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SAN MIGUEL COUNTY

ORDINANCE NO. SMC-10-09-2001-PZ, RELATING TO AND REGULATING THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF WIRELESS COMMUNICATIONS FACILITIES WITHIN THE EXTERIOR BOUNDARIES OF SAN MIGUEL COUNTY, NEW MEXICO; AMENDING SAN MIGUEL COUNTY ORDINANCE NO. 86-2 AND REPEALING AND SUPERSEDING SECTION 5120, ARTICLE V, THEREOF; IMPOSING PENALTIES FOR VIOLATION OF THE ORDINANCE AND PROVIDING AN EFFECTIVE DATE.

**ADOPTED OCTOBER 09, 2001
BY THE BOARD OF COUNTY COMMISSIONERS
OF SAN MIGUEL, NEW MEXICO**

EFFECTIVE NOVEMBER 09, 2001

COUNTY OF SAN MIGUEL
PAUL MAEZ
COUNTY CLERK
FILED FOR RECORD ON:
DATE: 10-10-01
TIME: 3:10 P.M.
BOOK: 240 OF 100 PG 007
DEPUTY: [Signature]
WITNESS: [Signature] AND SEAL

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SMC WIRELESS COMMUNICATIONS ORDINANCE

WHEREAS, Title 47, U.S.C.A., Section 332(c)(7), grants to State and local governments authority over decisions regarding the placement, construction, and modification of personal wireless service facilities, except as provided therein; and

WHEREAS, pursuant to Sections 3-21-1, 4-37-1 and 4-38-1, NMSA 1978, the Board of County Commissioners of San Miguel County, New Mexico, is vested with and granted those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County and its inhabitants; and

WHEREAS, this Ordinance is enacted pursuant to the foregoing grant of power and authority vested in the Board of County Commissioners of San Miguel County, New Mexico; now, therefore, be it

ORDAINED, by the Board of County Commissioners of San Miguel County, New Mexico, that Section 5120 of Article V, of San Miguel County Ordinance No. 86-2, is repealed in its entirety, and hereby amended, superseded and replaced.

5120.00.00 TITLE: This Ordinance relates to and regulates the placement, construction and modification of wireless communications facilities within the exterior boundaries of San Miguel County, New Mexico; amends San Miguel County Ordinance No. 86-2, and repeals and supersedes Section 5120 of Article V, of San Miguel County Ordinance No. 86-2; provides an effective date; and shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of San Miguel County, New Mexico.

5120.01.00 AUTHORITY: This ordinance is adopted pursuant to and in accordance with the enabling provisions of Title 47, U.S.C.A., Section 332(c)(7), and Sections 3-21-1, 3-21-13, 4-37-1 and 4-38-1, NMSA 1978.

5120.02.00 PURPOSE: This Ordinance shall apply to and regulate the application, review, and granting of conditional use permits for the siting, construction, maintenance, and modification of telecommunications towers and antenna facilities within the exterior boundaries of San Miguel County. The purpose of the Ordinance is to provide for the health and safety, and promote the general welfare, of the people of San Miguel County, consistent with all applicable federal and state laws, rules and regulations, and to:

5120.02.01: Insure that towers and antennas be configured in a manner that minimizes any adverse visual impact.

5120.02.02: Discourage towers and antennas from being located in districts that permit residential use.

5120.02.03: Insure the co-location of wireless service facilities, in order to minimize the number of towers. Encourage tower structure integrity to allow more co-locators.

SMC WIRELESS COMMUNICATIONS ORDINANCE

5120.02.04: Provide adequate set-back requirements to prevent any potential damage to adjoining landowners and their property.

5120.02.05: Further the goals of the County's Comprehensive Plan, and promote orderly development within the County, with minimal impact on existing uses.

5120.02.06: Protect and preserve the historic, scenic, archeological, cultural, and visual character of San Miguel County.

5120.02.07: Encourage creative alternatives to typical tower structures.

51.20.02.08: Encourage clustering when the site chosen is close to another existing tower site.

5120.03.00 APPLICABILITY: This Ordinance shall apply to the placement, construction and modification of all wireless communications facilities within the exterior boundaries of San Miguel County, except as provided in Section 5120.05.00.

