

# CITY of ALBUQUERQUE

## TWENTY-THIRD COUNCIL

COUNCIL BILL NO. O-18-27 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Pat Davis, Trudy Jones, Klarissa Peña, Ken Sanchez

1 **ORDINANCE**

2 **ADOPTING SMALL WIRELESS FACILITIES REGULATIONS TO AUTHORIZE**  
3 **AND REGULATE CERTAIN SMALL WIRELESS FACILITIES INSTALLATIONS**  
4 **WITHIN CITY RIGHTS OF WAYS OR ON CITY-OWNED UTILITY POLES**

5 **WHEREAS, the City desires to encourage wireless infrastructure**  
6 **investment by providing a fair and predictable process for the deployment of**  
7 **small wireless facilities, while enabling the City to promote the management of**  
8 **the rights-of-way in the overall interests of the public health, safety and**  
9 **welfare; and**

10 **WHEREAS, the City recognizes that small wireless facilities are critical to**  
11 **delivering wireless access to advanced technology, broadband and 9-1-1**  
12 **services to homes, businesses, schools within the City; and**

13 **WHEREAS, the City recognizes that small wireless facilities, including**  
14 **facilities commonly referred to as small cells and distributed antenna systems,**  
15 **often may be deployed most effectively in the public rights-of-way; and**

16 **WHEREAS, certain state and federal laws relating to wireless**  
17 **telecommunications facilities may pre-empt some local regulation of wireless**  
18 **facilities, including small wireless facilities, and this ordinance is intended to**  
19 **comply with and complement any such laws or regulations.**

20 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
21 **ALBUQUERQUE:**

22 **SECTION 1. A new Article 10 is added within Chapter 5 of the Revised**  
23 **Ordinances of Albuquerque as follows:**

24 **“§ 5-10-1. Short Title**

25 **This Article 10 of Chapter 5 of the Revised Ordinances of Albuquerque may**  
26 **be cited as the “Small Wireless Facility Ordinance.”**

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1     **5-10-2     Purpose and Intent**

2           **(A)     Purpose.** The purpose of this Chapter is to establish policies and  
3     procedures for the placement of small wireless facilities in right-of-way within  
4     the City's jurisdiction, which will provide public benefit consistent with the  
5     preservation of the integrity, safe usage, and visual qualities of the City rights-  
6     of-way and the City as a whole.

7           **(B)     Intent.** In enacting this Chapter, the City is establishing uniform  
8     standards to address the placement of small wireless facilities in the rights-of-  
9     way, including without limitation, to:

10                 **(1)     prevent interference with the use of streets, sidewalks, alleys,**  
11     **parkways and other public ways and places;**

12                 **(2)     prevent the creation of visual and physical obstructions and**  
13     **other conditions that are hazardous to vehicular and pedestrian traffic;**

14                 **(3)     prevent interference with the facilities and operations of**  
15     **facilities lawfully located in rights-of-way or public property;**

16                 **(4)     protect against environmental damage, including damage to**  
17     **trees;**

18                 **(5)     preserve the character of the neighborhoods in which facilities**  
19     **are installed; and**

20                 **(6)     facilitate rapid deployment of small cell facilities to provide the**  
21     **benefits of advanced wireless services.**

22           **(C)     Conflicts with Other Chapters.** This Chapter supersedes all Chapters  
23     or parts of Chapters of the revised ordinances of Albuquerque adopted prior  
24     hereto that are in conflict herewith, to the extent of such conflict.

