

**COLFAX COUNTY, NEW MEXICO
ORDINANCE NO. 2023-02**

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

WHEREAS Colfax 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 Colfax County; and

WHEREAS Colfax County desires to minimize the negative impact Wireless Telecommunications Facilities may have on the citizens and real property use in Colfax 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 location of the Facility; and

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

WHEREAS, pursuant to NMSA 1978 §§ 3-21-1 through 26 and §§ 4-37-1 through 13, 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 §§63-9—1 through 19, the Board of County Commissioners of Colfax 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 OF COLFAX COUNTY, AS THE GOVERNING BODY OF COLFAX COUNTY, NEW MEXICO, THAT THE CONTENTS OF THIS ORDINANCE No. 2023-02 BE IMPLEMENTED REGULATING THE SITING AND PERMITTING OF WIRELESS TELECOMMUNICATION FACILITIES:

Section 1. POLICY AND PROCEDURES

I. PURPOSE AND INTENT:

A. The purpose and intent of this Ordinance are to protect the health, safety, and welfare of the citizens of Colfax County by minimizing the negative impact of Wireless Telecommunications Facilities, by establishing a fair and efficient process for review and approval of applications per Federal, State, and Local Regulations, by encouraging the use of existing facilities, by promoting the improved appearance and functionality of any new facilities and ensuring that all new facilities are constructed using current technologies that are designed to conceal the site and to accommodate future growth.

II. DEFINITIONS:

A. Abandonment – cessation of use of a wireless support structure for wireless

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 – One of several specialized systems that comprises mini-macro cells, Distributed Antenna Systems (DAS), or Wi-Fi Hot Spots specifically for outdoor coverage. Individual small cell sites typically cover a small radius (<2000'). However, they are used in conjunction with the "typical" cell sites or a group of other small cell sites, a system, to cover a broad area of dense usage requirements.

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

Mexico state law.

- Facilities that exclusively provide unlicensed spread spectrum technologies (such as IEEE 802.11a/b/g/n/ac/ax {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 Special Use Permits and Conditional Special Use Permits shall comply with the requirements outlined in this Article.

B. The Board of County Commissioners of Colfax County designates the Colfax County Manager as the Administrator to whom applications for Special Use Permits and Conditional Special Use Permits 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 to assist the Administrator in expediting the completion of the process:

- Optional Pre-Application Conference: At the Administrator's discretion, applicants seeking a Telecommunications Permit will obtain and review this Ordinance and meet with the Administrator, either electronically or in person, before submitting an application. Typically called for on more complex applications (new towers, 5G, etc), the meeting intends to review the ordinance requirements, processes, and method of submission with the Applicant. The pre-application session may include the following:

a) A discussion of potential best locations for the Telecommunications Facility, taking into consideration Colfax County's defined priorities that meet the Applicant's requirements for service. The application process may require an explanation for a selected location not using the highest priority available to the Applicant. Colfax County's priorities (listed from highest to lowest) are:

- (1) On existing Towers or structures without increasing their height.
- (2) On existing Tower or structures with an increase in their height.
- (3) On Colfax 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

(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 site (e.g., building manager, tower owner);

(6) Define the type of project (colocation, modification, new tower, etc.), and the specific physical site address and description of the project.

(7) Completing a Tower/Wireless Facility Registration or, if a Tower/Wireless Facility Registration already exists for the proposed location, completing 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) Documentation and specifics regarding the agreement terms (other than financial) demonstrating 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 the number of existing co-locators;

(g) Verifiable copy of the current tower inspection report using ANSI/TIA-222-G (or newer), including the expiration date, the company performing inspection, and 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 New Mexico registration or license number of the Professional Engineer, and;

(j) Any other information deemed necessary or required by Colfax County.

c) Applications for a modification, colocation, or eligible Facility to an existing structure, without an increase of height or size, shall include:

(1) All items listed in Section b. above which do not exist or are no longer current or expired (inspection, lease, etc).

process so specific notice of any needed or required hearing can be given to them at least 7 days prior to any needed or required hearing.

(7) Public Hearing and Notification Requirements:

(a) In order that the County may notify nearby 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 accordance with the New Mexico Open Meetings Act, and the annual Colfax County Notice of Meetings Resolution, which sets the notice and type of publication for meetings, prior to the scheduled date of the public hearing.

(b) The County shall schedule the public hearing referred to in Subsection (a) of this section once it finds the Application is complete. The County, at any stage prior to issuing a Telecommunications Permit, may require such additional information as it deems necessary.

(c) All Public Hearings pursuant to this Ordinance are to be held before the Board of County Commissioners of Colfax County unless specifically exempted by this Ordinance; and, for any appeal purposes, the decision of the Board of County Commissioners of Colfax County is the final decision of the County.

e) **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.) Colfax County's defined Small Wireless Facilities design requirements are made available to applicants by the Administrator in the Small Wireless Facility Design Guidelines Resolution.

