

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2017-18

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4  
5 AN ORDINANCE

6 RELATING TO THE TELECOMMUNICATIONS IN THE PUBLIC RIGHTS-OF-WAY  
7 ORDINANCE; AMENDING SUBSECTION 27-2.19 SFCC 1987 TO STREAMLINE THE  
8 LAND USE REVIEW PROCESS FOR TELECOMMUNICATIONS FACILITIES IN THE  
9 PUBLIC RIGHTS OF WAY; AMENDING SUBSECTION 27-2.20 TO INCLUDE  
10 FACILITIES; AND REPEALING SUBSECTION 27-21 RELATING TO THE  
11 TELECOMMUNICATIONS ADVISORY COMMITTEE.

12  
13 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

14 Section 1. Subsection 27-2.19 SFCC 1987 (being Ord. #2010-14 § 15, as  
15 amended) is amended to read:

16 27-2.19 Land Use Review.

17 A. General Applicability

18 (1) This subsection applies to all telecommunications facilities located  
19 within the city's public rights of way for which a franchise agreement is required  
20 pursuant to this Article 27-2 SFCC 1987.

21 (2) Land use review under this Chapter is not required for the following:

22 (a) telecommunications facilities located within the city limits, but  
23 outside the public rights of way;

24 (b) telecommunications facilities in existence prior to July 5, 2010 in  
25 the form in which they existed on such date;

1 (c) emergency and temporary telecommunications facilities or the  
2 emergency repair of telecommunications facilities; and

3 (d) the underground installation of telecommunications facilities.

4 B. Land Use Review Required

5 (1) Unless otherwise excepted pursuant to subsections 27-2.19 A. (2) and  
6 27-2.19 C., submittal of an application for land use review is required for the following:

7 (a) The construction of new telecommunications facilities in the  
8 public rights of way, including, but not limited to, the addition of new facilities to  
9 existing facilities, including, but not limited to street lights and telephone poles  
10 (collocations); and

11 (b) Maintenance, repair and replacement of existing  
12 telecommunications facilities to the extent that such work will increase the  
13 physical dimensions or visual impact of such facilities, including, but not limited  
14 to, the addition of new elements that increase visual clutter.

15 (2) Land use review is separate from and in addition to the requirement for  
16 submittal of an application to the New Mexico Construction Industries Division for a  
17 construction permit.

18 C. No Application Required

19 (1) The following shall not require submittal of an application for review  
20 under this subsection:

21 (a) the construction of new telecommunications facilities that  
22 conform to design parameters established from time to time by the land use  
23 department and are approved for use following a public hearing in the historic  
24 districts by the historic districts review board or outside the historic districts by  
25 the planning commission, provided that notice of the use of the approved design

1 and of the proposed location is submitted to the city prior to commencement of  
2 the work and the city approves the proposed location of the facilities;

3 (b) maintenance, repair and replacement of existing conforming and  
4 legally nonconforming telecommunications facilities to the extent that such work  
5 does not increase the physical dimensions or visual impact of such facilities, and  
6 routine maintenance or improvements to existing infrastructure, such as painting  
7 over graffiti on utility boxes or renewing screening elements used to minimize  
8 visual impact;

9 (c) telecommunications facilities of any subdivision of government  
10 used exclusively for emergency services, including police, fire, and the operation  
11 of city utilities;

12 (d) upgrades in capacity that do not otherwise modify the  
13 telecommunications facilities being upgraded;

14 (e) erection and removal of temporary or emergency facilities;

15 (f) removal of telecommunications facilities, or modifications that  
16 reduce their visual impact.

17 (2) An exemption from land use review is not an exemption from the  
18 requirement for submittal of an application to the New Mexico Construction Industries  
19 Division for a construction permit.

20 D. Administrative Approval. Administrative approval as set forth in this paragraph  
21 is separate from and required prior to submittal to the New Mexico Construction Industries  
22 Division of an application for a construction permit.

23 (1) The following applications shall be subject to administrative approval:

24 (a) Except for facilities permitted under subsection Subsection 27-  
25 2.19(C)(1) above or requiring planning commission review under subsection 27-

1 2.19(E) below, the construction of new telecommunications facilities in the  
2 public rights of way, including, without limitation, the addition of new facilities  
3 to existing facilities (collocations); and

4 (b) Applications for modifications to existing telecommunications  
5 facilities submitted pursuant to subsection 27-2.19(B)(1) above, to the extent that  
6 they do not substantially change the physical dimensions or visual impact of such  
7 facilities.

8 (c) For the purposes of this subsection 27-2.19(D)(1)(c) the city  
9 adopts the objective standards established under 47 C.F.R. § 1.40001 for what  
10 constitutes a substantial change to the physical dimensions of an existing  
11 telecommunications facility.

12 E. Planning Commission Review Required. Applications for telecommunications  
13 facilities in the public rights of way that are not otherwise permitted or administratively approved  
14 under subsections 27-2.19(A)(2), (C)(1) or (D), shall be heard and decided by the planning  
15 commission after early neighborhood notification and in accordance with standard planning  
16 commission procedures.

17 (1) In reviewing applications for telecommunications facilities in the public  
18 rights of way, the planning commission shall consider the visual impact of the proposed  
19 facilities on the natural and built environment and the community benefits derived from  
20 access to stable and efficient telecommunications services.

21 (2) In approving an application, the planning commission shall determine  
22 that:

23 (a) The application is in compliance with this subsection;

24 (b) The application is necessary in order to close a proven significant  
25 gap in service coverage, either generally or of the applicant; and

1 (c) The applicant has demonstrated that no other less intrusive means  
2 or alternative to the approved facilities design and siting exists.

3 (3) The planning commission may not regulate the placement of  
4 telecommunications facilities on the basis of the environmental effects of radio frequency  
5 emissions where such telecommunications facilities comply with 47 C.F.R. 1.1310 et seq.

6 (4) The planning commission may place conditions upon its approval of the  
7 application, but the conditions shall not prohibit or have the effect of prohibiting the  
8 provision of the telecommunications services.

9 (5) Findings of fact and conclusions of law shall be prepared and approved.

10 (6) A decision of the planning commission is appealable as set forth in  
11 subsection 14-3.17 SFCC 1987.

12 (7) Any denial of an application or any approval of an application containing  
13 any conditions not accepted by the applicant shall:

14 (a) be in writing;

15 (b) cite to the administrative record; and

16 (c) not become final until approved by the same body at its next  
17 regularly scheduled meeting.

18 F. Notwithstanding anything in this section 27-2.19 to the contrary, no aboveground  
19 telecommunications facilities shall be approved in areas of the city where all other utilities have  
20 been constructed underground, except where there are existing aboveground structures suitable  
21 for collocation, including, but not limited to, street lights, or in locations where the city  
22 determines that new street lights are needed and approves their installation for collocation.

23 G. General Requirements for Land Use Review.

24 (1) *Zoning Districts; Location.* Telecommunications facilities are  
25 permitted in all zoning districts. However, to the maximum extent practicable,

1 telecommunications networks shall be designed in such a manner as to locate facilities:

- 2 (a) On existing structures;
- 3 (b) In nonresidential districts; and
- 4 (c) Along major arterials.

5 (2) *Maximum Height.* Telecommunications facilities in the public  
6 rights of way shall not exceed the higher of:

7 (a) the maximum height for buildings permitted in the zoning  
8 district in which such facilities are located as set forth in Chapter 14 SFCC 1987;  
9 or

10 (b) the height of other structures, including, but not limited to, street  
11 lights and telephone poles located in the public rights of way within a radius of  
12 150 feet of the location proposed for such facilities.

13 (c) To the extent that the height on any telecommunications facility  
14 has been increased pursuant to 47 C.F.R. § 1.40001, such increase shall not be  
15 included in calculating the maximum permitted height under this subsection 27-  
16 2.19(G).

17 (3) *Width.* To the maximum extent possible, telecommunications towers  
18 shall have a slender profile, with antennas and related equipment, including, but not  
19 limited to, wires, sheathed within a single cylinder or with antennas pulled in as close as  
20 possible to the tower in order to present a uniform appearance.

