

## City of Bertram

Ordinance No. O-1-2022

### Access Over Right of Way Ordinance

#### I. Policy/ Purpose

1. The purpose of this policy is to outline requirements and procedures for access to and maintenance of the City of Bertram public roads, alleys, and right of ways, including number of accesses, access surfacing, access agreements, and permit requirements.

#### II. Scope

1. This policy pertains to requests for access from residents to roads under the jurisdiction of the City of Bertram.

#### III. Objective

1. The objectives of this ordinance are to promote public safety and economical maintenance of roads, alleys, and right of ways through established access requirements to ensure compliance with the City of Bertram standards; to provide a process for permitting, construction and maintenance of accesses to and upon City roads, alleys, and right of ways; and to provide a mechanism for removal of unsafe structures and accesses and provide a process for obtaining exceptions to City roads, alleys and right of ways through an access agreement process.

#### IV. Definitions

1. Materials: Accesses may be surfaced with different types of material.
  - a) Aggregate: This material is often called gravel or rock. It is any of several hard inert materials such as sand or gravel used alone or in mixing with a cementing material and often in a specific gradation or distribution of particle sizes. At a minimum, all accesses shall be surfaced with aggregate. This is to prevent mud from being tracked onto the road creating safety and maintenance issues.
  - b) Hot Mix Asphalt (HMA): This material is often called asphalt or blacktop. It is a pavement consisting of aggregate and oil-based cement.
  - c) Portland Cement Concrete (PCC): This is most commonly referred to as concrete. It is a pavement consisting of aggregate, Portland cement and water.
  - d) Seal Coat: A thin maintenance overlay of liquid asphalt with embedded aggregate.
2. Permit: A document issued by the City of Bertram granting permission for construction within the right-of-way. The permit states the conditions under which work can be performed and sets standards for construction. *No person shall excavate, fill, or make a physical change within a ROW without obtaining a permit from the City.* For the purposes of this policy, the City of Bertram City Council is the issuing authority.
3. Right-of-Way (ROW): Property obtained through deed or permanent easement reserved for construction of and/or maintenance of transportation facilities. The ROW is typically 33' on either side of centerline (66' total) on most public roads.
4. Private Road: A road constructed that does not meet requirements for a public road as outlined in the County Standard Specifications.
5. Private Lane: A private lane is similar to a single access that provides entry for multiple properties from a public secondary road. Private lanes are named and generally provide access to three residences.
6. Maintenance Project: Routine work typically completed by the City of Bertram personnel and/or contractors that includes upkeep and preservation of roadsides, roadways, ditches, culverts, and bridges.
7. Construction Project: A project that provides a significant change to an existing road, bridge, or culvert. This could include a bridge or culvert replacement, roadway paving, roadway reconstruction, and is generally completed by a private contractor.

#### V. Procedure

The City of Bertram is continually maintaining and reconstructing roads that serve the City of Bertram. There are approximately 150 accesses that provide access to public and private property within the City of Bertram. Each

access impacts maintenance, construction, and roadway safety. The City of Bertram desires to set standards and require a permit for any physical changes within a City of Bertram ROW, or alleyway. An access permit is required for each access location to assure that the work meets or exceeds City standards to safeguard the interests of the City of Bertram, the travelling public, existing property owners and any future property owners. The permit process allows people seeking to do work within the City of Bertram an opportunity to review the proposed work with the City of Bertram and/or its engineering staff/Company, discuss appropriate standards for the work and consider safety requirements.

The construction and maintenance of accesses are the responsibility of the property owner. Accesses that have been built or paved without obtaining the required permit often have a negative impact on drainage, maintenance of the road surface and the safety of the traveling public. These accesses significantly increase the cost of projects and make routine surface maintenance more difficult.

Any work within a City of Bertram ROW, or alley way not in conformance to standards set forth herein is subject to modification or removal by the City. The City shall notify the property owner of the nonconforming issues. If the non-conforming issues are not corrected in the time period set forth by the City, the City may correct the nonconforming issue and invoice the landowner for the work. The City of Bertram may also assess any unpaid invoice for the cost of the correction as property tax.

#### Access Classifications

1. Residential Access: The Residential Access classification is used for an access to a property with a house.
2. Field Access: The Field Access classification may be used for an access to an undeveloped property or field or a separate drive from the residential access to gain access to buildings or other parts of the property.
3. Other Access: The Other Access classification is used for an access when a property owner provides acceptable justification for the need to have an access larger than that allowed by the Residential Access classification.
4. Joint Access: The Joint Access classification is used for an access that is shared by multiple parcels and usually by multiple property owners.

