that Ordinances 29, 34, and 222 are repealed and replaced as follows:

SECTION 1: GENERAL POLICY AND GOALS OF TIDS ORDINANCE.

Public funds have been invested to build, maintain and repair the streets within the City of Elephant Butte's municipal boundaries and the City holds these streets as an asset for its citizens. The adoption of the regulations in this ordinance will help protect the integrity of City streets and safeguard the value of public investments for the benefit of all City residents. Requirements will cause utilities to install, maintain, and repair their underground facilities without making excavations in City streets wherever feasible, and promote better coordination among utilities making excavations in City streets, and between these utilities and the City to (i) minimize the number of excavations being made and (ii) insure that excavations are performed, to the maximum extent possible, in streets scheduled for resurfacing within the same or succeeding fiscal year as the excavation.

SECTION 2. AUTHORITY.

The City Council of the City of Elephant Butte has the statutory authority and responsibility to make such orders concerning municipal property, including rights-of-way, as it may deem expedient, as authorized in NMSA 1978, Section 3-49-1.

SECTION 3: DEFINITIONS:

Actual and reasonable expenses: All expenses directly or indirectly incurred by the City related to permitting, ~~repair, restoration, the use of municipal 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,~~ the enforcement of the terms and conditions of this Ordinance, and any other cost or expense reasonably associated with the maintenance of the rights-of-way in a manner that protects the health, safety and welfare of the public.

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

Emergency: Any situation necessitating excavation, use of, or entrance onto the Municipal 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.

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.~~

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.

Municipality: The City of Elephant Butte, or the City Council of the City of Elephant Butte, as the context requires.

Permit: Permit issued by the Municipality pursuant to the terms and conditions of this Ordinance which allows the use of Municipal right-of-way by utilities and other persons.

52 **Permitee:** An applicant whose permit request has been approved and who holds a valid permit.
53 **Person:** Any individual, estate, trust, utility, receiver, association, subdivision of the state, cooperative,
54 club, public or private corporation, company, firm partnership, joint venture, syndicate, municipality or
55 any other entity.
56 **Public Place:** All property owned by or maintained by the Municipality, including but not limited to,
57 streets, highways, alleys, planes, sidewalks, easements, curbs, and drainage way, which constitute
58 Municipal right-of-way.
59 **Right-of-way:** See above definition of Public Place.
60 ~~**Right-of-way Administrator:** Land Use Administrator~~ The individual designated **employed by the City**
61 **of Elephant Butte** by the City Mayor to administer the Municipal Right-of-way Ordinance and the
62 Municipal right-of-way permit operation to include, but not limited to, the receipt, review, processing,
63 approval or denial of permit applications, approval and denial of administrative variances and
64 maintenance of Municipal right-of-way records.
65 **Right-of-way Use Fee:** Fee paid by persons or utilities utilizing Municipal right-of-way pursuant to the
66 terms and conditions of this Ordinance.
67 **Right-of-way Use Agreement:** Agreement entered into between utility and Municipality for utility use
68 of Municipal right-of-way.
69 **Service Hook-up:** Any excavation, not exceeding the width of the affected Municipal right-of-way,
70 necessary to allow a single meter hook-up for a single property owner to tie into an existing utility line for
71 the purpose of securing utility service, but does not include line extensions.
72 **Substructure:** Any facility located below the surface of the Municipal right-of-way. ~~Substructure~~
73 ~~opening: An opening into a lawfully permitted substructure, the top of which is required to be flush with~~
74 ~~the adjoining surface within the Municipal right-of-way, and which is constructed so as to permit~~
75 ~~frequent utilization, without requiring the removal of pavement, dirt or other material, while maintaining~~
76 ~~the health, safety and welfare of the public.~~
77 **Use:** Performance of work within and/or occupation of Municipal right-of-way, including but not limited
78 to, the excavation of materials, boring, maintenance and checking of substructures and substructure
79 openings; and/or the use of the right-of-way to place any facility thereon or therein.
80 **Utility:** Person, as defined in this Ordinance, whose primary function is the provision of certain services
81 to the public or third parties, which services include but are not; limited to, electrical, gas water,
82 wastewater, and telecommunications services.

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84 **SECTION 4. CONDITIONS OF USE OF MUNICIPAL RIGHT-OF-WAY**
85 No person or utility may commence any use of the Municipal right-of-way without first securing a permit
86 from the City and complying fully with all the provisions of this Ordinance and any related resolutions
87 and regulations that may be adopted by the City.

88 A permit shall be required for any use of Municipal right-of-way, including but not limited to excavation
89 within the right-of-way, boring any substructure opening, aerial use, or placement of any facility within
90 Municipal right-of-way.

91 Any person or utility making an excavation in the Municipal right-of-way shall comply with **New Mexico**
92 **Department of Transportation** City-specified standards and requirements for **excavation and backfill**. ~~for~~
93 **The City of Elephant Butte requires notification prior to commencement of work.** ~~compaction, backfill,~~
94 ~~pavement restoration and resurfacing in effect at the time of the application.~~

95 The permittee must take appropriate measures to maintain safe and adequate passage of vehicle and
96 pedestrian traffic as required by the City while performing any work within the right-of-way.
97 **The permittee shall provide signage expressing that the roadway may be damaged.**
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99 **SECTION 5. MORATORIUM ON OPENING OF NEWLY PAVED STREETS.**

100 Except in the case of an emergency, no excavation, trenching or other activity which compromises the
101 integrity of a paved street may be effected on any city
102 right-of-way which has been paved within the past two years. This includes, but is not limited to,

103 ~~placement of a service hook up.~~

104 ~~Any right of way which has been paved within the two years preceding the passage of this Ordinance is~~
105 ~~exempt from this provision until such time as it is repaved.~~

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107 **SECTION 5. RIGHT-OF-WAY USE PERMIT APPLICATIONS:**

108 Requirements, issuance/denial, and appeal.

- 109 A. Any person or party wishing to obtain a Permit from the Municipality pursuant to this Ordinance
110 must submit the following information to the ~~Right of way~~ Land Use Administrator:
- 111 1. The name, telephone number, address, and place of business of the applicant and his/her
112 Engineers and/or Contractors.
 - 113 2. A detail drawing and written description of the location and dimensions of the proposed use of
114 the Municipal right-of-way, including a plan view and cross-section view of the proposed use,
115 which are sufficient to indicate the placement of any facilities or to locate the work to be
116 performed.
 - 117 3. The method by which the proposed use within the right-of-way will be accomplished, including
118 an estimate of the amount of time required to complete any actual work to be performed within
119 the right-of-way including backfilling and removal of all obstructions, materials and debris., ~~and~~
120 ~~restoration of the surface.~~ The applicant's authority to use the Municipal right-of-way shall be
121 limited to the purposes and work plan specifically authorized by the Permit; The purpose and
122 function of any facility to be located within the right-of-way.
- 123 B. The applicant shall be required to provide proof of adequate insurance in an amount satisfactory
124 to the Municipality indicating that the applicant has sufficient insurance to protect both the
125 Municipality and the applicant for any and all claims or damages arising out of bodily injury,
126 including death, to any party including the applicant and his employees and agents and the
127 Municipality's employees and agents, and from claims for damaged property which may arise
128 out of, or result from, the applicant's use of the Municipal right-of-way.
129 The applicant must agree to defend, hold harmless, and indemnify the Municipality and its
130 officers, agents and employees, against all claims, losses and damages to persons or property on
131 account of or resulting from the intentional or negligent conduct on the part of the permittee in the
132 permittee's use of the Municipal right-of-way.
- 133 C. Upon receipt of the application, the ~~Municipality~~ Land Use Administrator ~~shall review the~~
134 ~~request. The Right of way Administrator will verify~~ will verify the information provided in the
135 application. ~~and will process the application.~~ Further review by the City Manager will be made to
136 determine if the application is consistent with the terms and conditions of this Ordinance
137 including the Standards and Requirements referred to in this Ordinance and any amendments,
138 Ordinances or Resolutions that may be promulgated by the Municipality in the future.
- 139 D. In most cases, within a maximum of 10 working days of receipt of the completed application, the
140 ~~Right of Way~~ Land Use Administrator will notify the applicant by regular mail or telephone
141 transmission of the acceptance or denial of the application. ~~Where~~ When approved by the Land
142 Use Administrator and the City Manager, such notification will include notification of the right-
143 of-way usage fee. The Permit will be valid only upon payment of the applicable fee.
- 144 E. An Applicant may appeal the denial of a permit to the City Council. All such appeals shall be
145 made in writing to the City Clerk or his/her designee no later than ten(10) days after receipt of
146 notice to the applicant of an adverse decision: Appeals shall be heard at a public meeting of the
147 City Council within forty-five(45) days of the filing of a \Written appeal. A decision adverse to
148 the applicant may be taken by the applicant to the state district court.