21 (4) *Aesthetic Requirements.* Subject to applicable federal standards,  
22 the following criteria shall be met:

23 (a) Telecommunications facilities shall be installed underground to  
24 the maximum extent feasible. No aboveground telecommunications facilities  
25 shall be permitted in the public rights of way in areas of the city where all other

1 utilities with facilities in the public rights of way are located underground in  
2 accordance with applicable law or otherwise by covenant, except where there are  
3 existing aboveground structures suitable for collocation, including, but not  
4 limited to, street lights.

5 (b) Aboveground telecommunications facilities shall be located,  
6 designed, installed and maintained in such a manner as to minimize the visual  
7 impact upon the natural and built environment. Acceptable methods to minimize  
8 visual impact shall include, but are not limited to: concealment, screening,  
9 camouflaging, color, materials, texture, shape, size and location. To the  
10 maximum extent feasible wires and similar appurtenances shall be contained  
11 within the tower or encased in conduit with a matching finish, in order to present  
12 a uniform appearance.

13 (c) Consideration shall be given to minimize disruption to or  
14 alteration of the natural or built environment, including, without limitation,  
15 landscaping in the public rights of way.

16 (d) No permanent lighting shall be permitted unless the lighting is  
17 necessary for compliance with federal, state or local law. Permanent lighting  
18 shall not include equipment status indicating lights exceeding fifteen (15) watts  
19 of power.

20 (5) *Archaeological Requirements.* The provider shall comply with  
21 subsection 14-5.3 SFCC 1987 regarding the city's archaeological review districts.

22 (6) *Other Requirements.*

23 (a) No signs are permitted unless the sign is required for  
24 safety reasons or for compliance with the federal, state or local law, or [~~unless~~] otherwise  
25 permitted by the city.

1 (b) All aboveground telecommunications facilities shall be  
2 maintained so as to be orderly and attractive.

3 (c) All telecommunications facilities shall be designed,  
4 constructed and installed in such a manner as to minimize noise to the maximum  
5 extent possible, but in no event shall it exceed the standards set forth in Section  
6 10-2 SFCC 1987.

7 (d) All lockable telecommunications facilities shall be kept  
8 locked when not being actively serviced by the provider.

9 (e) All nonlockable telecommunications facilities shall be  
10 kept closed when not being actively serviced by the provider.

11 (7) *Applications to Land Use Department.* After approval of a  
12 franchise as set forth in subsection 27-2.4 SFCC 1987 and prior to construction, any  
13 person proposing to construct telecommunications facilities in the city's public rights-of-  
14 way requiring land use review under this subsection 27-2.19 shall submit an application  
15 to the land use department for review.

16 (a) The application, in a form prescribed by the land use  
17 department, shall, without limitation:

18 (i) Describe the applicant's proposed  
19 telecommunications services and facilities;

20 (ii) Demonstrate compliance with this subsection;

21 (iii) Include a map at a suitable scale of the project area  
22 indicating the proposed locations of telecommunications facilities;

23 (iv) If a significant gap in coverage is claimed by the  
24 applicant, the applicant shall provide evidence demonstrating that the  
25 proposed facilities are necessary to close a defined and disclosed



1 significant gap the applicant's in service coverage, and that the proposed  
2 facilities are the least intrusive means to close the proven significant gap;

3 (v) To the extent that facilities are located in the  
4 Historic or Escarpment Overlay Districts or are not otherwise permitted  
5 or approved under this section 27-2.19, demonstrate that the applicant  
6 has investigated alternative siting and that no other practicable  
7 alternative exists; and

8 (vi) Demonstrate that the applicant has complied with the  
9 National Historic Preservation Act for the siting of proposed facilities  
10 that may affect sites that are listed or eligible for listing in the National  
11 Register of Historic Places.

12 (b) The application shall be in writing with the  
13 accompanying data in a format acceptable to the city that can be posted on the  
14 city's website in the same descriptive format as tendered in physical form (i.e., by  
15 use of PDF or other similar page reproduction software).

