

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

The Board of County Commissioners (the "Board") of Grant County (the "County"), in the State of New Mexico, met in a regularly scheduled meeting in full conformity with law and the ordinances and rules of the County, in the Commission Chambers of the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, in the County, being the regular meeting place of the Board, at 9:00 a.m., Thursday, April 13, 2023, at which time there were present the following members:

Commissioners:	Chris M. Ponce
	Gerald W. Billings, Jr.
	Harry Browne
	Alicia Edwards
	Eloy Medina

Absent:

Thereupon the following proceedings, among others, were had and taken, to wit:
There was officially filed with the County Clerk, the Chairman and each Commissioner, a copy of a duly adopted ordinance in final form, which is as follows:

GRANT COUNTY, NEW MEXICO

**ORDINANCE NO. O-23-03
WIRELESS TELECOMMUNICATIONS FACILITIES**

**AN ORDINANCE REGULATING THE SITING AND PERMITTING OF
WIRELESS TELECOMMUNICATION FACILITIES**

WHEREAS, Grant County, New Mexico (the "County") has determined that the regulation of the siting of wireless telecommunications facilities is necessary to protect the health, safety, and welfare of the citizens of Grant County, New Mexico; and

WHEREAS, the County desires to minimize the negative impact Wireless Telecommunications Facilities may have on citizens and real property use in the County by promoting the use of existing Wireless Telecommunications Facilities, and by ensuring new Wireless Telecommunications Facilities are compatible with the existing character and environment of the Facility's location; and

WHEREAS, the County wishes to provide an efficient, streamlined, and fair process for the review and approval of potential Wireless Telecommunications Facilities; and

WHEREAS, pursuant to NMSA 1978 §§ 3-21-1 et seq. and §§ 4-37-1 et seq., and the Telecommunications Act of 1996, §704.47 U.S.C. § 332(c)(7), § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 and recognizing the enactment of the New Mexico Wireless Consumer Advanced Infrastructure Act NMSA 1978 §§ 63-91-1 et. seq., the Board of County Commissioners of Grant County is empowered to enact regulations regarding the location, placement, construction, appearance, design, and modification of Wireless Telecommunications Antennae, Towers and other Wireless Telecommunications Facilities on lands and properties within the County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS AS THE GOVERNING BODY OF GRANT COUNTY, NEW MEXICO, that:

I. PURPOSE AND INTENT:

- A. The purpose and intent of this Ordinance is to protect the health, safety, and welfare of the citizens of the County by minimizing potential adverse impacts of Wireless Telecommunications Facilities; to establish a fair and efficient process for review and approval of applications in accordance with Federal, State, and Local Regulations; to encourage the use of existing facilities via non-discriminatory management of the Public Right-of-Way; to promote the improved appearance and functionality of any new facilities; ensuring that all new facilities are constructed using current technologies designed to conceal the site and to accommodate future growth. The provisions of this Chapter are not intended to and shall not be interpreted to

prohibit or have the effect of prohibiting the provision of conforming Wireless Telecommunications Facilities. Nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

II. DEFINITIONS:

- A. Abandonment – cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified by this ordinance.
- B. Administrative Approval – approval that the Administrator or designee is authorized to give.
- C. Administrator – the County Administrator, County Manager or his/her designee.
- D. Applicant – a wireless provider, infrastructure owner, or their agent, who is an Applicant for a Wireless Telecommunications permit.
- E. Antenna – communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provisions of Wireless Telecommunications services.
- F. Carrier on Wheels/Wings (COW) – a portable, self-contained Wireless Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis.
- G. Collocation – placement or installation of wireless facilities on existing structures, including electrical transmission Towers, Water Towers, buildings, and other structures capable of supporting the attachment of wireless facilities in compliance with all applicable codes and standards.
- H. Concealed Wireless Facility – any wireless facility that is blended as an architectural feature of any existing structure or any new wireless support structure designed to camouflage or conceal the presence of Antennas or Towers so that the purpose of the facility or wireless support structure is not readily apparent to casual observation.
- I. Eligible Facility Request – a request for modification or Collocation of an existing wireless Tower that involves new transmission equipment or replacement of transmission equipment but does not include a substantial change of the existing structure.
- J. Existing Structure – a wireless support structure erected prior to the application for an Eligible Facility Request, Collocation or modification

under this ordinance that is capable of supporting the attachment of wireless facilities. The term includes, but is not limited to, electrical transmission Towers, buildings, and water Towers. The term shall not include any utility pole(s).

