

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2017-22

3 INTRODUCED BY:

4
5 Councilor Mike Harris

6 Councilor Peter N. Ives

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9
10 AN ORDINANCE

11 RELATING TO THE TELECOMMUNICATIONS IN THE PUBLIC RIGHTS-OF-WAY
12 ORDINANCE; AMENDING SUBSECTION 27-2.19 SFCC 1987 TO STREAMLINE THE
13 LAND USE REVIEW PROCESS FOR TELECOMMUNICATIONS FACILITIES IN THE
14 PUBLIC RIGHTS OF WAY; AMENDING SUBSECTION 27-2.20 TO INCLUDE
15 FACILITIES; AND REPEALING SUBSECTION 27-21 RELATING TO THE
16 TELECOMMUNICATIONS ADVISORY COMMITTEE.

17
18 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

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

21 27-2.19 Land Use Review.

22 A. General Applicability

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

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

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

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

6 (c) emergency and temporary telecommunications facilities or the
7 emergency repair of telecommunications facilities; and

8 (d) the underground installation of telecommunications facilities.

9 B. Land Use Review Required

10 (1) Unless otherwise excepted pursuant to subsections 27-2.19 A. (2) and
11 27-2.19 C., submittal of an application for land use review is required for the following:

12 (a) The construction of new telecommunications facilities in the
13 public rights of way, including, but not limited to, the addition of new facilities to
14 existing facilities, including, but not limited to street lights and telephone poles
15 (collocations); and

16 (b) Maintenance, repair and replacement of existing
17 telecommunications facilities to the extent that such work will increase the
18 physical dimensions or visual impact of such facilities, including, without
19 limitation, the addition of new elements that increase visual clutter.

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

23 C. No Application Required

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

1 (a) the construction of new telecommunications facilities that
2 conform to design parameters established from time to time by the land use
3 department and are approved for use following a public hearing in the historic
4 districts by the historic districts review board or outside the historic districts by
5 the planning commission, provided that notice of the use of the approved design
6 is submitted to the city prior to commencement of the work;

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

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

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

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

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

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

24 D. Administrative Approval. Administrative approval as set forth in this paragraph
25 is separate from and required prior to submittal to the New Mexico Construction Industries

1 Division of an application for a construction permit.

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

3 (a) Except for facilities permitted under subsection Subsection 27-
4 2.19(C)(1) above or requiring planning commission review under subsection 27-
5 2.19(E) below, the construction of new telecommunications facilities in the
6 public rights of way, including, without limitation, the addition of new facilities
7 to existing facilities (collocations); and

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

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

16 E. Planning Commission Review Required. Applications for telecommunications
17 facilities in the public rights of way that are not otherwise permitted or administratively approved
18 under subsections 27-2.19(A)(2), (C)(1) or (D), shall be heard and decided by the planning
19 commission.

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

24 (2) In approving an application, the planning commission shall determine
25 that:

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

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

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

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

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

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

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

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

17 (a) be in writing;

18 (b) cite to the administrative record; and

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

21 F. Notwithstanding anything in this section 27-2.19 to the contrary, no aboveground
22 telecommunications facilities shall be approved in areas of the city where all other utilities have
23 been constructed underground, except where there are existing aboveground structures suitable
24 for collocation, including, but not limited to, street lights.

25 G. General Requirements for Land Use Review.

1 [A-] (1) *Zoning Districts; Location.* Telecommunications facilities are
2 permitted in all zoning districts~~[, except self-supporting lattice and guyed towers are prohibited in~~
3 ~~the public rights of way in residential and historic districts]~~. However, to the maximum extent
4 practicable, telecommunications networks shall be designed in such a manner as to locate
5 facilities:

6 [(+)] (a) On existing structures;

7 [(2)] (b) In nonresidential districts; and

8 [(3)] (c) Along major arterials.

9 [B-] (2) *Maximum Height.* Telecommunications facilities ~~[located on~~
10 ~~existing structures shall not exceed the height of the structure upon which the facility is~~
11 ~~located. Telecommunications facilities located on new structures]~~ in the public rights of
12 way shall not exceed the higher of:

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

16 (b) the height of other structures, including, but not limited to, street
17 lights and telephone poles located in the public rights of way within a radius of
18 150 feet of the location proposed for such facilities.

