

**ORDINANCE NO 2007-02
RIO ARRIBA COUNTY TOWER ORDINANCE**

TABLE OF CONTENTS

ARTICLE 1

Section I.
 TITLE 3

Section II.
 AUTHORITY 3

Section III.
 PURPOSE..... 3

Section IV.
 JURISDICTION 3

Section V.
 EXEMPTIONS..... 3

Section VI.
 INTERPRETATION 3

ARTICLE II

DEFINITIONS 3

ARTICLE III

Section I.
 SITE CRITERIA..... 6

Section II.
 DEVELOPMENT STANDARDS..... 7

Section III.
 REQUIRED SUBMITTALS 10

Section IV.
 REVIEW PROCESS..... 11

ARTICLE IV

NOTICE AND PUBLIC HEARING REQUIRED 12

ARTICLE V

APPEALS 10

ARTICLE VI

VARIANCES..... 10

ARTICLE VII

ABANDONED TOWER AND ANTENNAS 10

ARTICLE VIII

NONCONFORMING TOWERS AND ANTENNAS 10

ARTICLE IX

ENFORCEMENT, PENALTIES AND REMEDIES..... 11

ARTICLE X

REPEAL AND SAVING CLAUSE 11

ARTICLE XI

SEVERABILITY 11

ARTICLE XII

ADOPTION-EFFECTIVE DATE..... 11

RIO ARRIBA COUNTY BOARD OF COUNTY COMMISSIONERS

AN ORDINANCE 2007-02 COMPILING, AMENDING, ADOPTING, RESTATING AND SUPPLEMENTING A SYSTEM OF TOWER REGULATIONS THROUGHOUT RIO ARRIBA COUNTY; PROVIDING FOR ZONING OF LAND IN RIO ARRIBA COUNTY; PROVIDING FOR A SYSTEM OF USE PERMITS FOR TOWER PERMITS IN RIO ARRIBA COUNTY; SETTING FORTH PERFORMANCE STANDARDS FOR TOWERS IN RIO ARRIBA COUNTY; PROVIDING FOR ADMINISTRATION OF THE ORDINANCE; AND PROVIDING FOR VIOLATIONS.

WHEREAS, this Ordinance will supplement Ordinance No. 2000-01, which provides land use planning guidelines and location criteria for use in reviewing permitted uses and for reviewing, approving or denying requests for changes or uses, agricultural uses, mixed use permits, industrial use permits, mining use permits, tower use permits, large scale residential uses, and planned unit developments.

ARTICLE I. GENERAL PROVISIONS.

Section I. Title

This ordinance shall be known and may be cited as the “Rio Arriba County Towers Ordinance 2007-02” and shall be referred to elsewhere herein as “this Ordinance.”

Section II. Authority

This Ordinance is created pursuant to the enabling authority set forth in § 3-21-14 NMSA.

Section III. Purpose

This Ordinance is adopted for those purposes set forth in Ordinance No 2000-01 and to provide for and protect the public health, safety and general welfare of the County.

Section IV. Jurisdiction

This Ordinance shall apply to the same portion of the territory of Rio Arriba County as does Ordinance 2000-01.

Section V. Exemptions

This Ordinance shall not apply to towers and antennas legally constructed prior to the effective date of this Ordinance, unless said pre-existing towers or antennas are modified after the effective date of this Ordinance.

Section VI. Interpretation

The provisions of this Ordinance are held to be minimum requirements. Whenever any provisions of this Ordinance conflict with other laws, rules, regulations, or other ordinances, the more restrictive provision shall govern. This Ordinance shall be construed broadly to promote the purpose for which it is adopted.

Whenever the Board of County Commissioners (BCC) or its delegate is required by this Ordinance to make a decision, the decision shall be in writing and supported by the findings of fact which are sufficient for meaningful review.

ARTICLE II. DEFINITIONS.

As used in this ordinance, the following terms shall have the meanings set forth below.

ALTERNATIVE TOWER (SUPPORT) STRUCTURE: Artificial trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of towers and antennas.

ANTENNA ARRAY: An exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. Antennas used for the reception of television signals into residential or commercial televisions will not be considered antennas under this ordinance.

ARCHITECTURAL INTEGRATION: A facility which is visually integrated into the landscape or surrounding area by means of height, size, design, and shape so as not to appear as a wireless communication facility to the naked eye.

ATTACHED WIRELESS COMMUNICATION FACILITY: An antenna array that is attached or affixed to an existing building or structure, along with any transmission cables and accompanying pole or device that attaches or affixes the Antenna Array to the existing building or structure.

