

Chapter 123

WIRELESS TELECOMMUNICATIONS FACILITIES

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[HISTORY: Adopted by the Board of Trustees of the Village of Jemez Springs 1-29-2013 by Ord. No. 177. Amendments noted where applicable.]

GENERAL REFERENCES

Planning and Zoning Commission — See Ch. 80.

Zoning — See Ch. 130.

§ 123-1. Purpose and legislative intent.

The Telecommunications Act of 1996 affirmed the Village of Jemez Springs' authority concerning the placement, construction and modification of wireless telecommunications facilities. The Village of Jemez Springs finds that wireless telecommunications facilities may

pose significant concerns to the health, safety, public welfare, character and environment of the Village and its inhabitants. The Village also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Village and of significant benefit to the Village and its residents. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the Village's land use policies, the Village is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this chapter is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Village of Jemez Springs.

§ 123-2. Title.

This chapter shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance for the Village of Jemez Springs."

§ 123-3. Jurisdiction.

This chapter shall apply to all the territory with in the Village of Jemez Springs.

§ 123-4. Severability.

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B. Any conditional use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Village of Jemez Springs.

§ 123-5. Definitions.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

ACCESSORY FACILITY OR STRUCTURE — An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the

same property or lot as the wireless telecommunications facilities, including but not limited to utility or transmission equipment storage sheds or cabinets.

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority.¹

APPLICANT — Any wireless service provider submitting an application for a conditional use permit for wireless telecommunications facilities.

APPLICATION — All necessary and appropriate documentation that an applicant submits in order to receive a conditional use permit for wireless telecommunications facilities.

CITIZENS BAND RADIO — FCC licensed transmitter on the Citizens Radio Band. Legal maximum power output is five watts. This antenna is limited by the Federal Communications Commission to 65 feet. There will be no other exceptions for this usage. The construction of a tower exceeding 120 square feet will require a state building permit.

CO-LOCATION — The use of a tower or structure to support antennas for the provision of wireless services without increasing the height of the tower or structure.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE — The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

COMPLETED APPLICATION — An application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

CONDITIONAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the Village.

COW — Cellular on wheels, temporary cell site.

FAA — The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission, or its duly designated and authorized successor agency.

GOVERNING BODY — The Village of Jemez Springs Governing Body, New Mexico.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

HEIGHT — When referring to a tower or structure, the distance measured from the preexisting grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

MODIFICATION or MODIFY — The addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

NIER — Nonionizing electromagnetic radiation.

PERSON — Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY — See definition for "wireless telecommunications facilities."

PERSONAL WIRELESS SERVICES or PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS — The same meaning as defined and used in the 1996 Telecommunications Act.

PLANNING AND ZONING COMMISSION — Commission appointed by the Mayor for the Village of Jemez Springs.

PUBLIC SAFETY RADIO — A publicly (FCC) licensed transmitter on the Public Safety Band. Standard power output is 150 watts (e.r.p.); maximum power output not to exceed FCC licensed approval.

SQUARE FOOTAGE — The measurement of height times width of a single face of a tower.

STATE — The State of New Mexico.

STEALTH or STEALTH TECHNOLOGY — Minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

TELECOMMUNICATION SITE — See definition for "wireless telecommunications facilities."

TELECOMMUNICATIONS — The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS STRUCTURE — A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

TEMPORARY — Temporary in relation to all aspects and components of this chapter, something intended to, or that does, exist for fewer than 90 days.

VILLAGE — The Village of Jemez Springs, New Mexico.

WIRELESS TELECOMMUNICATIONS FACILITIES — Includes a telecommunications tower and tower and telecommunications site and personal wireless facility; means a structure, facility or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes, without limit, towers of all types and kinds and structures that employ camouflage technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities, such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority, excluding those used exclusively for the Village's fire, police or exclusively for private, noncommercial radio and television reception and private citizen's bands, amateur radio and other similar noncommercial telecommunications where the height of the facility is below the height limits set forth in this chapter.

