

ORDINANCE NO. 302

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING IN ITS ENTIRETY CHAPTER 16.44 (WIRELESS COMMUNICATIONS FACILITIES) AND APPENDIX A (REGULATION OF USES BY ZONING DISTRICT) OF THE CHINO HILLS MUNICIPAL CODE AND DETERMINING THE ORDINANCE IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings of fact:

- A. In February 2012, President Obama signed into law the “Middle Class Relief and Job Creation Act of 2012,”¹ and Section 6409(a) of that law which limits the City’s authority to regulate certain modifications and collocations for existing wireless transmission facilities (“Federal Law Section 6409(a)”). The Federal Communications Commission adopted a Report and Order in the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies on October 17, 2014 (“FCC Report and Order”) that implemented Federal Law Section 6409(a). The FCC Report and Order took effect on April 8, 2015. In October 2015, Governor Brown signed State Assembly Bill AB 57 which regulates the amount of time a City has to review certain wireless communication facilities. In response, staff has reviewed Section 16.44 (Wireless Communications Facilities) of the Municipal Code for provisions that could potentially conflict with Section 6409(a) and AB 57. The Municipal Code amendments proposed herein seek to eliminate or otherwise rectify those potential conflicting provisions while protecting the public safety, the general welfare, and the quality of life in the City of Chino Hills, including preserving the character of the neighborhood and avoiding aesthetic blight to the maximum extent permitted by federal and state law.
- B. Because of the many modifications to the existing Code required by the two new regulations, the proposed Municipal Code amendment replaces the City’s existing Section 16.44 Code section in its entirety to ensure compliance with the limitations established by Federal Law Section 6409(a) and State Assembly Bill AB 57.
- C. On September 20, 2016, the Planning Commission held a public hearing to receive oral and documentary evidence from staff and the public,

¹ 112 P.L. 96, § 6409 (known as the “Middle Class Relief and Job Creation Act of 2012”), codified at 47 U.S.C. § 1455.

regarding the proposed amendment to the Municipal Code. The Commission recommended the adoption of the proposed amendments.

- D. Notice of public hearing was published in the Chino Hills Champion newspaper on October 15, 2016.
- E. A duly noticed public hearing before the City Council was conducted on October 25, 2016, at which time all interested persons were given an opportunity to testify in support of, or in opposition to the project.

SECTION 2. CEQA. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq. ("CEQA")) for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15060(c)(2)), (2) there is no possibility that the ordinance may have a significant effect on the environment (14 Cal. Code Regs. § 15061(b)(3), and (3) the ordinance does not constitute a "project" as defined in the CEQA Guidelines (14 Cal. Code Regs. § 15378) and the project is exempt from review under CEQA pursuant to CEQA Guidelines §§ 15301(Existing Facilities which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination); and 15308 (Actions by Regulatory Agencies for Protection of the Environment which consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment).

SECTION 3. Amend in its entirety Section 16.44 of the Chino Hills Municipal Code to read as follows:

Chapter 16.44 - WIRELESS COMMUNICATIONS FACILITIES

- 16.44.010 - Intent and purpose.
- 16.44.020 - Definitions.
- 16.44.030 - Permitted Uses.
- 16.44.040 - Exemptions.
- 16.44.050 - General Criteria.
- 16.44.060 - Minor Wireless Communication Facilities.
- 16.44.070 - Major Wireless Communication Facilities.
- 16.44.080 - Right of Appeal.
- 16.44.090 - Enforcement.
- 16.44.100 - Wireless Communication Facility Removal.

Sections:

16.44.010 - Intent and Purpose.

