

ORDINANCE NO. 2021-002

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO,
CALIFORNIA, REPEALING AND REPLACING CHAPTER 20.22 OF THE
CHINO ZONING CODE REGARDING THE REGULATION OF WIRELESS
TELECOMMUNICATIONS FACILITIES ON PRIVATE PROPERTY.

WHEREAS, On September 27, 2018, the Federal Communications Commission (“FCC”) commenced issuance of a series of new rulemaking decisions/regulations that significantly limit state and local management of wireless telecommunications installations. The Telecommunications Act, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location, siting and aesthetics, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions.

WHEREAS, In response, in March 2019 the City Council adopted new Chapter 12.30 into Title 12 (“Wireless Telecommunications Facilities in the Public Right-of-Way”) for the governance of telecommunications installations in the public right-of-way. That Chapter, however, does not pertain to wireless telecommunications installations on private property. Wireless facilities on private property are still governed by Zoning Code Chapter 20.22 (“Telecommunications Facilities”).

WHEREAS, Zoning Code Chapter 20.22 has not been updated to reflect those new FCC rulemakings and other changes in law as described in the first Recital hereinabove.

WHEREAS, This ordinance proposes to repeal Zoning Code Chapter 20.22, and create a new Zoning Code Chapter 20.22 pertaining to the regulation of wireless telecommunications facilities on private property. The new Zoning Code Chapter 20.22 is designed to (i) be consistent with the FCC and state rules and regulations, (ii) harmonize the City’s land use development standards for private property installations with Chapter 12.30 pertaining to right-of-way wireless installations, and (iii) lawfully maintain the City’s exercise of aesthetic control over wireless telecommunications facilities.

WHEREAS, The City held a Planning Commission meeting on March 1, 2021, to review possible standards and regulations for a draft ordinance, and the proposed ordinance incorporates input and direction received.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that the above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 20.22 of the Chino Zoning Code is amended by repealing it entirely and replacing it with a new Chapter 20.22 (“Wireless Telecommunications Facilities on Private Property”) as follows:

“20.22 Wireless Telecommunications Facilities on Private Property

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20.22.010 Purpose and Intent.

- A. The City of Chino intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this chapter are intended to, and should be applied to be, consistent with federal and state law, protect and promote public health, safety and welfare, and also balance the benefits from advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City. This chapter is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's visitors, residents, and businesses.
- B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit, or effectively prohibit, any personal wireless service provider's ability to provide personal wireless services; (2) prohibit, or effectively prohibit, any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California state law.

20.22.020 Definitions.

The abbreviations, phrases, terms and words used in this chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this chapter will have their ordinary meanings.

The definitions in this chapter shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Chino Municipal Code. However, if any definition assigned to any phrase, term or word in this chapter conflicts with any federal or state-mandated definition, the federal or state-mandated definition will apply.

“Amateur station” means the same as defined by the FCC in 47 C.F.R. § 97.3, as may be amended or superseded, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas, mast, and related equipment used for amateur radio services.

“Approval authority” means the City official or body responsible for application review and vested with authority to approve or deny such applications.

“Code” refers to the Chino Municipal Code.

“Concealment” means a facility that is integrated into or hidden behind an architectural feature of an existing structure and designed so that the purpose of the facility or support structure for providing wireless services is not readily apparent to a casual observer. Concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure; and (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality.

“Department” means the Development Services Department.

“Director” means the Director of Development Services of the City of Chino or the Director’s designee. In addition to his/her authority specified herein, the Director shall have all powers specified in Section 12.30.040.A as may be appropriate to the administration of private property wireless facilities.

“Eligible facilities request” means the same as defined in 47 U.S.C. § 1455(a)(2), as may be amended or superseded, and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded.

“FCC” means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L. 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.

“OTARD” means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.

“Personal wireless service facilities” mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.

“Personal wireless services” mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

“RF” means radio frequency.

“Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

“Shot clock” means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.

“Small wireless facility (SWF)” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

“Stealth” means any wireless facility designed to blend into the surrounding environment, and is visually unobtrusive. Examples of stealth facilities may include without limitation street light, faux tree, water tower, or flag pole designs.

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“Wireless facility” means a personal wireless service facility including any facility, base station or tower that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other associated installation development.

“WTFPP” means Wireless Telecommunications Facility Permit for Private Property, including either a Minor WTFPP or Major WTFPP (as further described in Section 20.22.040), as applicable.