(1) All information listed in Sections b. c. & d. above;

(2) The entire system and any associated groups of Small Wireless facilities, within limits defined by the on-line application, may be included in a single application process.

(3) Each component of the system must be represented in the on-line Application Process.

(4) Each system's unique components must be shown and include all the relevant data to complete the process. However, all like (virtually identical) nodes may be demonstrated once but must consist of all the physical locations for each node.

- **Review of Application:** The Administrator or the county's agent shall review the application within thirty (30) days of submission to determine if the application is complete and meets the Ordinance requirements. Colfax County and the Applicant can, by a mutual written agreement, extend the period in which the review for completeness is conducted.

a) Incomplete applications will not be accepted for further review and

be issued to the Applicant:

- a) The Applicant must comply with all requirements of the Special Use or Conditional Special Use Permit;
 - b) The Applicant will be required to meet and satisfy all building inspection processes generally needed for a construction project;
 - c) The Special Use or Conditional Special Use Permit shall not be assigned, transferred, or conveyed without written notification to and approval from Colfax County within six (6) months;
 - d) The Special Use or Conditional Special Use Permit may be revoked, canceled, or terminated for violation of the Permit's conditions and provisions or for a material breach of this Ordinance as permitted by local Ordinance, state, and federal law;
 - e) Colfax 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 give the holder of the Special Use or Conditional Special Use Permit with an opportunity for a hearing before the Board of County Commissioners of Colfax County before revocation, cancellation or termination.
- Completion of Construction: When the Applicant completes the project's construction, the Applicant shall notify the Administrator of the need for a final inspection. Colfax County or the Agent for Colfax 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 Colfax County. If all requirements of this Ordinance and the Special Use or Conditional Special Use Permit have been met, Colfax County will issue a Certificate of Compliance to the Applicant that allows operational use of the site.

V. GENERAL REQUIREMENTS OF WIRELESS TELECOMMUNICATIONS FACILITIES:

- A. **Lighting**: Telecommunications facilities shall not be lighted or marked unless required by law. If lighting is needed, Applicant shall provide a detailed plan for sufficient lighting as inoffensive as permissible under State and Federal regulations. The Applicant shall also comply with any local or State "Night Skies" requirements.
- B. **Materials**: Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained for the Tower's life.
- C. **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 building should the Facility collapse for any reason. The height is measured from the pre-existing grade to the highest point of the structure.
- D. **Security of Wireless Telecommunications Facilities**: All Wireless

the Application Processing and Review Fee.

F. The Application Fees and Costs are defined by the Notice of Fees Resolution associated with this Ordinance; adopted, amended or replaced from time to time as the County Commission determines.

G. The Applicant, Colfax County, and the county's agent will comply with all state and local requirements concerning payment of the county agent'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 Colfax County a bond, or other form of security acceptable to Colfax County in at least the following amounts:

- Colocation or modification of an existing tower: \$25,000
- Small wireless facility: \$15,000
- New tower or other structure: \$75,000

Such sureties are deemed sufficient by Colfax County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Telecommunications Permit or Conditional Use Permit issued according 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, and any Conditional Use Permit has been fulfilled, and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed before the issuance of the original Special Use or Conditional Special Use Permit.

I. A holder of a Special Use or Conditional Special Use 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:

- Commercial General Liability covering personal injuries, death, and property damage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
- Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
- Workers Compensation and Disability: Amount required by New Mexico state law;
- Commercial General liability insurance policy shall specifically include Colfax County and its officers, employees, agents, and agents as additional named insureds;
- 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;
- Insurance policies shall contain an endorsement obligating the insurance company to furnish Colfax County with at least thirty (30) days prior written notice of the cancellation of the insurance;
- Renewal or replacement policies or certificates shall be delivered to Colfax County at least fifteen (15) days before the expiration of the insurance that such

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 the item, equipment, or (Telecommunications Facility is required): If the permit holder cannot cure the violation that involves removal of an item, equipment, or Telecommunications Facility within the cure period, the permit holder shall dismantle and remove such item, and any associated structures, from the site and restore the site to as close to its original condition as possible, reasonable wear and tear excepted, within ninety (90) days of the expiration of the cure period.

H. Removal by Colfax 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 Colfax County may order officials or representatives of Colfax County to remove the item at the sole expense of the owner or Permit holder.

I. Sale upon Abandonment: If Colfax 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 Colfax 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, Colfax County may approve an interim 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 Colfax County, and an agreement to such plan shall be executed by the holder of the Permit and Colfax County. In the case that such a plan is not developed, approved, and completed within the ninety (90) day time period, Colfax County may take possession of and dispose of the affected item in the manner provided in this Section.

K. Emergency Removal: If Colfax County determines the item is hazardous, creates an emergency situation, or adversely affects public safety, Colfax County may remove or cause to be removed the item after three (3) days 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 outlined in this Ordinance, and the Permit is subject to revocation.

M. Fines: A Permit holder who violates this Ordinance may be fined up to \$500 for each violation, and each day that a violation exists shall be deemed to be a separate violation.

Section 2. 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.