#### Need for Access Permit

1. All existing and new accesses along a public road and or alleyway requires an access permit. The access permit may be requested by the property owner, their agent, tenant, or designee.
2. Properties that access a private lane or private road are required to obtain an access permit. The City of Bertram and/or its engineer will provide guidance to achieve proper drainage and a safe access. An approved access permit does not establish legal access to the private lane or road.
3. The location at which a private lane or private road gains access from a public road and/or alleyway requires an access permit. An approved access permit does not establish legal access.
4. An existing access requires a new access permit when there is a physical change to the access's top width, surface, slopes or culvert within the City of Bertram ROW. A permit is also required when changing the access classification or location.

#### Review, Approval and Acceptance for New Accesses

1. Upon receipt of the completed access permit application and payment of fees, the City of Bertram will review the proposed location to ensure compliance with requirements of this ordinance. If approved, the permit will be issued by the City and construction may begin. If the permit is not approved, the applicant will be provided an explanation and recommendations for changes to comply with the Ordinance.
2. Permit application fees are non-refundable.
3. An approved access permit is not the final step. The constructed access must be inspected and accepted by the City of Bertram upon completion. In order to be accepted, all requirements as provided for on the

permit shall be satisfied. If all requirements are met, the City of Bertram designee will sign and date the Final Acceptance portion of the permit.

4. Approved access permits are valid for one year from the permit approval date. If the access is not constructed and accepted within one year, the permit is void and a new permit must be purchased before completing any work.

#### Review, Approval and Acceptance of Existing Unpermitted Accesses

Many accesses do not have a permit for various reasons. Over time, all accesses will be reviewed for compliance with the City of Bertram standards and final inspected. The City of Bertram's general approach to ensuring that all existing accesses are permitted and final inspected is outlined below.

1. Accesses that pose an immediate safety concern will be given top priority and work will be scheduled to address the safety concern. The work is the responsibility of the property owner and in some situations the City of Bertram will complete the work and invoice the property owner. An example of a safety concern would be an access constructed with a headwall/landscaping wall on either side of the access or a plugged culvert. Accesses that do not pose an immediate safety concern and not permitted will be handled as time allows.
2. Accesses will be reviewed at the time of a City of Bertram maintenance or construction project.
  - a. All accesses adjacent to and within the limits of the City of Bertram project will be permitted and final inspected.
  - b. Complying accesses without a permit will be permitted without cost to the property owner.
  - c. The City of Bertram will contact property owners with noncomplying accesses and discuss options for compliance. Options may include, but are not limited to, access removal or relocation, access improvements to ensure compliance, or entering into an access agreement. If the City of Bertram crews and/or contractors complete the work, the property owner may be invoiced for a portion or all the total cost.
3. Accesses will be reviewed for compliance at time of the Planning and Zoning Review process. This is when a parcel is associated with a zoning transaction, such as a conditional use permit, final plat, or parcel split.
4. Unpermitted accesses not meeting current policy and standards are not grandfathered in due to public safety concerns. The requirements for compliance and options will be communicated to the property owner.

#### Number of Accesses

One access is allowed per parcel. A parcel, for the purposes of this ordinance, shall consist of all adjoining parcels owned by the same owner or owners. A second access may be permitted by the City of Bertram and/or the City of Bertram Engineer Designee upon receipt and review of written justification of need. Examples that warrant a second access include:

- a natural barrier (creek) preventing full use of parcel
- a home on a parcel associated with the farm operation with separate accesses
- separate use of a portion of the parcel through a conditional use permit

All residential lots two acres or less in size shall be restricted to one access. Two accesses may be considered in the following situations unless potential safety or drainage problems are significant, or restrictions are placed during the platting process:

- the lot is located at the intersection of two internal subdivision streets with a minimum of 300 feet of total frontage
- the residential lot is 2 acres or greater and a justified need is provided. A natural barrier preventing full essential use of the property would be an example of a justified need. Convenience to a property owner is not considered to be a justification.

#### Access Agreements

Access requirements for properties not conforming to the City of Bertram access policy may be allowed by the City of Bertram and/or the City of Bertram Engineer Designee through an agreement. Non-conforming generally includes, but is not limited to, properties with multiple accesses and accesses that exceed allowed width requirements. The agreement shall establish the number and location of all accesses into a property and the responsibility of the property owner, and or properties served by the access for the costs to the City of Bertram associated with the accesses. This agreement is recorded once signed by the property owner and all properties served by the access, and the City of Bertram.

Examples of associated costs may include rock placement, dust control, or paved shoulders. Costs may be required upon approval of the access agreement, at time of City of Bertram project, or when maintenance is required.

