

STREETS, SIDEWALKS AND RIGHTS OF WAY

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Cross references: Environment, Ch. 14; Land use, Ch. 18; Parks and recreation, Ch. 26;
Traffic and vehicles, Ch. 34.

ARTICLE I. RIGHT OF WAY USE PERMITS AND FEES

Section 31-1. Purpose and Applicability.

(a) *Purpose.* The purpose of this article is to provide for the safety of the public and to preserve, protect and improve the esthetic quality of the Village by regulating excavation, construction, barricading and other activities occurring in public rights of way, including but not limited to streets, sidewalks, pathways and trails, and in other public places of the Village. This article provides a permitting process to ensure that excavation, construction, barricading and other activities by private individuals, companies or contractors within the public right of way are properly performed with a minimum of interference in the use of the public right of way by local residents and the traveling public.

(b) *Applicability.* This article and the provisions hereof shall be applicable to all excavation, construction, barricading and similar activities occurring in the public right of way, except as otherwise specifically exempted in this article. The provisions of this article shall be fully applicable to public utility companies and to employees, contractors, subcontractors, and representatives thereof, notwithstanding any franchise agreement between the Village and the public utility company, unless specifically provided otherwise in a current, unexpired franchise agreement presently in effect between the Village and the public utility company at the time of the excavation, construction, barricading or similar activities.

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Section 31-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section unless a different meaning is clearly required by the context.

Applicant means any person applying for a Right of Way Use Permit.

Barricade means any MUTCD approved obstruction within the right of way that impedes the flow of traffic or the traveling public, whether vehicular, equestrian or pedestrian.

Barricading means the placement of barricades as required by the MUTCD and approved by the Village or to delineate activities such as the placement of construction dumpsters or drop boxes, piles of gravel or other materials, placement of storage containers, or any similar activities.

Emergency repair means repair, restoration or replacement of an existing structure, infrastructure or

cable made necessary because of a sudden unexpected event which has created an immediate and continuing threat to public health, safety or welfare, including the need for protection of property from a threat of imminent harm and the need to restore or prevent the loss of public utility service.

Excavate means to create an excavation.

Excavation means any hole, trench, ditch or depression which penetrates through any paved or unpaved ground surface and creates a substantive opening by the removal of pavement, gravel, rock, dirt, stumps, roots or other materials.

Infrastructure means constructed physical features, including overhead and underground utilities, located within the public right of way and used primarily for the benefit and enjoyment of the general public.

Jacking means a horizontal guided or semi-guided tunneling process.

MUTCD means the Manual on Uniform Traffic Control Devices, latest edition.

Pathway means a constructed way or trace designed primarily for pedestrian, equestrian or non-motorized vehicular use, including but not limited to a sidewalk.

Pavement means any improved traveling surface for vehicular, bicycle, equestrian or pedestrian traffic, including asphalt, portland cement concrete, brick, masonry, gravel, clay or other man-made or humanly emplaced materials.

Permit or right of way use permit means a revocable permit for excavation, construction, barricading or other activity in a public right of way issued by the Village in accordance with this article or any other applicable ordinance of the Village.

Permittee means a person holding a valid, approved Right of Way Use Permit who is conducting work or other activity pursuant to that permit.

Person means any individual, estate, trust, receiver, association, club, corporation, company, firm, utility or other entity.

Public place means all property owned, maintained or controlled by the Village including, but not limited to, streets, bicycle paths, pathways, trails, ways, places, plazas, parks, public buildings, easements dedicated to the Village and rights of way.

Right of way means the entire area of public land used for a roadway, street, pathway or trail, or of an easement dedicated to the Village and so used, including the entirety of the land within the boundaries of such area, whether or not any portion thereof is actually used as a part of the roadway, street, pathway or trail.

Roadway means that portion of a street which is primarily devoted to vehicular traffic.

Sidewalk means a paved pathway adjacent to or at the side of a roadway that is designated and set aside for pedestrian use.

Street means a way located on public land, or a way or easement over private land which is dedicated to and maintained by the Village, used or intended to be used by the general public and open to the general public for passage or travel by motor vehicle, by bicycle or other non-motor vehicle, by horseback, or on foot.

Trail means an informal passage or way located on public land of the Village that is designated for, or commonly used for, travel on horseback, on foot, or by non-motorized vehicle, whether or not such passage is actually maintained by the Village.