BACKHAUL NETWORK: The lines that connect a provider's towers or cell sites to a cellular telephone switching office, long distance provider, or the public switched telephone network.

dB(A): Unit of sound level expressed in decibels (dB) as measured on the A-weighted scale.

CO-LOCATION: Use of common support structure by two or more wireless carriers or by one wireless carrier for more than one type of antenna array.

COMPATIBILITY ASSESSMENT: Evaluation of the compatibility of a proposed land use with the surrounding area as required by Article II Section II County Ordinance 2000-01.

COUNTY: Rio Arriba County.

DESIGNATED AREA: schools, historic properties, community/senior centers, river and stream corridors, scenic byways, and County-maintained parks or playgrounds.

EXISTING TOWER OR ANTENNA: A non-conforming tower or antenna in existence at the effective date of this Ordinance.

FAA: Federal Aviation Administration.

FCC: Federal Communications Commission.

HEIGHT: When referring to a tower or other structure supporting an antenna, the distance from the finished grade of the tower pad, or base of the support structure, to the highest point on the tower or antenna.

HISTORIC PROPERTIES: Historical property listed in the National Registry of Historic Places or identified in the NM Registered Cultural Properties listing by the New Mexico State Historical Preservation Office (NMSHPO), or future listings of historic properties adopted by the County.

LAND USE: Any activity which is subject to the Rio Arriba County Design and Development Regulation System which is conducted on, below and/or in the space above the surface of the earth.

MODIFICATION: An alteration to a tower or antenna including changes to its size, power output, height, change in frequency or the co-location of additional wireless carriers on an existing tower. Modifications do not include alterations made in the normal course of maintenance or repairs or a change in regulation by the FCC.

NONCONFORMING TOWER AND ANTENNA: A legal tower or antenna erected and operational prior to the effective date of this ordinance.

RIVER AND STREAM CORRIDOR: The land area comprising a perennial stream or river, that includes a buffer of one (100) hundred yards on either side of the center of flow, and tributaries.

SCENIC BYWAY: Designated by the U.S. Secretary of Transportation as part of the National Scenic Byways Program.

SEPARATION DISTANCE: The distance from the edge of the tower pad to a designated area.

SETBACK: The distance from the edge of the tower pad or base of support structure to a property line or structure.

SPECIAL EVENTS: Annual or semi-annual events that are temporary in nature and do not require zoning to occur.

SUPPORT STRUCTURE: Towers and other structures designed and constructed primarily to support one or more antenna array.

TOWER: A structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, wind turbines, microwave towers,

common carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

TOWER PAD: Refers to any building site, foundation or other structure upon which a tower is located.

TOWER PERMIT: Written document issued by the County allowing the construction of a tower.

WIND TURBINE: A tower or similar structure designed for producing electricity by using wind to power a turbine.

WIRELESS COMMUNICATIONS FACILITY (“WCF”): An un-staffed facility for the transmission or reception of wireless communications services, usually consisting of an antenna array, transmission cables, equipment facilities, and support structure.

ZONING ADMINISTRATOR: The Director of the Planning and Zoning Department, including staff and subordinates authorized to act on his behalf.

ARTICLE III. SITE CRITERIA, DEVELOPMENT STANDARDS, REQUIRED SUBMITTALS AND APPROVAL PROCESS

Section I. Site Criteria

A. No tower permit shall be administratively approved except as follows;

- (1) Co-location:** The addition of an antenna to be co-located on a legally existing tower may be approved administratively provided the applicable standards, submittal requirements, and notice pursuant to this Ordinance are complied with.
- (2) Additional equipment:** Equipment required to operate a legal nonconforming tower may be approved administratively if the equipment is part of routine maintenance operations, backup power, or is classified as new equipment required by law to be installed.
- (3) Temporary Tower Permits:** Temporary permits shall be granted for a term not to exceed ninety (90) days, and may be extended for an additional ninety (90) days in the event of emergencies. The Zoning Administrator may grant a temporary tower permit to construct and operate a tower or antenna for the following purposes:
 - (a) Emergency Dispatch:** In the event of an emergency, the tower or antenna may be constructed and operated immediately, provided that the owner or operator submits an application for a tower permit no later than five (5) working days after the emergency. In the event that the Zoning Administrator denies the temporary tower permit, the owner or operator shall cease its operation immediately, and shall either remove the tower or file a tower permit application pursuant to this ordinance within fifteen (15) days of notice.

- (b) **Special Events:** The Zoning Administrator shall have the authority to approve provided a temporary tower permit for use at special events if all standards, required submittals, and public notice requirements from this Ordinance are met with.
- (c) **Testing:** Frequency tests and other such forms of testing will be allowed under temporary tower permits, provided that applicants comply with all standards set forth by this Ordinance.

Section II. Development Standards

A. **Development Standards:** The following development standards shall apply to all tower permits applications.

B. **Height:**

- (1) **Separation Distance:** Towers shall not exceed thirty-six (36') feet if the proposed tower pad is located within one half (1/2) mile of a school, historic property, County-maintained park or playground, river or stream corridor, scenic byway, or community/senior center. The separation distance shall be measured from the outermost edge of the tower pad to the property line of the designated area.
- (2) For all areas outside of the one half (1/2) mile separation distance, towers shall not exceed seventy (70') feet.

C. **Lot Area:**

- (1) **Minimum lot size:** Proposed lot size for construction of a tower shall be a minimum 43,560 square feet, or one (1) acre.
- (2) **Tower Clusters:** Shall be allowed on lots of more than one (1) acre.

D. **Setbacks:**

- (1) **Residential setbacks:** Towers shall be set back from residential structures located on the same lot a minimum of the height of the tower plus ten (10') feet. Towers shall be set back a minimum of two hundred (200') feet from any residential structure located on adjacent lots. These separation distances shall be measured from the outermost edge of the tower pad or base of the support structure to the eave of the residential structure's roof.
- (2) **Lot line setbacks:** Towers shall be set back from all lot lines a minimum of twenty-five (25') feet plus the height of the tower, measured from the outermost edge of the tower pad or base of the support structure.
- (3) **Right of way setbacks:** Towers shall be set back one hundred (100') feet plus the height of the tower from public rights of way, measured from the outermost edge of the tower pad or base of the support structure.

- (4) **Stream and river setbacks:** Towers shall be set back from perennial rivers and streams a minimum of one hundred (100) yards, measured from the center of flow to the outermost edge of the tower pad or base of the support structure.
- (5) **Alternative support structures:** Alternative support structures less than twenty-four (24') feet in height shall be set back from property lines at least twenty-five (25') feet, measured from the outermost edge of the tower pad or base of the support structure.

E. Physical Design and Aesthetics:

- (1) **Alternative tower structures:** Towers and other support structures shall be designed as Alternative Tower Structures whenever technically and economically feasible. Examples of alternative structures are listed in Article 2 Definitions. All alternative structures shall require Zoning Administrator approval.
- (2) **Architectural integration:** Towers, support structures, antennas, and associated equipment shall be architecturally integrated by using materials, colors, textures, screening, and landscaping to blend the tower with surrounding buildings, natural setting, and environment. Towers and associated equipment shall not be reflective unless required by the FCC or FAA.
- (3) **Co-location capacity:** All WCF's shall be designed to maximize co-location potential whenever technically or economically feasible.
- (4) **Multiple Tower Sites:** Parcels with more than one tower shall cluster whenever physically or technically feasible.

E. Fencing and Anti-Climbing Devices and Landscaping:

- (1) **Fencing:** Gate-secured, opaque fences or walls between six (6) feet and eight (8) feet in height constructed of wood, block, brick or chain link, shall be installed around towers no later than the completion of construction.
- (2) **Anti-climbing devices:** Anti-climbing devices shall be installed on towers no later than the completion of construction.
- (3) **Access:** Access gates at tower sites shall be secured by means of a Knox lock or similar device approved by the Fire Marshal no later than the completion of construction.
- (4) **Landscaping types:** Native trees or other native landscaping vegetation shall be installed to screen the tower site and fence or wall from residential structures and public rights of way no later than the completion of construction.
- (5) **Landscaping agreement:** A landscaping maintenance agreement with a minimum duration of three (3) years shall be executed no later than the completion of construction.

F. Radio Frequency (RF):

- (1) **License:** To insure compliance with FCC requirements, all wireless providers shall provide a copy of their FCC license as part of their application.

G. Access Road:

- (1) **Legal Access:** Proof of legal access to and from a public right of way shall be provided for all tower sites.
- (2) **Fire Marshal Approval:** Proof of approval by the County Fire Marshall shall be provided for each legal access to a tower site.

