

Street & Alley Right-of-Way Excavation & Encroachment Policy

Cross References: Hobbs Municipal Code: Title 12: Streets, Sidewalks & Public Places, Chapter 12.20 Ditches & Pipelines; Title 15: Buildings and Construction; Title 16: Subdivisions.

RIGHT-OF-WAY EXCAVATION PERMIT REQUIRED:

Authority. This Policy is promulgated under authority of the Hobbs Municipal Code, Section 12-20, Ditches and Pipelines, et. seq., as amended.

Permission required. It shall be unlawful to make any excavation in or deposit any earth or other material on any public way or to construct any item or encroachment in any public right-of-way or public easement, or on any City owned real property without permission in writing from the City Engineer.

Protection of public. All persons making excavations or constructing encroachments within the city right-of-way shall mark the excavations in such a manner as to ensure the safety of vehicular and pedestrian traffic, and such warnings shall be clearly visible both day and night. The City right-of-way is hereby defined as any public street, alley, thoroughfare, arterial or other public way, and includes all public easements and municipally owned real property.

Refilling/Backfilling. Immediately upon the completion of any improvement for which an excavation has been made, the excavation shall be backfilled in compacted lifts or with flowable fill. Any excess dirt or other matter shall be removed. Refer to construction standards on page 6 of these policies.

Restoration of public way. The Permittee/Excavator shall restore the public way to its prior condition as soon as reasonably possible following backfilling and compaction, preferably tested by an independent testing laboratory.

Permit Required. The owner of any land or any contractor or agent of an owner or any public utility company desiring to construct any item or construction in any sidewalk, street, alley or public right-of-way shall first obtain a permit from the City Building Official.

New Mexico One Call Alert: The applicant must follow the New Mexico One Call Alert System 1-800-321-2537 prior to any excavation. The purpose is to locate all utilities in the area of the proposed excavation. The applicant should also notify the local utility companies if possible.

Application. Application for a permit required by this policy shall be made on forms provided by the Building Official and shall be accompanied by a plan showing accurately the extent and character of the excavation or encroachment proposed to be constructed. The Building Official will refer the permit application to the Engineering Department ("the Department") for review.

Consideration, approval. After examination and consideration of the application for the permit including the plan and examination of the premises if deemed necessary, the Engineering Department is authorized and directed to approve a permit for the construction and use of the right-of-way, public easement or City owned real property, if the proposed construction will not unreasonably interfere with the proper and safe use of the street, alley, sidewalk or right-of-way or the proper and safe use of the street or other public way. The Department shall make its determination based on the standards specified in this article. No work shall be performed until such permit has been granted.

General requirements and restrictions. No person or entity shall build, construct, work or encroach upon a city right-of-way, drainage easement or public utility easement or City owned real property without obtaining a permit as set forth herein in this Right-of-Way Encroachment Policy, except for minor plumbing work related to accessing City water meters. Permission shall be in the form of an

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encroachment or right-of-way permit. Permission shall not be given unless the person or entity pays the permit fee, provides acceptable insurance and demonstrates that said work shall be in compliance with applicable city codes and standards.

Emergency Work. In the case of emergency work, the person or entity performing the work shall notify the city on the next working day after the emergency and obtain the required permits within forty-eight hours of the emergency.

Revocation of Permits and Indemnification of the City. A right-of-way or encroachment permit may be revoked upon a determination by the Department that the work being performed in a right-of-way or easement is not in conformance with the approved permit. In addition, should any action or claim be brought against the city as a result of a person or entity building, constructing, working or encroaching upon the city right-of-way or easement, such person, whether written permission was received or not, and whether the required insurance was in effect or not, shall defend, indemnify and hold the city harmless from any such actions or claims.

Acceptable Insurance Requirement. "Acceptable insurance" means a minimum of one million dollars of general liability insurance for each occurrence provided by an insurance company rated B+ or higher (by A.M. Best company) and a financial size category (FSC) of "V" or higher. For work in the city right-of-way that involves a driveway, sidewalk, or fence to serve single family residential purposes, acceptable insurance is defined as a minimum of one hundred thousand dollars of general liability for each occurrence provided by an insurance company rated B+ or higher (by A.M. Best company) and a financial size category (FSC) of "V" or higher. The City should be made an additional insured party on the Insurance Certificate to be submitted to the City. The City Attorney shall determine if a Company's insurance requirements are adequate. Franchise utilities should have an Insurance Certificate on file with the City.