20.22.030 Applicability.

- A. **General.** This chapter applies to all requests for the City’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on private property within the City’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to Subsection 20.22.030.E or F. Notwithstanding that Chapter 12.30 of the Code applies to wireless facilities in the public rights-of-way, several of the procedural and administrative terms of Chapter 12.30 overlap with this chapter and are thus incorporated into this chapter to govern the processing and review of wireless applications on private property.
- B. **Wireless Facilities on City Property.** This chapter applies to permit applications for wireless facilities on property or structures owned or controlled by the City; provided, however, that this chapter does not govern whether or under what terms and conditions the City would lease, license or otherwise allow a wireless facility on such property or structures.
- C. **Small Wireless Facilities/Policy.** Notwithstanding anything in this chapter to the contrary, all small wireless facilities are additionally subject to such further permitting standards as specified in a City Council policy, which may be adopted and/or amended by a resolution of the City Council (the “SWF Regulations”). All small wireless facilities shall comply with the SWF Regulations. If the SWF Regulations are repealed and not

replaced, an application for a small wireless facility shall be processed pursuant to this chapter.

- D. **Eligible Facilities Requests/Policy.** Notwithstanding anything in this chapter to the contrary, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 are subject to a permit as specified in a City Council policy, which may be adopted and/or amended by a resolution of the City Council (the "Eligible Facilities Request Policy"). All eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall comply with the Eligible Facilities Request Policy. If the Eligible Facilities Request Policy is not adopted for any reason, or is repealed and not replaced, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall be processed pursuant to this chapter.
- E. **Exemptions.** Notwithstanding anything in this chapter to the contrary, this chapter does not apply to the following:
1. Wireless facilities operated by the City for public purposes;
 2. Wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber's private residence;
 3. OTARD antennas; or
 4. Wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.
- F. **Amateur Radio.** Antennas and related transmission equipment used in connection with a duly authorized amateur station are exempt from this chapter, and shall be permitted provided that all of the following requirements are met:
1. Only one such facility is installed on any single site.
 2. The facility meets all setback, site coverage and other limitations on structures in the applicable zoning district, except height.
 3. If tower-mounted, the supporting tower does not exceed thirty-five (35) feet in height from the natural grade below.
 4. The overall facility is no taller than necessary to support its function.
 5. The overall facility does not exceed the maximum height in the applicable zoning district by more than twenty feet. Increased height may be allowed if necessary to support the facility's function, subject to a special conditional use permit.
 6. Multiple antennas are grouped so as not to exceed nine square feet in area.
 7. The facility is licensed with the FCC.
 8. All required building permits are obtained.

9. Temporary mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of up to seventy-two hours.

20.22.040 Required Permits and Other Approvals.

A. Minor Wireless Telecommunications Facilities Permit for Private Property (“Minor WTFPP”).

1. **Applicability.** A Minor WTFPP is required for:
 - a. Stealth or concealed wireless facilities on private property in preferred locations as described in Subsection 20.22.090.B that do not require a special exemption under Section 20.22.130,
 - b. Eligible facilities requests, and
 - c. Small wireless facility applications.
2. **Approval Authority.** Minor WTFPPs shall be reviewed by the Director, through the City’s standard plan check procedure, who may approve, conditionally approve, or deny the permit, in accordance with Section 20.22.080.

B. Major Wireless Telecommunications Facilities Permit for Private Property (“Major WTFPP”).

1. **Applicability.** A Major WTFPP is required for all new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that do not qualify for a Minor WTFPP.
2. **Approval Authority.** Major WTFPPs shall be reviewed in the same manner as an Administrative Approval, under Section 20.23.120 of this Code, except that the required findings for approval shall be the findings in Section 20.22.080 rather than the finding in Subsection 20.23.120.G.

C. Other Permits and Regulatory Approvals. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. All City standards and requirements, including building and encroachment permits (if applicable), shall be followed.

20.22.050 Permit Applications.

- A. **Application Required.** The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the City or the Director may establish from time to time in any publicly stated format. All applications for a permit must include all the information and materials required by the Director for the application. The

City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. The application fee for a Minor WTFPP shall be the fee required for plan check, and the application fee for a Major WTFPP shall be the fee required for an Administrative Approval.