19 (c) To the extent that the height on any telecommunications facility
20 has been increased pursuant to 47 C.F.R. § 1.40001, such increase shall not be
21 included in calculating the maximum permitted height under this subsection 27-
22 2.19(G).

23 (3) Width. To the maximum extent possible, telecommunications towers
24 shall have a slender profile, with antennas and related equipment, including, but not
25 limited to, wires, sheathed within a single cylinder or with antennas pulled in as close as

1 possible to the tower in order to present a uniform appearance.

2 [C.] (4) *Aesthetic Requirements.* Subject to applicable federal standards,
3 the following criteria shall be met:

4 (a) Telecommunications facilities shall be installed underground to
5 the maximum extent feasible~~[, including without limitation, in residential areas~~
6 ~~where covenants regulate underground installations]~~. No aboveground
7 telecommunications facilities shall be permitted in areas of the city where all
8 other utilities with facilities in the public rights of way are located underground
9 in accordance with applicable law or otherwise by covenant, except where there
10 are existing aboveground structures suitable for collocation, including, but not
11 limited to, street lights.

12 (b) [~~If above ground, the~~] Aboveground telecommunications
13 facilities shall be designed, installed and maintained in such a manner as to
14 minimize the visual impact upon the natural and built environment. Acceptable
15 methods to minimize visual impact shall include, but [~~not be~~] are not limited to:
16 concealment, screening, camouflaging, color, materials, texture, shape, size and
17 location. To the maximum extent feasible wires and similar appurtenances shall
18 be contained within the tower or encased in conduit painted to match, in order to
19 present a uniform appearance.

20 (c) Consideration shall be given to minimize disruption to or
21 alteration of the natural environment.

22 (d) No permanent lighting [~~is~~] shall be permitted unless the lighting
23 is necessary for compliance with federal, state or local law. Permanent lighting
24 shall not include equipment status indicating lights exceeding fifteen (15) watts
25 of power.

1 ~~[(5)] (5) Telecommunications facilities located within the historic districts shall~~
2 ~~be reviewed by the historic design review board for compliance with this~~
3 ~~subsection.]~~

4 ~~[D.] (5)~~ *Archaeological Requirements.* The provider shall comply with
5 subsection 14-5.3 SFCC 1987 regarding the city's archaeological review districts.

6 ~~[E.] (6)~~ *Other Requirements.*

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

10 ~~[(2)] (b)~~ All aboveground telecommunications facilities shall be
11 maintained so as to be orderly and attractive.

12 ~~[(3)] (c)~~ All telecommunications facilities shall be designed,
13 constructed and installed in such a manner as to minimize noise to the maximum
14 extent possible, but in no event shall it exceed the standards set forth in Section
15 10-2 SFCC 1987.

16 ~~[(4)] (d)~~ All lockable telecommunications facilities shall be kept
17 locked when not being actively serviced by the provider.

18 ~~[(5)] (e)~~ All nonlockable telecommunications facilities shall be
19 kept closed when not being actively serviced by the provider.

20 ~~[F.] (7)~~ *Applications to Land Use Department.* After approval of a
21 franchise as set forth in subsection 27-2.4 SFCC 1987 and prior to construction, any
22 person proposing to construct telecommunications facilities in the city's public rights-of-
23 way requiring land use review under this subsection 27-2.19 shall submit an application
24 to the land use department for review ~~[by the planning commission].~~

25 ~~[(+)] (a)~~ The application, in a form prescribed ~~[and as necessary]~~

1 updated] by the land use department, shall, without limitation:

2 [(a)] (i) Describe the applicant's proposed
3 telecommunications services and facilities;

4 [(b)] (ii) Demonstrate compliance with this
5 subsection;

6 [(c)] (iii) Include a map at a suitable scale of the project
7 area indicating the proposed ~~[route and specific]~~ locations of
8 telecommunications facilities ~~[and specific information regarding a
9 facility's radio frequency emissions];~~

10 [(d)] (iv) If a significant gap in coverage is claimed by the
11 applicant, the applicant shall ~~[prove by clear and compelling]~~ provide
12 evidence demonstrating that the proposed facilities are necessary to close
13 a defined and disclosed significant gap in service coverage, and that ~~[its]~~
14 the proposed facilities are the least intrusive means to close the proven
15 significant gap;

16 [(e)] (v) To the extent that facilities are located in the
17 Historic or Escarpment Overlay Districts or are not otherwise permitted
18 or approved under this section 27-2.19, demonstrate that the applicant
19 has investigated alternative siting and that no other practicable
20 alternative exists; and

21 [(f)] (vi) Demonstrate that the applicant has complied
22 with the National Historic Preservation Act for the siting of proposed
23 facilities that may affect sites that are listed or eligible for listing in the
24 National Register of Historic Places.