- K. Public Right-of-Way – an area of land owned or controlled by the County for the purposes of constructing, operating, and maintaining public facilities such as streets, alleys, sidewalks, bike paths, and landscaping for the needs of transportation, utilities, and other public infrastructure easements.
- L. Rigorous Structural Analysis – May assume the structure is properly constructed and maintained; used to determine the final acceptance of proposed changes; must determine the overall stability and adequacy of the structural members, foundations, and connection details; foundation analysis must be site-specific; assumptions about details that are not visible or cannot be discerned without extensive field testing is acceptable.
- M. Set-Back – the area in which a wireless support structure may be expected to fall in the event of a structural failure as defined by the Ordinance.
- N. Small Wireless Facilities/Systems – Wireless Facilities mounted on structures 50 feet or less in height, or on structures no more than 10 percent taller than adjacent structures with an antenna no more than three (3) cubic feet and total wireless equipment no more than 28 cubic feet. Or generally, one of several specialized systems typically comprised of mini-macro cells, Distributed Antenna Systems (DAS) or other Wireless Facilities specifically for outdoor coverage. Individual small cell sites typically cover a small radius (< 2000') but are used in conjunction with the “typical” cell sites or a group of other small cell sites, or a system, to cover a broad area of dense-usage requirements. The nature and character of these types of facilities, their minimal impact, and typically permitted in quantity, can justify permitting considerations.
- O. Substantial Change - Substantial Change for Eligible Facilities Request means a modification that substantially changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:
 - 1. For Towers, other than Alternative Tower Structures in the Right of-Way or other towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent or by the height of one additional Antenna array, with separation from the nearest existing Antenna not to exceed 20 feet, whichever is greater. For other Eligible Support Structures, it increases the height of the structure by more than 10 percent, or more than 10 feet,

whichever is greater;

2. For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than 20 feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
 3. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for Towers in the Right-of-Way and base stations, it involves installation of any new equipment cabinets on the ground, if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;
 4. For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
 5. For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection (K), a change which undermines the concealment elements of an Eligible Support Structure will be considered to defeat the concealment elements, or;
 6. For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), and (3) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the Tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.
- P. Tower – a structure, guided or freestanding, that supports one or more Antenna.
- Q. Wireless Facility or Wireless Telecommunication Facility – a facility used to

provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or the set of equipment and network components exclusive of the underlying wireless support structure, including but not limited to Antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide Wireless Telecommunications services.

III. APPLICABILITY:

A. This Ordinance applies to all construction and expansion of Wireless Telecommunications facilities, except as provided in III B Exceptions.

B. Exemptions:

1. Fire, police, department of transportation, or other public-service facilities (including PSAP's) owned and operated by the local, County, state, or federal government, unless otherwise required by law to comply with local land use regulations.
2. Any facilities expressly exempt from the jurisdiction's citing, building, and permitting authority.
3. Over-the-air reception devices including the reception Antennas for direct-broadcast satellites (DBS), multi-channel, multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS), and other customer-end Antennas that receive and transmit fixed wireless signals and are primarily used for reception.
4. Facilities exclusively for private, non-commercial radio and television reception and private citizens' bands, and other similar non-commercial telecommunications. FCC-licensed amateur radio facilities require an administrative approval and are exempt from all ordinance requirements, except reasonable screening, setback, placement, construction, Tower height, and health and safety standards in accordance with state law.
5. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g {Wi-Fi and Bluetooth}) where the facility does not require a new Tower.

All Wireless Facilities existing on the date of passage of the ordinance shall be allowed to continue their usage as they are presently approved. Routine maintenance shall be permitted on such existing Towers.