Restrictions on Privately Owned Real Property. No person or entity shall excavate, build, construct, work or encroach upon a privately owned real property without first obtaining written permission from the Property Owner and in the case of leased property, to also obtain permission from the Lessee. Exceptions to the above would be made according to private or public easements of record and standing permits of access and right-of-entry.

Right-Of-Way Encroachment Or Excavation Permits.

General Requirements for Right-Of-Way Encroachment and Excavation Permits are detailed in Table A on the next page. The required permit form is attached hereto.

Permit fees to support processing and review costs are detailed in Table B.

**Table A
General Requirements
Right-Of-Way Encroachment Or Excavation Permits**

TYPE OF WORK	PERMIT REQUIRED	INSPECTION REQUIRED	INSURANCE ² REQUIRED DURING CONSTRUCTION
Utility (Franchised Utility)	Yes	Yes	No
Utility (Non-Franchised Utility)	Yes	Yes	Yes
Perpendicular Street Cut	Yes	Yes	Yes
Perpendicular Street Bore	Yes	Yes	Yes
Parallel Street Cut	Yes	Yes	Yes
Barricade Permit	Yes	Yes	Yes
Driveways and Curbs	Yes	Yes	Yes
Sidewalks	Yes	Yes	No
Fences	Yes	Yes	No
Retaining Walls ⁴	Yes	Yes	Yes
Landscaping (More than 2 feet high)	Yes	Yes	No
Mailboxes (Cluster units installed by USPS and Others)	Yes	Yes	Yes
Security Gates	Yes	Yes	Yes
Entrance Signs	Yes	Yes	Yes
Sewer Service Laterals	Yes	Yes	Yes
Other Structures	Yes	Yes	Yes
Site Grading	Yes	Yes	Yes
Block Parties	Yes	Yes	No

Notes to Table A:

1. Insurance requirements as defined by the City Attorney. Insurance is not required for franchised utility companies. A franchised utility company is a utility company empowered with a service agreement with the City of Hobbs to provide some type of utility service within the City limits of Hobbs.
2. Security Gates are permitted only for gated subdivisions or residential complexes. A subdivision Entrance Sign may be permitted by the City Engineer with a Subdivision Application. The Entrance Sign must be approved by the Planning Board prior to permitting by the City Engineer.
3. A retaining wall is defined as a wall in excess of 4' height designed to resist the lateral displacement of soil or other materials.
4. Utility Clearance may be required for an encroachment project, as deemed necessary by the City Engineer.
5. The City may require long term insurance or indemnification for certain projects, for example oil and gas related projects.
6. Curb and gutter can only be constructed by a licensed contractor.

**Table B
Encroachment And Excavation Permit Fees**

TYPE OF PERMIT	Fee For Franchised Utility	Fee For All Other Permittees
Perpendicular Street Cut	\$100	\$200
Parallel Street Cut	\$25	\$100
Barricade Permit	\$25	\$50
Perpendicular Street Bore	\$1	\$1
Fences	\$10	\$10
Retaining Walls ⁴	\$100	\$100
Landscaping (More than 2 feet high)	\$25	\$25
Mailboxes (Cluster units installed by USPS and Others)	\$10	\$10
Security Gates	\$25	\$25
Entrance Signs	\$25	\$250
Sewer Service Laterals	\$10	\$10
Other Structures	Yes	Yes
Site Grading Permits	\$100	\$100
Block Parties	\$0	\$0

Notes to Table B:

1. Fee amounts are as established in the above table as the current (April 2005) Fee Schedule for Building Permits. Fees for Franchised Utilities will be invoiced once per year if requested.
2. If the excavation or encroachment is not satisfactorily repaired within 10 days of the excavation work, a double fee will be assessed.
3. A fee for "Other Structures" will be negotiated based on the amount of processing time required.
4. For excessive length parallel cut projects in excess of 1,000 LF, a per foot fee - at \$0.10/LF may be assessed to the contractor or utility company.
5. No double Permit fees will be assessed by the City, in the event that a Building Permit fee and a fee on the above table apply to the same item. The following fees are applicable but are called for in the Building Code.

Driveways and Curbs	\$10 & up	\$10 & up
Sidewalks	\$10 & up	\$10 & up

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Permit Not Required: Right-of-Way Encroachment Permits are not required for the following:

1. Non-structural, individual mailboxes for single family residential properties. A non-structural mail box is defined as a box that does not use any concrete/brick/mortar except to set the pole.
2. Landscaping less than two (2) feet high.
3. Temporary utility maintenance work conducted by a franchised utility or the City for a period of time not exceeding two (2) hours in length, that does not include any type of ground excavation.

