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of San Miguel County, New Mexico, that Section 5120 of Article V, of San Miguel County Ordinance No. 86-2, is repealed in its entirety, and hereby amended, superseded and replaced.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

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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: