

**ORDINANCE NO. 15-020**

**AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA  
ADDING SECTION 6-6-1 OF THE CODIFIED ORDINANCES OF THE COUNTY OF  
ORANGE RELATED TO PERFORMANCE AND DEVELOPMENT STANDARDS FOR  
WIRELESS COMMUNICATIONS FACILITIES WITHIN COUNTY HIGHWAYS**

The Board of Supervisors of the County of Orange ordains as follows:

SECTION 1. Title 6, Division 6, Article, Section 6-6-1 is hereby added as follows:

Section 6-6-1. Performance and Development Standards for Wireless Communications Facilities.

This section will be referred to as the “County of Orange Wireless Communications Facilities Within County Highways Ordinance.”

(a) Purpose.

The purpose of this section is to provide a uniform and comprehensive set of standards for the development of wireless communications facilities and the installation of wireless antennas and related equipment within the limited space of available highways in the unincorporated area. The regulations contained herein are designed to protect and promote public health, safety, community welfare and aesthetic qualities of highways in the unincorporated area. These regulations encourage managed development of wireless communications infrastructure while providing a public review process to ensure a balance between the community’s concerns for aesthetics and location and the interest in establishing such facilities.

The purpose in regulating the development and siting of wireless communications facilities is to encourage economic development, preserve aesthetics and other community values and discourage proliferation of above-ground equipment. These regulations encourage collocation of wireless communications facilities, and require the use of natural and architectural screening in a manner that is compatible with the existing development policies and constraints that have been applied uniformly and historically throughout the unincorporated area.

The County of Orange Wireless Communications Facilities Within County Highways Ordinance is limited to the review of the location and aesthetic development of wireless communications facilities and establishing reasonable time, place and manner limitations. These regulations comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996, applicable regulations of the Federal Communications Commission, and state law. These regulations are not intended to unduly restrict the development of necessary wireless communications facilities or conflict with existing public utility franchises. These regulations are designed to be consistent with the County’s authority to regulate County highways pursuant to the Streets & Highways Code and Vehicle Code, and do not supersede such authority.

(b) Definitions.

**Alternative Structure:** Manmade trees, clock towers, utility structures, traffic signals and similar alternative-design mounting structures that conceal or minimize the presence of antennas, tower or support structure.

**Antenna:** One (1) or more rods, poles, panels, discs, dishes, or similar devices used to transmit, receive, or transmit and receive radio frequency signals or electromagnetic signals, including but not limited to an omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish), but excluding any pole or antenna mount.

**Base Station:** The equipment and non-tower supporting structure at a fixed location that enable FCC-licensed or authorized wireless communications between user equipment and a communications network. A “non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment.

**California Public Utilities Commission (CPUC):** An independent commission of the State of California that regulates all public utilities providing intrastate service within the State.

**Camouflage:** Incorporation of elements and/or techniques designed to mask or blend a wireless communications facility with the surrounding environment in such a manner to render it generally less noticeable to the casual observer. These types of facilities may include antennas located on light poles, power poles and traffic signals, ground mounted or building mounted antennas that blend with the surroundings and base station equipment screened by landscaping.

**Collocation/Collocated:** The placement or installation of wireless transmission equipment on an existing structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. Collocated equipment may be separately owned and used by more than one person or entity.

**Existing Structure:** A tower or base station, utility structure, traffic signal, building or other existing object is an existing structure, for purposes of this section, if it has been reviewed and approved under the applicable County regulations or under another state or local regulatory review process. An existing structure need not be an existing wireless communications facility.

**Federal Aviation Administration (FAA):** The federal agency responsible for regulating civil aviation and air traffic control to promote safety.

**Federal Communications Commission (FCC):** The independent commission of the federal government with interstate jurisdiction over all matters pertaining to communications by wire or radio in the United States.

**Hearing Officer:** Director, OC Public Works or designee.

**Height:** The distance measured from the finished grade to the highest point on the tower or antenna, including the base pad and any antenna. Towers that are adjustable in height shall be measured to the maximum height which the structure is capable of reaching.

**Minor Change:** Any modification to an existing wireless communications facility or any collocation to an existing structure that does not meet the definition of substantial change.

Open Space District: Zoning District, or specific plan or planned community land use designation, which is intended to preserve natural resources and/or protect valuable, unique or sensitive environmental features.