5120.04.00 DEFINITIONS: The following definitions shall apply to and control all matters relating to wireless communications facilities under this Ordinance, and shall supercede any other or different definition used in San Miguel County Ordinance No. 86-2, or otherwise.

5120.04.01. Alternative Tower Structures: Innovative siting techniques such as artificial trees, light poles, bell towers and other similar design mounting structures that, when viewed in combination with one another, adequately reduce or eliminate the visual presence of antennas or towers.

5120.04.02. Antenna: A tower or any exterior apparatus, or structure mounted on a tower, designed for telephonic, radio, television, personal pager network, or any other communications through the sending and/or receiving of electromagnetic waves.

5120.04.03. Applicant: A provider or any person, partnership, or company who files an application for any permit necessary to install or maintain a personal wireless service facility.

5120.04.04. Camouflaged: A tower or antenna that due to design or appearance, obscures, hides, or is disguised to conceal the presence of the tower or antenna, and the camouflage itself blends with or otherwise does not detract from the surrounding environment.

5120.04.05. Clustering: To place more than one tower structure in and upon one site.

5120.04.06. Co-location: The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

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5120.04.07. Conditional Use: Are those uses which have special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location and, therefore, are subject to special standards and conditions as required and imposed by the Board of County Commissioners of San Miguel County.

5120.04.08. Design: The appearance of wireless service facilities, including such features as their materials, colors, and shape.

5120.04.09. Equipment Shelter: An enclosed structure, cabinet, shed or vault used to house and protect electronic and/or accessory equipment necessary for processing wireless communications signals.

5120.04.10. Essential Services: Services provided by public utility or government agencies through erection, construction or maintenance and other similar equipment and accessories in connection therewith.

5120.04.11. Expansion: The addition of antennas, towers, or other devices to an existing structure.

5120.04.12. FAA: The Federal Aviation Administration of the United State Government.

5120.04.13. FCC or Federal Communications Commission: The federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications owners, services and providers on a national level.

5120.04.14. Guy Wire: A cable used to secure and steady a tower.

5120.04.15. Guyed Tower: A tower that is supported in whole or in part by guy wires and ground anchors.

5120.04.16. Height: When referring to a tower or other structure, the distance measured from base of tower structure to the highest point on the tower or other structure, even if the highest point is an antenna or lightning rod.

5120.04.17. Historic or Archaeological resources means resources or districts that are:

- (a) Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- (b) Areas identified by a governmental agency such as the State of New Mexico Historic Preservation Division as having significant value as a historic or archaeological resource or district, and any areas identified in Goal 3.0 of the County's

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Comprehensive Plan which have been listed or are eligible to be listed on the Local, State or National Register of Historic places.

- (c) Examples of historic and archeological resources include districts, landscapes, places, sites, structures, features, objects, and elements thereof, having archeological, scientific, architectural, community, or other cultural values that are significant to those respective groups.

5120.04.18. Historic Landmark: Means any improvement, building or structure of particular historic or architectural significance to the San Miguel County area and relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state, or national history or identified in Goal 3.0 of the County's Comprehensive Plan, which have been listed or are eligible to be listed in the Local, State, or National Register of Historic Places.

5120.04.19. Un-guyed Tower: A type of tower that is self-supporting without guy lines.

5120.04.20. Mount: The structure or surface to which antennas are mounted, including the following four types of mounts:

- a. Ground Mounted: Mounted on the ground.
- b. Structure Mounted: Mounted on a structure other than a building.
- c. Roof Mounted: Mounted on the roof of a building.
- d. Side Mounted: Mounted on the side of a building.

5120.04.21. Personal Wireless Service Facilities: A facility for the provision of personal wireless service, as defined by 47 U.S.C.A., Section 251, et seq.

5120.04.22. Planning and Zoning Commission: Is the Commission appointed by the Board of County Commissioners as provided in Section 4-57-1, NMSA 1978, and exists for the purpose of carrying out and promoting county planning, which shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

5120.04.23. Pre-Existing Towers or Antennas: Any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance.

5120.04.24. PUC or Public Utilities Commission: Means the state administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications owners, services and providers in the State of New Mexico.

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5120.04.25. San Miguel County Comprehensive Plan: San Miguel County Land Use Policies, Comprehensive Plan Part I and II, as adopted by the San Miguel Board of County Commissioners July 8, 1986.