IV. PERMIT APPLICATION PROCESS AND OTHER REQUIREMENTS:

- A. All Applicants for a Telecommunications Permit and its associated Building Permit shall comply with the requirements set forth in this Article.
- B. The Grant County Board of County Commissioners designates the Planning and Community Development Department as the Administrator to whom applications for a Telecommunications and Building Permit (Obtained, if required, from the State's Construction Industries Division (CID) following this permit process.) must be made. The Administrator is authorized to review, analyze, evaluate, and make decisions with respect to granting, not granting, or revoking Permits.
- C. The Applicant shall complete the following steps, in order, to assist the Administrator in expediting the completion of the process:
 - 1. Optional Pre-Application Conference: Applicants seeking a Telecommunications and Building Permit, excepting Applicants for Eligible Facilities Requests and Small Wireless Facilities, will obtain and review this Ordinance and meet with the Administrator and the County's consultant, either electronically or in person, prior to the submission of an application. The requirement for a pre-application conference may be waived at the discretion of the Administrator. The intent of the meeting is to review the ordinance requirements, processes, and method of submissions with the Applicant. The pre-application meeting will include the following:
 - a) A discussion of potential best locations for the Telecommunications Facility, taking into consideration the County's defined priorities that meet the Applicant's service requirements. The application process will require an explanation for a selected location if not using the location of highest priority available to the Applicant. The County's priorities from highest to lowest are:
 - (1) On existing Towers or structures without an increase in their height.
 - (2) On existing Towers or structures with an increase in their height.
 - (3) On County-owned properties.
 - (4) On properties zoned, or if not zoned, characterized predominantly by Industrial use.

- (5) On properties zoned, or if not zoned, characterized predominantly by Commercial use.
 - (6) On Properties zoned, or if not zoned, characterized predominantly by for Agricultural use.
 - (7) On properties zoned, or if not zoned, characterized predominantly by for Residential use.
- b) A discussion of issues which will help expedite the review and permitting process;
- c) A site visit to potential best locations sites, if deemed necessary by the Administrator;
- d) A determination of the type of applications to be made;
- e) A discussion of the required submission materials and other information that are needed for review and consideration by the Administrator. Requirements for the Application may vary based on the specific location, type of facility selected, and the potential impact to the County and its citizens, and;
- f) Any Applicant desiring relief, waiver, or exemption from any requirement of this Ordinance may request such at the pre-application meeting. The Administrator may refer a waiver or variance request to the Board of County Commissioners for consideration. The burden of proving the need for the request lies solely with the Applicant. The Applicant shall bear all costs to the County in considering the request. No request shall be approved unless the Applicant provides convincing evidence that the request will have no significant effect on the health, safety, and welfare of the County (jurisdiction) or its residents.
2. Application Process: The Applicant shall complete the online application processes as defined by the Administrator at the outset of the process.
- a) **Applications for Eligible Facilities Requests.** The County shall prepare an application form, which shall be limited to the information necessary for the County to consider whether an application is an Eligible Facilities Request. Such information may include, without limitation, whether the project:
- (1) Would result in a Substantial Change.
 - (2) Violates a generally applicable law, regulations, or other rule

codifying objective standard reasonably related to public health, safety and welfare specifically including a soils study (if not already provided), structural safety report, and a Tower inspection. The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.

b) **Applications for Non-Eligible Facilities Request Collocations, Small Wireless Facilities, New Towers, or other Wireless Telecommunications Facilities shall contain** a demonstration that the Telecommunications facility will be sited so as to be the least visually intrusive, as reasonably possible.

c) In addition to demonstration that the proposed modification, Collocation, Small Wireless Facility, or new Tower or other Wireless Telecommunications Facility blends into the character and environment of the proposed location, **all applications shall contain** the following information and shall be submitted through the online system designated by the County. For Small Wireless Facilities, these requirements may be met in part through the execution of a Master License Agreement or similar form of authorization.

- (1) Registration of an Agent, including the name, address and telephone numbers of the designated Agent and his/her company;
- (2) Letter from the Applicant authorizing the Agent as an official and representative of the Applicant;
- (3) Complete a project description which shall include a general description of the Applicant's project and its proposed location;
- (4) Contact information including the name, address, and telephone number of the person or entity who will be responsible for the Applicant's construction and management of the project;
- (5) Contact information for the support structure project manager for the proposed location and contact information for any manager of the real property for the proposed location (e.g. building manager, Tower owner, etc.);
- (6) Define the type of project (Collocation, modification, Small Wireless Facility, new Tower, etc.) and the specific site address and description of the project.