Traffic means the flow of vehicles and travelers along public streets, including motor vehicles, bicyclists, equestrians and pedestrians.

Trenchless excavation means utility line installation, replacement or rehabilitation through the use of boring, jacking, horizontal drilling or tunneling.

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Section 31-3. Permit required for excavation, construction or barricading.

(a) *Permit required.* A permit from the Village shall be required for any and all excavation, construction or barricading within any public right of way in the Village, whether or not the excavation, construction or barricading will obstruct any portion of a roadway, pathway, or trail located within such right of way. If the permit is for excavation, construction or barricading within the right of way of a State highway or a public right of way owned by any State or local governmental body other than the Village, the permit need only address any anticipated traffic delays, detours or rerouting of traffic relating to the proposed activity. If the permit is for excavation, construction or barricading within any right of way owned by the Village, the following Subsection (b) shall apply.

(b) *Permit for work within Village right of way.* No person or entity shall excavate, engage in any construction, or erect barricading within the right of way of any street, roadway, highway, sidewalk, pathway, trail or right-of-way owned by the Village except in accordance with the terms of a right of way use permit issued by the Village pursuant to Sections 31-4 through 31-6, inclusive.

(c) *Emergency repairs.* In the event that an emergency repair is necessary to provide for continuation of utility services or other critical services on a day or at a time when the Village offices are not open for business, the public utility company or other entity having responsibility for such emergency repair may commence the necessary repair work without a right of way use permit; provided, however, that such entity shall submit application for an appropriate right of way use permit no later than 12:00 noon on the next business day following the event requiring the emergency repair.

(d) *Short-duration operations.* Persons who use the public right of way for short-duration operations, including but not limited to landscaping and landscape maintenance, lifting with crane or boom truck, concrete delivery, concrete cutting, asphalt repair, and utility locators using destructive methods shall obtain a right of way use permit from the Village. Traffic control requirements, if any, will be commensurate with the duration and location of the work and the impediment, if any, to the flow of traffic.

(e) *Dumpsters and drop boxes.* A right of way use permit shall be required for the placement of any construction dumpster or drop box in the public right of way.

(f) *Exception for subdivisions under construction.* No right of way permit shall be required for work conducted in a right of way that has been dedicated to the Village by plat of the subdivision within which it is located, but that remains under construction by or for the subdivider and has not yet been accepted by the Village for operation and maintenance. However, this provision shall not be construed to exempt work within such subdivision from any other permit requirement, whether State or local, such as building permit or certificate of occupancy requirements.

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Section 31-4. Right of way use permits.(a) *Permit requirement.*

- (1) No person may excavate in a public right of way of the Village or perform construction work within a public right of way of the Village without first obtaining a permit for such excavation or construction from the Village. An excavation permit shall be required for the underground installation in a public right of way of any facility by jacking, trenching, boring, digging, tunneling or drilling.
- (2) No person may barricade any portion of a public right of way without first obtaining a barricade permit from the Village allowing the temporary obstruction of the right-of-way. A separate barricade permit shall not be required for barricade activities included within the scope of an excavation or construction permit.
- (3) Excavation permits, construction permits and barricade permits shall be approved by the Village Administrator or by a designated Village officer or employee specifically authorized to issue such permits by the Village Administrator or the Mayor.

(b) *Permit conditions.* Excavation, construction and barricade permits for Village-owned right of way shall be subject to the following conditions, as well as any further conditions that may be reasonably required by the Village Administrator for the protection of the public health, safety, welfare and convenience and to avoid damage to public or private property.

