

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THEREFORE, BE IT ORDAINED**, by the Governing Body of the City of Elephant Butte that Ordinances 29, 34, and 222 are repealed and replaced as follows: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

**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.

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

**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.

**Public Place:** All property owned by or maintained by the Municipality, including but not limited to, streets, highways, alleys, planes, sidewalks, easements, curbs, and drainage way, which constitute Municipal right-of-way.

**Right-of-way:** See above definition of Public Place.

**Land Use Administrator:** The individual employed by the City of Elephant Butte to administer the Municipal Right-of-way Ordinance and the Municipal right-of-way permit operation to include, but not limited to, the receipt, review, processing, approval or denial of permit applications, approval and denial of administrative variances and maintenance of Municipal right-of-way records.

**Right-of-way Use Fee:** Fee paid by persons or utilities utilizing Municipal right-of-way pursuant to the terms and conditions of this Ordinance.

**Right-of-way Use Agreement:** Agreement entered into between utility and Municipality for utility use of Municipal right-of-way.

**Service Hook-up:** Any excavation, not exceeding the width of the affected Municipal 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.

**Substructure:** Any facility located below the surface of the Municipal right-of-way.

**Use:** Performance of work within and/or occupation of Municipal 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.

**Utility:** Person, as defined in this Ordinance, whose primary function is the provision of certain services to the public or third parties, which services include but are not limited to, electrical, gas water, wastewater, and telecommunications services.

#### **SECTION 4. CONDITIONS OF USE OF MUNICIPAL RIGHT-OF-WAY**

No person or utility may commence any use of the Municipal right-of-way without first securing a permit from the City and complying fully with all the provisions of this Ordinance and any related resolutions and regulations that may be adopted by the City.

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

Any person or utility making an excavation in the Municipal right-of-way shall comply with City-specified standards and requirements for notification prior to commencement of work, temporary backfill with dirt higher than street level to maintain a safe roadway.

The permittee must take appropriate measures to maintain safe and adequate passage of vehicle and pedestrian traffic as required by the City while performing any work within the right-of-way.

The permittee shall provide signage expressing that the roadway may be damaged.

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

Requirements, issuance/denial, and appeal.

- A. Any person or party wishing to obtain a Permit from the Municipality pursuant to this Ordinance must submit the following information to the Land Use Administrator:
  1. The name, telephone number, address, and place of business of the applicant and his/her Engineers and/or Contractors.
  2. A detail drawing and written description of the location and dimensions of the proposed use of the Municipal right-of-way which are sufficient to indicate the placement of any facilities or to locate the work to be performed.
  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., The applicant's authority to use the Municipal right-of-way shall be limited to the purposes and

work plan specifically authorized by the Permit; The purpose and function of any facility to be located within the right-of-way.

- B. The applicant shall be required to provide proof of adequate insurance in an amount satisfactory to the Municipality indicating that the applicant has sufficient insurance to protect both the Municipality 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 Municipality's employees and agents, and from claims for damaged property which may arise out of, or result from, the applicant's use of the Municipal right-of-way. The applicant must agree to defend, hold harmless, and indemnify the Municipality 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 Municipal right-of-way.
- C. Upon receipt of the application, the Municipality shall review the request. The Land Use Administrator will verify information provided in the application and will process the application. Further review will be made to determine if the application is consistent with the terms and conditions of this Ordinance including the Standards and Requirements referred to in this Ordinance and any amendments, Ordinances or Resolutions that may be promulgated by the Municipality in the future.
- D. In most cases, within a maximum of 10 working days of receipt of the completed application, the Land Use Administrator will notify the applicant by regular mail or telephone transmission of the acceptance or denial of the application. Where approved, such notification will include notification of the right-of-way usage fee. The Permit will be valid only upon payment of the applicable fee.
- E. An Applicant may appeal the denial of a permit to the City Council. All such appeals shall be made in writing to the City Clerk or his/her designee no later than ten(10) days after receipt of notice to the applicant of an adverse decision: Appeals shall be heard at a public meeting of the City Council within forty-five(45) days of the filing of a \Written appeal. A decision adverse to the applicant may be taken by the applicant to the state district court.

#### **SECTION 6. FEES**

- A. Fees shall be established by the City Council from time to time by Resolution.
- B. Fees established shall be in an amount sufficient to recover:  
The City's cost for administrative review, labor and materials used in the restoration of the roadway.

#### **SECTION 7. STANDARDS & REQUIREMENTS**

- A. The permittee must backfill the trench or excavation as follows:
- Excavations will be saw cut.
  - All trenches and ditches shall be backfilled with same material.
- B. The permittee shall notify the City the day of commencement of work.
- C. The permittee shall provide/maintain appropriate roadway signage until the restoration has been completed by the City of Elephant Butte.
- D. Permittee shall contact 811 two days prior to the commencement of the work.

#### **SECTION 8. 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 Municipal right-of-way may be commenced without first obtaining the 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 9. VIOLATIONS**

A violation of this Ordinance is punishable by a fine of \$2500.00 for the first offense, \$3000 for the

second offense, each offense thereafter will increase by \$500.00.

**SECTION 10. SEVERABILITY**

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

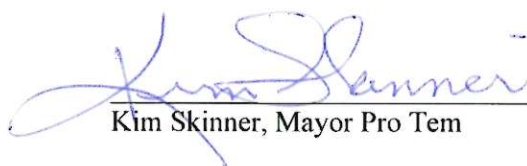
**SECTION 11. EFFECTIVE DATE**

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

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



Attest:

  
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Kim Skinner, Mayor Pro Tem

  
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Lindsey Cobleigh, City Clerk