§ 123-6. Policy and goals for conditional use permits.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the Village of Jemez Springs residents health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this chapter, the Village hereby adopts an overall policy with respect to a conditional use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a conditional use permit for wireless telecommunications facilities;
- B. Establishing a policy for examining an application for and issuing a conditional use permit for wireless telecommunications facilities that is both fair and consistent;
- C. Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;
- D. Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which

shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

§ 123-7. Conditional use permit application and other requirements.

- A. All applicants for a conditional use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. The Planning and Zoning Commission is the officially designated agency or body of the Village to whom applications for a conditional use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking conditional use permits for wireless telecommunications facilities. The Planning and Zoning Commission may, at its discretion, delegate or designate other official agencies, review, analyze, evaluate and make recommendations to the Planning and Zoning Commission with respect to the granting or not granting, recertifying or not recertifying or revoking conditional use permits for wireless telecommunications facilities.
- B. An application for a conditional use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application and shall agree to remove any existing violations and make all existing telecommunications facilities compliant with this chapter and all applicable local, state and telecommunications codes prior to the issuance of any certificate of occupancy or compliance or the functional equivalent for a new or modified wireless facility at the discretion of the Planning and Zoning Commission, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Planning and Zoning Commission.
- D. The applicant shall include a statement in writing:
 - (1) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the conditional use permit, without exception, unless specifically granted relief by the Planning and Zoning Commission, in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable municipal, county, state and federal laws, rules, and regulations;
 - (2) That the construction of the wireless telecommunications facilities is legally permissible, including but not limited to the fact that the applicant is authorized to do business in the state.
- E. No wireless telecommunications facilities shall be installed or constructed until the application is reviewed and approved by the Planning and Zoning Commission, and the conditional use permit has been issued.

- F. All applications for the construction or installation of new wireless telecommunications facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the applicant. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the state. The application shall include the following information:
- (1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily and essentially within the Village. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
 - (2) The name, address and phone number of the person preparing the report;
 - (3) The name, address, and phone number of the property owner, operator, and applicant, and to include the legal form of the applicant;
 - (4) The postal address and Tax Map parcel number of the property;
 - (5) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
 - (6) The location of nearest residential structure;
 - (7) The location, size and height of all structures on the property which is the subject of the application;
 - (8) The location, size and height of all proposed and existing antennas and all appurtenant structures;
 - (9) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - (10) The number, type and design of the tower(s) and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
 - (11) The make, model and manufacturer of the tower and antenna(s);
 - (12) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;
 - (13) The frequency, modulation and class of service of radio or other transmitting equipment;
 - (14) The actual intended transmission and the maximum effective radiated power of the antenna(s);
 - (15) Direction of maximum lobes and associated radiation of the antenna(s);
 - (16) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;

- (17) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices;
 - (18) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
 - (19) Certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site.
- G. In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Village. Copies of written requests and responses for shared use shall be provided to the Planning and Zoning Commission in the application, along with any letters of rejection stating the reason for rejection.
- H. The applicant shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all municipal, county, state and federal structural requirements for loads, including wind and ice loads.
- I. The applicant shall certify that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J. An applicant may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Planning and Zoning Commission may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- K. The applicant shall furnish a visual impact assessment, which shall include:
- (1) A zone of visibility map which shall be provided in order to determine locations from which the tower may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints both inside and outside of the Village as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. (Guidance will be provided concerning the appropriate key sites at a preapplication meeting.)
 - (3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- L. The applicant shall demonstrate and provide, in writing and/or by drawing, how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.

- M. Any and all representations made by the applicant to the Planning and Zoning Commission on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Planning and Zoning Commission.
- N. All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the municipality, county, and state, including specifically but not limited to the National Electrical Safety Code and the National Electrical Code, where appropriate.
- O. All wireless telecommunications facilities shall contain a demonstration that the facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.
- P. Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the Village.
- Q. At a telecommunications site, an access road, turnaround 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. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- R. A person who holds a conditional use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Village, 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.
- S. A holder of a conditional use permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Village of Jemez Springs governmental entity or agency having jurisdiction over the applicant.
- T. An applicant shall submit to the Planning and Zoning Commission the number of completed applications determined to be needed at the preapplication meeting.
- U. The applicant shall examine the feasibility of designing a proposed tower to accommodate future demand for at least five additional commercial applications, for

example, future co-locations. The tower shall be structurally designed to accommodate at least five additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- (1) The foreseeable number of FCC licenses available for the area;
- (2) The kind of wireless telecommunications facilities site and structure proposed;
- (3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
- (4) Available space on existing and approved towers.

V. Shared use.

- (1) The owner of the proposed new tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
 - (a) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (b) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 - (c) Allow shared use of the new tower if another telecommunications provider agrees, in writing, to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (2) Failure to abide by the conditions outlined above may be grounds for revocation of the conditional use permit for the tower.

W. There shall be a preapplication meeting. The purpose of the preapplication meeting will be to address issues, which will help to expedite the review and permitting process. A preapplication meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the Village's consultants to prepare for and attend the preapplication meeting will be borne by the applicant.

X. The holder of a conditional use permit shall notify the Village of any intended modification of a wireless telecommunication facility and shall apply to the Planning and Zoning Commission to modify, relocate or rebuild a wireless telecommunications facility.

Y. In order to better inform the public, in the case of a new telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a balloon test. The

applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three-foot-in-diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant 14 days in advance of the first test date in a newspaper with a general circulation in the Village. The applicant shall inform the Village, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

- Z. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.
- AA. All applicants for conditional use permit for wireless telecommunications facilities or any modification of such facilities should develop their plans to allow reasonable requests from the Village of Jemez Springs to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities (e.g., police, fire, emergency, homeland security, etc.). The Village will pay no fees for space on towers or for space within the compound.
- BB. The application will provide all maintenance free of charge for Village Police Department and Fire Department communication equipment placed on the tower.

§ 123-8. Location.

- A. Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and five being the lowest priority:
 - (1) On existing towers or other structures without increasing the height of the tower or structure;
 - (2) On Village-owned properties;
 - (3) On properties in areas zoned for commercial use.
 - (4) On properties in areas zoned for agricultural use.
 - (5) On properties in areas zoned for residential use.
- B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons

why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

- C. An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Village why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- D. Notwithstanding the above, the Village may approve any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is in the best interest of the health, safety and welfare of the Village of Jemez Springs residents and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Village may disapprove an application for any of the following reasons:
 - (1) Conflict with safety and safety-related codes and requirements;
 - (2) Conflict with the historic nature or character of a neighborhood;
 - (3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 - (4) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers;
 - (5) The location would have a deleterious effect on the nature and character on the community and neighborhood.
 - (6) Conflicts with the provisions of this chapter.

§ 123-9. Shared use.

- A. Locating on existing towers or others structures without increasing the height shall be preferred by the Village, as opposed to the construction of a new tower. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within four miles of the location of any proposed new tower, unless the

applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.

- B. An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.
- C. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown.

§ 123-10. Height of telecommunications tower(s).

- A. The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefor. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown.
- B. Building-mounted antennas should be located and designed to be an integral part of the building and shall be secured or camouflaged, as necessary or as reasonably required by the governing body, to minimize the visual impact on surrounding properties and minimize any change in or impact on the nature and character of the community.
- C. No tower constructed after the effective date of this chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, county, state, and/or any federal statute, law, local law, Village ordinance, code, rule or regulation.

§ 123-11. Appearance and visibility.

- A. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.
- C. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

§ 123-12. Security.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

- B. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

§ 123-13. Signage.

Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

§ 123-14. Lot size and setbacks.

- A. All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: a distance equal to the height of the proposed tower or wireless telecommunications facility structure plus 10% of the height of the tower or structure, or the existing setback requirement by the Village, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.
- B. Any decision of the Planning and Zoning Commission may be appealed to the Village governing body as provided in § 123-32 of this chapter.

§ 123-15. Retention of expert assistance and reimbursement by applicant.

- A. The Village may hire any consultant and/or expert necessary to assist the Village in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. An applicant shall deposit with the Village funds sufficient to reimburse the Village for all reasonable costs of consultant and expert evaluation and consultation to the Village in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500. The placement of the \$8,500 with the Village shall precede the preapplication meeting. The Village will maintain a separate escrow account for all such funds. The Village consultants/experts shall invoice the Village for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Village, replenish said escrow account before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Village is more than the amount of the actual invoicing (at the conclusion of the project) for work performed through the date of issuance of a

certificate of occupancy or compliance for the project, the remaining balance shall be promptly refunded to the applicant.²

- C. The total amount of the funds needed as set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

§ 123-16. Conditional use permit exceptions.

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a conditional use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no conditional use permit shall be required for those noncommercial exceptions noted in the definition of "wireless telecommunications facilities."
- B. All amateur radio facilities that meet the requirements of the FCC are exempt from the zoning requirements of this chapter, but will require a building permit for any tower with a single face exceeding 32 square feet.

§ 123-17. Public hearing and notification requirements.

- A. Prior to the approval of any application for a conditional use permit for wireless telecommunications facilities, a public hearing shall be held by the Village, notice of which shall be published in the local newspaper of the Village no less than 10 calendar days prior to the scheduled date of the public hearing. In order that the Village may notify nearby landowners, the application shall contain the names and addresses of all landowners whose property is located within 1,320 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.
- B. There shall be no public hearing required for an application to co-locate on an existing tower or other structure, as long as there is no proposed increase in the height of the tower or structure, including attachments thereto.
- C. The Village shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete, the Village, at any stage prior to issuing a conditional use permit, may require such additional information as it deems necessary.

§ 123-18. Action on application.

- A. The Village and/or its consultant will undertake a review of an application pursuant to this chapter in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

public's interest and need to be involved, and the applicant's desire for a timely resolution.

- B. The Village may refer any application or part thereof to any advisory or other committee for a nonbinding recommendation.
- C. After the public hearing and after formally considering the application, the Village may approve, approve with conditions, or deny a conditional use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.
- D. If the Village approves the conditional use permit for wireless telecommunications facilities, then the applicant shall be notified of such approval, in writing, within 10 calendar days of the Village's action, and the conditional use permit shall be issued within 30 days after such approval. Except for necessary building permits, and subsequent certificates of compliance, once a conditional use permit has been granted hereunder, no additional permits or approvals from the Village, such as site plan or zoning approvals, shall be required by the Village for the wireless telecommunications facilities covered by the conditional use permit.
- E. If the Village denies the conditional use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Village's action.

§ 123-19. Recertification.

- A. Between 12 months and six months prior to the five-year anniversary date after the effective date of the conditional use permit and all subsequent five-year anniversaries of the effective date of the original conditional use permit for wireless telecommunications facilities, the holder of a conditional use permit for such wireless telecommunication facilities shall submit a signed written request to the Village for recertification. In the written request for recertification, the holder of such conditional use permit shall note the following:
 - (1) The name of the holder of the conditional use permit for the wireless telecommunications facilities;
 - (2) If applicable, the number or title of the conditional use permit;
 - (3) The date of the original granting of the conditional use permit;
 - (4) Whether the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified since the issuance of the conditional use permit and, if so, in what manner;
 - (5) If the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified, then whether the Village approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;

- (6) That the wireless telecommunications facilities are in compliance with the conditional use permit and compliance with all applicable codes, laws, rules and regulations;
 - (7) Recertification that the tower and attachments both are designed and constructed and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the state, the cost of which shall be borne by the applicant.
- B. If, after such review, the Village determines that the permitted wireless telecommunications facilities are in compliance with the conditional use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Village shall issue a recertification of the conditional use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted wireless telecommunications facilities are not in compliance with the conditional use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Village may refuse to issue a recertification conditional use permit for the wireless telecommunications facilities, and in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of the decision by the Village until such time as the facility is brought into compliance. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the facility.³
- C. If the applicant has submitted all of the information requested and required by this chapter, and if the review is not completed, as noted in Subsection B of this section, prior to the five-year anniversary date of the conditional use permit, or subsequent five-year anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the conditional use permit for up to six months, in order for the completion of the review.
- D. If the holder of a conditional use permit for wireless telecommunications facilities does not submit a request for recertification of such conditional use permit within the time frame noted in Subsection A of this section, then such conditional use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the conditional use permit, or subsequent five-year anniversaries, unless the holder of the conditional use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Village agrees that there were legitimately extenuating circumstances, then the holder of the conditional use permit may submit a late recertification request or application for a new conditional use permit.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 123-20. Extent and parameters of conditional use permit.