25     **5-10-3     Definitions**

26           **(A)     "antenna"** means communications equipment that transmits or  
27     receives electromagnetic radio frequency signals and that is used to provide  
28     wireless services;

29           **(B)     "applicable codes"** means uniform building, fire, electrical, plumbing  
30     or mechanical codes adopted by a recognized national code organization and  
31     enacted by the City, including the local amendments to those codes enacted  
32     by the authority solely to address imminent threats of destruction of property

1 or injury to persons, to the extent that those amendments are consistent with  
2 the Wireless Consumer Advanced Infrastructure Investment Act;

3 (C) "applicant" means a wireless provider that submits an application;

4 (D) "application" means a request submitted by an applicant to the City  
5 for a permit to collocate one or more small wireless facilities or to approve the  
6 installation, modification or replacement of a utility pole or wireless support  
7 structure for purposes of a small wireless facility installation;

8 (E) "authority" means the City of Albuquerque;

9 (F) "authority utility pole" means a utility pole, owned or operated by the  
10 City in a right of way;

11 (G) "collocate" means to install, mount, maintain, modify, operate or  
12 replace one or more wireless facilities on, in or adjacent to a wireless support  
13 structure or utility pole;

14 (H) "communications service" means cable service as defined in 47  
15 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section  
16 153(24), mobile service as defined in 47 U.S.C. Section 153(33),  
17 telecommunications service as defined in 47 U.S.C. Section 153(53) or  
18 wireless service other than mobile service;

19 (I) "design district" means an area zoned or otherwise designated by  
20 municipal ordinance and for which a municipality maintains and uniformly  
21 enforces unique design and aesthetic standards;

22 (J) "fee" means a one-time charge;

23 (K) "historic district" means a group of buildings, properties or sites that  
24 fall within the category defined in 47 C.F.R. 1.1307(a)(4) and are: (a) listed in the  
25 national register of historic places or formally determined eligible for listing in  
26 that register by the keeper of the register in accordance with the nationwide  
27 programmatic agreement found in 47 C.F.R. Part 1 Appendix C; or (b)  
28 designated as a historic district by the City;

29 (L) "law" includes federal, state or local law;

30 (M) "permit" means the written permission of the City for a wireless  
31 provider to install, mount, maintain, modify, operate or replace or collocate a  
32 small wireless facility on a utility pole or wireless support structure, or to  
33 replace a utility pole for such purpose;

1 (N) "person":

2 (1) means an individual, corporation, limited liability company,  
3 partnership, association, trust or other entity or organization; and

4 (2) includes the City;

5 (O) "private easement" means an easement or other real property right  
6 given for the benefit of the grantee of the easement and the grantee's  
7 successors and assigns;

8 (P) "rate" means a recurring charge;

9 (Q) "right of way":

10 (1) means the area on, below or above a public roadway, highway,  
11 street, sidewalk (only as defined by the Traffic Code), alley or utility easement;  
12 and

13 (2) does not include the area on, below or above:

14 (a) a federal interstate highway;

15 (b) a state highway or route under the jurisdiction of the  
16 department of transportation;

17 (c) a private easement;

18 (d) a utility easement that does not authorize the  
19 deployment sought by a wireless provider; or

20 (e) any other City owned property not expressly included in  
21 subparagraph Q(1), above, such as but not limited to parks, open space, city  
22 facilities, bike paths as defined by the Traffic Code or multi-use trails as  
23 defined by the Integrated Development Ordinance.

24 (R) "small wireless facility" means a wireless facility whose:

25 (1) antennas are, or could fit, inside an enclosure with a volume of  
26 six or fewer cubic feet; and

27 (2) other ground- or pole-mounted wireless equipment, not  
28 including the following, is twenty-eight or fewer cubic feet in volume:

29 (a) electric meter;

30 (b) concealment elements;

31 (c) telecommunications demarcation box;

32 (d) grounding equipment;

33 (e) power transfer switch;

1 (f) cutoff switch;

2 (g) vertical cable runs for the connection of power and

3 other services; and

4 (h) elements required by an authority in accordance with

5 Subsection H of Section 3 of the Wireless Consumer Advanced Infrastructure

6 Investment Act;

7 (S) "technically feasible" that by virtue of engineering or spectrum

8 usage the proposed placement for a small wireless facility, or its design or site

9 location can be implemented without a reduction in the functionality of the

10 small wireless facility.