H. Terrain Management:

- (1) **Drainage Plan:** An applicant shall submit a drainage plan, stamped by a professional engineer licensed in New Mexico, which shall contain an erosion control plan, and storm water retention system (ponding) sufficient to protect against a one hundred (100) year storm of twenty four (24) hour duration.
- (2) **Reclamation of disturbed areas:** All areas disturbed by the construction of a tower, equipment, fences, walls, roads, and other activities shall be stabilized and re-vegetated to control erosion and dust, so as to resemble as close as possible the area prior to being disturbed.
- (3) **Grade/Slope:** No tower, equipment, or structure shall be constructed on a slope greater than twenty five percent (25%) unless technically or economically necessary, as certified by a professional engineer licensed in New Mexico.
- (4) **Power supply:** Power and communication lines shall be buried underground.

I. Noise:

- (1) **Decibel Standard:** No towers shall be operated in a manner to exceed dBA seventy-five (50 dB) decibels from the tower pad to the furthestmost property line.
- (2) **Emergency Backup Generators:** Emergency backup generators shall be used only during times of power outages and testing/maintenance.

J. Lightning Protection: Lightning protection shall be architecturally integrated.

K. Lighting: Towers shall not be lit unless required by the FAA or other applicable authority. If lighting is required by FCC or FAA regulations, documentation to that effect shall be provided. All lighting shall be designed to minimize impact on adjacent properties and views.

L. Traffic: Driveway permits from the State Highway Department shall be required on all state roads. Driveways accessing a county road must receive written approval from the County.

M. Existing Towers and Alternative Support Structures:

- (1) **Inventory:** The Zoning Administrator shall maintain and provide to all potential applicants an inventory of all towers and antennas in the County. All applicants shall provide an inventory of all existing towers and Alternative Support Structures that they own or operate in the County.

Section III. Required Submittals

- A. **Permit process:** The process for making application and obtaining a tower permit, hearings and administrative procedures shall be as set forth in County Ordinance 2000-01, including but not limited to Article I, Section X and Article II, Section III, and VI.
- B. **Pre-Application Conference:** Prior to filing an application, the applicant shall schedule a conference with the Zoning Administrator to discuss the application process and content.
- C. **Required Submittals:** The following items are required for all tower permit applications unless they are not applicable:
 - (1) Review fee of \$75
 - (2) Description of proposed location of tower, including access and acreage;
 - (3) Proof of legal lot of record;
 - (4) Proof of property ownership or ground lease to use the property;
 - (6) Proof of current property tax payment;
 - (7) Copy of FCC license (if applicable);
 - (8) Proof of authority to file the application for the person or entity proposing to construct and operate the tower or antenna;
 - (9) Application narrative demonstrating compliance with the development standards of this Ordinance;
 - (10) Description of proposed tower or Alternative Support Structure, and information regarding architectural integration;
 - (11) Description of raptor protection devices for wind turbine towers;
 - (12) Make and model of the transmitter, duty cycle, type of emissions, frequencies, number of channels and their power in watts for all transmitted signals;
 - (13) Horizontal and vertical radiation patterns including distances from the support structure and the computed distances covered by the proposed tower;
 - (14) Propagation maps for existing wireless telecommunications coverage areas and coverage within the range of the proposed tower;
 - (15) Co-locator capacity and antenna type including input and output in watts;
 - (16) Fall radius, stamped by a professional engineer in New Mexico;
 - (17) Vicinity map (scale 1 inch = 1000 feet), which shall include the following information:
 - (a) All geographic features within half (1/2) mile of the property including, drainages, mountains, hills, canyons and other landforms;

- (b) All federal, state, or county roads and acequias and other irrigation structures within one thousand (1,000') feet of the property;
- (c) All federal, state, tribal, historic, land grant and county property or acequias or other irrigation structures within half (1/2) mile of the property;
- (18) Site plan (scale 1 inch = 100 feet) stamped by a professional engineer licensed in New Mexico, which shall include the following information:
 - (a) Size, dimension and location of all existing and proposed structures;
 - (b) Type and height of the proposed tower;
 - (c) Existing land uses on the property;
 - (d) Existing and proposed walls or fences;
 - (e) Existing and proposed landscaping;
 - (f) Setbacks from adjoining property lines and all other items subject to setback requirements;
 - (g) Lighting;
 - (h) Ponding;
 - (i) Water features, including ephemeral and perennial water bodies;
 - (j) Roads and parking areas;
 - (k) Site topography and elevation drawings of the proposed tower and other structures; and
 - (l) Any other information required by the Zoning Administrator to determine compliance with this ordinance;
- (19) Drainage and grading plan including drainage which shall include calculations and retention pond location and design, stamped by a professional engineer licensed in New Mexico;
- (20) Topographical map which shall include all ridge tops and slopes greater than thirty (30%) percent within one-half (1/2) mile of the property;
- (21) Height model using pole, balloon or other object demonstrating the proposed height of a tower;
- (22) Photographic simulation of proposed tower with a minimum of four photos taken from all four directions from a distance of 1,000 feet of the proposed tower site;

Section IV. Review Process

- A. Except those for which administrative approval is allowed, all tower permit applications shall be made pursuant to Article II Section II A, "Application For All Use Change Permits".