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150 **SECTION 6. FEE SCHEDULE**

- 151 A. Fees shall be established by ~~the City Council from time to time~~ by Resolution.
- 152 B. Fees established **BY RESOLUTION APPROVED BY THE CITY COUNCIL WILL TAKE**
153 **INTO CONSIDERATION ADMINISTRATIVE REVIEW, MATERIALS AND**

154 **CONSTRUCTION COSTS.** shall be in an amount sufficient to recover:
155 the City management costs, and
156 degradation costs, if applicable. Fees shall be highest for excavations in newly surfaced streets and shall
157 decrease as the age of the street surface being excavated increases.

158 **SECTION 7. STANDARDS & REQUIREMENTS**

- 159 A. ~~The permittee must restore the street sub base, base and surface to its original condition upon~~
160 ~~completion of the work within the right of way as shown in appendices A-C.~~
- 161 B. ~~Unless specifically exempted in writing, any person who trenches or excavates within the right~~
162 ~~of way for any purpose is required to backfill the trench or excavation as follows:~~
- 163 1. ~~Excavations will be saw or straight cut and tack sealed.~~
 - 164 2. ~~All trenches and ditches will be backfilled and compacted.~~
 - 165 3. ~~In all trenches and excavations, the material used in backfilling must consist of the original,~~
166 ~~excavated material or other similar materials, in a finely divided form free from large lumps,~~
167 ~~large stones, rocks, pieces of old concrete, or asphalt pavement or large or wet gummy~~
168 ~~masses and must be placed and compacted to the top of the trench or excavation.~~
 - 169 4. ~~Compaction shall be in conformance with specifications of AASHTO, T 180(American~~
170 ~~Association of State Highway and Transportation Officials) to 95% maximum density.~~
171 ~~Replacement of pavement, when necessary, shall follow the backfill by not more than three~~
172 ~~working days.~~
173 ~~Inspections. Backfill and compaction inspections shall be made by the permittee. The City~~
174 ~~reserves the right to perform additional inspections and/or testing at its own cost.~~
- 175 1. ~~Prior to testing of compacted backfill, the permittee shall inform the City within 24 hours of~~
176 ~~scheduled testing.~~
 - 177 2. ~~Testing certificates shall contain the following minimum information: date, location, percentage~~
178 ~~compaction, permit number and other information applicable to the task. Testing certificates~~
179 ~~shall be furnished to the City within five(5) working days of completion of the testing.~~
 - 180 3. ~~Testing shall be accomplished by a Certified Independent Testing Laboratory.~~

181 **THE PERMITEE SHALL**

- 182 (A) Perform Excavation and backfill subject to the most current specifications provided by the New
183 Mexico Department of Transportation Highway & Bridge Construction Guide.
- 184 (B) The permittee shall notify the City the day of commencement of work.
- 185 (C) The permittee shall provide/maintain appropriate roadway signage until the restoration has been
186 completed by the City of Elephant Butte

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189 **SECTION 8. EMERGENCY USE OF RIGHT-OF-WAY**

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

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195 **SECTION 9. VIOLATIONS**

- 196 A. A violation of this Ordinance is punishable by a fine of \$2500.00 for the first offense, \$3000 for
197 the second offense, each offense thereafter will increase by \$500.00. of not more than \$500 or
198 imprisonment for not more than 90 days, or both. Each day of violation may be considered a
199 separate offense. In addition, in the case of failure to restore the right of way in the manner and
200 to the condition required by the city, the City may resort to enforcement authority under Section
201 8.
- 202 B. If the permittee fails to restore the right of way in the manner and to the condition required by the
203 City, the City may at its option do such work or have a contractor do such work. In that event the
204 permittee shall pay to the City, within thirty(30) days of billing, the cost of restoring the right of

205 way.

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207 **SECTION 10. SEVERABILITY**

208 Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held invalid or
209 unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not
210 affect any of the remaining provisions of this Ordinance.

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212 **SECTION 11. EFFECTIVE DATE**

213 This Ordinance shall become effective 5 days after being adopted, approved, and posted.

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216 **PASSED, APPROVED AND ADOPTED** by the Governing Body of the City of Elephant Butte, New
217 Mexico, this 11 day of February 2026. Effective five days after adoption.

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Richard Holcomb, Mayor

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Attest:

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Lindsey Cobleigh, City Clerk

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