

of Grant,  
I certify that this instrument  
is for record on the 26th  
Feb. A.D., 19 96  
8 o'clock P M, and duly  
filed in book 204 of the records  
of Grant  
20  
in my hand and seal of office  
in Madrid, N.M.  
CLERK, GRANT CO. N.M.

County Ordinance Bk. 204.

717

ORDINANCE #96-02-26 A

COUNTY OF GRANT, NEW MEXICO

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF  
RULES AND REGULATIONS FOR THE MANAGEMENT OF  
GRANT COUNTY PUBLIC RIGHTS-OF-WAY; REQUIRING FRANCHISES FOR  
THE UTILIZATION OF THE GRANT COUNTY RIGHTS-OF-WAY;  
ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS  
ORDINANCE; AND SUPERSEDING ORDINANCE NO. 78-12-4-1,  
RELATING TO SIMILAR SUBJECT MATTER.

WHEREAS, Ordinance #78-12-4-1, also known as "Ordinance No. 4, AN ORDINANCE REGARDING CONSTRUCTION, OR FACILITIES, WITHIN GRANT COUNTY ROAD RIGHT-OF-WAYS" (hereinafter "Ordinance No. 4") was adopted by the Commissioners of Grant County on December 4, 1978; and,

WHEREAS, Ordinance No. 4 empowered the Grant County Board of Commissioners to adopt certain rules and regulations concerning the construction and maintenance of utilities and other facilities within the Grant County Road rights of way; and,

WHEREAS, pursuant to Ordinance No. 4, a number of rules and regulations have, over the years, been adopted concerning such construction and maintenance of such facilities within Grant County Road rights of way; and,

WHEREAS, the Grant County Board of County Commissioners are further empowered by New Mexico State Statute Sections 4-38-18 and 62-1-3 NMSA 1978, Sections 63-9A-1 to 63-9A-20 NMSA 1978, and Ordinance 95-11-02-A to grant franchises, not exceeding twenty-five years in duration, to business entities for the purposes of utilizing streets, roads and rights of way of the County for the erection, construction or operations of a public utility and/or for telecommunication, audio, video, data or interactive transmission services governed by this Ordinance and to impose charges for reasonable actual expenses incurred in the granting of any franchise for these purposes; and,

WHEREAS, the Telecommunications Act of 1996, Section 253, specifies that no State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, provided that nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

WHEREAS, the Grant County Commission finds that, in the interest of the public health, safety and convenience, Ordinance No. 4 should be amended to include new sections requiring County franchises for use of County rights-of-way, making it a misdemeanor for violation of the requirements of this Ordinance and providing equitable relief for violations of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE GRANT COUNTY COMMISSION OF THE COUNTY OF GRANT THAT:

Section 1. The Grant County Board of Commissioners ("County") is empowered to adopt rules and regulations concerning the franchising, construction and maintenance of utilities and other facilities within the Grant County rights-of-way. These rules and regulations shall cover, but not be limited to, the following:

1. Minimum depth of underground utility lines;
2. Minimum height of above ground utility lines;
3. Location of utility poles;
4. Restriction governing fences on the right-of-way;
5. Permit requirements to cut county road;
6. Road restoration requirements;
7. Responsibilities for maintenance, or restoration of road drainage facilities.
8. Other costs incurred and conditions for managing the public rights-of-way.

Such rules and regulations to be adopted by the County shall be published and a matter of public record available for inspection at any time. Any and all such rules and regulations adopted pursuant to Grant County Ordinance 4, AN ORDINANCE REGARDING CONSTRUCTION, OR FACILITIES, WITHIN GRANT COUNTY ROAD RIGHT-OF-WAYS, also known as Ordinance #78-12-4-1, are hereby acknowledged to be rules and regulations of Grant County.

Section 2. The Board of Commissioners has the authority, pursuant to Sections 4-37-1, 4-38-1, 4-38-18 and 62-1-3, NMSA 1978 and the Telecommunications Act of 1996 to manage its public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for the use of public rights-of-way on a non-discriminatory basis.

Section 3. The Board of Commissioners is further empowered by Section 62-1-3 NMSA 1978, Sections 63-9A-1 to 63-9A-20 NMSA 1978, and Ordinance 95-11-02 A to require franchises, not exceeding twenty-five years duration, of business entities using or seeking to use streets, roads and rights-of-way of the County for the erection, construction or operations of a public utility and/or for telecommunication, audio, video, data or interactive transmission services governed by this Ordinance and to impose charges for reasonable expenses incurred in the granting and exercise of any

franchise for these purposes, not inconsistent with the Telecommunications Act of 1996.

Section 4. Misdemeanor: Any person or entity failing or omitting to do anything required of it by this Ordinance, or by any franchise granted pursuant to this Ordinance, is guilty of a misdemeanor and shall be subject to imprisonment for a period of not more than 90 days, or a fine not to exceed \$300.00 or both such confinement and fine.

Section 5. Federal and State Fines or Penalties: Any person or corporation which violates any provision of Federal or State law or regulation or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the County, may be subject to Federal and or State fines or civil penalties of not less than one thousand dollars (\$1,000) nor more than one hundred thousand dollars (\$100,000) for each offense.

Section 6. Equitable Relief: In addition to misdemeanor and Federal or State fines or penalties, the Board of County Commissioners of Grant County may apply to the District Court in and for the County of Grant, New Mexico, for the purpose of enjoining any violations or threatened violations of this Ordinance. In addition, the Board of County Commissioners may seek injunctive relief or bring mandamus to compel compliance with the provisions of this Ordinance.

Section 7. Actions to recover fines or penalties under this Ordinance: Actions to recover fines or penalties under this Ordinance shall be brought in the name of the Grant County Commission in the District Court of Grant County.

Section 8. Such persons or entities as the District Court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties.

Section 9. Every violation of the provisions of this Ordinance or of any lawful order of the County thereunder, or any part or portion thereof by any corporation or person is a separate and distinct offense. All fines or penalties accruing under this Ordinance shall be cumulative, and a suit for the recovery of one fine or penalty shall not be a bar to or affect the recovery of any other fine or penalty or be a bar to any criminal prosecution against any corporation or any officer, director, agent or employee thereof.

Section 10. Any entity challenging the validity, legality, or constitutionality of this Ordinance, if unsuccessful, will reimburse the County for all costs incurred, including attorneys fees, in such litigation.

Section 11. This Ordinance hereby supersedes Ordinance #78-12-4-1, also known as Ordinance 4, and repeals and supersedes all

previous Ordinances and/or parts of Ordinances dealing with the same subject matter included herein to the extent the previous Ordinance is in conflict herewith.

Section 12. If any of the sections, subsections, sentences, clauses or phrases of the Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be thereby affected since it is the express intent of the County Commission to pass each section, phrase, paragraph and word separately.

Section 13. This Grant County Ordinance shall take effect thirty (30) days after it has been duly recorded in the book kept for that purpose by the Grant County Clerk.

PASSED, APPROVED AND ADOPTED by the Board of County Commissioners of Grant County this 26th day of February, 1996.

Manuel T. Serna  
Manuel T. Serna, Chairman

Zeke Santa Maria  
Zeke Santa Maria, Member

Carl W. Scholl  
Carl W. Scholl, Member

ATTEST:

Rena Madrid-Cope  
Rena Madrid-Cope, County Clerk