5120.04.26. Board of County Commissioners: Is the governing body of San Miguel County and a body politic and corporate, organized and existing under and by virtue of the laws of the State of New Mexico, and vested by such laws, being Sections 4-37-1 and 4-38-1, NMSA 1978, with the general management of San Miguel County, and with the power and authority to provide for the safety, preserve the health, and promote the general welfare of the County and its inhabitants.

5120.04.27. Security Barrier: A locked fence, wall or berm that completely seals any area from unauthorized entry or trespass, and electronics sensors that send intrusion alarms.

5120.04.28. Siting: The method and form of placement, locale, location, place, position or spot.

5120.04.29. Tower: A tower is any structure designed and constructed primarily for the purpose of supporting one or more personal wireless facility antenna, including but not limited to monopoles, guyed towers, lattice towers, and self-supporting towers, whether square, triangular, or other shape capable of self-support.

5120.04.30. San Miguel County or the County: When not used as a geographical area, means the Board of County Commissioners, its officers and employees.

5120.04.31. Wireless Telecommunications Facility (WTF): All equipment, buildings, and structures with which a wireless communication service carrier broadcasts and receives the radio-frequency waves, and all locations of said equipment, or any part thereof.

5120.05.00 EXEMPTIONS: The following wireless telecommunication facilities shall be exempt from the requirements of this Ordinance:

5120.05.01. Public Property: Antennas or towers used for a governmental purpose and located on property owned, leased or otherwise controlled by San Miguel County, shall be exempt from the requirements of this ordinance, provided that antennas for commercial use are not attached to such governmental antennas or towers.

5120.05.02. Antennas used for personal, non-commercial use, less than 50' in height.

5120.05.03. Wireless Telecommunications Facilities operated by Essential Services and Public Utilities, provided that antennas for commercial use are not attached to such structures.

5120.05.04. Any other devices listed as exempt in Section 704 of the Federal Telecommunications Act of 1996.

5120.06.00 STANDARDS FOR SITING AND LOCATION OF WIRELESS COMMUNICATIONS FACILITIES. The following standards and requirements shall apply to the siting and location of all wireless communications facilities under this Ordinance.

5120.06.01. No tower or telecommunications facility as herein defined shall be erected, constructed, installed or modified that directly or indirectly affect properties designated or eligible to be designated historic districts in San Miguel County without the prior review and written comment by the Historic Preservation Division, Office of Cultural Affairs, State of New Mexico, in accordance with the National Historic Preservation Act of 1966, as amended, which written comment shall be filed with the County Planning and Zoning Department contemporaneously with the filing of the application for conditional use permit.

5120.06.02. When a proposed tower will be located in or adjacent to a district which permits residential use, or where a residential structure is located, the tower shall be set-back from the nearest residential lot line, a distance twenty percent (20%) greater than its total height. Additional set-backs may be required to contain on-site, substantially all ice-fall or debris, or to preserve the privacy and integrity of adjoining residential, public or historic property.

5120.06.03. When more than one tower is proposed, or where a second tower is proposed near an existing tower, there shall be a minimum separation distance between them of not less than the combined height of the 2 adjacent towers, which distance shall be measured by drawing or following a straight line between the base of the towers.

5120.06.04. Contemporaneously with the filing of the application for conditional use permit for a wireless communications facility, the applicant shall file with the Planning and Zoning Division its permit, license or other grant of permission for such facility from the FAA and the FCC.

5120.06.05. San Miguel County may require and impose such other standards and requirements as it deems necessary or desirable to provide for the safety, preserve the health, promote the prosperity and welfare, comfort and convenience of the county and its inhabitants.

5120.07.00 CONDITIONAL USE PERMITS FOR WIRELESS TELECOMMUNICATIONS FACILITIES: The following provisions shall apply to and control all applications for conditional use permits for wireless telecommunications facilities, and any notice, hearing or other provision relating to conditional use permits, as may be contained in Ordinance No. 86-2, inclusive of Article 7, shall not apply, and is hereby expressly superseded.

5120.07.01 Each application for a conditional use permit for a wireless telecommunications facility, and for each such facility, shall be accompanied by a filing fee in the amount of \$500.00, and a review fee in the amount of \$1,500.00. Fees are not refundable.