- (1) All excavated material not promptly removed from the site shall be piled adjacent to the excavation and maintained so as not to endanger the public and so as to cause minimal disturbance to persons using the public right of way and adjoining properties. Excavated material shall not be used as a barricade.
- (2) Permittee or contractor must thoroughly clean up and remove all rubbish and any excess dirt, rock and other debris resulting from excavation work. If the applicant fails to clean up and remove such material within forty-eight (48) hours following completion of the work, the Village may contract for such clean-up and removal and recover the cost thereof from the surety or cash bond provided by the applicant.
- (3) Permittee or contractor at all times shall maintain all existing bar ditches, culverts, gutters, drains, and other watercourses free and unobstructed for the full depth and width thereof, or provide adequate substitute for the flow of water in any watercourse that is unavoidably blocked by the excavation or construction.
- (4) Permittee and contractor shall at all times and under all conditions take affirmative steps to prevent the flow or discharge of debris, construction material, excavated material, or any other material into any watercourse or water conveyance discharging to the Rio Grande, regardless whether such watercourse or water conveyance contains an actual flow of water during the excavation or construction period. This requirement applies, without limitation, to natural arroyos and other natural, ephemeral watercourses and to the canals, acequias, drains, ditches, laterals and any other water control, distribution and collection works of the Middle Rio Grande Conservancy District, the Southern Sandoval County Arroyo Flood Control Authority, the Albuquerque Metropolitan Arroyo Flood Control Authority, the Village of Corrales, and Sandoval County.
- (5) When excavation will affect road pavement, the applicant is prohibited from using pavement breakers which endanger existing structures or other property. Saw cutting of concrete or

pavement may be required when the nature of the job or condition of the roadway warrants. Unstable pavement must be removed over cave-ins and subgrade is to be treated in the same manner as the main excavation. Pavement edges must be trimmed to a vertical face and neatly aligned with the centerline of any trench. All cuts shall be parallel or perpendicular to the roadway.

- (6) Any permittee who trenches or excavates a public place for any purpose whatsoever is required to backfill the trench or excavation with consecutive lifts of material, not exceeding eight (8) inches per lift, and compacted to ninety-five percent (95%) of maximum density. Permittee, at the discretion of the Village, may be required to submit laboratory test results, performed by an acceptable and certified laboratory, to verify compliance with this requirement.
 - (7) Upon completion of the work, and within the time allowed under the permit, the right of way and all structures therein, including but not limited to road pavement, surfacing of unpaved roads, sidewalks, pathways, trails and any other travel facilities, shall be restored by the permittee or contractor to their original condition, including their original material, elevation, slope, and profile.
 - (8) Permittee shall notify the Village immediately upon completion of the work or removal of the barricading.
- (c) *Other permittee responsibilities.*
- (1) Permittee is responsible for the location of existing utilities, whether above or below ground, and the Village shall have no responsibility or liability for utility location, except only to mark the location of existing Village-owned utilities upon request of Permittee through the New Mexico One-Call system.
 - (2) Permittee is responsible for implementation of the traffic control plan and flagging of the work zone as required. All flaggers shall be trained and certified by a training agency regularly engaged in the business of flagger training. Flaggers must show evidence of such training and certification upon request.
 - (3) Applicant shall be responsible for any damage to public or private property which may arise from or out of the performance of the work by the applicant or any contractor or agent of the applicant.
 - (4) Upon timely completion of the work and restoration of the entire work area to the satisfaction of the Village, including any necessary repairs to Village structures or appurtenances, the Village will release the surety bond or cash bond held by the Village. If the work is not timely or satisfactorily completed, the Village may retain such portion of the bond as is needed for the Village to complete any necessary repairs or restoration, or to pay any additional fees due because the work was not timely completed.

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Section 31-5. Permit application process.

- (a) *Application requirements.*
- (1) Applications for excavation, construction and barricade permits shall be filed with the Village Administrator or Village official or department designated by the Administrator and shall include the following information and documentation:

- a. Name, address, telephone number and email address of the applicant.
 - b. Location and delineation of the exact area to be excavated or barricaded, or within which the proposed construction will take place.
 - c. Evidence satisfactory to the Village that the applicant or applicant's contractor has all necessary licenses from the State of New Mexico to perform the proposed work.
 - d. Start and end dates of the proposed excavation, construction or barricading, including alternate dates. Unless otherwise specifically provided in the application and the permit, work must be completed within ten (10) working days after a permit is issued. Work or barricading must in any event be completed within the time specified in the permit.
 - e. Traffic control plan, including proposed work schedule.
 - f. Evidence of liability insurance for the proposed project, in an amount satisfactory to the Village.
 - g. Detailed construction plans, including plans for any repair work.
 - h. Estimated cost to replace or repair any Village-owned structures or appurtenances, based on current rate schedules. The Village will evaluate applicant's estimated costs using current estimated unit prices for contract items of the City of Albuquerque or other appropriate jurisdiction in the vicinity of the Village. The Village in its sole discretion may require that applicant modify or adjust the estimated cost to reflect current unit prices or rates.
 - i. Applicant must certify that applicant understands and agrees to all provisions of this Section 31-5(a) and will further adhere to all restrictions, conditions, limitations and other provisions contained in any permit issued by the Village.
 - j. A current list from the office of the Sandoval County Assessor showing the names and addresses of all owners of real property located within three hundred (300) feet of the proposed excavation, construction or barricading, with evidence satisfactory to the Village that each such property owner has been individually notified by the applicant regarding the proposed excavation, construction or barricading, including the specific dates and times when such activity is expected to occur.
 - k. If the excavation, construction or barricading will require the closure of any public street or road, a statement (i) signed by the owner or an adult occupant of each property located adjacent to such street or road within a distance of three hundred (300) feet from the location of such closure or blockage, and (ii) if the street or road terminates in a dead end or cul-de-sac beyond the point of closure, signed by the owner or an adult occupant of any residence between the point of closure and the dead end or cul-de-sac, in each case reflecting that the signatory has been made aware of the proposed dates and times of such closure and has no objection to them, or in the alternative stating the signatory's objection and reasons for such objection. If the applicant is unable after reasonable efforts to obtain such signature for any particular property, the applicant shall provide documentation satisfactory to the Village showing the efforts to obtain such signature, and the reasons no such signature was obtained.
- (2) Upon receipt of a completed application for an excavation or construction permit, including all necessary supporting materials, the Village will inspect the area of the proposed excavation or

construction and determine its present condition. The Village will determine the reasonable cost of repairing or restoring any area disturbed by the excavation or construction, and will notify the applicant of the cost. Applicant shall thereupon, as a condition for the issuance of the requested permit, post a performance bond issued by a qualified surety or a cash bond with the Village, in the amount determined necessary by the Village.

(b) *Issuance or denial of permit.*

(1) The Village will either issue the requested permit, subject to such conditions as the Village in its sole discretion deems appropriate and necessary, or will deny the requested permit, as promptly as reasonably practicable and in any event within ten (10) business days after receiving the application, unless otherwise agreed between the applicant and the Village.

(2) If a requested permit is denied, the applicant may either (i) submit an amended application addressing the deficiencies cited in the Village's denial of a permit under the original application, or (ii) file an appeal of the denial as provided in Section 31-7

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Section 31-6. Application and permit fees.

(a) *Application Fees.* Each application for a permit under this article shall be accompanied by payment of the following application fees, which shall be non-refundable:

(1) Excavation or construction within Village-owned right of way: \$150.00.

(2) Barricading, short-term operations, dumpsters or drop boxes within Village-owned right of way: \$75.00.

(3) Excavation, construction, barricading, short-term operations, dumpsters or drop boxes within public right of way not owned by the Village: \$75.00.

(4) Any other permit required by this article: \$75.00.

(b) *Permit Fees.* Each application for a permit under this article shall be accompanied by payment of the following fees, which will be refunded to the applicant upon demand if (i) the permit is denied by the Village, or (ii) the applicant determines not to perform the anticipated work in the public right of way and notifies the Village of such determination no later than five (5) business days before the start date for the work as approved by the Village or as stated in the application, if not yet approved by the Village.

(1) Excavation, construction or barricading within any roadway or obstructing any roadway (including a shoulder thereof accessible to motor vehicles) in whole or in part: \$100.00 for each calendar day or portion thereof that the excavation, construction or barricading remains.

(2) Excavation, construction or barricading within any Village right of way that obstructs any sidewalk, pathway or trail: \$50.00 for each calendar day or portion thereof that the excavation, construction or barricading remains.

(3) Excavation, construction or barricading within any Village right of way, without obstructing any roadway, sidewalk, pathway or trail: \$20.00 for each calendar day or portion thereof that the excavation, construction or barricading remains.

(4) Short-duration operations, dumpsters and drop boxes: \$10.00 for each calendar day or portion thereof that the operation continues or the dumpster or drop box remains; provided, however,

that if a dumpster or drop box is located so as to obstruct a roadway, sidewalk, pathway or trail, barricading will be required and the permit fee shall be as set forth in the preceding subsection 31-6(b)(1) or 31-6(b)(2), whichever is applicable.

(c) *Public utilities with current franchise agreements.* Application fees and permit fees for public utilities providing utility services to homes and businesses in the Village and having current unexpired franchise agreements with the Village shall be one-half (1/2) of the dollar amounts set forth in the foregoing subsections 31-6(a) and 31-6(b), unless otherwise specifically provided in the franchise agreement.