25 [(2)] (b) The application shall be in writing with the

1 accompanying data in a format acceptable to the city that can be posted on the
2 city's website in the same descriptive format as tendered in physical form (i.e., by
3 use of PDF or other similar page reproduction software).

4 ~~[(3)]~~ (c) The applicant may submit one (1) application showing
5 multiple locations or, if a project is to be phased, phases, or may submit a new
6 application for each location or successive phase.

7 ~~[G.]~~ (8) *Land Use Review Fee.* Each application~~[, which may include~~
8 ~~multiple phases as set forth in paragraph F(3) of this subsection,]~~ shall be accompanied
9 by a nonrefundable fee ~~[of two thousand five hundred dollars (\$2,500) or the fee~~
10 ~~established from time to time by the governing body for development plan review,~~
11 ~~whichever is less].~~ In addition, the applicant shall reimburse the city for the reasonable
12 costs of any technical review by a qualified consultant, including, but not limited to, any
13 structural, electrical or radio frequency engineer.

14 ~~[H.]~~ (9) *Staff Review of Application.* The land use department and other
15 city staff as necessary shall review the application according to the standard procedures
16 established by the land use department for applications to the planning commission.

17 ~~[I.]~~ (10) *Community Information Availability.* Following verification by
18 the land use department that the application is complete, the application and related
19 submittal documents shall be made available to the public on the city's website ~~[and in~~
20 ~~the land use department at least fifteen (15) days prior to the planning commission~~
21 ~~hearing.~~

22 ~~J. — Public Notice of Public Hearing and Review by Planning Commission.~~

23 (1) ~~— The planning commission agenda shall be mailed and published~~
24 ~~by the land use department as set forth in subsection 14-3.1H(1)(b) SFCC 1987.~~

25 (2) ~~— No less than fifteen (15) days prior to the public hearing, the~~

1 applicant shall give notice to the public as set forth below. The posters, mailings
2 and display advertisements shall state the nature of the application; the date, time
3 and place of the public hearing; and the availability for the public to review the
4 application as set forth above. In addition, the mailings and display advertisement
5 shall include a map of the project area indicating the proposed route and specific
6 locations of all proposed above ground facilities and equipment. The applicant
7 shall:

8 (a) ~~Place in the public right of way in a location approved~~
9 ~~by the city, or if the project is on private or public property immediately~~
10 ~~adjacent to the public right of way in a location approved by the city,~~
11 ~~one (1) poster obtained from the land use department at each major~~
12 ~~intersection within the project area provided that there shall be no less~~
13 ~~than one (1) poster every one quarter (1/4) mile along the proposed~~
14 ~~route.~~

15 (b) ~~Mail by first class mail a notice in a format approved by~~
16 ~~the land use department to all property owners and physical addresses~~
17 ~~adjacent to the public rights of way where the telecommunications~~
18 ~~services are to be located.~~

19 (c) ~~Publish a display advertisement in the local daily~~
20 ~~newspaper of general circulation.~~

21 ~~K. *Planning Commission Review.*~~

22 (1) ~~The planning commission shall review the application for compliance~~
23 ~~with this subsection and all relevant city codes.~~

24 (2) ~~In approving an application, the planning commission shall determine~~
25 ~~that:~~

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

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

4 (c) — The applicant has demonstrated that no other less intrusive
5 means or alternative to the approved facilities siting exists.

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

9 (4) — The planning commission may place conditions upon its approval of the
10 application but the conditions shall not prohibit or have the effect of prohibiting the
11 provision of the telecommunications services.

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

13 (6) — A decision of the planning commission is appealable as set forth in
14 subsection 14-3-17 SFCC 1987.

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

17 (a) — Be in writing, and

18 (b) — Shall cite to the administrative record, and

19 (c) — Shall not become final until approved by the same body at its
20 next regularly scheduled meeting.]