(7) Completion of a Tower/Wireless Facility Registration or, if a Tower/Wireless Facility Registration already exists for the proposed location, completion of a Tower/Wireless Facility Registration Update, if needed. The Tower/Wireless Facility Registration shall include;

- (a) Name, address, and telephone contact number for the Tower owner;
- (b) Name, address, and telephone contact number for the real property owner, if different than Tower owner;
- (c) Current number and identification of co-locators on the Tower/Facility;
- (d) Site name, number, and physical address;
- (e) A lease agreement in final form or other documentation demonstrating the terms of a final lease including the Applicant's right, title, or interest in the real property where the facility is to be sited, including the name, address, and phone number of the property owner;
- (f) Description of the Tower/Facility, including but not limited to, height, set-back, type of structure, and number of existing co-locators;
- (g) Verifiable copy of the current Tower inspection report, including expiration date, company performing inspection, ANSI standard used;
- (h) Contact information including name, address and telephone number for the person or entity performing the most recent or current Tower inspection;
- (i) A copy of the Soils Study Report including but not limited to the date completed, person or entity name performing the Soils Study, project number, identification of the Professional Engineer providing certification of the study with registration or license number of the Professional Engineer, and;
- (j) Any other information deemed necessary or required by the County.

d) Applications for a Non-Eligible Facilities Request modification or Collocation to an existing structure, shall include:

- (1) All items listed in Section b. above which do not exist or are no longer current or have not recently been updated;
- (2) Project name for the existing Collocation site or project;
- (3) Names, addresses, and phone numbers of person or entity preparing the application;

- (4) A copy of the FCC License for the carrier and a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations;
 - (5) Certified site plans, including the Professional Engineer's name and registration/license number, physical description of the current configuration of the site, physical description of the proposed configuration of the site, contacts, set-backs, grounding plans, security, parking, and turnarounds, as applicable, and a description of the components, including the sizes of the components in order to determine that the proposal is the least visibly intrusive design;
 - (6) Certified Structural Analysis including identification of the Professional Engineer's name and registration/license number providing the Analysis, a copy of all calculations, reference documents and results, percent loading, that include all components, structures, and foundations in accordance with Rigorous Structural Analysis;
 - (7) Performance Bond including amounts as set by the County, to remain in place as long as the site remains active and in place and until the Tower or facilities are removed as required by the Ordinance;
 - (8) Copy of the Certificate of Insurance demonstrating that the requirements of the Ordinance are met;
 - (9) Identification of the general contractor(s) with proof of current licensure as required by the state and/or local government, and;
 - (10) Projected start and completion dates of construction.
- e) **Applications to install a new Tower or Wireless Telecommunications Facility** will include the following:
- (1) All information listed in Sections b. and c. above;
 - (2) The number, type, and design of the Tower(s) and Antenna(s) proposed;
 - (3) All reports, data, calculation and design criteria which demonstrate the Tower's capability to accommodate multiple users;
 - (4) Demonstration of the Applicant's meaningful efforts to secure

shared use of existing Tower(s) or other structures within the defined parameter of one (1) mile including but not limited to copies of written requests and responses for shared use;

- (5) The justification for the new wireless facility including but not limited to capacity information, gap in coverage information or other information or data demonstrating justification for the location of the proposed facility and that alternative locations have been adequately considered;
- (6) The Applicant will provide list of design coordination with registered/recognized Homeowners Association(s) or property owners within fifteen hundred feet (1500') of the proposed site's property lines;
- (7) Public Hearing and Notification Requirements.

- (a) In order that the County may notify nearby Home Owners Associations and landowners, prior to the approval of any Application for a Telecommunications Permit for a New Tower, a public hearing shall be held by the County, notice of which shall be published in a newspaper of general circulation no less than 10 calendar days prior to the scheduled date of the public hearing.

f) **Applications to Install Small Wireless Facilities/Systems** will include the following: (Note: A special meeting with the agents/engineers/representatives of the Applicant may be needed to ensure that systems documentation requirements are fully understood). For Small Wireless Facilities these requirements may be met in part through the execution of a master license agreement or similar form of authorization

- (1) All information listed in Sections b. and c. above;
- (2) Excepting that entire system and the associated group of Small Wireless facilities may be included in a single application process.
- (3) Each small cell design and their constituent components must be approved through an online Application Process.
- (4) Once a small cell design has been approved, identical (or nearly identical) node designs will be Administratively Approved subject to a review of the location and compliance with the approved design.

