

Torrance County Road Cut and Right-of-Way Ordinance
2001-03

BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF TORRANCE

WHEREAS THE COUNTY COMMISSIONERS HEREBY REPEAL ORDINANCE 98-2 IN ITS ENTIRETY AND HEREBY ADOPT THIS ORDINANCE.

Section I. Title

This ordinance will be known as the Torrance County Road Cut and Right-of-Way Ordinance.

Section II. General Policy

- A. It shall be unlawful for any person to make any excavation, cut, trench, bore, tie-in to any dedicated public road, pavement cut, or remove pavement from any county road or road right-of-way; without first applying for and securing a permit from the Torrance County Road Department and complying with all the provisions of this ordinance.
- B. All utility construction and road restoration shall be in accordance with any Torrance County specifications and Standard Drawing adopted by Torrance County Commission application and copies shall be available to applicants at the Torrance County Road Department Office.
- C. Should any conflict exist between the provisions of this Ordinance and other applicable laws, the most stringent regulation shall apply.

Section III. Definitions

For the purpose of this ordinance, the following terms, phrases, words, and their derivation will have the meaning given herein. When not inconsistent with the context, words used in the present tense include future; words used in the plural number include the singular, and words in the singular include the plural.

- A. "AASHTO" means American Association of State Highway and Transportation Officials.
- B. "Applicant" means any persons, company, or corporation required to apply for a permit.
- C. "County" means the Torrance County Commission or its Representatives.
- D. "County Road" means any stripe of land granted or dedicated to the public, or dedicated by the County, or a portion of land holding no legal ownership, whether maintained or not.
- E. "County Road Department" means the Torrance County Road Department.
- F. "Emergency" means any situation necessitating excavation or entrance into a substructure opening for the purpose of locating trouble, or making repairs in a facility when circumstances are such that delay in correcting the problem would present a substantial threat of injury to persons or property.
- G. "Excavation" means a hole, trench, or depression in a public place resulting from the removal or moving the pavement, dirt or other material by person, except a substructure opening.
- H. "Facility" means any pipe, pipeline, tube, service vent, vault manhole, meter, regulator, valve, conduit, pole, poleline, anchor, cable, structure, object of any kind or character whether enumerated herein or not which is or may be a lawfully constructed, placed or maintained upon, along, across, under, or over any public place.
- I. "NESC" means National Electrical Safety Code, latest edition.

- J. "Person" may be any individual, estate, trust, receiver, cooperative association, club, corporation, franchised utility company, firm, partnership, joint venture, syndicate or other entity.
- K. "Public Place: means all property owned or maintained by a governmental agency including but not limited to streets, highways, alleys, lanes, sidewalks, plazas, parks, easements, right-of-way, curbs, and drainage ways.
- L. "Right-of-Ways" means any Torrance County land or other place, property, or interest therein, usually in strip, acquired for, dedicated or devoted to transportation purposes as public right-of-way. Measuring a minimum distance of 25' from center of roadway in some cases; usually measuring a distance of 30'. Right-of-ways may differ according to surveys or deeds of record.
- M. "Road Foreman" Means any person as the head of the Road Department of the County.
- N. "Roadway" means that portion of right-of-way within the roadway prism; i.e. bottom of ditch to bottom of ditch along the length of the right-of-way. If no ditch is present the ditch shall be considered 15' from the centerline of the roadway.
- O. "Service line" means an individual service drop to a residence connecting from an existing multiple service utility line or main and extending laterally to a point outside the right-of-way.
- P. "Shoulder" means the portion of right-of-way lying between the bottom of the ditch and the edge of the right-of-way or fence line.
- Q. "Substructure" means any facility located below the surface of any public place.
- R. "Substructure Opening" means an opening into lawful substructure the top of which is flush with the adjoining surface of a public place and which is not a hazard to the traveling public and so constructed as to permit openings without injury or damage to a public place and without the removal of pavement, dirt, or other material.
- S. "Traveling Public" means people or conveyances.
- T. "Treasurer" means the Torrance County Treasurer's Office.
- U. "Torrance County" means the geographic area or Government of Torrance County.

Section IV. Excavation Permits and Approvals

- A. Except as hereinafter provided in this section, and in Section V of this ordinance, no person may commence any excavation in any Torrance County street or road right-of-way unless a permit for such excavation is obtained from the County. The permit will be valid for a period of (15) days, at which time it will expire. All work shall be completed prior to the expiration date of permit, unless an extension is granted by the road department. The road department must be notified of the starting date and upon completion of the permitted project.
- B. A permit shall be required for excavation of a substructure opening. If removal of material is required to gain access to the substructure opening.
- C. A permit shall be required for the installation of a culvert along a county roadway and or driveway. Either paralleling or perpendicular to any County Right-of-way.
- D. A permit shall be required for aerial crossings of Torrance County Rights-of-way.