- B. **Appointments for Application Submittal.** All wireless facility applications under this chapter must be submitted to the City at a pre-scheduled appointment with the Department. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Department shall use reasonable efforts to provide the applicant with an appointment within a reasonable time after the Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- C. **Optional Pre-application Conferences.** The Department shall provide prospective applicants with the opportunity to schedule and attend a pre-application conference with Department staff. The City strongly encourages pre-application conferences for all proposed projects that: (1) the prospective applicant believes will qualify as a stealth or concealed facility and/or (2) involve any wireless facilities proposed to be located in or within 200 feet from a residential zone. The pre-application conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues.
- D. **Applications Deemed Withdrawn.** Wireless facility applications shall be deemed withdrawn upon inaction of the applicant in the same manner as set forth in Subsection 12.30.050.H of this Code.
- E. **Peer and Independent Consultant Review; Deposit and Reimbursement of Costs.** The City Council authorizes the Director, in the Director's discretion, to select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues for the purposes of reviewing or assisting the City with any permit application under this chapter. The Director is further authorized to collect deposits and a reimbursement of costs from applicants. The process and authority for retaining consultants and collection of deposits and costs shall be the same those procedures set forth in Subsections 12.30.050.D through 12.30.050.F of this Code.
- F. **Compliance with Shot Clocks.** The City will make reasonable efforts to comply with all shot clocks when processing applications under this chapter.

20.22.070 Pre- and Post-Decision Notices Required.

- A. **Pre-Decision Notices.** Pre-decision notices are not required for Minor WTFPPs. For Major WTFPPs, the same pre-decision notice shall be given as is required for an Administrative Approval.

B. **Post-Decision Notice.** All final decisions on applications for both Minor WTFPPs and Major WTFPPs shall be in writing and based on substantial evidence in the written administrative record.

20.22.080 Approvals; Denials.

A. **Required Findings.** The approval authority may approve a wireless facility application only when the approval authority makes all the following findings:

1. The proposed wireless facility is either (a) in a “preferred location” (Subsection 20.22.090.B below), or (b) the proposed wireless facility is in a discouraged location and the applicant has demonstrated through a meaningful comparative analysis that no more favored location under Subsection 20.22.090.C.2 or favored support structure under Subsection 20.22.090.D would be technically feasible and potentially available;
2. The proposed wireless facility complies with all applicable development and aesthetic standards in this Code and any other applicable regulations;
3. The applicant has provided a signed acknowledgment that states its willingness to allow other carriers and site operators to collocate transmission equipment with the proposed wireless facility, to the extent such facility or portions thereof are owned or controlled by the applicant, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this Code;
4. The applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
5. The proposed installation is designed, stealthed, and/or concealed to be aesthetically compatible with the surrounding built and/or natural environment to the extent technically feasible.

B. **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority’s ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the General Plan and any applicable specific plan, this Code, or this chapter.

C. **Appeals.**

1. **Minor WTFPPs.** Notwithstanding Subsection 20.23.150.A.1 of this Code, the Director’s approval or denial of an Minor WTFPP is final and may not be appealed.
2. **Major WTFPPs.** The Director’s decision on a Major WTFPP may be appealed as provided in Section 20.23.150 of this Code.

20.22.090 Location Standards.

- A. **Preface to Location Standards.** This section sets out criteria for the location and support structure of wireless facilities. The City cumulatively considers whether the facility is in a preferred location and on a preferred support structure to evaluate the least intrusive means for an applicant to provide its services to the public. Subsection 20.22.090.B describes land use designations where wireless facilities are in a “preferred location” and thus not subject to an alternative sites analysis. Subsection 20.22.090.C provides specific locations where wireless facilities are discouraged. It is possible for a proposed facility to be simultaneously in a “preferred” zone but also in a “discouraged” location, such as a proposal within an industrial zone (a “preferred” location) that also happens to be within 200 feet from a residence (a “discouraged” location). In such cases, the location would not be deemed to be a “preferred” location under Subsection 20.22.090.B, and thus shall be subject to an alternative sites analysis presenting the most favored location under Subsection 20.22.090.C.2 and the most preferred support structure technically feasible and potentially available under Subsection 20.22.090.D. In situations involving discouraged locations where the applicant must consider alternative sites, preferences for facility locations and preferred support structures are ranked in Subsections 20.22.090.C.2 and D, respectively.
- B. **Preferred Locations.** All applicants must, to the extent technically feasible and potentially available, propose wireless facilities in a preferred location. No alternative sites analysis is required for stealth or concealed facilities proposed in any preferred location. To qualify as a preferred location site, the wireless facility must be stealthed or concealed. For all other facilities, the approval authority shall consider whether any more preferred location would be technically feasible or potentially available. The following locations are all considered “preferred locations,” so long as the site is not simultaneously in a discouraged location under Subsection 20.22.090.C:
1. Parcels within industrial zoning districts.
 2. Parcels within commercial zoning districts.
- C. **Discouraged Locations.** When an application involves a facility in a discouraged location, the approval authority shall consider whether any alternative site within a preferred location would be technically feasible and potentially available. If no such preferred location alternative exists, the approval authority shall consider whether any less discouraged location would be technically feasible and potentially available per the ranking of locations listed in Subsection 20.22.090.C.2.
1. The following locations are all “discouraged” and ordered from most discouraged to least discouraged:
 - a. Any location where the wireless facility would be within 200 feet of a structure approved for residential use.
 - b. Any location where the wireless facility would be within 200 feet of a local, state, or nationally designated historic property, structure, or district.

