

STATE OF NEW MEXICO
McKINLEY COUNTY

Wireless Telecommunications Facilities Ordinance
ORDINANCE NO. No. NOV-18-006

AN ORDINANCE REGULATING THE SITING AND PERMITTING OF WIRELESS TELECOMMUNICATION FACILITIES

WHEREAS, the County of McKinley 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 the County of McKinley;

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

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

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 §§ 63-9I-1 *et. seq.*, the Board of County Commissioners of the County of McKinley 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 MCKINLEY COUNTY BOARD OF COMMISSIONERS AS THE GOVERNING BODY OF THE COUNTY OF MCKINLEY, NEW MEXICO, that the contents of this Ordinance No. NOV-18-006 be implemented REGULATING THE SITING AND PERMITTING OF WIRELESS TELECOMMUNICATION FACILITIES:

Section 1. **POLICY AND PROCEDURES:**

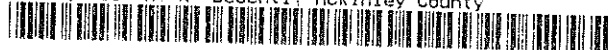
I. **PURPOSE AND INTENT:**

A. The purposes and intents of this Ordinance are to protect the health, safety, and welfare of the citizens of The County of McKinley by minimizing any negative impact of Wireless Telecommunications Facilities and to promote for its citizens the availability of advanced communication services, by establishing a fair and efficient process for review and approval of applications in accordance with Federal, State and Local Regulations, by encouraging the use of existing

DOCH 387110



11/20/2018 01:20 PM Page: 1 of 16
OR R \$0.00 H K Becenti, McKinley County



facilities, by promoting the improved appearance and functionality of any new facilities and ensuring that all new facilities are constructed using the most appropriate technologies and 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 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. Antenna – communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provisions of wireless telecommunications services

D. 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 base.

E. Colocation – 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.

F. 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.

G. Eligible Facility Request – a request for modification or colocation of an existing wireless tower that involves new transmission equipment or replacement of transmission equipment but does not include a substantial modification of the existing structure.

H. Existing Structure – a wireless support structure erected prior to the application for an eligible facility request, colocation 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.

I. 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.

J. Small Wireless Facilities/Systems – One of several specialized systems typically comprised of mini-macro cells, Distributed Antenna Systems (DAS), Wi-Fi Hot Spots specifically for outdoor coverage, or other special purpose systems such as point to multipoint systems that meet the criteria and characteristics of a

Small Wireless Facilities/Systems. Individual small cell sites typically cover a small radius (<2000') but 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. The nature and character of these types of facilities, their minimal impact, and typically permitted in quantity justify permitting considerations.

K. Tower – a structure, guided or freestanding, that supports one or more antenna.

L. Wireless Facility or Wireless Facilities – 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 County of McKinley, a local, state, or federal government.

2. Any facilities expressly exempt for 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 citizen's bands, and other similar non-commercial telecommunications.

5. 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 New Mexico state law.

6. Facilities exclusively for providing unlicensed wireless technologies (such as IEEE 802.11a, b, g {Wi-Fi and Bluetooth}) where the facility does not require a new tower.

DOCH 387110

11/20/2018 01:20 PM Page 3 of 16
OR R \$0.00 H K Becenti, McKinley County



IV. PERMIT APPLICATION PROCESS AND OTHER REQUIREMENTS:

A. All Applicants for a Telecommunications Permit shall comply with the requirements set forth in this Article.

B. The McKinley County Board of Commissioners designates the Special Projects Coordinator (or designee by the County Manager) in consultation with the McKinley County Legal 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. Pre-Application Conference: All applicants seeking a Telecommunications Permit 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 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 of McKinley's defined priorities that meet the applicant's requirements for service. The application process will require an explanation for a selected location not using the highest priority available to the applicant. The County of McKinley's priorities (listed from highest to lowest) are:

- (1) On existing Towers or structures without increasing their height.
- (2) On The County of McKinley-owned properties.
- (3) On properties zoned, or if not zoned, characterized predominantly by Industrial use.
- (4) On properties zoned, or if not zoned, characterized predominantly by Commercial use.
- (5) On Properties zoned, or if not zoned, characterized predominantly by Agricultural use.
- (6) On properties zoned, or if not zoned, characterized predominantly by Residential use.

b) A discussion of issues which will help expedite the review and permitting process;

DOC# 387110

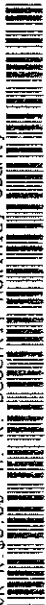
11/20/2018 01:20 PM Page 4 of 16
OR R \$0.00 H. K. Becenti, McKinley County



- 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 defined information required to support the proposed location;
- f) A discussion of the specific application requirements 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 of McKinley and its citizens, and;
- g) Any applicant desiring relief, waiver, or exemption from any requirement of this Ordinance may request such at the pre-application meeting. The burden of proving the need for the request lies solely with the applicant. The applicant shall bear all costs to The County of McKinley 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 of McKinley or its residents.

2. Application Process: The Applicant shall complete the on-line application processes as defined by the Administrator at the outset of the process.

- a) **All applications shall contain** a demonstration that the Telecommunications facility will be sited so as to be the least visually intrusive, as reasonably possible.
- b) In addition to demonstration that the proposed modification, colocation, eligible facility, or new tower or telecommunications blends into the character and environment of the proposed location, **all applications shall contain** the following information and shall be submitted through the on-line system designated by The County of McKinley:
 - (1) Registration of an Agent, including the name, address and telephone numbers of the designated Agent and his/her company;
 - (2) Authorization of the Agent as an official and representative of the Applicant; then pending approval
 - (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; colocation, modification, 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) 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 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 of McKinley.

c) Applications for a modification, colocation or eligible facility to an existing structure, without 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 have not recently been updated;

(2) Project name for the existing colocation site or project;

DOCH 387110

11/20/2018 01:20 PM Page: 7 of 16
OP R \$0.00 H. K. Becenti, McKinley County



- (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, setbacks, grounding plans, security, parking, turnarounds, 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 Standards;
- (7) Performance Bond including amounts as set by The County of McKinley, 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 of New Mexico and/or local government, and;
- (10) Projected start and completion dates of construction.

d) Applications to install a new tower or 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 application;
- (6) The Applicant will provide list of property owners, to include their addresses, within fifteen hundred (1500') of the proposed site's property lines. This list of owners and

addresses must be submitted early in the application 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; McKinley County Resolution No. MAR-14-017 AMENDED (POLICY NO. P-23) or most current version; and, the annual McKinley County Open Meeting 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 NOV-18-006, are to be held before the McKinley County Smart Growth Commission unless specifically excepted by this Ordinance; and, for any appeal purposes, the decision of the Smart Growth Commission 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)

- (1) All information listed in Sections b. c. & d. above;
- (2) Excepting that entire system and the associated group of up to 25 Small Wireless facilities maybe included in a single application process.
- (3) Each component of the system must be represented in online Application Process.
- (4) Each unique component of the system must be shown and include all the relevant data to complete the process. However all like (essentially identical) nodes may be demonstrated once, but must include all the physical locations for each node.

3. Review of Application: 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 of McKinley 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 of McKinley are incomplete and shall not be accepted for further review and processing;

c) **IF THE APPLICATION IS NOT COMPLETE:**

The County of McKinley shall notify the applicant in writing of the provisions of the code, ordinance, application process or publicly stated procedures which was/were not completed and notify the applicant that the application may be resubmitted.

d) **IF A RESUBMITTED APPLICATION IS NOT COMPLETE:**

Within ten (10) days, or as amended by State and Federal regulatory changes of the resubmission of the application, The County of McKinley 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** and based on the review of the application the Administrator shall, within the time periods allowed under federal, state and local law:

(1) Approve, approve with conditions or deny a Telecommunications Permit(s);

(2) Issue a written decision within ten (10) days of reaching a decision on the application which is supported by evidence contained in the on-line 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 McKinley County Smart Growth Commission for review and consideration, if a variance or waiver of zoning, zoning like, or other land use considerations is required or if the it is a new tower application, or if any variance is required; except that any variance for an application fee(s) or permitting fee(s) shall be referred to the Board of County Commissioners. Once a variance or waiver is obtained or granted, the Administrator may request the Applicant update the application if the Administrator deems it to be necessary to complete the application process.

DOC# 387110

11/20/2019 01:20 PM Page: 9 of 16
OR R \$0.00 H. K. Becenti, McKinley County



4. Public Hearing; and, Appeal of Administrator's Decision: The decision of the Administrator can be appealed by the Applicant or by The County of McKinley 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.

a) The McKinley County Board of County Commissioners hereby, for purposes of this Ordinance, Delegates to the McKinley County Smart Growth Commission the authority and duty to hold and decide upon, as the final decision of the County, any hearing required by this ordinance, and any appeal of the decision of the Administrator. For purposes of this delegation of authority and duty, the McKinley County Smart Growth Commission does not need to have a quorum present at the hearing to act, and if no quorum, the decision will be treated as if presented to a appointed Hearing Officer.

b) The hearing or appeal will be heard and considered at the next available meeting of the McKinley County Smart Growth Commission (SGC). Meetings of the (SGC) are usually held on the second Wednesday of each month as needed, the second Wednesday being reserved for this purpose.

c) For any application or appeal which is to be presented to the SGC, the County Administrator must have all documentation well prior to the time of the reserved second Wednesday such that all proper notices can be made timely.

5. Construction of the Proposed Facility: If an Application is approved or approved with conditions, a Telecommunication Permit will be issued to the Applicant:

a) The Applicant must comply with all requirements of the Telecommunication Permit;

b) The Applicant will be required to meet and satisfy the final inspection process required when construction is complete.

c) The Telecommunication Permit shall not be assigned, transferred, or conveyed without written notification to and approval from The County of McKinley within 6 months.

d) The Telecommunication Permit may be revoked, canceled, or terminated for violation of the conditions and provisions of the Telecommunication Permit or for a material violation of this ordinance as permitted by local ordinance, state and federal law.

e) The County of McKinley 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 Telecommunications Permit with an opportunity for a hearing before the McKinley County Board of 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 of McKinley or the consultant



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 of McKinley. If all requirements of this Ordinance, the Telecommunications permit have been met, The County of McKinley 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 required, applicant shall provide a detailed plan for sufficient lighting as inoffensive as permissible under State and Federal regulations. Applicant shall also be in compliance with the any local or State "Night Skies" requirements.

B. 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.

C. Setback 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.

D. 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.

E. 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 shelter or cabinet and be visible from an access point outside the secured site area. On tower sites, an FCC registration sign shall also be present. The signs shall not be lighted, unless required by law, rule, or regulation. No other signage, including advertising, shall be permitted.

F. Update of Signage: The applicant or future owner of the site 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.

G. Temporary Communications on Wheels/Wings (COW): In the event of an emergency or natural disaster which renders other forms of communication nonviable, thus necessitating a COW, The County of McKinley and the Telecommunications provider shall agree to special terms and conditions as needed by The County of McKinley and the Telecommunications provider:



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. In regards to a special event where a COW is used, it must be removed from the site within 48 hours of the conclusion of the event.

VI. APPLICATION FEES and OTHER REQUIREMENTS:

A. At the time a person submits an application for a Telecommunication Permits for a new Tower or requires an increase in height to an existing Tower or for colocating 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 of McKinley.

B. In addition to the application fee, The County of McKinley 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 of McKinley for all costs and amounts incurred by The County of McKinley for such expert consultation.

C. The Applicant shall pay for the projected consultation costs to The County of McKinley at the time of the application.

D. An application is incomplete until the Application Fee is paid; and, the Applicant has paid the costs for the expert consultant.

E. The consultant shall provide The County of McKinley with an 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.

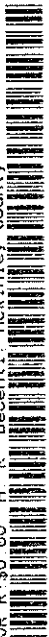
F. The Application Fees and Costs are defined by the most current Resolution as adopted or any subsequent Resolution amended, replaced or adopted from time to time associated with this Ordinance.

G. The Applicant, The County of McKinley and the consultant will comply with all 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 of McKinley a bond, or other form of security acceptable to The County of McKinley in at least the following amounts:

1. Colocation or modification on an existing tower: \$25,000
2. Small Wireless Facility: \$15,000
3. New tower, or other structure: \$75,000

Such sureties as are deemed sufficient by The County of McKinley to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Telecommunications Permit or Conditional Use 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



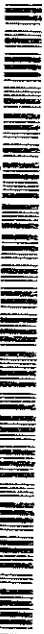
and any Conditional Use Permit have been fulfilled, and until such time as any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Telecommunications Permit or Special Use Permit.

I. A holder of a Telecommunications 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 The County of McKinley 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 of McKinley with at least thirty (30) days prior written notice of the cancellation of the insurance;
7. Renewal or replacement policies or certificates shall be delivered to The County of McKinley at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace;
8. The Permit Holder shall provide The County of McKinley a copy of the policies/certificates before construction and upon written request by The County of McKinley.

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

A. **Cessation of Operations/Abandonment/Disrepair:** The County of McKinley may require the removal of a Telecommunications Facility(ies) when: such item(s) with a permit have been abandoned or operations of 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. For small wireless facilities/systems, all items and equipment subject to the Telecommunications Permit shall be removed within forty-five (45) 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 New Mexico 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 of McKinley 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 of McKinley may require the removal of the item, equipment or the Telecommunications Facility.

C. Lack of Insurance: If a Permit holder has failed to comply with the liability insurance requirements required by The County of McKinley, The County of McKinley may require the removal of the item, equipment or the Telecommunications Facility.

D. Notification of Violation: If Telecommunications Facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way not in compliance with this Ordinance or the Telecommunication Permit or the Telecommunications Permit, The County of McKinley shall notify the Permit holder in writing of such violation. If The County of McKinley makes such a determination that removal of an item, equipment or Telecommunications Facility is required, then The County of McKinley shall notify the Permit holder within forty-eight (48) hours that said items are to be removed. The County of McKinley 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 of McKinley 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 Telecommunications Facility is not required): Cure: For all violations other than a violation which requires removal of an item, equipment or 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 of McKinley 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 the permit holder cannot cure the violation that requires 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 The County of McKinley: 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 of McKinley may order officials or representatives of The County of McKinley to remove the item at the sole expense of the owner or Permit holder.

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

K. Emergency Removal: If The County of McKinley determines the item is a hazardous, creates an emergency situation, or adversely affects public safety, The County of McKinley 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 set forth in this Ordinance, and the Permit is subject to revocation.

M. Fines: A Permit holder who violates this ordinance may be fined up to three hundred dollars (\$300) or face imprisonment for ninety days, or both for each violation and each day that a violation exists shall be deemed to be a separate violation.[NMSA 1978 §3-21-13].

Section 2. REPEALER:

All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. Specifically, LOCAL ORDINANCE NUMBER DEC-001 of 2003 is hereby repealed and replaced with this Ordinance No. NOV-18-006. This repealer shall not be construed to revive any ordinance or part of any ordinance regarding the same subject matter heretofore repealed.

Section 3. 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.

DOCH 387110

11/20/2018 01:20 PM Page: 15 of 16
OR R \$0.00 H. K. Becenti, McKinley County

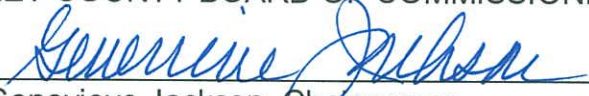


Section 4. EFFECTIVE DATE:

This ordinance shall be effective after five (5) days following its publication as required by law. In accordance with NMSA 4-37-9 C, the Board of County Commissioners declares 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.

PASSED, ADOPTED AND APPROVED this 20th day of November, 2018.

McKINLEY COUNTY BOARD OF COMMISSIONERS



Genevieve Jackson, Chairwoman



Carol Bowman-Muskett, Commissioner



Bill Lee, Commissioner

ATTEST:



Harriett K. Becenti, County Clerk





DOCH 387110

11/20/2018 01:20 PM Page: 16 of 16
OR R: \$0.00 H. K. Becenti, McKinley County