21 [L.] H. *Modifications to Approved Plans.*

22 [(1) — Modifications to approved telecommunications facilities plans that
23 comply with the standards of this Section 27-2 and do not materially modify the approved
24 telecommunications plan may be approved by the land use director. An example of a
25 material modification to the approved telecommunications plan is a route for which

1 residents did not receive notice of the planning commission public hearing, or an increase
2 in effective radiated power or any proposed increase in frequency. Relocation of a single
3 antenna to an adjacent structure along the approved route is not a material modification.

4 (2) ~~The maintenance, repair, replacement in kind, or reinforcement of~~
5 ~~existing telecommunications facilities, or the undergrounding of new telecommunications~~
6 ~~facilities are not modifications to approved plans and shall not require approval of the~~
7 ~~land use department or the planning commission.]~~

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

12 ~~[M.]~~ L. *Waivers.*

13 (1) The planning commission may grant a waiver of the requirements set
14 forth in this subsection 27-2.19 SFCC 1987 provided that the commission finds ~~[based on~~
15 ~~clear and convincing evidence provided by the applicant]~~ that the waiver:

16 (a) Is necessary to assure continuing service coverage by the
17 applicant at the same level, or is necessary to close a significant gap in coverage
18 ~~[proven by clear and convincing evidence];~~

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 ~~[proven by the~~
25 ~~applicant by clear and convincing evidence].~~

1 (2) The planning commission shall consider the following when granting a
2 waiver:

3 (a) The ~~[general appearance]~~ visual impact of the ~~[facility]~~ of the
4 proposed facilities on the natural and built environment;

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

6 (c) The physical surroundings and constraints; and

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

10 ~~[N.] *Permits Required.* In addition to the permits required set forth elsewhere in~~
11 ~~Section 27-2 and city code, the following permits are required from the land use~~
12 ~~department:~~

13 ~~(1) Secondary electrical permit at each antenna or other facility site requiring~~
14 ~~secondary electrical service; and~~

15 ~~(2) Other permits as may be required.]~~

16 ~~[O.] *J. Monitoring Standards.*~~

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

21 ~~[(2) The telecommunications provider shall obtain and maintain the most~~
22 ~~current information from the FCC regarding allowable radio frequency emissions and all~~
23 ~~other applicable regulations and standards, and, at the following indicated times, shall file~~
24 ~~a report with the land use director indicating whether the provider is in compliance with~~
25 ~~such standards, advising the land use director of any regulatory changes that require~~

1 modifications to the telecommunications facilities and advising the land use director of
2 the measures taken by the provider to comply with such regulatory changes as follows:

3 ~~(a) Prior to the commencement of the installation of the~~
4 ~~telecommunications facility;~~

5 ~~(b) Within ten (10) days after initial activation of the~~
6 ~~telecommunications facility (the initial compliance report);~~

7 ~~(c) Every year, on the anniversary of the submittal of the initial~~
8 ~~compliance report, and~~

9 ~~(d) Upon any proposed increase of at least ten percent (10%) in the~~
10 ~~effective radiated power or any proposed change to frequency use, and~~

11 ~~(e) Within ten (10) days after the activation of the proposed increase~~
12 ~~in effective radiated power or change in frequency use of the telecommunications~~
13 ~~facility.~~

14 ~~(3) Both the initial and updated certifications shall be subject to review and~~
15 ~~approval by the city, and shall be public records.~~

16 ~~(4) At the land use directors' sole discretion, a qualified independent radio~~
17 ~~frequency engineer, selected by and under contract to the city, may be retained to review~~
18 ~~said certifications for compliance with FCC regulations and for actual compliance with~~
19 ~~the FCC regulations at the telecommunications facility.~~

20 ~~(5) All costs associated with the city's review of these certifications shall be~~
21 ~~the responsibility of the provider, which shall promptly reimburse the city for the cost of~~
22 ~~review.]~~

23 [P.] K. *Enforcement.* The land use director has the authority to interpret this
24 subsection in accordance with the purpose of this section and shall administer and enforce the
25 provisions of this subsection.


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

3 **27-2.20 Compliance with Other Codes.**

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

7 **Section 3. [REPEAL] Subsection 27-2.21 SFCC 1987 (being Ord. #2010-14**
8 **§ 18, as amended) is repealed.**

9
10 APPROVED AS TO FORM:

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12 _____
13 KELLEY A. BRENNAN, CITY ATTORNEY