The extent and parameters of a conditional use permit for wireless telecommunications facilities shall be as follows:

- A. Such conditional use permit shall be nonexclusive.
- B. Such conditional use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Village.
- C. Such conditional use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the conditional use permit, or for a material violation of this chapter after prior written notice to the holder of the conditional use permit.

§ 123-21. Application fee.

- A. At the time that a person submits an application for a conditional use permit for a new tower, such person shall pay a nonrefundable application fee as listed below to the Village.⁴
- B. Application fee schedule. Any application required by this chapter shall be filed with the required filing fee on prescribed forms obtained from the Planning and Zoning Commission. Such fees shall not be required where the Village or any official thereof is the moving party. Other parties as indicated in this document are exempt from fee requirements.
- C. Fees. Filing fees will be charged as follows per site:
 - (1) Conditional use review: \$60.
 - (2) Tower application fee: \$5,000 (includes building permit fees).
 - (3) Co-location applications fee: \$3,000.
 - (4) Appeal: \$250.
 - (5) Temporary use permit: \$50.
 - (6) Late fee penalty. Applications for and fees collected after the fact shall be double as that listed above.
- D. No application fee is required in order to rectify a conditional use permit for wireless telecommunications facilities, unless there has been a visible modification of the wireless telecommunications facility since the date of the issuance of the existing conditional use permit for which the conditions of the conditional use permit have not previously been modified. In the case of any modification, the fees provided in Subsection A shall apply.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 123-22. Performance security.

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Village a bond, or other form of security acceptable to the Village as to type of security and the form and manner of execution, in an amount of at least \$75,000 and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this chapter and conditions of any conditional use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the conditional use permit and/or until 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 conditional use permit.

§ 123-23. Inspections.

In order to verify that the holder of a conditional use permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Village may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to towers, antennas and buildings or other structures constructed or located on the permitted site.

§ 123-24. Notifications and annual NIER certification.

- A. The holder of the conditional use permit shall, annually, certify to the Village that NIER levels at the site are within the threshold levels adopted by the FCC.
- B. The holder of the conditional use permit shall provide twenty-four-hour notification of any changes or modifications (e.g., repositioning antenna, propagation patterns) that will affect the defined service areas. This information is necessary to support advance notification of E911 Service Centers.

§ 123-25. Liability insurance.

- A. A holder of a conditional use permit for wireless telecommunications facilities 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 conditional use permit in amounts as set forth below:
 - (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - (3) Workers' compensation and disability: statutory amounts.

- B. The commercial general liability insurance policy shall specifically include the Village and its officers, commissions, employees, committee members, attorneys, agents and consultants as additional named insured.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Bests rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least 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 Village at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the grant of the conditional use permit, the holder of the conditional use permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 123-26. Indemnification.

- A. Any application for wireless telecommunication facilities that is proposed for Village property, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village, and its officers, commissions, 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, or 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 facility; 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 the Village, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.
- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the Village itself applies for and secures a conditional use permit for wireless telecommunications facilities.

§ 123-27. Violations and penalties.

- A. Any one violating any of the provisions of this chapter shall, upon conviction, be subject to a fine not exceeding \$300 or imprisonment for a period not exceeding 90 days, or both

such fine and imprisonment. Any violation continued for a period of 30 days after conviction shall be prosecuted and treated as a separate offense.

- B. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each days' continued violation shall constitute a separate additional violation.
- C. Notwithstanding anything in this chapter, the holder of the conditional use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the conditional use permit to termination and revocation of the conditional use permit. The Village may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Village.

§ 123-28. Notice of violation; revocation of conditional use permit.

- A. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the conditional use permit, then the Village shall notify the holder of the conditional use permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Village may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in Subsection A above the wireless telecommunications facilities are not brought into compliance with the provisions of this chapter, or of the conditional use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Village may revoke such conditional use permit for wireless telecommunications facilities, and shall notify the holder of the conditional use permit within 48 hours of such action.

§ 123-29. Removal.

