

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to any and all interested persons, that pursuant to §4-37-7 NMSA, 2007 compilation, the County Commissioners of Curry County, which is the governing body of and for the County of Curry, State of New Mexico, intends to introduce and consider for adoption at its regular meeting, which is scheduled for Tuesday, the 5th day of November, 2019 at the hour of 9:00 AM, the following described Ordinance, to wit:

ORDINANCE NO. 2019-05

AN ORDINANCE BY WHICH CURRY COUNTY CAN TRACK THE LOCATION OF ANY AND ALL COMMERCIAL WIRELESS TELECOMMUNICATION FACILITIES, WIND TOWERS, WIND GENERATORS, CELL TOWERS, AND OTHER SIMILAR FACILITIES THAT ARE BUILT OR CONSTRUCTED IN CURRY COUNTY

The meeting will be open to the public and any person or persons interested in the ordinance or the subject matter thereof or any person or persons desiring to comment on the same are urged to attend and be heard.

Copies of the proposed Ordinance are available for review at www.currycounty.org or copies of the same can be picked up at the County Manager's Office at 417 Gidding Street, Suite 100, Clovis, New Mexico, during normal and regular business hours, upon request and payment of a reasonable charge for copies, if any are requested.

WITNESS my hand this 17th day of September, 2019.


Annie Hogland, County Clerk



AFFIDAVIT OF LEGAL PUBLICATION

Legal 8345

STATE OF NEW MEXICO
COUNTIES OF CURRY
AND ROOSEVELT:

The undersigned, being dully sworn, says:
That she is a Legal Clerk of
The Eastern New Mexico News
Newspaper of general circulation,
Published in English at Clovis and Portales,
said counties and state, and that the
hereto attached

Notice of Intent – Wind Ordinance
Legal 8345

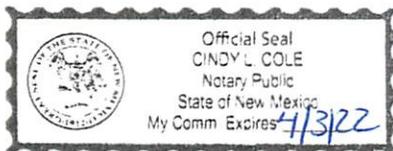
was published in The Eastern New Mexico News
a daily newspaper duly qualified for that purpose
within the meaning of Chapter 167 of the 1937
Session Laws of the State of New Mexico for
2 Days/weeks on the same days as follows:

First Publication October 6, 2019
Second Publication October 20, 2019
Third Publication:
Fourth Publication

Sammy Newby
Legal Clerk

Subscribed and sworn to before me,
October 20, 2019
Cindy Cole
Notary Public

My commission expires on April 3, 2022



Legal 8345
October 6, 2019
October 20, 2019

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Ordinance, to wit:

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Annie Hogland, County
Clerk

CURRY COUNTY ORDINANCE NO. 2019-05

**AN ORDINANCE BY WHICH CURRY COUNTY CAN
TRACK THE LOCATION OF ANY AND ALL COMMERCIAL
WIRELESS TELECOMMUNICATION FACILITIES, WIND
TOWERS, WIND GENERATORS, TOWERS AND OTHER
SIMILAR FACILITIES THAT ARE BUILT OR
CONSTRUCTED IN CURRY COUNTY**

WHEREAS, commercial developers are recognizing the rural lands in Curry County are excellent locations for the placement of Wireless Telecommunications Facilities, Wind Towers, Wind Generators (WECS), Towers and other similar facilities; and,

WHEREAS, alternative energy is being made available through Wind Turbines located in Curry County; and,

WHEREAS, Pursuant to §3-21-1 *et seq.* and §4-37-1 *et seq.*, NMSA 1978, and the Telecommunications Act of 1996, §704.47 U.S.C., §6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, the Board of County Commissioners of the County of Curry is empowered to enact regulations regarding the location, placement, construction, appearance, design, and modification of Wireless Telecommunications Antennae, Towers, Wireless Telecommunications Facilities and other similar structures on lands and properties within the County; and,

WHEREAS, an Ordinance requiring the submission of an Application with the County providing the specific location, size and other pertinent data and the owners and operators name and contact information, the placement and construction of Wireless Telecommunications Antennae, Wind Towers, Wind Generators, Towers and other Facilities would serve a valid public purpose and will otherwise serve to promote the prosperity, public health, safety, and welfare of the residents of Curry County; and,

WHEREAS, this Ordinance does not restrict, limit or otherwise regulate the placement, construction and/or modification of Wireless Telecommunications Facilities, Wind Towers, Wind Generators, Towers and other similar Facilities; and,

WHEREAS, for the proper assessment of property, as well as emergency services, Curry County must have recorded current and accurate documentation in its data base showing the physical location and contact information of each individual Wireless Telecommunication Facility, Wind Tower, Wind Generator, Tower and all similar Facilities together with information on physical access to the same.

NOW, THEREFORE, BE IT HEREBY ORDAINED, by the Board of County Commissioners of Curry County that the following policies and procedures set forth herein are adopted.

SECTION 1. PURPOSE

The purpose of this Ordinance is to ensure that for tax purposes and purposes of appropriate emergency response including but not limited to fire, Sheriff and medical, the County has the correct contact information and GPS coordinates for each individual structure identified in this Ordinance that is currently located in Curry County or that will be erected, built, installed or put up in Curry County after the date of this Ordinance.

SECTION 2. DEFINITIONS

1996 TELECOMMUNICATIONS ACT: those aspects of the Act that enable the County to protect its rights and ensures that the County respects the rights of the wireless industries.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE: Accessory Facility or Accessory Structure serving or being used in conjunction with any Wireless Telecommunications Facilities, Wind Towers, Wind Generators, and other similar Facilities and located on the same property including, but not limited to, utility or transmission equipment storage sheds or cabinets.

TOWERS: The support structure where antennae and electronic communication equipment are placed, individually or as part of a Cellular Network, also referred to as Telecommunications Structures, Wireless Telecommunications Facilities, Radio Towers or Sites.

CELLULAR NETWORK: A telecommunication site or system of Towers distributed over land where each Tower includes a fixed location transceiver.

MODIFICATION: The addition, removal or change of any of the physical and visually discernable components or aspects of a Unit as defined herein. Modified does not include the replacement of any component where the replacement is identical to the component being replaced.

OPERATOR: The name and contact information for the entity responsible for the day-to-day operation and maintenance of each Unit or system.

OWNER: The full name of the individual, entity or entities with an equity interest in each Unit or system including their respected successor and assigns.

PROPERTY OWNER: The full name(s), physical and mailing address, telephone number and email address of the individual, entity or entities that owns the surface property where each Unit or system will be located.

ROAD: Includes private or public roads or other physical means of vehicular access to each Unit.

SHAPE FILE: A Geospatial Vector Data Format for Geographic Information System (GIS) Software. Shape file format can spatially describe vector features such as points, lines and polygons representing Wind Towers, Towers, etc.

SITES: The physical location on the ground of each and every Unit, including the recorded rights-of-way, easement, roads that connect the site to a Curry County road or New Mexico State highway.

SUBSTATION: The facility that connects the electrical collection system of the Unit(s) and increases or decreases the voltage for connection with utility transmission lines.

SURVEY: An examination and record of the area and features of an area of land so as to construct a map, plan and description of a graphical representation locating all feature pertaining to a site.

UNIT: A Unit for purposes of this Ordinance shall be defined as each and every separate and stand-alone structure, Tower, Network, Site, Substation and WECS regardless of whether the structure is connected to another structure by cables, wiring or lines. All structures that are built on the surface, including buildings, Towers, poles, transformers, Storage Facilities, and similar structures for purposes of this Ordinance, are separate Units.

WIND ENERGY CONVERSION SYSTEM (WECS): All necessary devices that together convert Wind energy into electricity, including the rotor, nacelle, generator, Wind Tower, electrical components, Wind Tower foundation, transformer, and electrical cabling from the Wind Tower to the substation(s).

WIND TOWER: The support structure to which the nacelle and rotor are attached.

WIND TOWER HEIGHT: The distance between the rotor blade at its highest point to the top surface of the Wind Tower.

WIRELESS TELECOMMUNICATION FACILITY: the concrete pads Towers Antennae, out buildings and support structures used for or associated with Wireless Telecommunication.

SECTION 3. APPLICABILITY

- A. This Ordinance applies to any and all Units built, repaired, maintained, monitored, operated or situated in the County but outside areas within the territorial limits of the City of Clovis, or the City of Texico, Village of Grady and Melrose. The following shall also be exempt from this Ordinance:
 - 1. Utility line transmission and distribution poles, except to the extent that those poles or Towers are used for siting of WECS.

2. The County Fire Departments, Sheriff's Department, Road Department and other public service Facilities owned and operated by a government entity.
3. Any Facilities expressly exempt from the County's siting, building and permitting authority.
4. 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 that are primarily used for reception.
5. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
6. Facilities used exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.
7. Those poles or towers that do not exceed 150 feet in height from the surface used by private individuals or part of a telecommunication system.

SECTION 4. APPLICATION

Prior to any Unit(s) being placed, constructed, modified, erected or built on any real property in the unincorporated lands of Curry County, the owner/operator must complete and file an Application with the Curry County Assessor's Office. The Application shall be obtained from the Curry County Assessor's office, and can be found online at <https://www.currycounty.org/>. Each Application shall be submitted together with the payment of a recording fee in the amount approved by the Board of County Commissioners of Curry County.

Each Application will require the Applicant to provide proof of liability insurance as required by Section 7 and shall acknowledge Applicant's obligation to indemnify Curry County as set forth in Section 8 of this Ordinance.

SECTION 5. ASSURANCES

- A. At all proposed sites, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. All road construction shall, at all times, minimize ground disturbance and the cutting of vegetation.

- B. All Units shall be constructed, operated, maintained, repaired, provided for removal of, modified and restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- C. Reasonable requests from Curry County to use space on any Tower (Unit) and available space within the existing or planned site shall be made available for Curry County's use in deploying and operating public service radio frequencies (e.g. Police, Fire, Emergency, Homeland Security and the communication needs of the Curry County Road Department, etc.) on an existing Tower or Unit. Should the addition of this County requirement exceed the structural limits for that Tower, or Unit, as shown by proper documentation presented, the request by County may be denied as to that Tower or Unit. Curry County will not be charged or accessed and will not pay fees for space on any Towers (Unit) or for space within the Facility. Curry County will also require, and be granted access to its equipment on a 24 hours 7-day basis for maintenance and operating requirements. The County will work with the respective Owner/Operators to ensure they receive adequate advance notice for routine activities, excluding emergencies.

SECTION 6. REGISTRATION FOR PURPOSES OF FILING

Any and all documents required pursuant to Section 4 of this Ordinance must be submitted for filing in a shape file, together with the payment of the filing fee and the attribute tables which includes details on the specific points and locations for each individual Unit, with the Curry County Assessor's Office at 417 Gidding St., Ste. 160, Clovis, NM 88101. Each shape file shall, at a minimum, include the .shp file and corresponding .cpq, .dfg, .prj, .sbn, .sbx, and .shx files.

SECTION 7. LIABILITY INSURANCE

- A. The Owner/Operator of any Unit shall secure and at all times maintain (1) public liability insurance for personal injuries, death and property damage, and (2) umbrella insurance coverage for the duration of the time that each Unit is situated in Curry County in amounts as set forth below:
1. Commercial General Liability covering personal injuries, death and property damage- a minimum of \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
 2. Automobile Coverage a minimum of \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;

3. Workers Compensation and Disability – a minimum of Statutory amounts.
- B. The Commercial General liability insurance policy shall specifically include Curry County and its officers, councils, employees, agents, attorneys, and consultants as additional named insureds.
 - C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of New Mexico and with a Best's rating of at least "A".
 - D. The insurance policies shall contain an endorsement obligating the insurance company to furnish Curry County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
 - E. Renewal or replacement policies or certificates shall be delivered to the Curry County Manager's Office at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
 - F. Before construction of a Unit is initiated, but in no case later than fifteen (15) days after the registration of each Unit, the Owner/Operator shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

SECTION 8. INDEMNIFICATION

- A. An Application for any Unit(s) that are constructed, built, erected or otherwise placed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt Curry County and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, and expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Unit(s), excepting, however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of Curry County or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorney's fees, consultant's fees, and expert witness fees are included in those costs that are recoverable by Curry County.

- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Unit.

SECTION 9. PENALTY

- A. This Ordinance applies to any individual, business, partnership, corporation and all other entities and all Units and/or Facilities that are built, erected, constructed, modified or operated upon any real property in the unincorporated parts of Curry County on or after the effective date of this Ordinance. Every structure or Unit that is not fully completed and operational as of the effective date of this Ordinance shall also be required to comply with and shall be subject to the terms of this Ordinance and a separate Application for the same must be submitted to the Curry County Assessor's Office. Failure by any person, individual, party, entity, owner, operator or builder, to comply with all of these terms and conditions as hereinabove required, shall be a separate violation of this Ordinance and subject to a penalty of \$250.00 per month for each and every month of non-compliance.
- B. Any Person who violates any of the provisions of this Ordinance shall be punished by a fine of up to three hundred dollars (\$300) and/or imprisonment of no more than ninety (90) days, or both, upon conviction.
- C. Each month continued violation shall constitute a separate, additional violation.
- D. Notwithstanding anything in this Ordinance, the Owners/Operators of any Unit or Facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. Curry County may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the County.

SECTION 10. PERIODIC REGULATORY REVIEW BY THE COUNTY

- A. Curry County may at any time conduct a review and examination of this entire Ordinance.
- B. If after such a periodic review and examination of this Ordinance, Curry County determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted; then Curry County may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of Curry County, the County may repeal this entire Ordinance at any time.

C. Notwithstanding any of the provisions of this Ordinance, Curry County may at any time and in any manner (to the extent permitted by Federal, State, or local law) amend, add, repeal, and/or delete one or more provisions of this Ordinance.

SECTION 11. SEVERABILITY

It is hereby declared to be the intention of the Board of County Commissioners of Curry County that the sections, paragraphs, sentences, clauses and phrases in this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

ADOPTED on this 5 day of November, 2019.



Ann Koford
COUNTY CLERK

Chet Spear
Chet Spear, Chairman
Board of County Commissioners

CERTIFICATE OF CURRY COUNTY CLERK

I, Annie Hogland, Curry County Clerk, hereby certify that Curry County Ordinance Number 2019-05, an Ordinance by Which Curry County Can Track the Location of Any and All Commercial Wireless Telecommunication Facilities, Wind Towers, Wind Generators, Towers and Other Similar Facilities that are Built or Constructed in Curry County, was passed, approved and adopted by the Curry County Board of County Commissioners on this 5th day of November, 2019.



Annie Hogland, Curry County Clerk

