

## EDDY COUNTY COMMUNICATIONS TOWER ORDINANCE

## STATE OF NEW MEXICO

## COUNTY OF EDDY

ORDINANCE # O-06-51

## EDDY COUNTY COMMUNICATIONS TOWER ORDINANCE

**Section 1. Statement of purpose and findings**

The Board of County Commissioners of Eddy County, New Mexico, hereby declares that the purposes of this ordinance are to:

1. Establish standards for the siting of communications towers and antennas;
2. Encourage the use of existing structures/towers as an alternative to new tower construction;
3. Encourage the design and construction of towers and antennae which minimize adverse visual impacts;
4. Ensure compliance of all communications facilities with current federal, state, and local regulations;
5. Ensure removal of obsolete and unused facilities;
6. Facilitate the provision of wireless communications services; and
7. Prevent harm to the health, welfare, and visual environment of Eddy County and its citizens.

**Section 2. Requirements for facility permit submissions**

1. The applicant shall submit a letter defining the project, need, location and any other information relevant to the request along with a check for the application fee.
2. A detailed site plan shall be submitted containing the following information:
  - Drawing to scale with scale shown.
  - North icon.
  - Property boundaries.
  - Legal description.
  - Tower location and footprint.
  - Existing and proposed streets, roads, rights-of-way or easements.
  - Existing and proposed buildings with building square footage indicated.
  - Existing and proposed parking areas with spaces shown.
  - Ingress/egress locations.
  - Tower fall radius in case of structure failure
  - Existing and proposed fencing, landscaping and signage.
  - Existing and proposed utilities.
  - Site topography with a one-foot contour interval.
  - Coverage area for the proposed array.
  - Surveyor's certification.

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3. A cross-sectional view of the proposed antenna with the total height and the height of all installed appurtenances shown.
4. The applicant shall notify all property owners located within five hundred feet (500') of the proposed project via certified, return receipt mail. The mailing shall include a self-addressed, stamped envelope for the owner to make comments about the proposed project. Copies of receipts and comments to be included with the application.
5. In addition to any other materials required for a permit under this or any other ordinance of Eddy County, all applicants for permits to construct a communications tower or antenna may be required to submit visual impact demonstrations using photo simulations of the proposed facility as it would be seen from residential areas, public rights of way, public parks or other sites as deemed appropriate by the agent, the Planning and Zoning Commission, or the Board of County Commissioners.

**Section 3. Locating facilities on or near historic structures, districts, and scenic corridors**

Towers and antennae may be approved on or near historic structures, districts and designated scenic corridors by special exception and only if so concealed as to be substantially invisible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of communications towers and antennae. The Board of County Commissioners shall approve all requests for exceptions in conjunction with any State or Federal agency that may also have jurisdiction.

**Section 4. Height Restrictions**

1. No new communications facility shall exceed 199 feet in height. However, in the event topography or other substantial obstacles to signal propagation exists, facilities can be extended to achieve the desired coverage area. Evidence for the need of extended heights must be provided with the application for review and recommendation by the Planning and Zoning Commission.
2. Communications facilities that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission facilities, pump jacks, or communications towers) may exceed 100 feet in height if, based on the judgment of the Planning and Zoning Commission, it would appear in context on the landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised facility.
3. Communications facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.
4. The Board of County Commissioners shall approve all requests for increased facility height.

**Section 5. Co-location**

In all applications for construction of a new facility, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove

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that it has made all reasonable efforts to procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least twenty-five percent.

Prior to the issuance of a permit for a new tower, the applicant shall demonstrate commitment to joint use as follows.

1. The applicant requesting the permit shall submit evidence to the County demonstrating that a genuine effort has been made to solicit additional users for the proposed new tower. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within Eddy County and adjacent counties, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen business days.
2. The applicant shall sign an instrument, maintained by the County, agreeing to encourage and promote the joint use of communications towers within the County and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.

### **Section 6. Setback**

All new towers shall be constructed with a setback of the full radius as shown on the site plan, plus 5% safety factor. The requirement shall apply to property lines and public or private roads.

### **Section 7. Equipment shelters**

No equipment shelter for a communications facility shall exceed 750 square feet in area or 12 feet in height. All such shelters located in populated areas shall be screened with vegetation or other aesthetically pleasing materials as approved by the Board of County Commissioners.