11 (T) "utility pole":

12 (1) means a pole or similar structure used in whole or in part for

13 communications services, electricity distribution, lighting or traffic signals;

14 and

15 (2) does not include a wireless support structure or electric

16 transmission structure;

17 (U) "wireless facility":

18 (1) means equipment at a fixed location that enables wireless

19 communications between user equipment and a communications network,

20 including:

21 (a) equipment associated with wireless communications;

22 and

23 (b) radio transceivers, antennas, coaxial or fiber-optic

24 cables, regular and backup power supplies and comparable equipment,

25 regardless of technological configuration;

26 (2) includes a small wireless facility; and

27 (3) does not include:

28 (a) the structure or improvements on, under or within which

29 the equipment is collocated;

30 (b) a wireline backhaul facility, coaxial cable or fiber-optic

31 cable between wireless support structures or utility poles; or

32 (c) coaxial or fiber-optic cable otherwise not immediately

33 adjacent to, or directly associated with, an antenna;

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1 (V) "wireless infrastructure provider" means a person, other than a  
2 wireless services provider, that may provide telecommunications service in  
3 New Mexico and that builds or installs wireless communications transmission  
4 equipment, wireless facilities' utility poles or wireless support structures;

5 (W) "wireless provider" means a wireless infrastructure provider or  
6 wireless services provider;

7 (X) "wireless services" means services provided to the public that use  
8 licensed or unlicensed spectrum, either mobile or at a fixed location, through  
9 wireless facilities;

10 (Y) "wireless services provider" means a person that provides wireless  
11 services;

12 (Z) "wireless support structure" means a freestanding structure,  
13 including a monopole or guyed or self-supporting tower, but not including a  
14 utility pole; and

15 (AA) "wireline backhaul facility" means a facility used to transport  
16 services by wire from a wireless facility to a network.

17 5-10-4 Permitted Use; Application and Application Fees

18 (A) Permitted Use: Collocation of a small cell facility or a new or  
19 modified utility pole for the collocation of a small cell facility, that results in a  
20 height increase to the existing pole structure of ten (10) or fewer feet is  
21 permitted within all rights-of-way as defined by this Article, subject only to the  
22 restrictions in Section 5-10-5, and is not subject to any use restrictions within  
23 the Integrated Development Ordinance.

24 (B) Permit Required. No person shall place a small wireless facility in  
25 any right-of-way, without first filing a small wireless facility application and  
26 obtaining a permit therefore, except as otherwise provided in this Article. An  
27 applicant may submit a consolidated application for up to twenty-five (25)  
28 small wireless facilities so long as they are all of substantially the same type,  
29 and on substantially the same types of structures, however no more than one  
30 (1) such consolidated application may be filed within any five (5) business-day  
31 period. The City's denial of one or more small cell facilities in a consolidated  
32 application shall not delay the processing of any other small wireless facilities  
33 submitted in the same application;

1 (C) Permit Application Form. All small wireless facility applications for  
2 permits filed pursuant to this Article shall be on a form, paper or electronic,  
3 provided by the City.

4 (D) Permit Application Requirements. Applications submitted to the City  
5 for a small wireless facility shall include the following:

6 (1) All relevant information otherwise required for a general  
7 wireless telecommunications collocation permit administered under the  
8 Integrated Development Ordinance;

9 (2) A certification by the applicant that the small wireless facility  
10 or facilities to be collocated conform with the federal communications  
11 commission's regulations concerning radio frequency emissions;

12 (3) A certification that a delay is caused by the lack of commercial  
13 power or fiber at the site, the collocation must begin within 180 days of permit  
14 issuance, after which time the permit shall be void.

15 (4) A reasonably acceptable showing through the application  
16 materials that the facility or facilities comply with all applicable codes.

17 (E) Routine Maintenance and Replacement. An application shall not be  
18 required for: (i) routine maintenance; and (ii) the replacement of a small  
19 wireless facility with another small wireless facility that is substantially similar  
20 to or the same size or smaller in size and weight and height as long as the  
21 wireless provider that owns the wireless facility notifies the authority and  
22 provides details of the proposed replacement demonstrating the substantial  
23 similarity of the replacement at least ten days before the replacement is made.