5120.07.02 Each application for a conditional use permit for a wireless telecommunications facility, and for each such facility, shall include the following documents:

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1. A project comment review letter from the State of New Mexico Historic Preservation Division as required by Section 5120.06 of this ordinance.
2. A detailed written statement explaining in full the proposed project.
3. A scaled site development plan and a scaled elevation view and other supporting drawings showing the location, color and dimensions of all improvements, tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, and such other information as may be deemed necessary by the Planning and Zoning Division to assess compliance with this ordinance.
4. Name, address and telephone number of applicant and any co-applicants, and agents for the applicant or co-applicants. Co-applicants include the landowners of the subject property, licensed carriers and tenants for the communications facility.
5. The applicant shall submit documentation of the legal right to install the tower or antenna, including ingress and egress easements, and shall include original signatures of such land owner and a copy of the property deed, plus a full copy of any proposed lease agreement with subject property owner.
6. Photo simulations of the proposed facility, from locations as directed by the Planning and Zoning Division. The Applicant will also be required to simulate the height of the tower on site (with a weather balloon, or crane, etc.) in cases where the visual impact may be critical to the surroundings. The on-site height simulation test should remain on site 3 days, and should be preceded by public notice in a paper of general circulation one week before the actual test.
7. A copy of the FCC license for the wireless telecommunication facility (WTF) and notarized statement from the owner or operator of the WTF attesting that the WTF complies with current FCC regulations.
8. Propagation maps showing the cellular coverage that the site will provide. Any engineering information submitted by the applicant shall be certified by a professional engineer licensed in the State of New Mexico.
9. A copy of the Tax Map and parcel identification code number of the subject property as shown in the records of the San Miguel County Assessor's Office.
10. A site plan showing all property within 300' of the perimeter of the proposed property that will house the proposed WTF. A list of the owners of each of the affected properties, and their mailing addresses, as shown by the San Miguel County Assessor's Office.

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11. The applicant shall also identify all existing tower(s) within 1000 feet of the proposed tower, and the owner/operators of these existing towers, and indicate the distance of such existing towers from the proposed tower.
12. A statement by the applicant as to whether the tower will be designed for additional antennas.
13. A statement by the applicant as to the projected number and locations of any wireless telecommunications facilities proposed to be built within two (02) years of the date of the current application, within San Miguel County, and that are part of the same system as the wireless telecommunication facility for which a Conditional use permit is being sought.
14. Applicant shall have a registered Business License in San Miguel County.

5120.08.00 PROCEDURE FOR NOTICE AND HEARING BEFORE THE PLANNING AND ZONING COMMISSION: When the County Planning and Zoning Department deems the application complete, the Planning and Zoning Commission shall at a public hearing consider and pass upon the application for conditional use permit in accordance with the following procedure and requirements:

5120.08.01. The public hearing before the Planning and Zoning Commission shall be held within ninety (90) days from the date the application is deemed complete by the Planning and Zoning Department.

5120.08.02. Notice of the time, place and purpose of the hearing shall be given as follows:

- (1) By publication not less than fifteen (15) calendar days before the public hearing in a newspaper of general circulation in San Miguel County, and in any other newspaper particular to the area affected by the Conditional Use application; and
- (2) By posting not less than twenty (20) calendar days before the public hearing, upon the premises where the facility is proposed to be located, and upon the perimeter fences of said premises, and adjacent to any public road or right-of-way nearest said premises.
- (3) By the applicant, return receipt requested, to all contiguous landowners identified under the requirements of Section 5120.07 (10) of this Ordinance, which certified mail shall be postmarked not less than (30) calendar days before the date of the public hearing.
- (4) By e-mail to all neighborhood associations registered with San Miguel County.

5120.09.00 AFTER GIVING THE NOTICE SPECIFIED ABOVE, THE PLANNING AND ZONING COMMISSION:

- (1) Shall hold and conduct its public hearing on the application for conditional use permit, and upon the conclusion of the hearing, shall make and render its decision recommending to the Board of County Commissioners the approval or denial of the application for conditional use permit;
- (2) Shall include in its decision and recommendation the findings of fact relied upon in making such decision and recommendation and, if the decision and recommendation is to grant the conditional use permit, the conditions, if any, which should be imposed.