(d) *Village construction projects and events.* No application or permit fees shall be required for excavation, construction, or barricading permits approved and issued for construction projects of the Village or for public events and festivals sponsored or specifically authorized by action of the Village. *History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.*

Section 31-7. Appeal.

(a) *Appeal to Mayor.* An applicant aggrieved by a decision of the Village Administrator denying or limiting a permit sought under this article may appeal such decision to the Mayor by filing a notice of appeal within ten (10) days following the date of the decision appealed from. The Mayor may affirm, reverse, or modify the decision of the Village Administrator. If the Mayor does not act on an appeal under this section within twenty (20) days, the appeal is deemed to be denied.

(b) *Appeal from Mayor to Governing Body.* An applicant aggrieved by a decision of the Mayor on appeal, or by the Mayor's allowing a decision to remain in effect by failing to act on an appeal within twenty (20) days, may appeal the Mayor's decision to the Governing Body by filing with the Village Clerk a notice of appeal no later than twenty (20) days following the date of notification of the Mayor's decision or the date when the Mayor's decision was due, whichever is earlier. The Governing Body shall render its decision on the appeal following a hearing in open meeting. The Governing Body may affirm, reverse, or modify the decision appealed from. Notice of a hearing before the Governing Body shall be given to an applicant or landowner directly interested in the matter no less than ten (10) days before the hearing. The decision of the Governing Body on appeal shall be the final decision of the Village. *History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.*

Section 31-8. Penalties for violation.

(a) *Fees doubled.* Any person who, without applying for or without obtaining a permit as required by this article, undertakes an excavation, construction project, barricading or short-duration operations within the public right of way, or locates a dumpster or drop box thereon, upon notice of such violation shall immediately make application for the necessary permit and along with such application shall pay double the application and permit fees set forth in Section 31-6.

(b) *Penalty for violation.* Any person who violates any provision of this article or fails to apply for or obtain a permit as required by this article after notification of the violation or failure shall be subject to punishment in accordance with Section 1-6. Each day that an unpermitted excavation, construction project or barricade remains in the public right of way shall constitute a separate offense. Each day that a violation continues after notification by the Village requiring correction of the violation shall constitute a separate offense.

(c) *Option to seek injunctive or other relief.* In addition or as an alternative to any penalty or requirement of reimbursement imposed or required under Section 31-8(a) or 31-8(b), the Village may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with, or to enjoin the violation of, any provision of this article, and in such action may seek further to recover the

Village's costs, including costs of litigation and attorney fees, incurred as a result of the need to maintain such action or proceeding.

History: Ord. No. 300, adopted 5-13-97; Ord. No. 14-01, adopted 2-11-14.

Sections 31-9 to 31-25. Reserved.

ARTICLE II. OBSTRUCTIONS IN RIGHT OF WAY

Section 31-26. Purpose.

The purpose of this article is to provide for the safety, security and welfare by providing that public streets, rights of way, sidewalks, trails, pathways and other public places of the Village are kept free of obstructions or impediments that may interfere with their appropriate use and provide for the free and unimpeded passage of vehicles, equestrians and pedestrians.

History: Ord. No. 15-04, adopted 5-12-15.

Section 31-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section unless a different meaning is clearly required by the context.

Excavate means to create an excavation.

Excavation means any hole, trench, ditch or depression which penetrates through any paved or unpaved ground surface and creates a substantive opening by the removal of pavement, gravel, rock, dirt, stumps, roots or other materials.

Landmark Tree means a tree or stand of trees that has been designated as a landmark tree in accordance with the criteria and procedures established in Chapter 14, Article V.

Landowner means the owner or owners of the fee title to any privately owned land.

Pathway means a constructed way or trace designed primarily for pedestrian, equestrian and non-motorized vehicular use, including but not limited to a sidewalk.

Public place means all property owned, maintained or controlled by the Village including, but not limited to, streets, bicycle paths, pathways, trails, ways, places, plazas, parks, public buildings, easements dedicated to the Village and rights of way.

Right of way means the entire area of public land used for a roadway, street, pathway or trail, or of a private easement dedicated to the Village and so used, including the entirety of the land within the boundaries of such area, whether or not any portion thereof is actually used as a part of the roadway, street, pathway or trail.