Prohibited: The following items/structures are prohibited in City right-of-way and Right-of-Way Encroachment Permits will not be issued for the following:

1. After the date of adoption of this policy by the Hobbs City Commission, no fences or screening walls of any kind shall be built or constructed in the street right-of-way. A fence is defined as an artificially constructed barrier of any material or combination of materials erected, wholly or partially, to enclose or screen areas of land. All fences existing in the City right-of-way at the time of adoption of this policy are grand-fathered in as legal non-conforming structures for a period not to exceed ten (10) years, unless the fence is determined to be a threat to the health and safety of the community.
2. Placement of signs, except subdivision entrance signs and those signs authorized by the City of Hobbs City Commission & Traffic Division. Signs which overhang the right-of-way must be approved by the City Building Official or his designee.
3. Perpendicular cuts of Major Arterials and Minor Arterials are prohibited. Parallel cuts in the right-of-way are to be permitted if not in the pavement or curb areas. Perpendicular cuts of all other paved streets are discouraged and the alternative to bore under the street pavement is recommended by the City.

Utility Review: If deemed necessary by the City Engineer, site plan and project information for a project shall be submitted to the utility companies before issuance of permits. The utility companies may request additional information to determine compliance with their regulations. The utility must approve the request prior to issuance of a permit and approval shall not be unreasonably withheld.

Public Easement Encroachment Permits.

A Public Easement Encroachment Permit application for work in a drainage or public utility easement, shall be accompanied by the appropriate fee, proof of acceptable insurance, and plans which demonstrate compliance with applicable city codes and standards. The minimum requirements for work permitted in drainage and public utility easements are generally the same as street and alley right-of-way permits, except that traffic control is not normally required. The required permit form is to be the same as for a street right-of-way.

Barricade Street Use Permits.

The Application for Barricade Street Use Permit is attached hereto. The purpose of the Barricade Street Use Permit is to partially or completely block a section of a public street to allow construction activities to be undertaken on private property or in an easement adjacent to the right-of-way. The City Engineer and the General Services Director will be charged with review of these permits. The minimum requirements for these permits will vary with the activities proposed on private property, and traffic control will be required.

GENERAL CONSTRUCTION STANDARDS FOR STREET EXCAVATIONS:

Companies & Entities Requiring Permits:

City owned and maintained utilities,
Franchise utilities (Gas, Telephone, Electric, etc.),
Privately owned utilities and pipelines,
Contractors making street or alley cuts,
Property owners excavating or construction of any object or pipe in the right of way.

General Construction Requirements:

All density and material requirements will be as found in the latest edition of the APWA Standard Specifications. Base Course shall be Type I or II and the Asphalt Concrete Aggregate shall be Type B. If Superpave pavement is used it shall be a New Mexico State Highway and Transportation Department (NMSHTD) mix design installed and shall be installed under NMSHTD Specifications.

Permittee shall hire a Professional Engineer to provide quality control and compaction testing certification on any trench backfill and any subgrade, base course, and hot mix asphalt patching needed. The subcontracting firm providing the street patching shall also be a contractor licensed in New Mexico to perform that type of work.

All underground utility mains or lines shall be a minimum depth of 30" below ground surface.

A maximum of 300 feet of trench may be left open during the day at any location as long as access to all driveways is preserved when needed by the adjacent property owners. At night, all trenches should be backfilled if possible except for the beginning of the next day's work, which shall be barricaded properly. The permit holder shall barricade all open ditches when work crews are not present; and at night, the barricades shall maintain yellow/orange warning light flashers.

Upon completion of the construction, please remit copies of the compaction tests taken on each lift of trench backfill, subgrade, base course, and hot mix asphalt pavement at a minimum of 200 foot intervals along the trench. Flowable fill (as specified by the City Engineer) is allowed in lieu of subgrade installation and compaction.

Edges of pavement shall be saw cut straight a minimum of 12" beyond the trench edge and tacked to insure a good edge to patch against. Residential pavement cross sections shall be 6" base course and 2" hot mix asphalt pavement as a minimum. Arterial pavement cross sections shall be 10" base course and 4" hot mix asphalt pavement as a minimum, or match existing cross section, whichever is larger.

Alleys shall be patched with a six inch (6") caliche base surface. Contractor shall schedule their construction in alleys to coordinate with waste management to assure pickup of waste. Work performed in locations back of curb shall result in minimal damage to existing property. Yards shall be replaced as closely as possible to the condition they were in prior to construction.