3. Review of Application: The County shall review all applications in accordance with state and federal shot clocks as applicable. Accordingly, the Administrator and the consultant(s) shall review the Application within thirty (30) days, or as amended by State and Federal regulatory changes of submission to determine if the application is complete and meets the requirements of this Ordinance. The County and the Applicant can, by mutual written agreement, extend the period of time in which the review for completeness is conducted.
- a) Incomplete applications will not be accepted for further review and processing;
 - b) Applications submitted without the payment of costs and fees as required by the County is incomplete and shall not be accepted for further review and processing;
 - c) **IF THE APPLICATION IS NOT COMPLETE:** The County shall notify the Applicant in writing of the provisions of the code, ordinance, application process or publicly stated procedures not completed and notify the Applicant that the application may be resubmitted.
 - d) **IF A RESUBMITTED APPLICATION IS NOT COMPLETE:** Within 10 days, or as amended by State and Federal regulatory changes of the resubmission of the application, the County shall notify the Applicant in writing of whether the resubmission is complete and that the application may be resubmitted, and notify the Applicant of the code, ordinance, application process or publicly stated procedures which remain incomplete.
 - e) **IF THE APPLICATION IS COMPLETE:** based on the review of the application the Administrator shall, within the time periods allowed under federal, state and local law:
 - (1) Approve, with conditions or deny the Wireless Telecommunications Facilities and Building Permits;
 - (2) Issue a written decision within 10 days of reaching a decision on the application which is supported by evidence contained in the online information and record submitted by the Applicant;
 - (3) Place the burden of proof for the granting of the permit upon the Applicant;
 - (4) Refer the application to the Board of County Commissioners for review and consideration. If a variance or waiver of this code,

zoning requirements, or other land use considerations is required, the application will be referred to the Board of County Commissioners. Upon successfully obtaining the waiver or variance the application will be referred to the Administrator for final review.

4. Appeal of Administrator's Decision: Excepting decisions on the denials of Small Cells and Eligible Facilities Request, the decision of the Administrator can be appealed by the Applicant or by the County by submitting written notification to the Administrator. The content of the Notice of Appeal shall contain the name of the Applicant and a description of the Wireless Telecommunications Facilities. The Applicant must submit the Notice of Appeal within 30 calendar days after the decision. The appeal will be heard and considered at the next available meeting of the Board of County Commissioners.
5. Construction of the Proposed Facility: If an Application is approved, or approved with conditions, a Wireless Telecommunication Facility and Building Permit will be issued to the Applicant:
 - a) The Applicant must comply with all requirements of the Wireless Telecommunication Facility and the Building Permit;
 - b) The Applicant will be required to meet and satisfy the final inspection process required when construction is complete.
 - c) The Wireless Telecommunication Facility and Building Permit shall not be assigned, transferred, or conveyed without written notification to and approval from the County within six (6) months.
 - d) The Wireless Telecommunication Facility and Building Permit may be revoked, canceled, or terminated for violation of the conditions and provisions of the Wireless Telecommunication Facility and Building Permit or for a material violation of this ordinance as permitted by local ordinance, state, or federal law.
 - e) The County will provide the permit holder written notice of an intent to revoke, cancel, or terminate the permit with identification of the violation(s) and provide the holder of the Wireless Telecommunications Facility and Building Permit with an opportunity for a hearing before the Board of County Commissioners prior to revocation, cancellation or termination.
6. Completion of Construction: When the Applicant completes construction of the project, the Applicant shall notify the Administrator of the need for a final inspection. The County or the consultant for the

County will verify that the site is constructed in accordance with the application, meets all the requirements of the Ordinance, and that the Applicant has paid all monies due to the County. If all requirements of this Ordinance, the Telecommunications permit and the Building permit have been met, the County will issue a Certificate of Compliance and Telecommunications Permit to the Applicant that allows operational use of the site.