5120.10.00 PROCEDURE FOR NOTICE AND HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS. Not later than sixty (60) days after the decision and recommendation is made by the Planning and Zoning Commission, said decision and the application for conditional use permit at issue, shall be considered *de novo* by the Board of County Commissioners at a public hearing pursuant to and in accordance with the notice requirements set forth in Section 5120.08.02, of this Ordinance and upon the conclusion of the public hearing, the Board of County Commissioners shall:

- (1) Make and render its decision granting or denying the conditional use permit, which decision shall include the findings of fact relied upon by the County Commission, and the conditions imposed, if any, upon the granting of the application.
- (2) Not later than twenty(20) days after the conclusion of the public hearing, reduce its decision to writing and serve the same upon the applicant by certified mail, return receipt requested, which decision shall notify the applicant of its right to appeal the decision to the District Court as provided by the law.

5120.11.00 INDEMNIFICATION: San Miguel County shall not approve the construction of any tower or telecommunication facility until and unless San Miguel County obtains adequate indemnification from the facility owner, which shall, at a minimum:

1. Indemnify and hold harmless San Miguel County, its elected and appointed officers, agents, and employees, from and against any and all claims, demands or causes of action, of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys fees, liabilities, damages, orders, judgments or decrees sustained by San Miguel County or any third party arising out of or by reason of tower failure or collapse or resulting from the negligent acts, errors or omissions of all telecommunications facility operators, agents, or employees; and
2. Provide that the covenants and representations relating to the indemnification provision

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shall survive the term of any agreement and continue in full force and effect as long as the tower remains in place.

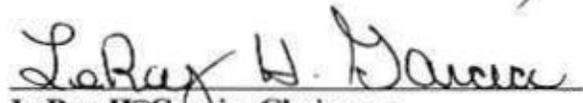
5120.12.00 REMOVAL OF ABANDONED ANTENNAS AND TOWERS: Any antenna or tower that is not operated for a continuous period of twelve months shall be considered abandoned, and the owner of each such antenna or tower shall remove the same within ninety (90) days of receipt of notice from San Miguel County of such removal requirement. Removal includes the removal of the tower, all tower and fence footers, underground cables and support buildings. The applicant shall restore property to original condition (seeding trees, leveling ground etc.).

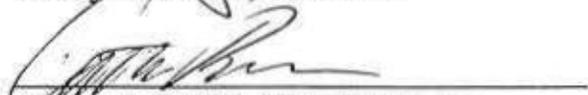
5120.13.00 REQUIRED YEARLY REPORT: The owner of each antenna or tower shall submit a report to the San Miguel County Planning and Zoning Department, 520 West National, Las Vegas, New Mexico 87701, once each year, no later than July 1. This report shall explain and verify the current user status of the tower.

5120.14.00 PENALTY: Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing a violation of any of the provisions of this ordinance shall upon conviction thereof be punished by a fine not exceeding three hundred dollars (\$300.00) per violation, or by imprisonment not exceeding ninety (90) days in the county jail, per violation, or by both such fine and imprisonment. Each day of violation shall constitute a separate offense and shall be punishable as provided herein.

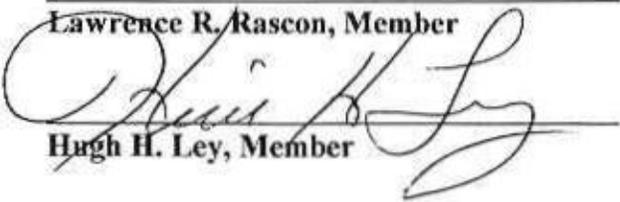
5120.15.00 EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days after it is filed in the office of the San Miguel County Clerk.

MOVED, SECONDED, ADOPTED AND ORDAINED this 9th day of October, 2001, by the Board of County Commissioners of San Miguel County, New Mexico.