If unable to completely patch any street to grade within 48 hours after backfilling trench, trench must be filled to grade with flowable fill as specified by the City Engineer. All permit information must be provided to Building Official/Inspector for approval prior to beginning any street cut. All construction must comply with NMSHTD Design Standards and is subject to approval by the City Engineer. The City Engineer is authorized to approve minor variations to the Policy as determined in the best interests of the City of Hobbs.

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Companies & Entities Requiring Permits:

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WORK AREA TRAFFIC CONTROL REQUIREMENTS:

Purpose. The purpose of this policy is to: 1) Set forth traffic control requirements to be observed by all those who perform work in a public street; 2) Provide safe and effective work areas; and 3) Warn, control, protect, and expedite vehicular and pedestrian traffic.

Applicability. Unless otherwise stated, the requirements specified in this article are applicable to all private contractors, utility companies, property owners, and city work crews performing work on or within public rights-of-way and City owned real property within the city limits.

Traffic Control Requirements. All traffic control performed within public right-of-way shall conform to chapter 6, entitled "Standards for Work Zone Traffic Control," as set forth in the Manual on Uniform Traffic Control Devices, published by the federal highway administration.
(Code 1988, § 28-28)

Responsibilities.

(a) Generally. Construction work within public rights-of-way is performed by private contractors, utility companies and city work crews, each with distinct and separate responsibilities, as discussed in this section.

(b) Private contractors. Private contractors, when working in the public right-of-way, shall be required to submit a traffic control plan to the Engineering Department, in conjunction with the request for a permit from the Engineering Department. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. Also, the traffic control plan shall include the time and date of the construction work.

(c) Private contractor under contract with city. Private contractors, when working under contract with the city for construction work, shall be required to follow the specific traffic control plan outlined in the construction plans. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. The contract administrator for the city shall be responsible for ensuring that the contractor follows the prescribed traffic control plan. The Engineering Department, Traffic Division will provide review of the project plans prior to the letting of the bid and will be available to inspect the traffic control devices during construction, as requested by each project contract administrator.

(d) Utility companies. Franchised Utility Companies, when working in the public right-of-way, shall be required to notify the City Traffic Division of any construction work that will adversely affect traffic and that will be in place for longer than 24 hours in duration. All traffic control shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. As required, the public works department will inspect the work site for conformance with the Manual on Uniform Traffic Control Devices.

(e) City work crews. City work crews, when working in the public right-of-way, shall be required to conform as outlined in the Manual on Uniform Traffic Control Devices and will be required to obtain permits under this policy.

(f) Notification by private contractors, utility companies and city work crews. Private contractors, utility companies, and city work crews are responsible for notification to and coordination with all agencies that the traffic control will affect, including the following:

Police Department

(397-9265)

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Fire Department	(397-9308)
Utility companies, when applicable	(Contact #s are available at the Building Permit Office)
City Engineering Department (Traffic)	(370-3950, 397-9352)
City Street Division	(397-9318)
City Manager.	(397-9206)

If a street is to be closed, the following must also be notified:

Waste Management	(392-6571)
B & G Transportation	(392-8514) (or current school bus contractor)
Hobbs Express	(397-9290)

In the event that the excavation is near a buried pipeline, then the appropriate pipeline companies should be notified.

(g) Public Notice. The City Engineer and Contractor will jointly decide if a public announcement of street closures is to be made.

Temporary Work. A permit is not required for temporary utility maintenance or street maintenance work conducted by a franchised utility or the City which does not include any type of ground excavation provided that the period of time required for the maintenance work does not exceed two (2) hours in length. The utility or entity will be fully responsible to follow all traffic safety rules as specified in this policy.

Administration and Enforcement. The City engineer or his designee shall administer and enforce the provisions of this chapter. Under this policy, the City Engineer or his designee shall notify the private contractor or utility company of any deficiencies in traffic control. The private contractor or utility company will have two hours from the time of notification to correct the discrepancies. If the deficiencies are not corrected, the problem shall be turned over to the police department for enforcement, as outlined in the HMC. The City Engineer or his designee shall also notify the private contractor or utility company of any deficiencies in construction practices or repairs to the right-of-way and request corrected actions as necessary.

Violations & Penalties.

(a) Every violation of this article constitutes an offense. Each day a violation of this article exists constitutes a separate offense.

(b) The Police Department is authorized to issue citations for violations of this article and to file criminal complaints in municipal court, alleging violations of this article.

(c) The municipal court may impose a fine for each offense, not to exceed \$300.00 for each day the violation is found to have occurred. Failure to comply with any such orders for compliance or other judgements of the municipal court, including failure to pay fines previously imposed, shall constitute contempt of court and may be separately punished at the discretion of the municipal court.