- E. No Permit is required for excavation made pursuant to a construction contract for road or highway construction issued by the County or by the New Mexico State Highway and Transportation Department to licensed and bonded contractors.
- F. This permit is not required to run a service line when the existing line is not within or does not require excavation within the right-of-way or does not cross, enter or exit any portion of the right-of-way.
- G. If emergency repair does not involve a public place a permit will not be required. All emergency work shall be in accordance with Section IX. Of this ordinance.
- H. A permit shall be required for line spotting only when excavation or pot holing is required within the roadway prism, at the expense of the excavator.
- I. No permit shall be transferable to another excavation site.

Section V. Excavation in Emergency

In the event of an emergency, excavation may be commenced without first obtaining a permit provided that the person making the emergency excavation files such application for a permit as required by this ordinance during the first working day immediately following the date of commencement of excavation. If emergency repair does not involve a public place a permit will not be required. All emergency work shall be in accordance with Section IX of this Ordinance.

Section VI. Application

Every person required to obtain a permit by this Ordinance must submit and application to the County Road Foreman or his designated representative.

- A. The application shall provide:
 - 1. Name, business, location of business, name of owner or contact person, business and emergency telephone number.
 - 2. Description of the location and dimensions of the proposed excavation.
 - 3. The method by which the proposed excavation will be accomplished including the statement required by Section VI (B) below;
 - 4. The purpose of the facility to be installed therein;
 - 5. The estimated length of time required to complete the work, including backfilling and removal of all obstructions, materials, and debris and the restoration of the surface. A duly issued permit shall be the authority of the applicant to excavate in the public place for which the permit is granted. Normally, a permit will be issued within two (2) days.
 - 6. Certificate of insurance or proof of insurance shall be attached to application, unless a current copy is on file with the Road Department
 - 7. Upon approval by the Road Foreman and payment of proper fees applicant may be granted a permit from the Torrance County Road Department.
- B. All road crossings on paved roads shall be performed by boring rather than excavating except where boring is not reasonably justified. All applications shall state that any contemplated road crossing shall be bored, or if boring is not justified, such applications shall state the applicants justification for excavation. The following shall constitute sufficient justification for excavating rather than boring:
 - 1. Lack of adequate room in the County right-of-way to operate boring equipment;

2. Any other condition which would render boring not feasible from an engineering analysis;
3. Boring of gravel or dirt roads will be left to the option of the County Road Foreman.

Section VII. Liability

All persons required to apply for a permit under this Ordinance shall provide a certificate of insurance satisfactory to the County showing that he has such insurance as will protect him from claims or damage because of bodily indite, including death, to his employees and all other; and from claims for damage to property, any of or all of which may arise out of or operations including completed operations. In connection with the result from his making of an excavation or the entering into a substructure opening whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by him. This insurance shall be written for not less than the following limits of liability:

	Each Person	Each Occurrence
Body Injury or Death	\$300,000.00	\$1,000,000.00
Property Damage	\$300,000.00	\$1,000,000.00

Certificate of insurance shall provide that the County be given ten (10) days written notice in advance of cancellation. Any public utility company having a net worth in excess of ten million dollars (\$10,000,000.00) is not required to comply with the requirements of this section. If it furnishes to the County a statement that the company's net worth exceeds ten million dollars (\$10,000,000.00) and that it is either self-insured or carries liability insurance.

Section VIII. Excavation Permit Warranty and Restriction

- A. The permittee is required to correct incomplete or defective materials and workmanship performed under each permit.
- B. The permittee must restore the street sub-base and surface, to its original condition. Upon failure of the permittee to do so within twenty-four (24) hours after notice from the County, the County may cause to have such work done and the cost thereof charged to the permittee.
- C. The permittee must take appropriate measures to maintain (during the entrance into a substructure opening or performance of excavation work) safe and adequate passage of vehicle and pedestrian traffic as required by the County.
- D. In the event the permittee causes damage to existing utilities (and for this purpose, pipe coating, or encasement or devices considered a part of the utility); the owners must be notified immediately. Further the permittee is responsible for the proper installation of any diversion or pouding devices necessary for the protection of property and structures, and shall be responsible for repair or payment of damages caused to property or structures by permittee's failure to properly provide such services.
- E. Damage caused to aerial crossing due to conveyances shall be the responsibility of the owner or operator of the aerial crossing.