**V. GENERAL REQUIREMENTS OF NON-ELIGIBLE FACILITIES
REQUEST WIRELESS TELECOMMUNICATIONS FACILITIES:**

- A. The Administrator, in his or her sole discretion, may waive or modify any of the below requirements based on a demonstration that alternative designs or construction techniques will adequately protect health safety and welfare.
- B. Lighting: Telecommunications facilities shall not be lighted or marked, unless required by law. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting as inoffensive as permissible under State and Federal regulations. Applicant shall also comply with any local or State "Night Skies" requirements.
- C. Materials: Towers shall be galvanized and/or painted with rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained for the life of the Tower.
- E. Set-Back Requirements: Stand-alone Wireless Telecommunications Facilities shall be no closer to any property line than the total height of the completed unit, plus ten percent (10%). The structure should not be capable of falling onto an adjacent property or structure should the structure collapse for any reason. The height is measured from the pre-existing grade to the highest point of the structure. Security of Wireless Telecommunications Facilities: All Wireless Telecommunications Facilities and Antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.
- F. Signage: Telecommunications Facilities shall contain a sign to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size shall also be installed to contain the site identification number and emergency phone number(s). The sign shall be on the fence, equipment shelters or cabinet and be visible from an access point outside the secured site area. On Tower sites, an FCC registration sign shall be present. The signs shall not be lighted, unless required by law, rule, or regulation. No other signage, including advertising, is permitted.
- G. Update of Signage: The Applicant or future site owner shall update the site

identification number and emergency phone numbers of the Wireless Telecommunications Facility as displayed on the required sign within one month of any sale, assignment, or transfer.

H. Temporary Communications on Wheels/Wings (COW): In the event of an emergency or natural disaster which renders other forms of communication nonviable or a relocation or temporary removal of a Wireless Facility, the County and the telecommunications provider shall agree to special terms and conditions for the provision of a COW as needed by the County and the Telecommunications provider to permit a COW to be deployed:

1. In the event a COW becomes inoperable due to force majeure or Acts of God, it must be removed from the site within 30 days of becoming inoperable.
2. If a COW is permitted as part of a special event, it must be removed from the site within 48 hours of the event conclusion.

VI. APPLICATION FEES AND OTHER REQUIREMENTS:

- A. The County shall pass a resolution establishing fees for review of applications for Wireless Telecommunications Facilities and attachment of Wireless Facilities to County-owned infrastructure. This resolution may be amended from time to time. Applicant shall pay all fees and costs as established by the resolution.
- B. At the time an application is submitted for a Wireless Telecommunication and associated Building Permits for a new Tower, or requires an increase in height to an existing Tower, or for Collocating on an existing Tower or other suitable structure, where no increase will occur in the height of the Tower or other suitable structure, such Applicant shall pay a non-refundable application fee to the County.
- C. In addition to the application fee, the County may retain the services of an expert consultant in connection with the processing and/or review of the application and the permitting and final inspection of site. The Applicant shall be responsible for reimbursing the County for all costs and amounts incurred by the County for such expert consultation.
- D. The Applicant shall pay for the projected consultation costs to the County at the time of the application.
- E. An Application is incomplete until the Application Fee is paid; and, the Applicant has paid the costs for the expert consultant.
- F. The consultant shall provide the County with a detailed invoice for the costs for the consultation. The amount invoiced by the consultant will be assessed

to the Applicant as the Application Processing and Review Fee.

G. The Applicant, County and the consultant will comply with all federal, state, and local requirements with regard to payment of the consultant's fees.

H. The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at their cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County in an amount set by the County for a Collocation at least the following amounts:

1. Collocation or modification on an existing Tower:
\$25,000
2. New Tower or new structures excluding Small Wireless Facilities:
\$75,000

Such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Wireless Telecommunications Facility Permit or Building Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Telecommunications Permit have been fulfilled, and until such time as any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the Wireless Telecommunications Facility Permit.

- I. A holder of a Wireless Telecommunications Facility Permit shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage and umbrella insurance coverage for the duration of the Permit in amounts as set forth below:
 1. Commercial General Liability covering personal injuries, death, and property damage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
 2. Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
 3. Workers Compensation and Disability: Amount required by New Mexico state law;
 4. Commercial General liability insurance policy shall specifically include Grant County and its officers, employees, agents, and consultants as additional named insureds;
 5. Insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a

“Best's” rating of at least A;

6. Insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice of the cancellation of the insurance;
7. Renewal or replacement policies or certificates shall be delivered to the County at least 15 days before the expiration of the insurance that such policies are to renew or replace;
8. The Permit Holder shall provide the County a copy of the policies/certificates before construction and upon written request by the County.