The purpose of these requirements and guidelines is to regulate the location and design of "wireless communication facilities" as defined in this chapter to protect the public safety, the general welfare, and the quality of life in the City of Chino Hills, including preserving the character of the neighborhood and avoiding aesthetic blight. The City Council has found and determined that these requirements and guidelines for wireless communication facilities are necessary to attain such purpose. These regulations are intended to supersede applicable provisions of the City Municipal Code pertaining to antenna structures and appurtenant communications equipment and to establish minimum requirements and flexible guidelines for the governance of wireless communication facilities, taking into consideration the rapid technological advances and the proliferation in use of wireless communication services. The standards are intended to address adverse visual impacts and operational effects of these facilities through appropriate design, siting, screening techniques and locational standards while providing for the communication needs of residents, local businesses, and government agencies. This chapter provides a mechanism to ensure that all wireless communication facilities shall be erected, located, modified, operated and maintained at all times in compliance with this chapter and all applicable laws and regulations of the City of Chino Hills, the State of California, and the United States of America. This article is not intended to, and does not, address or regulate health impacts associated with telecommunication projects.

16.44.020 - Definitions.

For the purposes of this chapter, the following words, terms, phrases and their derivations shall have the meanings given in this section. The word "shall" is always mandatory and not merely advisory.

"Accessory structure" means an "accessory structure" as defined in Section 16.02.130 of the Chino Hills Municipal Code.

"Antenna structure" means an antenna, any structure designed specifically to support an antenna, and/or any appurtenances mounted on such structure or antenna, designed for use in radio communication.

"Base Station" means a structure or equipment at a fixed location that enables Federal Communication Commission (FCC) licensed or authorized wireless communications between user equipment and a communications network. This term does not encompass a tower or equipment associated with a tower.²

"City property" means any property in which the City holds a legal interest, including but not limited to the right-of-way.

² This definition is intended to summarize, and not to modify in any way, the definition of "Base Tower" as defined and described in the FCC Report and Order released on October 21, 2014, FCC 14-153. Any ambiguity is to be resolved by consulting such FCC Order and applicable case law interpreting same.

"Collocation" or "collocated" means the mounting or installation of transmission equipment on a base station or tower for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.³

"Director" means the Community Development Director or his or her designee.

"Existing facility" means a constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

"Existing Support Structure" means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with City.

"Ground mounted" means mounted to a pole, lattice tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna.

"Lattice tower" means support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

"Major facility" means a wireless communication facility that is either ground mounted or a structure specifically designed for a wireless communication facility. See "Wireless communication facility."

"Minor facility" means a wireless communication facility that is attached to an existing structure, wall mounted, or utility mounted, or roof mounted in such a manner that the entire mounted facility is screened by solid material on all sides and does not exceed the maximum height permitted in this chapter.

"Major modification" means any request for modification of an existing tower or base station that substantially changes the physical dimensions of such tower or base station. See "Substantial change."

"Minor modification" means any request for modification of an existing tower or base station that replaces or removes existing equipment and does not substantially change the physical size or appearance of the wireless communication facility. See "Substantial change."

"Monopole" means a single pole, supporting wireless communication equipment.

"Mounted" means any manner of attachment, support, or connection.

"Multipoint distribution service" means a commercial service that uses microwave transmission to deliver video programming directly to subscribers, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services.

"Project area" means the boundaries of the leased area or owned property surrounding the wireless communication equipment.

³ This definition is intended to summarize, and not to modify in any way, the definition of "Collocation" as defined and described in the FCC Report and Order released on October 21, 2014, FCC 14-153. Any ambiguity is to be resolved by consulting such FCC Order and applicable case law interpreting same.

"Radio communication" means the transmission and/or reception of impulses, writing, signs, signals, pictures, and sounds of all kinds through space by means of electromagnetic waves.

"Residential Zone" means the zoning districts as defined in Section 16.10.010.B. or the residential portion of zoning district Planned Development (PD) in the City.

"Roof mounted" means mounted on any structure that is not specifically constructed for the purpose of supporting antenna(s), in any manner that does not satisfy either the definition of wall mounted or utility mounted, typically mounted on the roof of an existing building.

"Stealth facility" means any wireless communication facility which is designed to blend into the surrounding environment, typically one that is camouflaged, architecturally integrated into a building or other concealing structure.