Residential District: Zoning district, or specific plan or planned community land use designation, which has “single-family dwelling or mobilehome” as a principal permitted use.

Stealth: Wireless communications facility designed with concealment elements so visibility of any antenna or other transmission equipment associated with the facility is generally unnoticeable and so that the wireless facility fits into the context of its surroundings. By way of example, and not of limitation, a faux pine tree in an area with other natural pine trees would be considered stealth.

Substantial Change: Any modification to a wireless communications facility or any collocation to an existing structure that substantially changes the physical dimensions of the existing facility or structure. Shall have the same meaning as the term “substantial change” or “substantially change” as defined in Title 47, Code of Federal Regulations, section 1.40001(b)(7), as may be amended, which is any of the following criteria:

- (1) it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
- (2) it protrudes from the edge of the structure more than six feet;
- (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- (4) it entails any excavation or deployment outside the current site of the tower or base station;
- (5) it would defeat the existing concealment elements of the tower or base station; or
- (6) it does not comply with conditions associated with the prior approval of construction or modification of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds identified above.

Tower: Any structure built for the purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

Transmission Equipment: Any equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

Wireless Communications Facility (or Wireless Facility or Wireless Facilities): All equipment and other improvements installed for the purpose of providing wireless transmission of voice, data, images or other information, including, but not limited to, cellular phone service, personal wireless services, and paging services, consisting of equipment and network components, such as towers, utility poles, transmitters, base stations and emergency power systems. A wireless communications facility does not include on-site radio or television broadcast facilities.

(c) Applicability.

- (1) This section applies to all permit applications to construct, install, collocate, or modify, and/or operate wireless communications facility or transmission equipment received after the effective date of this section.

(2) This section shall not apply to:

- a. Temporary Emergency Towers. Any applicant that seeks a permit to install a wireless communications facility necessary to protect public health, safety or welfare during an emergency shall submit an application for a temporary emergency-use permit no later than one (1) calendar day after the installation of such wireless communications facility. The Director may approve such temporary wireless facility without regard for the other provisions in this section for no more than thirty (30) days. The owner of any wireless communications facility installed pursuant to this subsection shall immediately remove such facility at the end of the thirty (30) day period or the conclusion of the emergency, whichever occurs first. The County may remove any wireless communications facility installed pursuant to this subsection at the owner's cost immediately at the end of the thirty (30) day period or the conclusion of the emergency, whichever occurs first. No predictable or prior-scheduled event, including without limitation, any sporting event, entertainment event or civic event, constitutes an "emergency" for the purposes of this section; or
- b. Wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical generation, transmission and distribution facilities subject to CPUC General Order 131-D.

(d) Approvals Required for Wireless Communications Facilities.

Any wireless communications facility proposed within a County highway shall be subject to an encroachment permit. New towers and substantial changes to existing wireless communications facilities shall be subject to a public notification process.

(e) Permit Application Requirements.

An application for a wireless communications facility shall meet the requirements of the "County of Orange Wireless Communications Facility Manual," as approved by the Director, including the submittal of items listed in the "County of Orange Wireless Communications Facility Submittal Checklist," and all such other information and/or materials that the County may, from time-to-time, publish as required for a complete application.

(f) Wireless Facility Design Standards.

- (1) The applicant shall demonstrate to the satisfaction of the Director that the wireless communications facility is the least intrusive means by which to locate and design the facility. "Least intrusive means" means that all new wireless communications facilities and substantial change shall be designed to minimize aesthetic and visual impacts, and shall include appropriate stealth or camouflage techniques given the proposed location, design, visual environment and nearby uses and/or structures. Wireless facilities shall be located in areas where existing topography, vegetation, buildings or other structures naturally conceal the facility. An applicant may be required to provide an alternative site and design analysis and demonstrate why other suitable locations do not exist.
- (2) New towers shall be stealth when adjacent to or within one hundred (100) feet of residential and commercial districts as measured from the parcel line.