VII. REMOVAL OF TOWER/ANTENNA/REVOCATION/DEFAULT:

- A. Cessation of Operations/Abandonment/Disrepair: The County may require the removal of a Wireless Telecommunications Facility(ties) when: such item(s) with a permit have been Abandoned or operations of a Wireless Telecommunications Facility has ceased for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) calendar days. All items and equipment subject to the Telecommunications Permit shall be removed within ninety (90) days of Abandonment or the cessation of operations. If equipment or items subject to the Telecommunications Permit fall into such disrepair that a health or safety hazard is created as determined pursuant to a review by a licensed engineer, and such item is not repaired within sixty (60) days or longer as necessary upon the permit holder demonstrating that despite good faith efforts, such disrepair could not be responsibly cured within the provided time, the County may require the removal of the item of the Telecommunications Facility.
- B. Modification, location or construction without permit: If any equipment or item has been located, constructed, or modified without a permit, or in a manner inconsistent with the approved permit requirements, and, the Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Permit, or any other necessary authorization, the County may require the removal of the item, equipment or the Wireless Telecommunications Facility.
- C. Lack of Insurance: If a Permit holder has failed to comply with the liability insurance requirements required by the County, the County may require the removal of the item, equipment or the Wireless Telecommunications Facility.
- D. Notification of Violation: If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way not in compliance with this Code or the Wireless Telecommunication

Facility and Building Permit, the County shall notify the Permit holder in writing of such violation. If the County makes such a determination that removal of an item, equipment or Wireless Telecommunications Facility is required, then the County shall notify the Permit holder within fourteen (14) days that said items are to be removed. The County may approve an interim temporary use agreement/permit, such as to enable the removal and/or sale of the item.

- E. Failure to Cure: After receiving notice of a violation, the permit holder shall have ninety (90) calendar days to cure or remove the violation. The County shall extend such cure period as necessary upon the Permit holder demonstrating that despite good faith efforts, such default cannot be reasonably cured.
- F. Failure to Cure (Removal of item, equipment or Wireless Telecommunications Facility is not required): Cure—For all violations, other than a violation which requires removal of an item, equipment, or Wireless Telecommunications Facility, a Permit holder has thirty (30) days to cure such violation(s) after notice has been mailed or delivered to the Permit holder's address of record. The County may extend the cure period upon demonstration that the Permit holder has made good faith efforts to cure, and that despite its good faith efforts; such default cannot be reasonably cured within the provided time.
- G. Failure to Cure (Removal of item, equipment or Telecommunications Facility is required): If permit holder cannot cure the violation that requires removal of an item, equipment or Wireless Telecommunications Facility within the cure period, permit holder shall dismantle and remove such item, and any associated structures, from the site and restore the site close to original condition as possible, reasonable wear and tear excepted, within ninety (90) days of the expiration of the cure period.
- H. Removal by the County: If the item, equipment or Telecommunications Facility is not removed or substantial progress has not been made to remove it within ninety (90) days of the permit holder receiving notice, then the County may order officials or representatives of the County to remove the item at the sole expense of the owner or Permit holder. The County shall be held harmless for removal of the Wireless Telecommunications facility.
- I. Sale Upon Abandonment: If the County removes, or causes to be removed, the item, and the owner does not claim and remove it from the site to a lawful location within one hundred twenty (120) days, then the County may take steps to declare the item Abandoned, and sell it and its components.
- J. Temporary Use Permit/Agreement: Notwithstanding anything in this Section to the contrary, the County may approve a temporary use

permit/agreement for the item for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected item shall be developed by the holder of the Permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the Permit and the County. If such a plan is not developed, approved, and executed within the ninety-(90)-day time period, then the County may take possession of and dispose of the affected item in the manner provided in this Section.

K. Emergency Removal: If the County determines the item is a hazardous, creates an emergency situation, or adversely affects public safety, the County may remove or cause to be removed the item after twenty-four (24) hours written notice to the Permit holder or the holder of the Certificate of Compliance.