- c. Any location where the wireless facility would be within 200 feet of a property, structure, or district eligible for local, state, or national historic designation.
2. When an application involves a wireless facility in a discouraged location, regardless of zone, applicants must propose the facilities on parcels with the most favored land use designation listed below whenever technically feasible and potentially available. Applications must include a written justification, supported by factual and verifiable evidence, that shows that no higher-ranked location is technically feasible and potentially available, unless the proposed facility is in the most favored land use designation and/or is a stealth or concealed facility. The following zoning districts are ranked from most favored to least favored for facilities in a discouraged location:
 - a. Industrial.
 - b. Commercial.
 - c. Other nonresidential zones.
 - d. Residential.
- D. **Support Structure Preferences.** When an application involves a facility in a discouraged location, the approval authority shall, in addition to considering the most favored location in 22.22.090.C, consider whether any more preferred support structure would be technically feasible and potentially available. The approval authority may require the applicant to use a more preferred support structure when the alternative is technically feasible and potentially available. The City's preferences for support structures are as follows, ordered from most preferred to least preferred:
 1. Collocation on an existing structure with existing wireless facilities.
 2. Installations on a rooftop.
 3. Installations on a building facade.
 4. A stealthed or concealed freestanding facility.
 5. Stealthed or concealed installations within the public right-of-way.
 6. Installations on a replacement pole(s) within private streets (as defined in Section 10.04.180 of this Code).
 7. Installations on a new freestanding structure within private streets (as defined in Section 10.04.180 of this Code).

20.22.100 Design Standards.

- A. **Concealment/stealth.** All wireless facilities must be concealed and/or stealthed to the maximum extent feasible with design elements and techniques that hide, mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- B. **Overall Height.** To maintain the natural appearance of the community, wireless facilities may not exceed the maximum height allowed as stated, if at all, in Section 20.10.030 of this Code. If the applicant plants new natural trees around the proposed wireless facility, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.
- C. **Setbacks.** All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel.
- D. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which include, without limitation, any noise regulations in Chapter 9.40 of this Code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- E. **Landscaping.** All wireless facilities proposed to be placed in a landscaped area must include landscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties, or otherwise enhance the stealthing or concealment required under this chapter. All plants proposed or required must be native and/or drought-resistant and be consistent with the terms of Chapter 20.19 of this Code.
- F. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be required, if technically feasible. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealthing or concealment, and the approval authority may condition approval on additional stealth or concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- G. **Secondary Power Sources.** The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis, excepting that such power sources shall be approved in accordance with Government Code Section 65850.75 for so long as such section is effective or as may be amended. The approval authority shall not approve any permanent diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residential structure absent a showing of extraordinary need, by clear and convincing evidence, such as a declared public emergency; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- H. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigate illumination impacts on other properties to the maximum extent feasible. Any lights used shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.

- I. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies.
- J. **Future Expansion.** To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this section when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- K. **Utilities.** All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities; there shall be no exposed cabling. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external above-ground cabinet, enclosure, or "doghouse." Meters, panels, disconnect switches and other associated equipment must be concealed in inconspicuous locations to the fullest extent technically feasible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unstealthed or unconcealed antenna.
- L. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use and comply with applicable City and safety codes.
- M. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, General Plan and any applicable specific plan, the Chino Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- N. **Towers and Freestanding Wireless Facilities.** In addition to all other design requirements in this chapter, the following provisions shall be applied to a tower or other freestanding wireless facility:
 - 1. **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent technically feasible.

All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.