"Substantial Change"⁴ means a modification that substantially changes an existing tower or base station as defined by the following criteria:

- A. For towers other than towers in the right-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 1. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of applicable Federal Law.
- B. For towers other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- C. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing

⁴ This definition is intended to summarize, and not to modify in any way, the definition of "Substantially Change" as defined and described in the FCC Report and Order released on October 21, 2014, FCC 14-153. Any ambiguity is to be resolved by consulting such FCC Order and applicable case law interpreting same.

ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

- D. It entails any excavation or deployment outside the current project area;
- E. It would defeat the concealment elements of the eligible support structure; or
- F. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in items (A) through (F).

"Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.⁵

"Transmission Equipment" means equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antenna(s), coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

"Utility mounted" means mounted to an existing aboveground structure specifically designed and originally installed to support electrical power lines, cable television lines, street lighting, or traffic signal equipment.

"Wall mounted" means mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the fence of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted.

"Wireless communications facility" or "facility" means an antenna structure for which buildings permit or electrical permit is required by the Chino Hills Municipal Code and any facilities or equipment appurtenant to it.

"Wireless communication facility tower" means any structure built for the sole or primary purpose of supporting any FCC licensed or authorized antenna(s) and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated project area.

⁵ This definition is intended to summarize, and not to modify in any way, the definition of "Tower" as defined and described in the FCC Report and Order released on October 21, 2014, FCC 14-153. Any ambiguity is to be resolved by consulting such FCC Order and applicable case law interpreting same

16.44.030 - Applicability.

All wireless communication facilities which are erected, located, or modified within the City on or following the effective date of this chapter shall comply with this chapter, including all wireless communication facilities for which building permits and any extension of such permit have expired, except for those facilities exempt from review by Section 16.44.040 of this chapter. Any lease of City property for the purpose of erecting a wireless communications facility shall require a negotiated lease agreement and/or such other license, franchise, or other specified right granted by the City in accordance with the City Municipal Code. The existence of a lease agreement or other license shall not relieve the applicant of any obligations to obtain appropriate permits as required by this chapter.

16.44.040 - Exemptions.

This Chapter shall not apply to any tower or antenna that is owned and operated by a federally licensed amateur radio station operator. This Chapter shall also not apply to any tower or antenna used for commercial radio or television purposes.

16.44.050 - General Criteria.

- A. A Site Development Permit for Wireless Communication Facilities or a Conditional Use Permit for Wireless Communication Facilities is required for all wireless communication facilities erected, located, modified, operated and maintained within the City. The permit shall continue unless any of the following shall occur:
 - 1. The permit is suspended or revoked by the City pursuant to the procedures set forth in Section 16.44.090 below; or
 - 2. The wireless communications facility has been modified beyond the conditions set forth in the permit.
- B. Permit approval is attached to the specific facility in which the permit application was made, unless suspended or revoked by the City.
- C. Application Requirements and Procedures.
 - 1. The Community Development Director or his or her designee is authorized to promulgate application forms ensuring that the requirements of this code and all applicable law and make it available to the public as appropriate. The Community Development Director may require information or documentation in addition to that required in this code in the application, as appropriate to ensure that the spirit and intent of this chapter is complied with.
 - 2. Any application that is improperly submitted or fails to contain all required information and documentation shall be deemed incomplete.
 - 3. Each application shall contain a brief narrative accompanied by written documentation that explains and demonstrates the

applicant's efforts to locate the facility in accordance with the screening and site selection guidelines set forth in subsection F of this section.

4. All facilities shall be installed and at all times maintained in compliance with the requirements of the Title 15 of this code regardless of any permit that may be granted in accordance with Chapter 16.44. Applicants are separately required to obtain all applicable building and construction permits that may be required prior to erecting or installing the facility. Facilities located within the public right-of-way require the applicant to obtain a separate encroachment permit from the Engineering Division.
 5. The Community Development Director or his or her designee may require additional information, as appropriate for applications for a new tower or base station, or applications proposing to substantially change a tower or base station.
 6. Any fraudulent or false information submitted to the City by the applicant in connection with an approved application is grounds for revocation of the permit at any time by the City.
 7. An application is deemed complete and accurate once it meets the requirements of the City's adopted Codes and provides all information and documentation required in the City's application as deemed satisfactory by the Director.
- D. Public hearing and noticing radius. Public hearing notices of proposed major facilities, minor facilities located in residential zone, and major modifications (excluding exempt facilities) shall be conducted in accordance with Sections 16.58.040 of this code. For proposed wireless communication facilities located within the public right-of-way, the standard noticing radius may not provide adequate public notice due to the width of the right-of-way and potentially intervening open space parcels; therefore, the noticing radius shall be increased to five hundred (500) feet. For all other locations the noticing radius shall be three hundred (300) feet. The noticing radius shall be measured from the exterior boundaries of the subject parcel, or, for those facilities in the public right-of-way, the exterior boundaries of the nearest adjacent parcel closest to the proposed wireless communications facility.
- E. Independent Expert. If the Director deems it necessary, the Director has the authority to retain on behalf of the City an independent, qualified consultant to review any application for a permit for a wireless communications facility. The review is intended to be a review of technical aspects of the proposed wireless communications facility and shall address any or all of the following:
1. Compliance with applicable FCC radio frequency emission standards;

2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the City.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the City for the consultants cost.

- F. Lattice towers shall be prohibited at all locations in the City.
- G. Conditions of Approval. In addition to compliance with the screening and site selection standards outlined below, all major and minor facilities shall comply with and be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the Director or Planning Commission, as applicable:
 1. The facility shall not bear any signs or advertising devices other than certification, warning, or other required seals or required signage.
 2. Any and all accessory equipment, or other equipment associated with the operation of the facility, including but not limited to transmission cables, shall be located within a building, enclosure, or underground vault in a manner that complies with the development standards of the zoning district in which such equipment is located; whenever feasible, accessory equipment or other types of equipment shall be located underground. In addition, if equipment must be located above ground, it shall be visually compatible with the surrounding buildings and either screened by sufficient landscaping to screen the equipment from view, or designed to match the architecture of adjacent buildings. If no recent and/or reasonable architectural theme is present, the Director or his or her designee may require a particular design that is deemed by the Director to be suitable to the subject location.
 3. The facility exterior shall be comprised of nonreflective material(s) and painted or camouflaged to blend with surrounding materials and colors.

4. The site of the facilities shall be maintained in a condition free of debris, refuse, and trash. All graffiti shall be removed within 48 hours.
 5. Any and all screening used in connection with a wall mounted and/or roof mounted facility shall be compatible with the architecture, color, texture and materials of the building or other structure to which it is mounted.
 6. Access to the facility shall be limited to existing access roads only. No grading or construction of new roads, either paved or unpaved, is permitted for the purpose of providing access to the facility unless otherwise approved by the City, based upon a determination in the City's sole discretion, that a new road will not have any significant impacts on the property upon which the new road to be constructed or on any surrounding properties.
 7. For facilities installed on existing utility structures, the facility owner must obtain the written permission of the utility structure owner and any underlying property owner.
 8. The facility shall maintain maximum clearance consistent with current Americans with Disabilities Act (ADA) requirements.
- H. Screening and Site Selection Guidelines. The following shall be considered by the City in connection with its processing of any facility permit:
1. The extent to which the proposed facility blends into the surrounding environment or is architecturally integrated into a concealing structure, taking into consideration alternate sites that are available;
 2. The extent to which the proposed facility is screened or camouflaged by existing or proposed new topography, vegetation, buildings, or other structures;
 3. The proposed facility is a stealth facility;
 4. The total size of the proposed facility, particularly in relation to surrounding and supporting structures;
 5. The location of the proposed facility and the extent to which it conforms to the following in order of preference (item "a" being the most preferred):
 - a. Located within City owned property,
 - b. Collocated with an existing facility,
 - c. Attached to an existing structure such as an existing building, communication tower, church steeple or utility pole or tower,
 - d. Located in an industrial/business park zoning district,
 - e. Located in a commercial zoning district,
 - f. Located in the public right-of-way.

- I. Findings. In addition to any other applicable findings in this code, the following findings shall be met prior to approval of any facility:
 - 1. The proposed facility meets all applicable standards and requirements set forth in this code.
 - 2. The proposed facility has been designed to minimize its visual and environmental impacts, including the utilization of stealth technology, when applicable.
 - 3. The proposed site has the appropriate zoning, dimensions, slope, design, and configuration for the development of a facility.
 - 4. That general landscaping considerations, when applicable to the facility, have been complied with to complement the structures and antennae, provide an attractive environment and preserve natural features and elements.
 - 5. Based on information submitted, the proposed facility is in compliance with all FCC and California Public Utilities Commission (PUC) requirements.
 - 6. The applicant has demonstrated and confirmed that the facility is necessary to close a significant gap in the provider's coverage and there is no less intrusive means to close that significant gap unless determined that the facility is a modification.
- J. Setback requirements. The facility shall comply with the setback requirements for the zone in which the facility is located.
- K. Variance. An application for a Variance to the requirements set forth in this section may be granted pursuant to Chapters 16.70 or 16.72 of the City Municipal Code.

16.44.060 - Minor Wireless Communication Facilities and Minor Modifications.

- A. Permit required. A Site Development Permit for Wireless Communication Facilities is required for each minor facility that is not specifically exempt under Section 16.44.040 of this chapter and for facilities that are minor modifications. Such facilities must first obtain administrative approval of the Site Development Permit for Wireless Communication Facilities in accordance with Chapter 16.78 of the Municipal Code and any additional or different requirements made applicable by this chapter. If the Director or designee denies an application for a Site Development Permit for Wireless Communication Facilities under this chapter, he or she shall make a written determination supported by substantial evidence. An approved Site Development Permit for Wireless Communication Facilities shall comply with the time limits set forth under Section 16.78.060. The permit shall continue unless any of the following shall occur:
 - 1. The permit is suspended or revoked by the City pursuant to the procedures set forth in Section 16.44.090 below; or
 - 2. The wireless communications facility has been modified beyond the conditions set forth in the permit.

- B. Residential Zones Require Conditional Use Permit for Wireless Communication Facilities. Regardless of subsection A directly above, a minor facility shall not be located within a residential zone unless such facility receives Planning Commission approval of a Conditional Use Permit for Wireless Communication Facilities.
- C. Height Requirements.
 - 1. No minor facility nor any minor modification shall exceed twenty-five (25) feet in height within a residential zone or within two hundred (200) feet of a residential property line, regardless of any other provision in this code;
 - 2. No minor facility nor any minor modification shall exceed thirty-five (35) feet in height for non-residential areas, regardless of any other provision in this code;
 - 3. Maximum heights shall be measured from lowest adjacent grade to the highest point of the facility;
 - 4. Regardless of the requirements of this subsection C, a minor facility and minor modification may exceed the maximum building height set forth in this subsection C if an adjustment is granted by the Planning Commission after a finding that the adjustment is necessary to ensure compliance with federal or state law.

16.44.070 - Major Wireless Communication Facilities, Major Modifications, and Minor Facilities within a Residential Zone.

- A. Permit required. Planning Commission approval of a Conditional Use Permit in accordance with Chapter 16.68 of the Municipal Code and all applicable requirements of this chapter is required for each:
 - 1. Major facility that is not specifically exempt under Section 16.44.040 of this chapter;
 - 2. Major modification; and
 - 3. Minor facility in a residential zone.
- B. If the Planning Commission denies any application for a Conditional Use Permit for Wireless Communication Facilities, it shall make a written determination supported by findings that the proposed Facility would cause significant negative impacts in the public safety or welfare or cannot achieve any of the other required findings. An approved Conditional Use Permit for Wireless Communication Facilities shall comply with the time limits set forth under Section 16.68.060. The permit shall continue unless any of the following shall occur:
 - 1. The permit is suspended or revoked by the City pursuant to the procedures set forth in Section 16.44.090 below; or
 - 2. The wireless communications facility has been modified beyond the conditions set forth in the permit.

- C. The following location requirements shall apply to major facilities, major modifications, minor facilities within a residential zone:
1. The wireless communications facility tower shall not be located within two hundred (200) feet of a residential zone as measured from the closest point of the facility adjacent to that residential property line.
 2. A ground mounted facility shall be located in the rear yard or side yard of a property; provided that no part of a ground mounted facility shall be located in a side yard that abuts any public street.
 3. No portion or extension of a facility, including without limitation any guy wires, shall protrude beyond property lines or extend into any portion of property where such facility is not itself permitted.
- D. The following design requirements shall apply to major facilities, major modifications, and minor facilities within a residential zone:
1. A ground mounted facility and associated equipment shall be screened and enclosed with a wall. The design shall be approved by either the Director or designee or the Planning Commission as appropriate.
 2. A ground mounted facility shall not be located in a required parking area, vehicle maneuvering area, or vehicle and/or pedestrian circulation area in such a manner that it interferes with, or in any way impairs, the utility or intended function of such area.
- E. Height Requirements.
1. No major facility nor any major modification shall exceed thirty-five (35) feet in height for non-residential areas, regardless of any other provision in this code;
 2. No minor facility shall exceed twenty-five (25) feet in height within a residential zone or within two hundred (200) feet of a residential property line, regardless of any other provision in this code;
 3. Maximum heights shall be measured from lowest adjacent grade to the highest point of the facility;
 4. No major facility, major modification, nor minor facility in a residential zone may exceed the maximum building height set forth in this subsection E. unless an adjustment is granted by the Planning Commission after making all of the following findings:
 - a. The Planning Commission has reviewed alternative options provided by the applicant and staff, including but not limited to additional and/or different locations and designs, and has determined that the application as approved with the additional height has a lesser impact on the aesthetics and welfare of the surrounding community as compared to other alternatives; and
 - b. Based on the evidence presented, the additional height above the maximum is reasonably necessary for collocation

of wireless communication facilities or for the efficient operation of the proposed facility;

- c. The additional height above the maximum is required to ensure compliance with federal or state law.
- F. Additional Screening and Site Selection Guidelines.
1. A major facility should be located at least one thousand (1,000) feet from the nearest existing, legally established major facility (except in the event that such facility is collocated).
 2. A ground mounted facility should be located in close proximity to existing above ground utilities, such as electrical tower or utility poles (not scheduled for removal or under grounding in the next eighteen (18) months), light poles, trees of comparable height, water tanks and other areas where the facility will not detract from the image or appearance of the City.
 3. A ground mounted facility should be covered with a clear anti-graffiti material of a type approved by the Director or designee.
 4. A roof mounted facility that extends above the existing parapet of the building on which it is mounted should be screened by a material and in a manner that is compatible with the existing design and architecture of the building.
 5. A roof mounted facility, and any guy wires, supporting structures and accessory equipment should be located and designed so as to minimize visual impact as viewed from surrounding properties and public streets.

16.44.080 - Right of Appeal.

Any decision made by the Director or his or her designee pursuant to this chapter may be appealed to the Chino Hills Planning Commission in accordance with Section 16.58.060 of the Chino Hills Development Code. Any decision made by the Planning Commission is appealable directly to the City Council in accordance with Section 16.58.070 of the Municipal Code.

16.44.090 - Enforcement.