Roadway means that portion of a street which is primarily devoted to vehicular traffic.

Street means a way located on public land, or a way or easement over private land which is dedicated to and maintained by the Village, used or intended to be used by the general public and open to the general public for passage or travel by motor vehicle, by bicycle or other non-motor vehicle, by horseback, or on foot.

Trail means an informal passage or way located on public land of the Village that is designated for,

or commonly used for, travel on horseback, on foot, or by non-motorized vehicle, whether or not such passage is actually maintained by the Village.

History: Ord. No. 15-04, adopted 5-12-15.

Section 31-28. Encroachments prohibited in public right-of-way.

(a) *No encroachments in right-of-way.* No person or entity shall erect or cause to be erected or place or cause to be placed any fence, wall, building, structure, or other constructed object in such a manner or in such a location as to encroach upon or obstruct, whether temporarily or permanently, any street, roadway, sidewalk, pathway, trail or right of way owned or maintained by the Village, except only for temporary barricades and other temporary obstructions specifically approved by the Village in accordance with Chapter 31, Article I and as otherwise expressly provided in this article.

(b) *Landscaping or plantings in public right-of-way.* No person or entity shall plant, maintain, or otherwise foster the growth of any tree, shrub, hedge, bush or other vegetation within or extending over any street, roadway, sidewalk, pathway, or trail on right of way owned or maintained by the Village.

(c) *Limited landscaping and small structures permitted.* Landscaping or plantings in the public right of way and small structures such as mailboxes or newspaper delivery boxes may be permitted in the public right of way, provided such landscaping, plantings or structures do not obstruct or impede public use, or constitute a hazard.

(d) *No materials to be deposited in right-of-way.* No person or entity shall deposit or cause to be deposited any trees, timber, gravel, rock, leaves, weeds, sod, brush, waste, rubbish, construction materials or other material (except excavated material in accordance with a permit issued by the Village and construction materials needed for Village maintenance of the street or roadway) on any street, roadway, sidewalk, pathway, trail or right of way owned or maintained by the Village; provided, however, that the placement of solid waste for pick-up in approved containers supplied by a solid waste disposal company licensed by the Village, on the days designated for the collection of such solid waste and in a location clear of any roadway, sidewalk or pathway, shall not be deemed a violation of this section.

(e) *No excavation or construction without permit.* No person or entity shall excavate or engage in any construction within any street, roadway, sidewalk, pathway, trail or right-of-way owned by the Village except in accordance with the terms of an excavation or construction permit issued by the Village pursuant to Chapter 31, Article I.

(f) *Landmark Trees.* Nothing in this article shall be deemed to require the removal, trimming, or pruning of any Landmark Tree, except to the extent specifically permitted or required pursuant to Chapter 14, Article V.

History: Ord. No. 15-04, adopted 5-12-15.

Section 31-29. Penalties for violation.

(a) *Penalty for violation.* Any landowner or other person who violates any provision of this article shall be subject to punishment in accordance with Section 1-6.

(b) *Village correction of violation; recover of costs.* In the event that a landowner fails within thirty (30) days after notification by the Village to correct any violation under this article or to remove any landscaping, plantings or structures from the public right of way upon notice to do so, or if the immediate correction of any such violation or removal of landscaping, plantings or structures is necessary to protect the public health, safety or welfare or to permit necessary work in the public right of way, the Village in its sole discretion may undertake to correct or cause the correction of the violation or removal of the landscaping, plantings or structures, with or without the permission of the owner thereof. In any

such case, the Village may require that the property owner or owners responsible for the violation or the landscaping, plantings or structures reimburse and make the Village whole for the costs incurred by the Village, and such obligation of the property owner or owners shall be a lien upon the real property of such owner or owners, which lien may be enforced or foreclosed in accordance with applicable law, including but not limited to Sections 3-36-1 through 3-36-7, NMSA 1978. Such lien shall be in addition to, and not a substitute for, any penalty that may be imposed pursuant to Section 31-29(a).

(c) *Option to seek injunctive or other relief.* The Village may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with, or to enjoin the violation of, any provision of this article (Chapter 31, Article 2) of the Village Code, and in such action may seek further to recover the Village's costs, including costs of litigation and attorney fees, incurred as a result of the need to maintain such action or proceeding.

History: Ord. No. 15-04, adopted 5-12-15.

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