- A. Under the following circumstances, the Village of Jemez Springs may determine that the health, safety, and welfare interests of the Village warrant and require the removal of wireless telecommunications facilities:⁵
 - (1) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred-sixty-five-day period,

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
- (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - (3) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required conditional use permit, or any other necessary authorization.
- B. If the Village makes such a determination as noted in Subsection A of this section, then the Village shall notify the holder of the conditional use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed; the Village may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.⁶
- C. The holder of the conditional use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Village. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Village.
- D. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Village may order officials or representatives of the Village to remove the wireless telecommunications facilities at the sole expense of the owner or conditional use permit holder.
- E. If, the Village removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within 10 days, then the Village may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.
- F. Notwithstanding anything in this section to the contrary, the Village may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the conditional use permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the conditional use permit and the Village. If such a plan is not developed, approved and executed within the ninety-day time period, then the Village may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

6. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 123-30. Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request such at the preapplication meeting, provided that the relief or exemption is contained in the original application for either a conditional use permit, or, in the case of an existing or previously granted conditional use permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Village in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Village, its residents and other service providers.

§ 123-31. Periodic regulatory review.

- A. The Village may at any time conduct a review and examination of this entire chapter.
- B. If after such a periodic review and examination of this chapter, the Village determines that one or more provisions of this chapter should be amended, repealed, revised, clarified, or deleted, then the Village 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 the Village, the Village may repeal this entire chapter at any time.
- C. Notwithstanding the provisions of Subsections A and B of this section, the Village 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 chapter.

§ 123-32. Appeals.

Anyone aggrieved by a decision of the Planning and Zoning Commission in carrying out the provision of this chapter may appeal such decision as specified below. Such appeal must set forth specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision was not supported by evidence in the matter.

- A. Application. Any appeal following a decision of the Planning and Zoning Commission shall be made in writing to the Village's governing body on prescribed forms obtainable from the Zoning Officer upon payment of the applicable one-hundred-dollar filing fee. Appeals shall be filed within 15 working days of the date of the Planning and Zoning Commission decision.
- B. The Village of Jemez Springs governing body will hold a public hearing within 60 days of the appeal. The record to be review will include:
 - (1) All materials, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Planning and Zoning Commission as evidence;

- (2) All materials submitted to the Planning and Zoning Commission with respect to any application(s);
 - (3) The minutes and/or tape recording of the public hearing(s) held by the Planning and Zoning Commission;
 - (4) The findings of fact and conclusion of law entered by the Planning and Zoning Commission following their decision; and
 - (5) Argument confined to the record by the parties or their legal representatives at the time of review before the Village's governing body.
- C. Stay of proceedings. An appeal shall stay all proceedings in the action unless the Planning and Zoning Commission certifies that a stay will cause imminent peril to life or property. Upon such certification, the proceedings shall not be stayed except by order of the district court.
- D. Decision. At the public hearing, the Village governing body may reverse, change, or affirm the decision appealed. A majority vote of the members of the governing body is required to reverse or change a decision made by the Planning and Zoning Commission. The decision of the governing body shall become final on the date the decision is recorded by the Village Clerk/Treasurer.

§ 123-33. Adherence to state and/or federal rules and regulations.

- A. To the extent that the holder of a conditional use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a conditional use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are changed and/or are modified during the duration of a conditional use permit for wireless telecommunications facilities, then the holder of such a conditional use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.
- C. Complaints and notification. The Zoning Officer may institute any appropriate actions or proceedings whenever there is a probable cause to believe there is a violation of this chapter. Any person aggrieved by an apparent violation of this chapter shall file a written complaint with the Zoning Officer who shall immediately document, in writing, the nature of the complaint and investigate such complaint to determine if a violation of this chapter is found to exist. Whenever the Zoning Officer finds probable cause to believe a

violation of this chapter exists, whether acting on independent initiative or in response to an investigated complaint, the Zoning Officer shall notify the person responsible for the alleged violation in writing. Such notification shall order the necessary correction to be made within 30 days following the date of notification. Any person who fails to comply with the notification order shall be subject to penalties as stated in this chapter.

§ 123-34. Conflict with other laws.

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, this chapter shall apply.

§ 123-35. Authority.

This chapter is enacted pursuant to applicable authority granted by the state and federal government.