### **Section 8. Fencing**

All equipment shelters, tower base, and guy wire anchor points shall be adequately fenced and secured to prevent unauthorized entrance.

### **Section 9. Signs**

1. No commercial messages or any other signs beyond safety warnings and an identification sign of not greater than four (4) square feet shall be placed on any tower or facility.
2. A sign with the operator and safety contact information shall be placed such that it is visible from the access drive to the facility.
3. No sign shall be illuminated unless required by regulation.
4. The rural addressing sign shall be maintained by the operator and remain unobstructed.

### **Section 10. Review and Approval Process**

1. The agent shall have thirty (30) days to determine if an application is complete. If an application is incomplete, or more information is requested, the applicant shall have thirty (30) days to provide the additional information.

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2. Once an application has been deemed complete, the Planning and Zoning Commission shall have forty-five (45) days to review the application and make recommendation to the Board of County Commissioners to approve, approve with conditions, or deny the permit for construction.
3. The Board of County Commissioners shall hold a public hearing to receive public comments within thirty (30) days of the Planning and Zoning Commission review. At the conclusion of the public hearing, the Board of County Commissioners shall vote to approve, approve with conditions, or deny the permit for construction.
4. The applicant shall be notified within ten (10) working days, in writing, of the decision of the Board of County Commissioners. Any application that is denied shall be supported by substantial evidence from the record of the public meeting at which the application was considered. The Board of County Commissioners shall issue the permit for construction for an approved application within thirty (30) days of the approval.

**Section 11. Electronic emissions and electromagnetic radiation**

1. Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.
2. All facility operators and owners must sign an agreement, to be maintained by the County, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.

**Section 12. Facility Operation/Maintenance**

1. Applicants shall comply with all applicable ordinances, laws, rules, and regulations.
2. Applicants shall obtain and maintain, at all times, all required licenses, permits, and certifications for the operation of the facility. The County shall be provided with a copy of each as they are obtained and/or renewed.
3. Any remodeling, renovations, or additions to the facility shall be of sound engineering design/practices, be properly permitted, and conform to all current applicable building codes.
4. All materials and supplies related to the business shall be stored inside. No outside storage is permitted.
5. The property shall be properly maintained, including but not limited to, the removal of trash, weeds, debris, and any other fire hazard, nuisance, unsanitary or unsightly condition. All items shall be properly disposed of.
6. Any and all hazardous, explosive, toxic, flammable, or corrosive substances shall be properly stored, used, and disposed of. Such substances shall not be stored on any public right-of-way, spilled on or allowed to soak into the ground, nor shall they be disposed of in any sanitary or storm sewer system. All such type substances shall be disposed of in accordance with all applicable Federal, State, and Local regulations.
7. There shall be no offensive noise, fumes, odors, electrical interference, dust, or hazardous materials generated by the use of the facility.

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8. Vehicles may be parked at the facility only during times of ongoing maintenance. No unattended vehicles will be permitted at the facility.

### **Section 13. Removal of Facilities**

1. The tower and all appurtenant equipment shall be removed within one-hundred-eighty (180) days of the facility becoming obsolete, abandoned, or no longer in service.
2. The operator of a facility shall guaranty the removal of obsolete, abandoned, or out of service facilities by one of two methods.
  - a) The operator shall provide a copy of the lease between the landowner and the tower operator that provides for the removal of facilities in compliance with the timelines set forth in this ordinance. The lease shall give the County the authority to remove and dispose of all structures and equipment should the landowner and operator fail to comply with the terms of the lease. A lien will be placed upon the operator should the cost to remove and dispose exceed any monies generated from said disposal. Or,
  - b) The owner/operator of a facility shall establish a cash security fund or provide the County with an irrevocable letter of credit in an amount to secure the cost of removing an antenna, antenna array, or tower that has been abandoned. A cost estimate, on company letterhead, for such removal from a firm with experience in this type work shall be included with the application.
3. When a facility is demolished, all footings shall be removed to a depth of 24 inches below grade, and the site returned to its natural condition prior to construction.
4. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the County of the transfer. The new owner shall have thirty (30) days from the date of purchase to comply with this section.
5. All facilities removed by the County shall be disposed of at the discretion of the County and any funds generated from such disposal shall remain with the County.
6. The Board of County Commissioners shall approve all removal projects.