LeRoy H. Garcia, Chairman


Arthur J. Padilla, Vice-Chairman

Lawrence R. Rascon, Member


Hugh H. Ley, Member

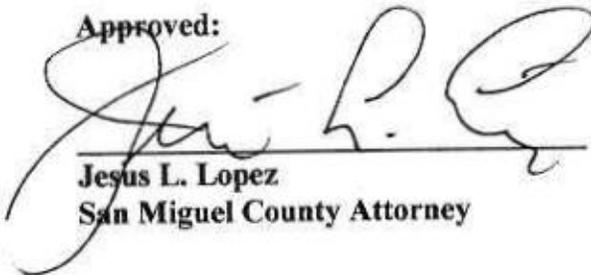
SMC WIRELESS COMMUNICATIONS ORDINANCE


Kenneth C. Medina, Member

Submitted:


Les W.J. Montoya
San Miguel County Manager

Approved:


Jesus L. Lopez
San Miguel County Attorney

ATTEST:


Paul Maez
San Miguel County Clerk

COUNTY OF SAN MIGUEL
PAUL MAEZ
COUNTY CLERK
FILED FOR RECORD ON:
DATE: 10-10-01
TIME: 3:10 PM
BOOK: 240 OF MCLPG 007
DEPUTY: 
WITNESS BY HAND AND SEAL

#0138

SAN MIGUEL COUNTY ORDINANCE NO. SMC-11-12-2003-PZ

AN AMENDMENT TO ORDINANCE NO. SMC-10-09-2001-PZ, RELATING TO ZONING APPROVAL OF CO-LOCATION OF WIRELESS FACILITIES WITHIN THE UNINCORPORATED BOUNDARIES OF SAN MIGUEL COUNTY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, IT APPEARING to the Board of County Commissioners of San Miguel County, New Mexico that the Wireless Communications ordinance for telecommunication facilities being San Miguel County Ordinance No. SMC-10-09-2001-PZ, otherwise known as the Cell Tower Ordinance requires certain on-going review and revisions; and

WHEREAS, IT APPEARING further to the Board of County Commissioners that collocation of antennas on telecommunications towers requires certain administrative review to include such items as the submitted application, site plan and data sheet specification, ensure State Historic Preservation Division Section 106 review, compliance with FCC permits and other matters that may be necessary, as such administrative review is above and beyond normal zoning application review; and

WHEREAS, IT APPEARING further to the Board of County Commissioners that current zoning fees are not reasonable and adequate to defray the costs of such administrative review;

NOW, THEREFORE, BE IT RESOLVED that the following application requirements and zoning fees shall apply to zoning applications for co-location of an antenna or antennas on existing or future telecommunications towers.

5120.1600 CO-LOCATION.

5120.1600.01 Each application for zoning approval of co-location of a wireless telecommunication facility shall include the following documents:

1. Letter of intent briefly describing the project.
2. Site sketch to include elevation of existing towers
3. Copy of current FCC Permit
4. Site layout plan
5. Copy of correspondence to New Mexico State Historic Preservation Division requesting Section 106 Review.

6. Copy of correspondence from New Mexico State Historic Preservation Division indicating Section 106 clearance.
7. Each application for zoning clearance for co-location of a wireless telecommunication facility shall be accompanied by a filing fee of \$1000.00 plus \$500.00 for each antenna to be co-located on a wireless telecommunication facility.

MOVED, SECONDED AND ADOPTED this 12th day of November, 2003,
By the Board of County Commissioners of San Miguel County, New Mexico.

This Ordinance shall be effective thirty (30) days after being recording in the office of the
San Miguel County Clerk.

Effective date: December 20, 2003


LeRoy H. Garcia, Chairman

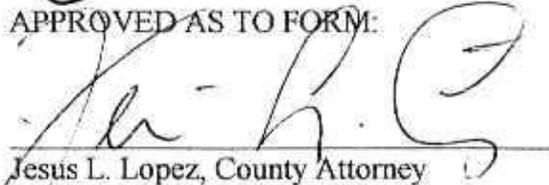

Hugh H. Ley, Commissioner
District 2

Susano F. Ortiz, Commissioner
District 3


Lawrence R. Rascon, Commissioner
District 4


Kenneth C. Medina, Commissioner
District 5


Les Montoya, County Manager

APPROVED AS TO FORM:

Jesus L. Lopez, County Attorney

Ordinance No. SMC-11-12-2003-PZ



ATTEST:


County Clerk

COUNTY OF SAN MIGUEL
PAUL MAEZ
COUNTY CLERK

Page 2

FILED FOR RECORD ON:

DATE: 11-20-03

TIME: 8:55 A.M.

BOOK 040 OF misc PG 4672

DEPL attached to Ordinance
WITNESS MY HAND AND SEAL