- A. Reservation of right to review permits.
 1. Changed Circumstances. Any Conditional Use Permit for Wireless Communication Facilities or Site Development Permit for Wireless Communication Facilities granted or approved pursuant to this chapter shall be granted or approved by the City and its Planning Commission, or the City Council on appeal with reservation of the right and jurisdiction to review and modify the permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, changes in relation to the approved facility as described and diagrammed in the related Site Plan; increased height or size of the facility; additional impairment of the viewshed from surrounding properties; change in the type of antenna or supporting structure; changed color or

- materials; substantial change in location of the project area; and an effective increase in signal output above the maximum permissible exposure (MPE) limits imposed by the revised radio frequency emissions guidelines by the Federal Communications Commission.
2. Additional Right to Revoke for Violation. The reservation of right to review any permit granted and approved under this chapter by the City, its Planning Commission and/or City Council is in addition to, and not in lieu of, the right of the City, its Planning Commission and/or City Council to review and revoke or modify any permit granted or approved under this chapter for any violations of the conditions imposed on such permit or any fraudulent or false information submitted to the City in connection with the application or the approval of such application.
 3. Modification of Permit/Collocation. Upon review pursuant to subsection A of this section, any changed circumstance as determined by the Director or designee shall require the application and approval of a modification to the original Site Development Permit for Wireless Communication Facilities or Conditional Use Permit for Communication Facilities, except that any modification to accommodate collocated wireless communication facilities may be approved administratively without the approval of the Planning Commission.
- B. Nonconforming Wireless Communication Facilities.
1. Legal Nonconforming Facility. Any facility that is lawfully constructed, erected, or approved prior to the effective date of this chapter, or for which the application for a use permit is deemed complete prior to the effective date of this chapter, in compliance with applicable laws, and which facility does not conform to the requirements of this chapter shall be accepted and allowed as a legal nonconforming facility. Legal nonconforming wireless communication facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal or state laws as they may be amended or enacted from time to time, and shall at all times comply with the conditions of approval. Any legal nonconforming facility which fails to comply with applicable laws, ordinances, regulations, or conditions of approval may be required to conform to the provisions of this chapter.
 2. Illegal Nonconforming Facility. Any facility constructed or erected prior to the effective date of this chapter in violation of applicable laws, ordinances, or regulations shall be considered an illegal nonconforming facility and shall be abated as a public nuisance pursuant to Chapter 8.12 of the Municipal Code.

C. Penalties

1. It is unlawful and a misdemeanor for any person, firm, or corporation to violate, disobey, omit, neglect, refuse to comply with, or resist the enforcement of any of the provisions of this chapter. Such behavior shall subject the violator to penalty as set forth in Section 1.36.020 of this Code. Each day that a violation exists shall constitute a separate offense.
2. In addition to subsection 1 above, any violation of the provisions of this chapter or the conditions of operation of any permit issued pursuant to this Chapter are and shall be a public nuisance subject to abatement by the City through obtaining a court injunction from a court of competent jurisdiction or through the procedures set forth in Chapter 8.12 of this Code.

16.44.100 - Wireless Communication Facility Removal.

- A. Discontinued Use. The operator of a lawfully erected facility, and the owner of the premises upon which it is located, shall promptly notify the Director or designee in writing through a Site Development Permit Application for Wireless Communication Facilities in the event that the permitted use is discontinued for any reason. In the event that discontinued use is permanent, then the owner(s) and/or operator(s) shall promptly remove the facility, repair any damage to the premises caused by such removal, and restore the premises as appropriate to conform with applicable zoning codes. All such removal, repair and restoration shall be completed within ninety (90) days after the use is discontinued, and shall be performed in accordance with all applicable health and safety requirements. For purposes of this subsection A, a discontinued use shall be permanent unless the facility is reasonably likely to be operative and used within the immediately following three-month period. The Director or designee may at any time request proof by the operator of any facility that the facility is in active use.
- B. Abandonment. A facility that is inoperative or unused for a period of six continuous months shall be deemed abandoned. Upon reasonable suspicion of abandonment, the City shall provide a preliminary notice of abandonment to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such preliminary notice of abandonment may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed given at the time delivered or placed in the mail.
- C. Removal of Abandoned Facility.
 1. Within thirty (30) days after preliminary notice of abandonment is given, the operator of the facility and the owner(s) of the property on which it is located shall either (a) remove the facility and restore the premises, or (b) provide the Community Development Department with written objection to the City's preliminary notice of

abandonment and submit a request for administrative hearing to reconsider the abandonment. If after such time, the facility is not properly removed, or the City does not receive an objection to the preliminary notice of abandonment and request for administrative hearing, the Director or designee may make a determination of abandonment and provide notice of such determination in the same manner as the preliminary notice of abandonment.