2. **Ground-Mounted Equipment.** To the extent technically feasible all ground-mounted equipment must either be concealed underground, or concealed within an existing or new structure, or other enclosure(s) or stealth design subject to the approval authority's prior approval. The approval authority may require additional concealment or stealthing elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
3. **Faux Trees.** In addition to all other design requirements in this chapter, the following provisions shall apply to a WTFPP for a faux tree:
 - a. **Shape and Branching.** Faux trees shall be designed and shaped from bottom to top to resemble the natural tree shape associated with the actual tree species that the faux tree is intended to resemble.
 - b. **Bark Cladding.** The entire tower above any fence line shall be fitted with faux-bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural tree bark resembling the actual tree species that the faux tree is intended to resemble.
 - c. **Equipment Stealthing.** All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the faux tree must be painted or colored with a flat greens, browns or other appropriate earth tones to blend into the faux branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux tree "sock" with faux leaves. No tower-mounted equipment shall be permitted to protrude beyond the faux branch canopy such that it would materially alter the applicable tree shape.
 - d. **Material Selection and Approval.** All materials and finishes used to stealth wireless facilities mounted on a faux tree shall be subject to prior approval by the Department. Applicants shall use only high-quality materials to stealth the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux leaves and faux bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.
4. **Fall Zone.** All freestanding towers outside the public rights-of-way must be setback from habitable structures approved for residential occupancy by a distance equal to one horizontal foot for every foot of the tower height, or the distance from the highest engineered break point to the top of the tower. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.

- O. **Building-Mounted Wireless Facilities.** In addition to all other design requirements in this chapter, the following provisions shall be applied to a wireless facility installed on a building rooftop or facade:
1. **Architectural Integration.** All applicants should, to the extent feasible, propose non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
 2. **Rooftop Wireless Facilities.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish to the maximum extent practicable. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
 3. **Facade-Mounted Wireless Facilities.** When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this Subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
- P. **Administrative Design Guidelines.** The Director may propose design guidelines, SWF Regulations (as defined in Section 20.22.030(C)), and/or an Eligible Facilities Request Policy (as defined in Section 20.22.030(D)), for consideration by the City Council to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. These guidelines and regulations shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. These design guidelines and regulations, and any subsequent amendments, shall not be effective unless approved by a resolution or ordinance amendment (as applicable) adopted by the City Council. If a conflict arises between the development standards specified in this chapter and the design guidelines adopted under this section, the development standards specified in this chapter shall control.

20.22.110 Standard Conditions for Approved Permits.

- A. **General.** Except as may be authorized in Subsection 20.22.110.B, all wireless facilities approved under this chapter, or deemed approved by the operation of law, shall be automatically subject to the following conditions:
1. **Permit Term; No Site Transfers.** WTFPPs do not run with the land. The permit will automatically expire 10 years and one day from its issuance unless California Government Code Section 65964(b) is amended to state otherwise. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
 2. **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless facility complies with all the conditions of approval associated with its permit and all applicable provisions in this Code that exist at the time the decision to renew or not renew is rendered. The approval authority (which shall be the approval authority that approved the original WTFPP) may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Code or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance. Additional permit renewals shall be subject to the procedures in this subsection.
 3. **Build-Out Period.** This construction permit will automatically expire one year from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and its use. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the build-out period if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period (and any extension) expires, the construction permit shall be automatically void but the permittee may resubmit a new complete application, which includes, without limitation all application fees, for the same or substantially similar project.
 4. **Approved Plans.** Any construction plans submitted to the building official shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the "approved plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, shall be subject to the Director's prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the approved plans, the Director may refer the request to the original approval

authority if the Director finds that it proposes a substantial change from the approved plans or implicates a significant or substantial land-use concern

5. **Post-Installation Certification.** At the time permittee commences full, unattended operations at a wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the approved plans. Such documentation shall include without limitation as-built drawings, GIS data and site photographs. In a written notice to the permittee, the Director shall either certify that the wireless facility complies with the approved plans or order the permittee to correct any noncompliance.
6. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by Chapter 15.44 of this Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a facility violates applicable noise regulations in this Code (Chapter 9.40), the Director, in addition to any other actions or remedies authorized by the permit, this Code or other applicable laws, may require the permittee to commission a noise study, at permittee's sole cost, by a qualified professional to evaluate the facility's compliance.
7. **Compliance with Applicable Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit. If the Director finds good cause to believe that the wireless facility is not in compliance with any laws applicable to human exposure to RF emissions, either individually or cumulatively with other transmitters in the vicinity, that result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population, the Director may require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the wireless facility that certifies that the wireless facility is in compliance with all such laws. The Director may order the facility to be powered down if, based on objective evidence, the Director finds that the wireless facility is in fact not in compliance with any laws applicable to human exposure to RF emissions until such time that the permittee demonstrates actual compliance with such laws. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in this Code, this chapter, any permit, any permit condition or any applicable law or regulation, shall be deemed to

relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in this Code, this chapter, any permit, any permit condition or any applicable law or regulation.