#### Requests for Paved Access

All accesses shall be surfaced with aggregate. Property owners may choose to hard surface or pave their access. The access must be constructed in accordance with the permit and any costs associated with the access pavement must be borne by the owner. The typical requirements for paved accesses are:

1. Accesses must be surfaced a minimum of 6 inches thick.
2. Accesses shall not be attached or dowelled to the public road or shoulder.
3. Access openings must be paved the full width of the public road shoulder. On a paved road, the paving cannot stop short of the paved public road leaving a gap unpaved.
4. Accesses must be sloped to drain to the ditch, not onto the public road.
5. On rock surfaced roads, the pavement must be stopped a minimum of 15 feet from the centerline of the public road.

#### Access Surface Replacement on the City of Bertram Construction and Maintenance Projects

The City of Bertram will use the following procedures when the replacement or adjustment of access surfacing is needed in the course of construction and maintenance projects on paved and rock surfaced roadways.

1. Permitted and non-permitted access pavements: If adjustments to the access are required as a result of a project, The City of Bertram will remove and replace any hard surfacing with rock. The owner is entitled only to replacement of the access surfacing with a rock surface.
  - a. Rock shall be used on all projects to provide a transition from the owner's access to the new secondary road surface. The City of Bertram shall provide enough rock for a transition with a maximum final access slope ratio of 10:1 (Horizontal:Vertical or 10%) when the existing access slope is 10:1 or less. If an existing access slope is greater than 10:1, the City of Bertram shall provide enough rock so the resulting transition is no steeper than the existing. The City of Bertram may enter into an encroachment agreement if access slope construction is needed beyond the City of Bertram ROW. Removal of concrete or asphalt is the responsibility of the owner and is subject to invoice for the City of Bertram cost of removal as deemed appropriate by the City of Bertram. A property owner may purchase additional rock through the project to reduce the slope of their access beyond what the City of Bertram provides, if desired.
  - b. Public road paving projects: The City of Bertram will replace any paved accesses with rock surfacing. However, the City of Bertram may determine that it is beneficial to the project to surface existing paved accesses with new pavement. This is generally when the existing pavement may be connected to a new HMA overlay within the standard access fillet of 4 feet. On paving projects, owners may choose to have their access paved within the City of Bertram ROW through the project contract at the owner's expense. Payment is based upon estimated quantities and is required in advance of paving. Generally, access connections are made with the same pavement material used for the public road project.

#### Access Design Standards

Accesses along public roads are subject to the requirements of the City of Bertram Standard Specifications. These standards set minimum and maximum access width, grade, sight distance, drainage and distance from

intersections. These criteria are set for the safety of the property owner and traveling public and are provided for on the access permit.


1. Access width at ROW line
  - a. Residential Access: 16' - 24'
  - b. Field/Commercial Access: 16' - 30'
  - c. Joint Access: 30'
2. The maximum access opening width at the roadway for all accesses is 50'.
3. Side Slopes Ratio (H:V)
  - a. Paved Road: 6:1
  - b. Seal Coat or Subdivision: 4:1
  - c. Rock Road: 3:1
4. Culvert Diameter & Length
  - a. The diameter is determined by the City of Bertram in accordance with the 2022 Storm water survey provided by Fehr Graham Engineering and Environmental based on the size of the drainage area.
  - b. The length is calculated by the City of Bertram in accordance with the 2022 Storm water survey provided by Fehr Graham Engineering and Environmental based on the ditch depth, requested top width, and the required slopes based on road type.
5. Obstructions are not allowed within the ROW. An obstruction is any solid object higher than four inches off the ground. Common examples of obstructions include brick mailboxes, rock landscaping, decorative headwalls and trees.

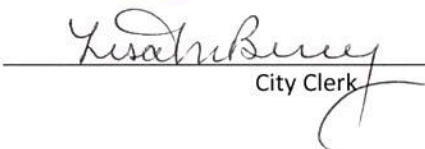
| Council Member  | 1 <sup>st</sup><br>Reading<br>5/16/22 | 2 <sup>nd</sup><br>Reading<br>6/1/2022 | 3 <sup>rd</sup><br>Reading |
|-----------------|---------------------------------------|--|----------------------------|
| Steve Carpenter | Y                                     | Y                                      | WAIVED                     |
| Louise Hall     | Y                                     | Y                                      | WAIVED                     |
| John Klimek     | Y                                     | Y                                      | WAIVED                     |
| Chris Price     | Y                                     | Y                                      | WAIVED                     |
| Jim Unzeitig    | Y                                     | Y                                      | WAIVED                     |

ADOPTED AND PASSED by the City Council of the City of this 1st day of June, 2022.

Seal of City

Attest:

  
 \_\_\_\_\_  
 Mayor

  
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 City Clerk

Public Hearing Date: May 16, 2022

Publication Date: June 16, 2022

Effective Date: June 16, 2022