ARTICLE IV. NOTICE AND PUBLIC HEARING REQUIRED.

- A. Public hearing and notice of public hearing shall be made pursuant to County Ordinance 2000-01 Article I Section X., “Public Hearing”.**
- B. Administrative approval notice shall require that the applicant advertise in a newspaper of local circulation, post physical notice on the property, and notify all adjacent property owners pursuant to County Ordinance 2000-01 Article I Section X., “Area of Notice Defined”, at least fifteen (15) days prior to the date of decision.**
- C. Participation in public hearings and record thereof shall be as provided by County Ordinance 2000-01.**

ARTICLE V. APPEALS.

Appeals shall be made pursuant to County Ordinance Article III, Section II., “Appeals”.

ARTICLE VI. VARIANCES.

Applications for variance shall be made pursuant to County Ordinance 2000-01 Article II, Section VI., “Variances”.

ARTICLE VII. ABANDONED TOWERS AND ANTENNAS.

Abandonment shall be as provided in County Ordinance 2000-01 Article 1 Section IX., “Existing/Current Land-Uses”.

ARTICLE VIII. NONCONFORMING TOWERS AND ANTENNAS.

- A. Expansion of Nonconforming Use or Structure: A tower or antenna that is constructed in accordance with this Ordinance shall not constitute an expansion of a nonconforming use or structure.**
- B. Existing Tower or Antenna: A legally constructed tower or antenna constructed or installed prior to the effective date of this Ordinance shall be allowed to continue its existing use. Routine repair and maintenance, including the replacement of an existing tower with a new tower of like construction, height, aesthetic design, and location shall not constitute a change in the use or structure.**
- C. Damaged or Destroyed Existing Tower or Antenna: The reconstruction of a legal tower or antenna that was in existence prior to the effective date of this Ordinance and that was damaged or destroyed after the effective date of this Ordinance shall not be subject to this Ordinance provided that the type, height, aesthetics design, and location of the new tower or antenna is substantially similar to the tower or antenna before it was damaged or destroyed; provided further, that if the tower or antenna is not reconstructed within one hundred eighty (180) days from the date of damage or destruction, the tower or antenna shall be deemed to be abandoned.**

ARTICLE IX. ENFORCEMENT, PENALTIES AND REMEDIES.

Enforcement, penalties and remedies shall be as provided in County Ordinance 2000-01, Article III., “Administration and Enforcement”.

ARTICLE X. REPEAL AND SAVING CLAUSE.

This ordinance supersedes any conflicting provision in another ordinance. The remaining provisions of those ordinances shall continue in effect.

ARTICLE XI. SEVERABILITY.

If any part or application of this ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected. This ordinance shall be interpreted, wherever possible, to be in accordance with applicable constitutional, statutory and case law provisions.

ARTICLE XII. ADOPTION-EFFECTIVE DATE.

EFFECTIVE DATE

Pursuant to § 4-37-7 NMSA 1978, it is hereby declared by the Board of County Commissioners of Rio Arriba County that there is an immediate danger of the public health, safety and welfare of Rio Arriba County and therefore this Ordinance shall take effect immediately upon signature by the County Commissioners, signature and recording by the County Clerk and publication by title and general summary in a newspaper of general circulation in Rio Arriba County.

REVIEWED, APPROVED, AND ADOPTED ON THIS _____ DAY OF _____, 2007, BY THE RIO ARRIBA BOARD OF COUNTY COMMISSIONERS.

**BOARD OF COUNTY COMMISSIONERS
RIO ARRIBA COUNTY**

**FELIPE MARTINEZ
DISTRICT III CHAIRMAN**

**ALFREDO L. MONTOYA
DISTRICT II COMMISSIONER**

**ELIAS CORIZ
DISTRICT I COMMISSIONER**

ATTEST:

J. FRED VIGIL, COUNTY CLERK

CERTIFICATE OF FILING

I, J. Fred Vigil, County Clerk, do hereby certify that the foregoing ordinance designated as Ordinance 2007-02 was filed in my office on the _____ day of _____ 2007 in Book Number _____ Pages _____

J. FRED VIGIL, COUNTY CLERK