2. If the City receives a timely written objection to the preliminary notice of abandonment and a request for administrative hearing, the Director or designee shall schedule an administrative hearing to commence within fifteen (15) days of receiving the objection. The Director or designee shall send notice of the time and place for the hearing to the operator of the facility and the owner(s) of the property on which it is located. At the time and place scheduled for administrative hearing, the operator of the facility or the owner(s) of the property on which it is located may present documents and other evidence that the facility was in use during the relevant six-month period and that it is presently operational. The Director or designee shall review all evidence, determine whether or not the facility was properly deemed abandoned, and make a determination of abandonment or a finding of continued use and provide notice of such determination in the same manner as provided for the preliminary notice of abandonment.

- D. Removal by City. At any time after thirty (30) days following the determination of abandonment, the City may remove the abandoned facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable code. The City may, but shall not be required to, store the removed facility (or any part of such facility). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the City promptly after demand therefor is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.
- E. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the real property on which the facility was located for the full amount of the cost of removal, repair, restoration, and storage. The Director of Community Development shall cause the lien to be recorded in the County of San Bernardino Recorder's Office.

- F. The operator of the facility, and the owners of the premises upon which it is located shall be in violation of this chapter for failure to timely comply with any requirements hereunder. Each such person shall be subject to penalties for each such violation, pursuant to Section 16.44.090 of this chapter.

SECTION 4. Amend Appendix A of the Chino Hills Municipal Code as follows:

The following symbols are used to describe the relationship of the listed uses to each zoning district:

"P"	The use is permitted by right.
"C"	The use requires a Conditional Use Permit.
"A"	The use is permitted as an accessory use only, subject to specific conditions outlined in the Development Code.
"T"	The use is permitted only as a temporary use, subject to the specific conditions contained in Chapter 9.75.
"S"	The use requires approval of a Site Development Permit.

APPENDIX A
REGULATION OF USES BY ZONING DISTRICTS

ZONING DISTRICT LAND USE	R A	R R	R S	R M 1	R M 2	R M 3	C N	C F	C G	C O	C R	M U	B P	L I	I - 1	I - 2	O S
Wireless Communications Facilities – Major Facilities							C	C	C	C	C	C	C	C	C	C	C
Wireless Communications Facilities – Major Modifications	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Wireless Communications Facilities – Minor Facilities	C	C	C	C	C	C	S	S	S	S	S	S	S	S	S	S	S
Wireless Communications Facilities – Minor Modifications	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S

Key:	
"P"	The use is permitted by right.
"C"	The use requires a Conditional Use Permit.
"A"	The use is permitted as an accessory use only, subject to specific conditions outlined in the Development Code.
"T"	The use is permitted only as a temporary use, subject to the specific conditions contained in Chapter 9.75.
"S"	The use requires approval of a Site Development Permit.

SECTION 5. Remove the term "Cellular Telephone Towers" from Appendix A of the Chino Hills Municipal Code.

SECTION 6. Upon the effective date of this Ordinance, the provisions hereof shall supersede any inconsistent or conflicting provisions of the San Bernardino County Code, as the same were adopted by Reference by City Ordinance Nos. 91-01 and 92-02.

SECTION 7. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 8. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 9. The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the City of Chino Hills' book of original Ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 10. This Ordinance will take effect on the 30th day following its final passage and adoption.

SECTION 11. The City Clerk shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 8th day of November, 2016.


ART BENNETT, MAYOR

ATTEST:


CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:


MARK HENSLEY, CITY ATTORNEY

*Asst. City Attorney
Elizabeth W. Eakins*