24 (F) Information Updates. Any amendment to information contained in a  
25 permit application shall be submitted in writing to the City within thirty (30)  
26 days after the change necessitating the amendment.

27 (G) Application Fees. Application Fees shall be subject to the following  
28 requirements:

29 (1) Unless otherwise provided by law, all applications for permits  
30 pursuant to this Chapter shall be accompanied by a fee related to processing  
31 the application, but shall not exceed \$100 each for up to five small wireless  
32 facility requested in the application and \$50 for each additional small wireless  
33 facility.

(2) The application fee for the installation, modification or replacement of a utility pole that is permitted in accordance with this Article shall not exceed \$750 per utility pole in the rights-of-way.

**5-10-5 Permit Applications; Conditions**

**(A) Review of Small Cell Facility Applications.**

(1) The City shall accept and process applications for small wireless facility permits subject to the following:

(a) Within thirty (30) days of receiving an Application, the City shall determine and notify the Applicant whether the Application is complete. If an Application is incomplete, the City shall specifically identify the missing information in writing. If the City fails to notify the applicant of incompleteness within thirty (30) days, the application is deemed complete.

(b) Make its final decision to approve or deny the application within ninety (90) days of first receiving the complete application material, except that the City and an applicant may agree to an extension of this period. An applicant shall not unreasonably deny any City requests to extend this period; and

(c) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the City denies the application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.

(2) If the City fails to act on an application within the ninety (90) day review period in subsection (1)(b), the application is deemed approved.

(3) The City may deny a proposed collocation of a small wireless facility or installation, modification or replacement of a utility pole for the collocation of a small wireless facility where the proposed small cell facility:

(a) Materially and demonstrably interferes with public safety, such as the safe operation of traffic control equipment;



1 (b) Materially and demonstrably interferes with sight lines  
2 or clear zones for transportation or pedestrians;

3 (c) Materially interferes with the Americans with Disabilities  
4 Act or similar federal or state standards regarding pedestrian access or  
5 movement;

6 (d) Fails to comply with applicable codes; including  
7 requirements imposed upon small wireless facilities located in design overlay  
8 zones and/or historic districts;

9 (e) Does not comply with objective design standards for  
10 utility poles as adopted and administered by the City in any form now or in the  
11 future;

12 (f) Does not comply with reasonable stealth or  
13 concealment standards for utility poles as adopted and administered by the  
14 City in any form now or in the future;

15 (g) Due to ground-mounted equipment, impedes pedestrian  
16 movement on any sidewalk or walkway or otherwise diminishes sidewalk's  
17 width;

18 (h) A new utility pole is proposed within a right-of-way  
19 location along a roadway that is fifty-feet wide or less, as measured from curb  
20 to curb, and fronted on at least one side by a residential use, or an IDO zone  
21 authorizing residential uses.

22 (B) Permit Notice; Conditions.

23 (1) The City may, at its discretion and prior to final approval  
24 (subject to the shot clock limitations of Section 'A' above, provide or require  
25 the applicant to provide, public notice of the proposed small cell facility in  
26 accordance with the notice provisions of the IDO, notifying interested persons  
27 of the opportunity to submit written comments on the proposal. The applicant  
28 shall respond to any such comments, and failure to do so shall be grounds for  
29 the application being deemed incomplete.

30 (2) The City may condition its approval on a requirement that a  
31 utility pole or wireless support structure be replaced before an application for  
32 a collocation is approved if the City determines that such a replacement is  
33 required an applicable code or law.