- (3) A new tower visible by a motorist driving on a scenic highway (including landscape corridors and viewscape corridors as defined in the Orange County General Plan) shall be stealth and placed or constructed so that the entire wireless facility is below any major ridgeline (as defined by the General Plan or Specific Plan).
- (4) If the applicant demonstrates to the satisfaction of the approving authority that stealthing the facility is infeasible then the applicant shall be required to camouflage the facility.
- (5) Modifications to existing wireless communications facilities shall match the level of stealth or camouflage of the facility, as applicable.
- (6) All new wireless communications facilities shall collocate on an existing wireless communications facility or other existing structures to the maximum extent feasible.
- (7) Wireless communications facilities are prohibited in all center street medians.
- (8) All transmission equipment and associated enclosures for new wireless communications facilities and substantial changes shall be designed to include appropriate stealth or camouflage techniques given the proposed location, design, visual environment, and nearby uses and/or structures. In addition, it shall also be situated in a manner that utilizes existing natural or man-made features including, but not limited to, topography, vegetation, buildings or other structures to visibly conceal it from roads and residences.
- (9) Ground-mounted transmission equipment and associated enclosures for new wireless communication facilities and substantial changes shall be located either underground or completely within a fenced area. Such fence shall not exceed a maximum height of six (6) feet unless the applicant demonstrates a valid safety consideration that justifies a taller fence. No transmission equipment or associated enclosures shall protrude above the fence. Any chain link fence shall be concealed with landscaping that extends the full length and width of the fence. If technically infeasible to locate the structures underground or within a fenced area, they shall be designed to include appropriate stealth or camouflage techniques given the proposed location, design, visual environment, and nearby uses and/or structures.
- (10) All pole-mounted or wireless tower-mounted transmission equipment shall be mounted as close as technically feasible to the pole or tower so as to reduce the overall visual profile, and shall be painted with non-reflective colors and textured to match the support pole or wireless tower.
- (11) On all new wireless communication facilities and substantial changes, all cables, jumpers, conduits and other connections between transmission equipment and/or associated structures shall be either completely enclosed or placed underground to the maximum extent feasible.
- (12) All wireless communications towers shall be designed to prevent climbing within the first twelve (12) feet from the ground.
- (13) All wireless communications towers shall be constructed from concrete, steel, or wood.

- (14) All wireless communications facilities shall be painted or treated with non-reflective colors to provide concealment of the facility and to minimize visual disruption.
- (15) No tower shall exceed the maximum permissible height for structures in the immediately adjacent zoning district.
- (16) A tower located adjacent to or within one hundred (100) feet of a residential, open space or commercial zoning district as measured from the parcel line, or across the street and within the ultimate right-of-way if greater than one hundred (100) feet, shall be designed to the lowest feasible height to reasonably achieve the applicant's technical objective.
- (17) There shall be a minimum of three hundred (300) feet between any two wireless communications facilities. This separation requirement does not apply to collocated equipment.
- (18) Unless the County explicitly allows otherwise on a case-by-case basis, no sign shall be attached to the facility, except signs that identify the wireless communications facility owner and/or operator, and are required to comply with state or federal law.
- (19) Lighting shall be prohibited unless otherwise required under Federal Aviation Administration ("FAA") regulations. Applicants shall install only timed or motion-sensitive lights and design all lights associated with the wireless communications facility so that direct light rays shall be confined to the premises.
- (20) The facility shall comply with all applicable FAA requirements of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code). If a proposed wireless communications facility is within an Airport Planning Area, the Director shall submit the application to the County Airport Land Use Commission (ALUC).
- (21) Any permit application that includes a request for a deviation from any performance or site development standard shall demonstrate to the satisfaction of the Director that it would be technically infeasible to meet such standard. The Director shall make the following findings prior to final action:
  - a. It has been demonstrated that adherence to applicable zoning regulations will make the project technically infeasible.
  - b. The proposed wireless communications facility is the least intrusive means by which to locate and design the facility to the extent feasible.

(g) Public Notice.

- (1) If the wireless communications facility will be located within one thousand (1,000) feet from a military installation, within special use airspace, or beneath a low-level flight path as defined by California Government Code section 65940, the applicant shall be required to comply with California Government Code section 65944.
- (2) At time of encroachment permit application submittal for the installation of new tower or substantial change to an existing wireless communications facility, the applicant shall

distribute and provide evidence of the distribution of a “Notice of Application” by registered mail to owners of abutting and adjoining properties, properties located across the highway from the abutting and adjoining properties, applicable resident organizations and homeowners associations. The “Notice of Application” shall include a description and photo simulation of the proposed wireless communications facility, name and phone number and email address of contact person for applicant, listing of requests for deviation(s) from site development standards and instructions on how to submit comments/questions.

(3) Applicant shall also post the “Notice of Application” at the proposed installation site.

(h) Processing of Encroachment Permit for New Towers and Substantial Changes to Existing Facilities.

(1) After staff has deemed the encroachment permit application complete, the information in the application will be assessed and a determination made if the application shall be denied or approved.

(2) Following the denial or approval determination, a second notification shall be sent by the County to the same parties as listed in (g)(2). This notification shall include the determination of denial or approval and describe the appeal process for this determination.

(3) Notwithstanding this subsection, if the applicant demonstrates to the satisfaction of the Director that Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as Title 47, United States Code, section 1455(a), as may be amended or interpreted by a court of competent jurisdiction, applies to the proposed minor change, then the Director will not deny the application.

(i) Appeals.

(1) The denial or approval determination shall be subject to appeal by the parties listed in (g)(2).

(2) Appeals must be filed within fourteen (14) calendar days of the date of the notification as described in (h)(2) by either the applicant or a member of the public entitled to a Notice of Application.

(2) Appeals shall be based only on the project’s consistency with the requirements set forth in this section.

(3) Appeals shall be considered by the Hearing Officer at a hearing held no later than thirty (30) days after the expiration of the appeal period. The decision of the Hearing Officer shall be final.

(j) Legal Nonconforming Use.

(1) Any wireless communications facility that is lawfully constructed, erected, or approved prior to the adoption of this section, in compliance with all applicable laws, and which facility does not conform to the requirements of this section, shall be accepted and

allowed as a legal nonconforming use for a ten (10) year period beginning on the effective date of this section.

- (2) Legal nonconforming facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the encroachment permit was granted, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.
- (3) At the end of the ten (10) year period, or prior to improving the facility through a substantial change, if earlier, the permittee shall apply for an encroachment permit to bring the facility to existing standards.

(k) Maintenance Requirements.

- (1) At all times, a wireless communications facility shall comply with all applicable rules and regulations related to public health and safety, including, without limitation, all applicable rules and regulations related to human exposure to electromagnetic radio frequency emissions.
- (2) At all times, a wireless communications facilities, including all transmission equipment, associated improvements and concealment elements, shall be maintained in neat, clean and safe condition. The County may take actions reasonably necessary to maintain a wireless communications facility when the owner fails to comply with this section either after ten (10) days' notice or immediately in the case of an emergency. The owner shall reimburse the County for any costs to maintain a wireless communications facility within thirty (30) days after receipt of written notice.

(l) Change of Ownership.

The owner or operator shall provide written notice to the Director within thirty (30) days after a transfer of ownership or authorization to operate the wireless communications facility. The written notice shall include (1) the transfer date; and (2) full contact information for the transferee, including a name, direct phone number and mailing address.

(m) Abandonment.

Any permittee or operator who intends to, or does abandon or discontinue use of a wireless communications facility for any reason, shall do all of the following:

- (1) Except where discontinuance is due to the revocation of a permit, on or before the sixtieth (60th) day before the final day of use, notify the Director in writing, specifying the date of the intended abandonment or discontinuance and the applicable permit number.
- (2) Within one hundred and eighty (180) days after the abandonment or discontinuance, at the permittee's sole expense, remove any wireless communications facility and all its associated equipment in compliance with all applicable health and safety requirements and restore the site to the condition that existed before installation of the wireless communications facility, or as otherwise required by the Director.
- (3) At any time after one hundred and eighty (180) days following the abandonment or discontinuation, without further notice to the applicant, the Director may remove and

store the wireless communications facility, repair any damage to the premises caused by such removal, and restore the premises as the Director deems appropriate. The permittee, and all prior owners and operators of the wireless communications facility, will be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the County promptly after demand for payment is made. The County may, instead of storing the removed wireless communications facility equipment, convert it to the County's use, sell it, or dispose of it in any manner deemed appropriate by the County.

(n) Conflicting Ordinances.

In the event that any County ordinance or regulation, in whole or in part, conflicts with any provisions in this section, the provisions of this section shall control.

(o) Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section.

The Board of Supervisors hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.