L. Failure to Cure: A Permit holder still in violation after the expiration of the cure period may be considered in default, subject to fines as set forth in this Ordinance, and the Permit is subject to revocation. County may choose, in its sole discretion not to issue other Wireless Telecommunications Permits to Permit Holder until all violations are cured and outstanding fines paid.

M. Fines: A Permit holder who violates this ordinance may be fined up to \$300 for each violation and each day that a violation exists shall be deemed to be a separate violation.

VIII. SAVINGS CLAUSE

If any section, paragraph, clause or provision of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

IX. CODIFICATION OF AMENDMENTS


The codifier of the County is hereby authorized to make such numerical, grammatical, and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Code.

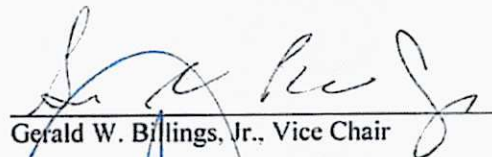
X. EFFECTIVE DATE

The Grant County Board of County Commissioners that this Ordinance is necessary for the public peace, health, and safety, and that this Ordinance take effect immediately when it is properly recorded by the County Clerk.

ADOPTED AND APPROVED this 13th day of April, 2023 in Silver City, Grant County, New Mexico.

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**


Chris M. Ponce, Chair

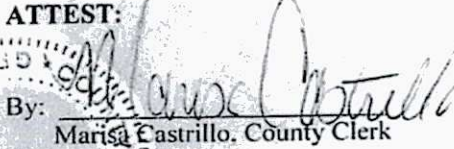

Gerald W. Billings, Jr., Vice Chair


Alicia Edwards, Commissioner


Eloy H. Medina, Commissioner

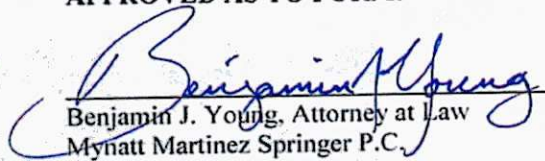

Harry Brown, Commissioner

ATTEST:

By: 
Marisa Castrillo, County Clerk



APPROVED AS TO FORM:


Benjamin J. Young, Attorney at Law
Mynatt Martinez Springer P.C.

Commissioner Browne then moved that the Ordinance be adopted.

Commissioner Edwards seconded the motion.

The question being upon the passage and adoption of said ordinance, the motion was voted upon with the following result:

Those Voting Yea: Ponce Edwards
 Billings Medina
 Browne

Those Voting Nay:

Those Absent:

The Chairman thereupon declared that at least a majority of all the members of that Commission having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted.

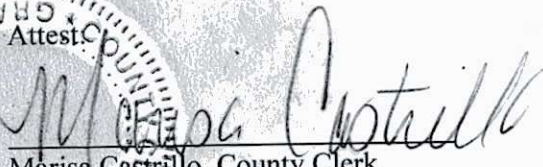
After consideration of matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.



Chris M. Ponce, Chairman,
Board of County Commissioners

[SEAL]

Attest:



Marisa Castrillo, County Clerk

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

I, Marisa Castrillo, County Clerk of Grant County, New Mexico (the "County"), do hereby certify:

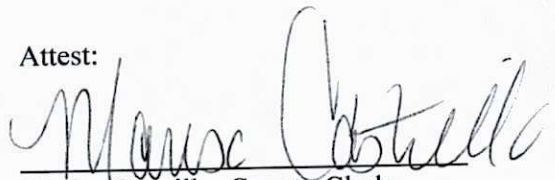
1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, taken at a duly called, open meeting of the Commission held in the Commission Chambers of the Grant County Administration Building, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Commission on Thursday, April 13, 2023, beginning at 9:00 a.m., insofar as the same relate to consideration of the adoption of Grant County Ordinance No. O-23-03 entitled, WIRELESS TELECOMMUNICATIONS FACILITIES, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Commission as required by the open meetings standards then in effect, i.e., the Commission's Open Meetings Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Grant County, New Mexico, this 13TH day of April 2023.

[SEAL]

Attest:


Marisa Castrillo, County Clerk