1       **5-10-6        Small Wireless Facilities in the ROW; Maximum Height; Other**  
2 **Requirements**

3       **(A)     Maximum Size. Small wireless facilities, and new or modified utility**  
4 **poles for the collocation of small wireless facilities may be placed in the**  
5 **rights-of-way pursuant to this Article subject to the following requirements:**

6               **(1)     Each new or modified utility pole installed in the rights-of-way**  
7 **shall not exceed the greater of:**

8                       **(a)     Ten (10) feet in height above the tallest existing utility**  
9 **pole in the rights-of-way in place as of the effective date of this Chapter**  
10 **located within 500 feet of the new pole in the same rights-of-way; or,**

11                       **(b)     Fifty (50) feet above ground level.**

12               **(2)     New small wireless facilities in the rights-of-way may not**  
13 **extend:**

14                       **(a)     More than ten (10) feet in above an existing utility pole in**  
15 **the rights-of-way in place as of the effective date of this Chapter; or**

16                       **(b)     More than ten (10) feet above the height for a new utility**  
17 **pole under Section 5(A)(1).**

18       **(B)     Zoning. Any wireless provider that seeks to install, modify, operate**  
19 **or replace a utility pole in the rights-of-way that exceeds the height or size**  
20 **limits contained in this section, shall be subject to any applicable zoning**  
21 **requirements.**

22       **(C)     Decorative Poles: A wireless provider shall be permitted to replace a**  
23 **decorative pole when necessary to collocate a small wireless facility, but only**  
24 **where the replacement pole conforms to the design aesthetics of the**  
25 **decorative pole being replaced and any other design applicable design**  
26 **requirements for the area.**

27       **(D)     Underground District. The City may deny a request to install, replace**  
28 **or modify a utility pole in areas requiring underground utilities. The wireless**  
29 **provider is permitted to seek a waiver of the undergrounding requirements for**  
30 **the placement of a new utility pole to support small wireless facilities.**

31       **(E)     Historic and Design Districts . The City shall require reasonable,**  
32 **technically feasible, non-discriminatory and technologically neutral design or**  
33 **concealment measures and reasonable measures for conforming to the**

1 design aesthetics of a design district or Historic District. Any such design or  
2 concealment measures may not have the effect of prohibiting any provider's  
3 technology; nor may any such measure be considered part of the small  
4 wireless facility for purpose of the size restrictions in the definition of small  
5 wireless facility.

6 5-10-7 Effect of Permit

7 (A) Authority Granted. No Property Right or Other Interest Created. A  
8 permit from the City authorizes an applicant to undertake only certain  
9 activities in accordance with this Chapter, and does not create a property right  
10 or grant authority to the applicant to impinge upon the rights of others who  
11 may already have an interest in the rights-of-way.

12 (B) Permit Duration. Any work described in a permit granted pursuant to  
13 this Article shall be completed within 180 days of the Permit issuance date  
14 unless the City and applicant agree to extend this period due to delay caused  
15 by the lack of commercial power or communications facilities. Subject to  
16 applicable relocation requirements and applicant's right to terminate a permit  
17 at any time, a permitted location is valid for a period of ten years, and must be  
18 renewed for successive ten-year terms so long as the wireless provider is in  
19 compliance with the other requirements in this Chapter as of each extension  
20 date.

21 5-10-8 Removal, Relocation or Modification of Small Wireless Facility  
22 in the ROW

23 (A) Notice. Within ninety (90) days following written notice from the City,  
24 wireless provider shall, at its own expense, protect, support, temporarily or  
25 permanently disconnect, remove, relocate, change or alter the position of any  
26 small wireless facilities within the rights-of-way whenever the City has  
27 determined that such removal, relocation, change or alteration, is reasonably  
28 necessary for the construction, repair, maintenance, or installation of any City  
29 improvement in or upon, or the operations of the City in or upon, the rights-of-  
30 way.

31 (B) Emergency Removal or Relocation of Facilities. The City retains the  
32 right and privilege to cut or move any small wireless facility located within the  
33 rights-of-way of the City, as the City may determine to be necessary,

1 appropriate or useful in response to any public health or safety emergency. If  
2 circumstances permit, the City shall notify the wireless provider and provide  
3 the wireless provider an opportunity to move its own facilities prior to cutting  
4 or removing a facility and shall notify the wireless provider after cutting or  
5 removing a small wireless facility.

6 (C) Abandonment of Facilities. Upon abandonment of a small wireless  
7 facility within the rights-of-way of the City, the wireless provider shall notify  
8 the City of its intention to discontinue use of a small wireless facility or utility  
9 pole. The notice shall inform the authority of the time and the way in which the  
10 small wireless facility or utility will be removed. The wireless provider is  
11 responsible for the costs of the removal. The authority may require the  
12 wireless provider to return the property to its pre-installation condition. If the  
13 wireless provider does not complete the removal with forty-five (45) days after  
14 notice, the authority may complete the removal and assess the costs of  
15 removal against the wireless provider.

16 (D) Damage and Repair. The City may require a wireless provider to  
17 repair all damage to the rights-of-way caused by the activities of the wireless  
18 provider and return the rights-of-way to its pre-damage condition according to  
19 the City's requirements and specifications. If the wireless provider fails to  
20 make the repairs within a reasonable period after written notice, the City may  
21 effect those repairs and charge the applicable party the reasonable,  
22 documented cost of such repairs.

23 5-10-9 ROW Rates

24 (A) Annual Rate. A wireless provider authorized to place small wireless  
25 facilities in the rights-of-way shall pay to the City compensation for use of the  
26 rights-of-way in the amount of \$250 annually per small wireless facility.

27 (B) Cease Payment. A wireless provider is authorized to remove its  
28 facilities at any time from the rights-of-way and cease paying the City  
29 compensation for use of the rights-of-way.

30 (C) Annual Rate Increase. City may adjust the annual rate, but no more  
31 often than once a year and by no more than an amount equal to one-half the  
32 annual change, if any, in the most recent consumer price index for all urban  
33 consumers for New Mexico, as published by the United States Department of

1 Labor. The City shall notify all wireless providers charged the preadjusted rate  
2 of the prospective adjustment and shall make the adjustment effective sixty  
3 days or more following that notice.

4 5-10-10 Attachment to City Utility Poles in the ROW

5 (A) Collocation on City Poles. Small wireless facilities may be  
6 collocated on city utility poles pursuant to this Chapter. No person will be  
7 permitted an exclusive arrangement to attach to city poles.

8 (B) Annual Rate. The rate for collocation of a small wireless facility on a  
9 city utility pole in the right-of-way shall be \$20 per year. Such compensation  
10 together with the application fee and the rights-of-way fee specified in this  
11 Chapter shall be the sole compensation that the wireless provider shall be  
12 required to pay the City.

13 (C) Cease Payment. A wireless provider is authorized to remove its  
14 facilities at any time from a city utility pole in the rights-of-way and cease  
15 paying the annual rate to the City.

16 (D) Make-Ready. The rates, fees, terms and conditions for the make-  
17 ready work to collocate a small wireless facility on a city utility pole must be  
18 nondiscriminatory, competitively neutral, comply with this Act and be subject  
19 to the following:

20 (1) The City or any person owning, managing, or controlling the  
21 city poles shall provide a good faith estimate for any make-ready work  
22 necessary to enable the pole to support the requested small wireless facility,  
23 including pole replacement if necessary, within 60 days after receipt of a  
24 completed request. Make-ready work including any pole replacement shall be  
25 completed within sixty (60) days of written acceptance of the good faith  
26 estimate by the wireless provider.

27 (2) The City or any person owning, managing, or controlling the  
28 city poles shall not require more make-ready work than required to meet  
29 applicable codes or industry standards. Fees for make-ready work shall not  
30 include costs related to pre-existing for prior damage and non-compliance.  
31 Fees for make-ready work including any pole replacement shall not exceed  
32 actual costs or the amount charged to others for similar work and shall not  
33 include any consultant fees or expenses.

1     **SECTION 2. COMPILATION.**

2             Section 1 of this ordinance shall amend, be incorporated in and made part  
3     of the Revised Ordinances of Albuquerque, New Mexico, 1994

4     **SECTION 3. EFFECTIVE DATE.**

5             This ordinance shall take effect five (5) days after publication by title and  
6     general summary.

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