16 (c) The applicant may submit one (1) application showing  
17 multiple locations or, if a project is to be phased, phases, or may submit a new  
18 application for each location or successive phase.

19 (8) *Land Use Review Fee.* Each application shall be accompanied by  
20 a nonrefundable fee established from time to time by the governing body. In addition,  
21 the applicant shall reimburse the city for the reasonable costs of any technical review by a  
22 qualified consultant, including, but not limited to, any structural, electrical or radio  
23 frequency engineer.

24 (9) *Staff Review of Application.* The land use department and other  
25 city staff as necessary shall review the application according to the standard procedures

1 established by the land use department for applications to the planning commission.

2 (10) *Community Information Availability.* Following verification by  
3 the land use department that the application is complete, the application and related  
4 submittal documents shall be made available to the public on the city's website. The  
5 public may submit written comments to the land use department for its consideration for  
6 a period of ten (10) calendar days after the website posting on all applications that do not  
7 require planning commission approval.

8 H. *Modifications to Approved Plans.*

9 Modifications or amendments to approved telecommunications facilities or  
10 networks shall be reviewed as provided under Section 27-2.19 (A) – (D). Approvals of  
11 applications for telecommunications facilities shall expire after three (3) years if the  
12 applicant has not commenced and completed the work.

13 I. *Waivers.*

14 (1) The planning commission may grant a waiver of the requirements set  
15 forth in this subsection 27-2.19 SFCC 1987 provided that the commission finds that the  
16 waiver:

17 (a) Is necessary to assure continuing service coverage by the  
18 applicant at the same level, or is necessary to close a significant gap in coverage;

19 (b) Is in the best interest of the community as a whole;

20 (c) Will not jeopardize public safety and welfare;

21 (d) Will better serve the purposes contained in Section 27-2 SFCC  
22 1987; and

23 (e) The applicant demonstrates that compliance with the  
24 requirement is not practicable due to physical or legal constraints.

25 (2) The planning commission shall consider the following when granting a

1 waiver:

2 (a) The visual impact of the of the proposed facilities on the natural  
3 and built environment;

4 (b) The nature of uses on adjacent and nearby properties;

5 (c) The physical surroundings and constraints; and

6 (d) Improved telecommunications services including service  
7 coverage and the potential for increasing the affordability of telecommunications  
8 services through competition.

9 J. *Monitoring Standards.*

10 (1) At all times, a telecommunications provider shall ensure that its  
11 telecommunications facilities comply with the most current regulatory and operational  
12 standards including but not limited to radio frequency emissions standards adopted by  
13 the FCC and antenna height standards adopted by the Federal Aviation Administration.

14 K. *Enforcement.* The land use director has the authority to interpret this subsection  
15 in accordance with the purpose of this section and shall administer and enforce the provisions of  
16 this subsection.

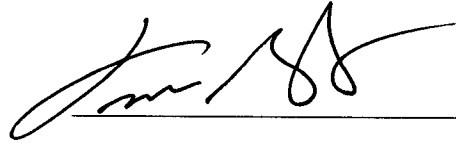
17 **Section 2. Subsection 27-2.20 SFCC 1987 (being Ord. #2010-14 § 15, as amended) is**  
18 **amended to read:**

19 **27-2.20 Compliance with Other Codes.**

20 Telecommunications networks or facilities granted approval under this section shall be  
21 constructed, installed, operated and maintained in accordance with all applicable federal, state  
22 and local codes, rules and regulations.

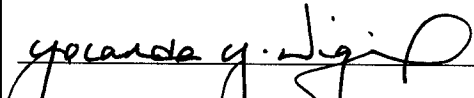
23 **Section 3. [REPEAL] Subsection 27-2.21 SFCC 1987 (being Ord. #2010-14**  
24 **§ 18, as amended) is repealed.**

1 PASSED, APPROVED AND ADOPTED this 30<sup>th</sup> day of August, 2017.


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4 JAVIER M. GONZALES, MAYOR

5 ATTEST:

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7   
8 YOLANDA Y. VIGIL, CITY CLERK

9 APPROVED AS TO FORM:

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11  
12 KELLEY A. BRENNAN, CITY ATTORNEY