### **Section 14. Existing Facilities**

All existing facilities at the time of adoption of this ordinance shall have one (1) year to come into compliance with the provisions of this ordinance. Existing facilities are exempt from the height requirements until such time as the facility is significantly modified or replaced. For the purposes of this ordinance significant modification would be any changes to the facility, excluding appurtenant equipment upgrades, which exceed fifty percent (50%) of the cost of a new facility.

### **Section 15. Variances**

The Board of County Commissioners shall approve all requests for variances from any provision of this ordinance.

### **Section 16. Penalties**

Pursuant to §4-37-3, NMSA, 1978, failure to comply with any provision of this ordinance may result in a fine not to exceed three hundred (\$300.00) or imprisonment for ninety (90) days or

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both for each occurrence or infraction. The Board of County Commissioners shall designate the person(s) responsible for enforcement of this ordinance and issuance of citations.

**Section 17. 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. This ordinance is applicable to all unincorporated areas of Eddy County.

**Section 18. Agent**

The agent shall be the person/s designated by the Eddy County Board of County Commissioners to administer this ordinance.

**Section 19. Severability**

Should any section or provision of this ordinance be found by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or a part thereof other than the part so declared to be unconstitutional or invalid.

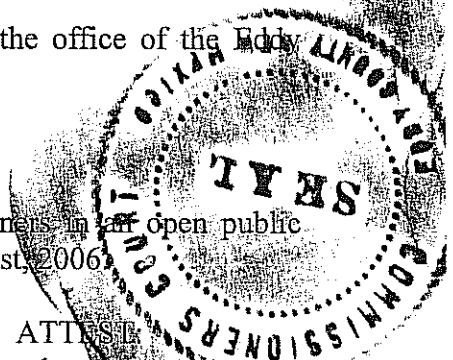
**Section 20. Effective Date**

This ordinance shall become effective thirty days (30) after filing in the office of the Eddy County Clerk.

PASSED AND ADOPTED by the Eddy County Board of Commissioners in an open public meeting in Carlsbad, Eddy County, New Mexico on this 15<sup>th</sup> day of August, 2006.

EDDY COUNTY BOARD OF COMMISSIONERS

Wilmer "Lucky" Briggs  
Wilmer "Lucky" Briggs, Chairman



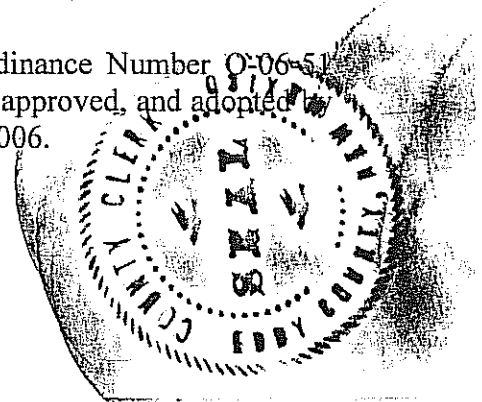
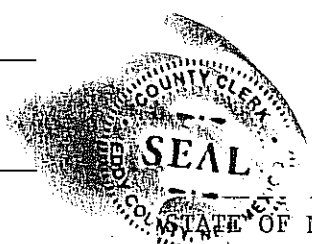
ATTEST  
Jean Blenden  
Jean Blenden, County Clerk

CERTIFICATION:

I, Jean Blenden, Eddy County Clerk, hereby certify that Ordinance Number O-06-51 being "Eddy County Communications Tower Ordinance" was passed, approved, and adopted by the Eddy County Board of Commissioners on this 15<sup>th</sup> day of August, 2006.

By: Jean Blenden  
Jean Blenden, County Clerk

My term expires: 12/31/2006



STATE OF NEW MEXICO, COUNTY OF EDDY  
RECORDED ON AUGUST 22, 2006 AT 10:50 A.M.  
IN BOOK 2, PAGE 0001 OF THE ORDINANCE RECORDS.  
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Jean Blenden  
JEAN BLENDE, COUNTY CLERK