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ORDINANCE

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

WHEREAS, the City desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to manage the rights-of-way in the overall interests of the public health, safety and welfare; and

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

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

WHEREAS, certain state and federal laws relating to wireless telecommunications facilities may pre-empt some local regulation of wireless facilities, including small wireless facilities, where the preempted local regulation would have prohibited or would have had the effect of prohibiting the ability of any entity to provide telecommunications services; and

WHEREAS, this ordinance is intended to comply with and complement any
19 such state and federal 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.”

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
state and federal law; and

2 ;

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 provider to
install, mount, maintain, modify, operate or replace or collocate a small
wireless facility on a utility pole or wireless support structure, or to 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 that meets each of
the following conditions:

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

- 26 (2) It is mounted on a structure fifty feet or less in height including
is antennas or on structures no more than ten percent taller than
other adjacent structures; and
- 27 (3) It does not extend existing structures on which they are
located to a height of more than fifty feet or by more than ten
percent, whichever is greater;
- 28 (4) Its other ground or pole-mounted wireless equipment is
twenty-eight or fewer cubic feet in volume; and
- 29 (5) It is in all respects in compliance with federal regulations
including those at 47 C.F.R. § 1.6002.]

1 (S) "technically feasible" means that by virtue of engineering or
spectrum usage the proposed placement for a small wireless facility, its
design, or site
2 location can be implemented without a reduction in the functionality of the
3 small wireless facility.

4 (T) "utility pole":

5 (1) means a pole or similar structure used in whole or in part for
6 communications services, electricity distribution, lighting or traffic signals;
7 and

8 (2) does not include a wireless support structure or electric
9 transmission structure;

10 (U) "wireless facility":

11 (1) means equipment at a fixed location that enables wireless
12 communications between user equipment and a communications network,
13 including:

14 (a) equipment associated with wireless communications;

15 and

16 (b) radio transceivers, antennas, coaxial or fiber-optic
17 cables, regular and backup power supplies and comparable equipment,
18 regardless of technological configuration;

19 (2) includes a small wireless facility; and

20 (3) does not include:

21 (a) the structure or improvements on, under or within which
22 the equipment is collocated;

23 (b) a wireline backhaul facility, coaxial cable or fiber-optic
24 cable between wireless support structures or utility poles; or

25 (c) coaxial or fiber-optic cable otherwise not immediately
26 adjacent to, or directly associated with, an antenna;

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 wireless facility or installation,
modification or replacement of a utility pole for the collocation of a small
wireless facility, as defined herein, is

19 permitted within all zoning districts of the IDO, subject to all applicable use
specific standards, and within all rights-of-way as defined by this Article,
subject only to the restrictions in Section 5-10-5.

20 (B) Permit Required. No person shall place a small wireless facility in
21 any right-of-way, without first filing a small wireless facility application and
22 obtaining a permit therefore, except as otherwise provided in this Article. An
23 applicant may submit a consolidated application for up to twenty-five (25)
24 small wireless facilities so long as they are all of substantially the same type,
25 and on substantially the same types of structures, however no more than one
26 (1) such consolidated application may be filed within any five (5) business-day
27 period. The City's denial of one or more small wireless facilities in a
consolidated

28 application shall not delay the processing of any other small wireless facilities
1 submitted in the same application;

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

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

7 (1) All relevant information otherwise required for a general

8 wireless telecommunications collocation permit administered under the
9 Integrated Development Ordinance;

10 (2) A certification by the applicant that the small wireless facility
11 or facilities to be collocated conform with the Federal Communications
12 Commission's regulations concerning radio frequency emissions;

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

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

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

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

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

30 (1) Unless otherwise provided by law, all applications for permits
31 pursuant to this Chapter shall be accompanied by a fee related to processing

32 the application, but shall not exceed \$500.00 for up to five small wireless
facilities and an additional \$100.00 each for up to five small wireless beyond
five.

1 (2) The application fee for the installation, modification or
2 replacement of a utility pole for the collocation of a small wireless facility that
is permitted in accordance with this Article
3 shall not exceed \$750 per utility pole in the rights-of-way. No additional
application fee shall be required for the small wireless facility to be collocated
on the newly installed, modified or replaced pole.

4 **5-10-5 Permit Applications; Conditions**

5 **(A) Review of Small Wireless Facility Applications.**

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

8 (a) Within thirty (30) days of receiving an Application, the
9 City shall determine and notify the Applicant whether the Application is
10 complete. If an Application is incomplete, the City shall specifically identify
11 the missing information in writing. For each item alleged to be missing, the
City must specify the code provision, ordinance, application instruction, or
otherwise publicly-state procedure that requires the submission of the
information. For incomplete applications, the time for processing the
application shall be tolled by the number of days from the day after the date
when the City properly notifies applicant of the missing documents or
information until the date on which the applicant submits all required
documents or information such as to render the application complete. If the
City fails to notify the applicant of
12 incompleteness within thirty (30) days, the application is deemed complete.

13 (b) Make its final decision to approve or deny the
14 application within ninety (90) days of first receiving the complete application

15 material, except that the City and an applicant may agree to an extension of
16 this period. An applicant shall not unreasonably deny any City requests to
17 extend this period; and

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

26 (2) If the City fails to act on an application within the ninety (90)
27 day review period in subsection (1)(b), this inaction shall constitute a “failure
to act” under Section 332(c)(7)(B)(v) of the federal Telecommunications Act
and presumptive prohibition of services within the meaning of Section
332(c)(7)(B)(i)(II) and applicant may seek remedies for these violations, if
proved.

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

31 (a) Materially and demonstrably interferes with public
32 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, aesthetic, spacing,
placement, and/or construction standards for
10 small wireless facilities as adopted, published, 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, published 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.;

1 (i) A new utility pole or wireless support structure is proposed within a
right-of-way where the applicant has not adequately explained why it could

not use an existing or replacement utility pole or wireless support structure,
either owned by the City or by a third-party.

2 (4) The City specifically reserves its right under federal law to publically
disclose design, aesthetic, spacing, placement, and/or construction standards
within one hundred, eighty days of September 27, 2018.

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 percent in height above 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 existing structures on which they are located to a height of more than
fifty feet or by more than ten percent, whichever is greater:

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

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

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

27 (E) Historic and Design Districts . The City shall require reasonable,
28 technically feasible, non-discriminatory and technologically neutral design or
29 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 \$270.00 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) First Six-Month Increase; and Annual Fee and Rate Increases. The
City shall have the opportunity to adjust the rates established in this
ordinance within one-hundred and eighty (180) days from September 27,
2018 if the City determines during that time that its costs of maintaining the
rights-of-way and the structures in the rights-of-way and processing
applications and permits have increased as a result of a given deployment
to an amount that does not approximate, but rather exceed the fees and
rates paid by permittees. In such event, the City shall notify all wireless
providers of the proposed fee and/or rate increases and provide a
reasonably detailed report showing why the fees and rates established
herein do not recover the City's costs and how the proposed increases
would remedy the situation. Following any increase pursuant to any First
Six-Month Increase, the City may adjust the fees and 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 the preadjusted rate
2 of any prospective adjustments 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-owned utility pole in the right-of-way shall be \$270.00 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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