8. **Site Maintenance.** The permittee shall keep the site area, which includes, without limitation, any and all improvements, equipment, structures, access routes, walls, fences and landscape features, in a neat, clean, safe and code-compliant condition in accordance with the approved plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. Routine maintenance shall be restricted to normal construction work hours specified in Chapter 15.44 of this Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
9. **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping, in compliance with the Chapter 20.19 of this Code (Landscaping), in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
10. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility has not operated for any continuous six-month period and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation this Code. The permittee and/or property owner may request an extension to complete restoration to 180 days after a wireless facility is abandoned or deemed abandoned, which the Director may grant if the applicant presents evidence of good cause for the extension. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities; the City may also collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the City has no obligation to store such facility or associated equipment.
11. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable

prior notice to the permittee and/or property owner. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee and/or property owner, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

12. **Safety Hazard Protocol.** If the Fire Chief or Building Official (or their designee) finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable law, the Fire Chief or Building Official may order the facility to be shut down and powered off until such time as the immediate threat has been mitigated, after a good faith effort is made to notify the applicant, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.
13. **Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Department basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the regulatory authorizations held by the permittee and, to the extent applicable, site operator, equipment owner and site manager as may be necessary for the facility's continued operation; (C) the facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (D) a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the City, the permittee shall furnish the City with an updated form that includes all the most-current information described in this condition.
14. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the wireless facility. If the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or

permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the approval authority to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the WTFPP.

15. **Insurance.** The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City's risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the Director of to the cancellation or material modification of any applicable insurance policy.
16. **Performance Bond.** Prior to issuance of a WTFPP, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100 percent of the cost of removal of the facility as specified in the application for the WTFPP, or as that amount may be modified by the Director in in the permit based on the characteristics of the installation. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
17. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the WTFPP application, the WTFPP, the approved plans and photo simulations incorporated into such approval, all conditions associated with the approval, any ministerial permits or approvals issued in connection with the WTFPP approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies.
18. **Permit Revocation.** See Section 20.23.180 of this Code ("Revocation Procedure").
19. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person

authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

20. **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
21. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
- B. **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions listed in Subsection 20.22.110.A to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with this Code, generally applicable health and safety requirements and/or any other applicable laws.

20.22.120 Legal Nonconforming Wireless Telecommunications Facilities on Private Property. Legal nonconforming wireless telecommunications facilities are those private property wireless facilities that existed but did not conform to this chapter on the date this chapter became effective and shall be subject to the provisions of Chapter 20.20.

20.22.130 Special Exceptions for Federal or State Preemption.

- A. **Preface.** The provisions in this section establish a procedure by which the City may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in Subsection 20.22.130.B in addition to the findings required under Subsection 20.22.080.A. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- B. **Findings for an Exception.** The approval authority may grant an exception to any provision or requirement in this chapter only if the approval authority finds that a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law, or both.
- C. **Scope of Exception.** If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this chapter to least extent necessary for compliance with federal or state law.
- D. **Burden of Proof.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception."

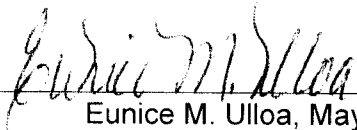
SECTION 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The City Clerk is directed to certify this Ordinance and cause it to be published in the manner required by law.

SECTION 5. This Ordinance shall become effective 30 days after the date of its adoption.

SECTION 6. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), Common Sense Exemption, in that it can be seen with certainty that there is no possibility for this action to have a significant effect on the environment, and individual development applications will be reviewed under CEQA as they are proposed. Adoption of this Ordinance would enact changes in land use regulations adding additional regulations and siting requirements on wireless facilities that would reduce their impacts, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless communication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations.

PASSED, APPROVED, AND ADOPTED this 6th day of April, 2021.



Eunice M. Ulloa, Mayor

ATTEST:



Angela Robles, City Clerk

State of California)
County of San Bernardino) §
City of Chino)

I, Angela Robles, City Clerk of the City of Chino, do hereby certify that the foregoing Ordinance of the City of Chino was duly adopted by the City Council at a regular meeting held on the 6th day of April, 2021.

AYES: COUNCIL MEMBERS: ULLOA, LUCIO, COMSTOCK, FLORES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE



ANGELA ROBLES, CITY CLERK