Section IX. Construction Requirements

- A. The permittee prior to making any excavation or paving cut, shall adequately barricade the area to be excavated and shall adequately light the area at night in compliance with the latest edition of the Manual on Uniform Traffic Control Devices.

- B. After completing the ditch, trench, or excavation, the permittee shall install all facilities at least 36" inches below road surface, or deeper if necessary to meet the more stringent requirements of other governmental agencies. All parallel and lateral depths shall be minimum of 36" inches beneath the ground surface including pipelines above 50 psi, electrical lines above 260 volts to ground, or hazardous materials pipelines (as defined by Environmental Protection Agency). Other applicable rules, regulations, or laws may require Greater depths. Utility lines parallel with the roadway shall be installed within five (5') feet of right-of-way lines, unless a wavier is granted by the Road Foreman. All roadway crossings shall be perpendicular to the roadway.
- C. Excavation paralleling county roads that exceed 350' feet in length shall not be left open over night. Unless authorized by the County Road Foreman, and in compliance with The Manual on Uniform Traffic Control Devices and OSHA standards of safety. Any excavation crossing the roadway shall not be left unattended and in no case left open overnight.
- D. All material excavated must be piled and maintained so as not to endanger the public in order to expedite flow of traffic or 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 Section X. Upon failure to do so within 24 hours after notice from the County, the County may do so and charge the cost to the permittee.
- E. In the event grade changes are made within a County right-of-way that necessitates relocation of any installation, the permittee, upon receiving written notice from the County Road Department, will contact the Road Department to coordinate relocation of his facilities. Relocation shall be done by the permittee within a reasonable time, at his own expense.
- F. In no case during use or maintenance of its right-of-way will the County be responsible for any utility breaks or interruptions. Any damage occurring will be at the expense of the utility.
- G. Location markers as deemed necessary shall be furnished, installed, and placed as to the location of the Facility. The Licensee shall install markers when the facility crosses the route and periodically along the roadway not exceeding 660' apart. The Marker shall indicate the location of the Facility, name, address, and telephone number for information regarding the Facility.
- H. Upon completion of the permitted project an as built diagram will be furnished to the County Road Department and recorded in the County Road Department Office.

Section X. Backfilling

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

- A. All trenches and ditches will be backfilled and compacted. All excavations outside the roadway shall be compacted to a density equal to the surrounding undisturbed soil. Excavation within the roadway shall be compacted to a density of 90% percent of maximum density according to AASHTO T-180. Methods of sampling and testing and average surfacing proctors are available at the road department office.
- B. In all trenches and excavation, the material used in backfilling must consist of the original, excavated material or other material in a finely-divided form, free of large lumps, large stones, rocks, pieces of old concrete, or asphalt pavement or large wet or gummy masses, and must be placed and compacted in layers or lifts (6" – 8" thickness) from the bottom of the trench excavation. Compaction to be 90% percent of maximum density according to AASHTO T-180. If deficiencies are found any time thereafter, a soil density test and or proctor can and will be required and conducted by the County Engineer, at the expense of the permittee.

- C. Inspection of backfill, compaction, and final grade elevations shall, to the extent practical, be made by the County.
- D. In the event the compacted backfill fails to meet the requirements of this Section when tested, or otherwise fails as evident by settlement of the trench or excavation, the County may order the faulty backfill material removed, replaced, and compacted to the required density specified herein; and the County may also order the replacement of all pavement destroyed or damaged as the result of the backfill failure settlement. The permittee shall pay any cost incurred by the County. Including, but not limited to compaction tests, unnecessary inspection costs, time involved in enforcing the compliance of this ordinance.

Section XI. Inspections

- A. The County may make such inspections as are reasonably necessary in the enforcement of this Ordinance.
- B. Acceptance or approval of ditching, excavation, backfilling, and restoration of surface by the County does not prevent the County from asserting claim against the permittee for incomplete or defective workmanship or materials. The presence of a representative of the County during the performance of the work does not relieve the permittee of his responsibilities hereunder.

Section XII. Fees

- A. The fee will cover the permit, plan checking and inspection. The permittee will pay for any laboratory test required by the Department.
- B. The amount of the permit shall be completed as follows:
 - 1. There shall be a fee for each permit in the amount of \$75.00 for the first (60') sixty feet. Each permit shall be valid for a period of 15 days from the date of issuance. Upon written request a permit may be extended at no extra cost. Every public right-of-way dedicated to the County will require a permit. A permit fee of \$25.00 will be assessed for the installation of a culvert to an existing County Road, either paralleling or perpendicular to a roadway.
 - 2. Trenching supervisor fees shall be based upon lineal feet, trenched or bored, to complete the utility construction and the depth as shown in the following table.

Depth	Cost per lineal ft./1' minimum width
36"	0.10/L ft
48"	0.12/L ft
60"	0.14/L ft
72"	0.16/L ft

- C. Payment shall be made in the form of check payable to Torrance County Road Department and deposited with the County Treasurer in the County Road Fund.
- D. A minimum vertical clearance of 18' 6" over the highest point of the roadway is required for all overhead electrical lines. In no case shall the aerial crossing be lower than the standard set by the latest edition of the NESC. A permit fee and a fee of \$10.00 per pole and or anchor located within or crossing the right-of-way will be assessed to the permittee as compensation for the inspection of its location and height as permitted. Each time a facility enters, exits or crosses a right-of-way a permit shall be required.
- E. The County reserves the right to waive fees for entry into a substructure opening.

- F. The County reserves the right to negotiate lease, license, and franchise agreements with permittees. Provided that, reasonable compensation and fair market value is agreed upon between the permittee and the County Attorney in accordance with all State and County Laws.
- G. If a right-of-way easement larger than that of a standard utility is required, extending beyond 1' foot in width. The County as an obligation to the public may seek reasonable compensation and fair market value as required by New Mexico State Law.

Section XIII. Double Fees

Where work for which a permit is required is started prior to obtaining a permit, the fees specified above shall be doubled, but the payment of such double fees shall not relieve any persons from full compliance with the requirements of this ordinance in the execution of the work, nor from any other penalties provided by law. The road department receives daily reports from the New Mexico One Call System. If excavation is conducted without obtaining this permit, the road department will enforce sections XIII and XIV of this ordinance. If the assessment is not honored, the road department will not permit any future requests.

Section XIV. Penalty

In addition to any other liability imposed by law. Any violations, or failing, or neglecting to comply with any orders or regulation issued pursuant to any section hereof shall be deemed a misdemeanor. A separate offense which shall be cited for each and every day or portion thereof during which any violation or violations are continued. Upon conviction, violators shall be guilty of a misdemeanor, punishable by a fine of not more than \$300.00 or by imprisonment in the County jail for a period not to exceed ninety (90) days, or to both such fine and imprisonment for each offense at the discretion of the Judge.

Section XV. Regulations

The County may promulgate such rules and regulations as may be required to implement this ordinance. Incorporated areas of Torrance County may enforce this ordinance or adopt stricter regulations for road cuts within the incorporated area

Section XVI. Severability

If any section, subsection, sentence, clause, word, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The County Commission hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, word and phrase thereof, irrespective of any unconstitutional or otherwise invalid statement.

Section XVII. Suspension or Cancellation of Permit

On discovery of non-compliance with this Ordinance the Road Foreman is authorized and empowered to suspend, all work permitted under the permit. Upon a hearing with the County or its representatives any permit may be cancelled or withdrawn by the County for performance of any work not being done in compliance with this Ordinance.

Section XVIII. Variances

- A. Variances will be considered should problems arise concerning compliance by the permittee with this Ordinance.
- B. A request for variance must be submitted to the Road Department in writing, and set out the problems encountered and justification for granting the request.

Section XIX. Appeals

In the event any applicant is aggrieved by the refusal of the Road Foreman to grant any permit, or by the suspension or cancellation pursuant to Section XVII, the applicant may, within 30 days of denial, suspension, or cancellation of the permit, appeal the decision of the Road Foreman to the Board of County Commissioners by timely filing written notice of appeal in the office of the Road Department

Passed and adopted by the Board of County Commissioners of Torrance County, New Mexico on 27th Day of June, 2001.

Torrance Board of County Commissioners

Bill Williams
Bill Williams, Chairman

Roger Rayner
Roger Rayner, Member

Chester Riley
Chester Riley, Member

ATTEST:
Linda Jaramillo
Linda Jaramillo, County Clerk



State of New Mexico
County of Torrance

I, hereby certify that this instrument was filed for record on the 27th day of June A.D., 2001 at 2:15 o'clock P M and duly recorded in book 290 at page 2562-2569

Witness my hand and Seal of Office

Linda Jaramillo
County Clerk, Torrance Co., N.M.
Deputy

